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Impact of the Friendly Settlement

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INTRODUCTION

INTRODUCTION

1. The Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "Commission," or "IACHR") presents this, the second edition of its report *Impact of the Friendly Settlement Procedure*, which systematizes several of the 137 friendly settlement agreements signed between 1985 and 2017, as well as providing an update on best practices, challenges, and legislative and administrative frameworks for advancing friendly settlement agreement negotiation and implementation processes.

2. One of the main functions of the Inter-American Commission 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.

3. 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.

4. 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 through contentious cases, 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, (hereinafter "the Convention", "the American Convention" or "ACHR"), the American Declaration of the Rights and Duties of Man (hereinafter "the Declaration" or "the American Declaration"), 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.

5. The friendly settlement mechanism opens a venue for dialogue between alleged victims, petitioner and State, where the parties 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.

6. The IACHR facilitates the friendly settlement procedure before adopting a decision on merits. Thus, for petitioners and alleged victims of human rights violations, the friendly settlement procedure is a prior opportunity for dialogue with the State in order to agree on the terms of redress for the harm caused by the violation of their rights that they allege have been violated and for reaching a settlement to the dispute that avoids contentious proceedings. 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 and other regional human rights instruments. The procedure depends on the will of both parties; therefore, the facilitation that the IACHR provides is geared toward satisfying their interests in the negotiation. In that sense, given that the friendly settlement procedure begins and continues based on the will of the parties, if they consider that the negotiation is not in their interests, they may ask the IACHR to terminate its good offices and continue to litigate the matter in contentious proceedings.

7. Within the context of the friendly settlement procedure, once the agreement has been approved and published by the IACHR, it acquires legal effects, putting an end to the petition in the indvidual petitions and cases system in accordance with Article 49 of the ACHR. Following the publication of the approval report under Article 49, the IACHR follows up on implementation of the commitments set forth in the agreement; however, the matter may not be reopened in contentious proceeding, whether in the admissibility or merits stage, or the case be referred to the Inter-American Court of Human Rights.

8. 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.

9. 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

10. 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.

11. 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,1 the OAS member States expressed their interest in seeing the Commission 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.

12. The Commission has made important steps to strengthen the friendly settlement procedure as an alternative to litigation, such as creating a special Section on friend settlements and follow up of agreements, preparing an analysis of current friendly settlement practices, training the

[1] 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

Executive Secretariat staff on alternative dispute resolution, and preparing an internal protocol to facilitate the processing of friendly settlements; and the publication of a handbook on basic elements of the friendly settlement mechanism[2]

13. 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.

14. 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.

15. 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.

16. To respond to this challenge, the Commission prepared in 2013 a first version of this impact report on the successes obtained through the friendly settlement mechanism, which update is presented in this second edition, 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. In addition, as part of the strategy implemented to address the challenge of the need to disseminate information about the mechanism to users of the system, the *Handbook on the Use of the Friendly Settlement Mechanism* was published in 2013. As mentioned, the handbook is intended as a guide containing basic procedural and substantive information of use for victims, petitioners, and States in the friendly settlement procedure.

17. Given that the friendly settlement procedure continues to evolve and that it is important to understand its significance and impact based on results, the IACHR decided to prepare this second edition in order to present up-to-date information about outcomes and constructive developments from the point of view of best practices.

[2] IACHR, Handbook on the Use of the Friendly Settlement Mechanism. Available online: https://www.oas.org/es/cidh/soluciones_amistosas/docs/guia-practica-sa-es.pdf

B. Methodology

18. 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.[3]

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

20. 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 144th 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.

21. The First Inter-American Conference on Human Rights and the Exchange of Best Practices on Friendly Settlements[4] was held on June 7 and 8, 2013,

[3] The working meeting was held on June 10, 2011 at the IACHR headquarters.

[4] 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

during the 43rd 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.

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

23. For the update of this report, the Commission took into consideration the friendly settlement agreements approved between the end of 2012 and 2017 in addition to input gathered at two special meetings on implementation of decisions of the IACHR held at the headquarters of the IACHR in Washington, D.C., on September 21 and December 5, 2017.

C. Structure of the Report

24. This report is divided into three sections and a conclusion, one on the evolution of the friendly settlement mechanism, the challenges and good practices that have been identified during the said evolution on the negotiation and implementation of agreements, the impacts of the implementation of friendly settlements and the challenges and best practices identified.

25. Chapter II, 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

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).

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 and 2013 of the amendments to the Commission's Rules of Procedure; and the Inter-American Commission's current practices.

26. Bearing in mind that the primary objective of friendly settlement agreements approved by the Commission is to redress harm caused by alleged violations, the this report's second chapter examines the impact that the reparation measures contained in friendly settlement agreements concluded between States and petitioners have had. Thus, that chapter's sections present the system's users, the different modalities of reparation that have been adopted in the framework of friendly settlement agreements, and the effectiveness of their implementation.

27. Chapter III analyzes the different types of impact of friendly settlement agreements. Section a is devoted to the first modality of reparation, which involves 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. Section B addresses a second modality, which concerns *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.

28. Section C, covering *measures of satisfaction,* the third reparation modality, on the other hand, mainly involves 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.

29. Section D, of Chapter III 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.

30. Section E 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.

31. Chapter IV of the report identifies a number of challenges with regard to negotiation and implementation of friendly settlement agreements, emerging best practices in the region, and recommendations for implementing frameworks that would facilitate the use of the friendly settlement procedure in States. Finally, Chapter V contains the report's conclusions.

CHAPTER 2
EVOLUTION OF THE FRIENDLY SETTLEMENT PROCEDURE

EVOLUTION OF THE FRIENDLY SETTLEMENT PROCEDURE

32. 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 that was held from the 7th to the 22nd of March of 2013. The third and final chapter of this section looks at the IACHR's current practice with respect to the friendly settlement procedure.

A. Legal Foundation for the Friendly Settlement Procedure

33. 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.[5]

34. 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

[5] 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.

alleged, the IACHR has the authority to make itself available to the parties with a view to reaching a friendly settlement on the matter.[6]

35. The first principles governing the friendly settlement procedure appeared in Article 42 of the Commission's Regulations, approved on April 8, 1980. That 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.[7] This rule was subsequently eliminated by the Commission.

36. 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.

B. First precedent of the Friendly Settlement procedure

37. 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

[6] 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.

[7] 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.

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.[8]

38. 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.

39. 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 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[9]

40. 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.

41. 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.

42. 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

[8] 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.

[9] 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, para. 11.

conditions of détente essential for the Commission to perform its conciliatory functions effectively.[10] Two important points related to this negotiation 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[11]

43. 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 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.12 It is worth mentioning that the process concluded with the publication of the *Special Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin*, which was transmitted to the Government of Nicaragua on November 29, 1983.[13]

44. It is worth pointing out that although the case of the Miskito divers mentioned marked the first use of the friendly settlement procedure and came in the context of the country monitoring and thematic activities of the IACHR at the time, the evolution of the friendly settlement mechanism through the working methodology and regulatory reforms adopted by the IACHR has placed the friendly settlement procedure within the context of the Commission's system of individual petitions and cases. In that regard, the case of the Miskito divers highlighted the need to develop parameters for the use of the mechanism within the IACHR Rules Procedure, a task that has gradually evolved and continues to do so.

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10 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, para. 8.

11 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.

12 Ibid, para. 8.

13 IACHR, Special Report on the Situation of Human Rights of a Segment of the Nicaraguan Population of Miskito Origin, November 29, 1983. Available online: http://www.cidh.org/countryrep/Miskitosesp/Indice.htm

C. Subsequent evolution of the IACHR's Methodology and Procedural Standards for Friendly Settlements

45. 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.*[14]

46. 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[15] were inapplicable.[16]

47. 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.[17]

48. 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, conditions that are left to the discretion of the

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[14] 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, para. 26.

[15] 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.

[16] I/A Court H.R., Case of Velásquez Rodríguez v. Honduras, Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 42.

[17] Ibid, para. 43.

Commission.[18] 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.[19]

49. As happened in the *Case of Velásquez Rodríguez*, the Commission argued in the *Case of Caballero Delgado and Santana v. Colombia*[20] 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."[21] 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[22] and observed that the parties had not requested it.[23]

50. The Court, for its part, held that only in exceptional cases and for substantive reasons could the Commission omits 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."[24]

51. 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

18 Ibid, para. 44.

19 Ibid, para. 45.

20 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, para. 2.

21 Ibid, para. 23.

22 IACHR, Report No. 31/91 (Merits), Case 10,319, Caballero Delgado and Santana v. Colombia, September 26, 1991.

23 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, para. 22.

24 Ibid, paras. 27-28.

Americas.[25] These initiatives were geared 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.[26] This change in the Commission's practices was explained by the Commission's President at the opening of the Commission's 95th 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.[27]

52. 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, compared with just three published from 1985 to 1995, the decade following the very first friendly settlement report. It is worth noting in that regard that the approval and publication of friendly settlement agreement depends on a variety of factors, such as, the will of the parties, the nature of the agreement, and the implementation of the commitments adopted in the agreement, among other factors. Over the last five years, the number of friendly settlement agreements published annually by the IACHR has fluctuated between five and eight.

53. 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

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25 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 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

26 Ibid.

27 Address by the President of the Inter-American Commission on Human Rights, Claudio Grossman, at the of the IACHR's 95th 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

equality before the law, and freedom of expression.[28] 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.[29] This represented a visible shift away from the principle 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.

54. During its 109th Special Period of Sessions, held December 4 through 8, 2000, the Commission approved new Rules of Procedure [hereinafter "Rules"].[30] 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,[31] was the product of an open and inclusive process in which the States and some one hundred civil society organizations participated.

55. The Rules of the year 2000 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.

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28 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.

29 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 Rua Álvarez, Colombia, March 9, 1999.

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

31 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

56. The articles introduced to the Rules in 2000 regarding the friendly settlement procedure[32] 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.

57. 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.[33] This provision introduces the first fundamental change with respect to the procedure established in earlier regulations, which did not include this particular provision.[34] 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.[35] 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.[36]

58. 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

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32 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.

33 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."

34 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.

35 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).

36 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).

petitioners and the State.[37] 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.[38]

59. 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.

60. Lastly, the new Rules authorized the IACHR to implement the *follow-up measures it deems appropriate [...] in order to verify compliance with friendly settlements.*[39] These follow-up measures may include requesting information from the parties and holding working meetings to evaluate the progress made in the agreements' fulfillment.

61. With the amendments to the Rules took effect in 2000, the number of friendly settlement reports adopted by the IACHR increased again.[40] 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;[41] an open-mindedness on the

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37 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.

38 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.

39 Ibid, Article 46.

40 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.

41 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.

part of the States, which in many cases voluntarily proposed that a friendly settlement procedure be initiated;[42] 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.

62. 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.

63. 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.

64. 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.[43] Article 59, which concerns the Annual Report, indicates that Chapter II of the report shall include friendly settlements approved during the period.

D. The IACHR's Current Practice

65. 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

[42] 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.

[43] IACHR, Rules of Procedure of the Inter-American Commission on Human Rights, Resolution 1/2013, Article 29(2)(c).

does not show a willingness to reach a friendly settlement respectful of human rights.

66. When the friendly settlement process begins, the Commission explores the parties' interests in the negotiation and potential areas of agreement that they may have in order to maintain the momentum of the negotiations. At the same time, as part of the facilitation work for complex negotiation processes, the Commission makes pertinent precedents in the inter-American human rights system available to the parties, along with the experience of different States in the region with friendly settlement agreements in cases with similar factual contexts, so that the parties may have objective criteria which allow them to advance the negotiations toward a possible friendly settlement.

67. 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.

68. Should the parties arrive at an agreement according to the stablished in article 40 of its Rules, 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.

69. 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.

70. 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, the American Declaration 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 the case to the Inter-American 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.

CHAPTER 3

MODALITIES AND IMPACTS OF THE FRIENDLY SETTLEMENTS PUBLISHED BY THE IACHR

MODALITIES AND IMPACTS OF THE FRIENDLY SETTLEMENTS PUBLISHED BY THE IACHR

71. 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.[44] In this chapter the Commission presents examples of measures that have been agreed upon in friendly settlements agreements approved and published by the IACHR that are different stages of implementation. A friendly settlement agreement offers the possibility to reflect the interests and needs of both parties, as well as to take into account and address the causes and consequences of the alleged violations from the perspective of the individuals concerned. In that regard, for each type of reparation measure, examples are presented of clauses that have been agreed upon, along with the impact of their implementation. At the same time, it is worth mentioning that the IACHR follows up on approved and published friendly settlement agreements in its annual reports, which therefore contain more detailed information about the implementation of each reparation measure.[45]

72. 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.[46]

73. That document describes the elements of a "full and effective" reparation, that is appropriate and proportional to the gravity of the violation and the

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44 IACHR, Principal Guidelines for a Comprehensive Reparations Policy, OEA/Ser/L/V/II.131, doc. 1, February 19, 2008, para. 1.

45 IACHR, Annual Report to the OAS General Assembly, Chapter II.D, Status of compliance with the recommendations of the IACHR, Available online: http://www.oas.org/en/iachr/reports/annual.asp

46 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

circumstances of each case. It lists the following as forms of reparation: restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.

74. 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

75. Restitution includes measures for restoring the victim to the situation known before the violation.[47] 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.[48] The Commission understands that the nature of 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.[49]

76. 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.

47 Ibid, Article 19.

48 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 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

49 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.

77. Restitution has figured in 24 out of the 137 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

78. The friendly settlement agreement that the State of Mexico and the petitioners signed in the case of Ricardo Ucán Seca[50] illustrates the inclusion of restitution measures in such agreements and the impact that they have when the State complies.

79. 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 in 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 that ended with a guilty decision.

80. Following the negotiations and a public hearing at the Commission's headquarters,[51] 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 declare his innocence and 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. The friendly settlement agreement signed in this case was fully implemented by the Mexican State.[52]

81. Another example that illustrates how measures of restitution are incorporated into friendly settlements and the State's actions in

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50 IACHR, Report No. 91/10 (Friendly Settlement), Case 12,660, Ricardo Ucán Seca, Mexico, July 15, 2010.

51 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, para. 10.

52 See IACHR, 2012 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, paras. 876-881.

compliance thereof is the case of Luis Rey García Villagrán,[53] who was victim of unlawful detention, torture, and violations of due process during his prosecution for an alleged crime[54] In the friendly settlement agreement signed, the Mexican State pledged that, in collaboration with the Government of the State of Chiapas, it would take the relevant steps for Mr. García Villagran'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.

82. 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. The friendly settlement agreement signed in this case was fully implemented by the Mexican State.[55]

83. Another example was the case of Marcos Gilberto Chávez and Sandra Beatriz Chávez in Argentina, in which the petitioners alleged that they had been sentenced to life imprisonment for the homicide of Mrs. Chávez's spouse in a proceeding that violated their right to a fair trial and in which her her sexual preferences and habits, stereotyped physical ailments, and supposed "coldness" at the loss of her husband were examined.[56] Based on the friendly settlement process, on August 4, 2014, the Government of the Province of Salta issued Decrees Nos. 2.281 and 2.283, ordering the life prison sentences imposed on Sandra Beatriz Chaves and Marcos Gilberto Chaves to be commuted to time served as of the date that the commutation was granted, with the result that the petitioners immediately regained their personal liberty without any restrictions.[57]

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53 IACHR, Report No. 164/10 (Friendly Settlement), Case 12.623, Luis Rey García Villagrán, Mexico, November 1, 2010.

54 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, para. 20.

55 See IACHR, 2011 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, paras. 982-987.

56 IACHR, Report No. 102/14, Case 12.710, Friendly Settlement, Marcos Gilberto Chaves and Sandra Beatriz Chaves, Argentina, November 7, 2014.

57 IACHR, Report No. 102/14, Case 12.710, Friendly Settlement, Marcos Gilberto Chaves and Sandra Beatriz Chaves, Argentina, November 7, 2014.

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

84. 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 and the American Declaration establish.[58]

85. For Example, in the friendly settlement agreement that journalist Horacio Verbitsky signed with the Argentine State[59] illustrates the ripple effect that friendly settlements can have when they include such measures.

86. 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 the crime of *desacato* under Article 244 of the Criminal Code.

87. 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.

88. 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.*

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58 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.

59 See, IACHR, Report No. 22/94 (Friendly Settlement), Case 11,012, Horacio Verbitsky, Argentina, September 20, 1994.

89. 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.

90. 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.60 Thus, the repeal of *desacato* laws which criminalize criticism of public officials has played a key role in building and consolidating democracy, by enabling journalists to perform their role as watchdogs and critics of the authorities without fear of reprisals.

3. Land Return

91. Through a friendly settlement mediated by the Commission and signed by the Enxet-Lamenxay and Kayleyphapopyet–Riachito indigenous community and the government of Paraguay[61] on March 25, 1998, 300 members of the indigenous communities had their ancestral lands returned.[62]

92. After the signature of the friendly settlement agreement, 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.

93. 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

60 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.

61 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.

62 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.

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[63]

94. 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.[64]

95. 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.[65]

96. Friendly settlement agreements have also been used to restore property. For example, such a measure was agreed in the case of Juan Jacobo Arbenz Guzmán from Guatemala. Mr. Arbenz Guzmán was elected as the constitutional president of Guatemala in 1951 and was in office until June 27, 1954, when he was overthrown and expelled from the country together with his family. The *de facto* government confiscated the assets of Mr. Arbenz Guzmán and his family. The confiscated assets included Finca el Cajón, a ranch owned by the Arbenz family. The petition was lodged on September 26, 2001, and as a result of the negotiations facilitated by the Commission, the parties agreed to the restitution of Finca el Cajón as a reparation measure and the State undertook to make the necessary legal and administrative arrangements to enable ownership of that part of the

63 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, paras. 22-23.

64 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 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.

65 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, San Vicente de los Cimientos Community, Guatemala, October 10, 2003, para. 38.

ranch to be restored to the relatives of former president Árbenz Guzmán.[66] Although the State made the relevant arrangements, it was not possible to turn over the property, so the parties subsequently decided to implement the measure through financial compensation.[67]

4. Reinstatement of One's Employment

97. The Commission has established that reinstatement can be an effective form of reparation when 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.

98. A case in point is the friendly settlement whereby the Peruvian State undertook to restore Dr. Ignacio Livia Robles[68] 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.[69] The friendly settlement agreement signed in this case was fully implemented by the Peruvian State.[70]

99. 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

66 See IACHR, Report No. 30/12 Friendly Settlement, Case 12.546, Juan Jacobo Arbenz Guzmán, Guatemala, March 20, 2012.

67 See IACHR, 2013 Annual Report, Chapter II.D, Status of compliance with the recommendations of the IACHR, paras. 876-878.

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

69 See, IACHR, 2005 Annual Report, OEA/Ser.L/V/II.124 Doc.7, pars. 332-335. Available at: http://www.cidh.org/annualrep/2005eng/toc.htm

70 See IACHR, 2005 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, pars. 332-335.

reinstatement in their previous positions or appointment to a vacant seat at the same level.[71]

100. More recently, in the petitions of Jesús Salvador Ferreira Gonzalez and of Tito Guido Gallegos Gallegos, the Peruvian State pledged to reinstate the judges, who had been removed from their respective posts in the judiciary in proceedings that violated their rights to a fair trial and judicial protection.[72] In addition, in the case of Néstor Albornoz Eyzaguirre, which concerned the arbitrary dismissal of a teacher in the public sector, the State countermanded the resolution dismissing the victim and he returned to his post and regular duties.[73] In relation to this example, it is worth noting that the friendly settlement agreement signed in this case was implemented in full by the Peruvian State.

B. Medical, Psychological, and Social Rehabilitation

101. 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.[74] 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.

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71 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; This friendly settlement agreement was implemented in full by the Peruvian Chilean State. See IACHR, 2007 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, pars. 613-616; IACHR, Report No. 50/06 (Friendly Settlement), Petition ,711-01 et al., Miguel Grimaldo Castañeda 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.

72 IACHR, Report No. 69/16, Petition 288-08. Friendly Settlement, Jesús Salvador Ferreyra González, Peru, November 30, 2016; IACHR, Report No. 70/16, Petition 1339-07, Friendly Settlement, Tito Guido Gallegos Gallegos, Peru, November 30, 2016.

73 IACHR, Report No. 137/17, Case 12.383, Friendly Settlement, Néstor Albornoz Eyzaguirre, Peru, October 25, 2017.

74 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.

102. Out of the 137 friendly settlement reports approved and published to this date, 45 included measures of medical and psychological rehabilitation, as well as social assistance aimed at favoring the personal development of those affected.

103. 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,[75] rape victims,[76] and immediate family of victims of forced disappearance[77] and of violations of the right to life.[78] 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.

104. *Medical and psychological rehabilitation measures* have been included in several friendly settlement agreements approved by the Inter-American

[75] 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.

[76] 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. This agreement was implemented in full by the Mexican State. See IACHR, 2012 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, pars. 833-844. Furthermore, as a result of the friendly settlement agreement signed 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. This agreement was implemented in full by the Colombian State. See IACHR, 2010 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, pars. 339-344.

[77] 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.

[78] 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.

Commission. Their purpose is to help victims overcome their suffering, especially that caused by illnesses and the deterioration of their living conditions.[79]

105. Implementation of medical rehabilitation measures must be differentiated, differentiated individualized, preferential, comprehensive, and provided by specialized institutions and personnel.[80] 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.

106. 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.[81] 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.[82]

107. In four friendly settlement agreements, the State has pledged to pay a sum of money for the purchase of medication,[83] payment of treatment,[84] surgeries[85] and psychological rehabilitation treatment.[86]

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79 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.

80 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, para. 270.

81 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.

82 Supra note 65, para. 243.

83 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.

84 See, IACHR, Report No. 19/97 (Friendly Settlement), Juan Chanay Pablo et al., Guatemala, March 13, 1997. IACHR, Report No. 42/16, Case 12.848, Friendly Settlement, Mrs. N, Panama, September 25, 2016.

85 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.

86 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.

108. With regard to the first modality, the negotiation model used in the case of Mrs. N regarding Panama should be highlighted as good practice. In that case, the parties decided to involve actuarial experts, who determined the cost of lifelong treatment for someone who had been the victim of infection with the human immunodeficiency virus at a public hospital. Although the parties had the same interests in the negotiation of obtaining and providing medical treatment and of settling the matter amicably, the victim felt that it was re-victimizing for her to have to return to the same public health service where she acquired the disease. Therefore, either party appointed an actuarial expert of their choosing. The two experts then carried out the study and determined the applicable amounts.[87] Thus, the agreement included "periodic check-ups, provision of medication for her treatment, specialized medical care where circumstances stemming from the illness so require, and physical, surgical, or pharmacological treatments, the purpose of which is to mitigate and counter the consequences of the illness and improve her quality of life" in the private health system, at the petitioner's preference, given that the harm caused was the result of negligence in the public health system.[88] That practice also allowed the negotiation to be depersonalized, so that there was less of an impact on the relationship between the parties. It also facilitated the full implementation of the friendly settlement agreement.

109. 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 several friendly settlements.[89] These agreements either name the specific medical facility

87 IACHR, Report No. 42/16, Case 12.848, Friendly Settlement, Mrs. N, Panama, September 25, 2016.

88 IACHR, Report No. 42/16, Case 12.848, Friendly Settlement, Mrs. N, Panama, September 25, 2016.

89 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 specific 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. Case 12.358, Friendly Settlement, Octavio Rubén Gonzalez Acosta, Paraguay, March 20, 2013; IACHR, Report No. 25/13, Petition 1097-06, Friendly Settlement, Miriam Beatriz Riquelme Ramirez, Paraguay, March 20, 2013; IACHR, Report No. 102/14, Case 12.710, Friendly Settlement, Marcos Gilberto Chaves and Sandra Beatriz Chaves, Argentina, November 7, 2014; IACHR, Report No. 61/13, Case 12.631, Friendly Settlement, Karina Montenegro at al., Ecuador, July 16, 2013; IACHR, Report No. 59/14, Case 12.376, Friendly Settlement, Alba Lucía Rodríguez Cardona, Colombia, July 24, 2014; IACHR, Report No. 15/16, Petition 1171-09, Friendly Settlement, Ananías Laparra Martínez et al., United Mexican States, April 14, 2016; IACHR, Report No. 10/15, Case 12.756, Friendly Settlement, El Aracatazzo Bar Massacre, Colombia, January 13, 2015; IACHR, Report No. 38/15, Petition 108-00, Friendly Settlement, Segovia Massacre, Colombia, July 24, 2015; IACHR, Report No. 43/16, Case 11.538, Friendly Settlement, Herson Javier Caro, Colombia, October 7, 2016; IACHR, Report No. 67/16, Case 12.541, Friendly Settlement, Omar Zúñiga Vásquez, Colombia, November 30, 2016; IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016.

where the service will be provided[90] or stipulate that the medical care will be provided through the Ministry of Health.[91] 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 provided.[92] 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.

110. A third type of reparation is to provide the victims with permanent health coverage through the Ministry of Health or appropriate public institution,[93] or through the service of private health institutions. [94] 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.[95]

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90 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. This friendly settlement agreement was implemented in full by the Guatemalan State. See IACHR, 2013 Annual Report, Chapter II.D, Status of compliance with the recommendations of the IACHR, pars. 879-885; IACHR, Report No. 69/14, Case 12.041, Friendly Settlement, M.M, Peru, July 25, 2014.

91 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. This friendly settlement agreement was implemented in full by the Peruvian State. See IACHR, 2005 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, pars. 336 y 337.

92 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.

93 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. IACHR, Report No. 81/15, Case 12.813, Friendly Settlement, Blanca Olivia Contreras Vital et al., Mexico, October 28, 2015.

94 IACHR, Report No. 82/15, Petition 577-06, Friendly Settlement, Gloria González and Family, Colombia, October 28, 2015.

95 IACHR, Report No. 24/09 (Friendly Settlement), Case 11,822, Reyes Penagos Martínez et al., Mexico, March

111. A fourth modality allows the parties specifically to indicate the type of medical service to be included in the health rehabilitation measure. For example, in the case of Gloria González regarding Colombia, which concerned a woman who was killed as a collateral casualty of a military operation and the physical injuries caused to her daughter by bullet fragments that penetrated her eye, the Colombian State specifically undertook to provide "[s]pecial attention ... to the child D who, in addition to the psychological harm, suffered physical injuries at the moment of her mother's death; she will therefore be given complete coverage by the health provision agency of the regime to which she is affiliated and her prosthesis will be changed regularly, and she will be provided with the necessary items of everyday consumption and hygiene and with medicines for lubricating the prosthesis."[96]

112. In the case of Ananías Laparra regarding Mexico, in which it was alleged that a person's criminal conviction was the result of a confession obtained under torture, the State promised to provide psychological care in accordance with international standards and the standards of care envisaged in the Istanbul Protocol for victims of torture. That specific indication provides for differentiated care consistent with the peculiarities of the emotional impact of the human rights violations in that case.[97] Finally, a number of friendly settlement agreements have specifically included access to addiction rehabilitation services based on the beneficiary's consent and bearing in mind that the impact of human rights violations can sometimes result in addictions that have left survivors or relatives of victims of human rights abuses living in especially vulnerable circumstances.[98]

113. 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,[99] under which the State pledged to finance

20, 2009.

96 IACHR, Report No. 82/15, Petition 577-06, Friendly Settlement, Gloria González and Family, Colombia, October 28, 2015.

97 IACHR, Report No. 15/16, Petition 1171-09, Friendly Settlement, Ananías Laparra Martínez et al., United Mexican States, April 14, 2016.

98 IACHR, Report No. 15/16, Petition 1171-09, Friendly Settlement, Ananías Laparra Martínez et al., United Mexican States, April 14, 2016; IACHR, Report No. 67/16, Case 12.541, Friendly Settlement, Omar Zúñiga Vásquez, Colombia, November 30, 2016.

99 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

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.[100]

114. Finally, one good practice where medical and psychological rehabilitation measures are concerned is the creation of special structures to implement such measures, such as in Mexico, which established the Executive Committee for Victim Assistance,[101] or in Colombia, which set up the Victims' Comprehensive Psychosocial and Health Care Program.[102] Specific follow-up mechanisms could be established in such programs in the future in order to continue monitoring beneficiaries' access to health care services, bearing in mind the progressive nature of the implementation of those measures, which may span decades.

115. 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

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murders. See, IACHR, Report No. 32/12 (Friendly Settlement), Yanomami Indigenous People of Haximú, Venezuela, March 20, 2012.

100 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; development of a strategic plan for immunization against yellow fever, in the State of Bolivar, 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.

101 IACHR, Report No. 15/16, Petition 1171-09, Friendly Settlement, Ananías Laparra Martínez et al., United Mexican States, April 14, 2016.

102 IACHR, Report No. 10/15, Case 12.756, Friendly Settlement, El Aracatazzo Bar Massacre, Colombia, January 13, 2015; IACHR, Report No. 38/15, Petition 108-00, Friendly Settlement, Segovia Massacre, Colombia, July 24, 2015; IACHR, Report No. 43/16, Case 11.538, Friendly Settlement, Herson Javier Caro, Colombia, October 7, 2016; IACHR, Report No. 67/16, Case 12.541, Friendly Settlement, Omar Zúñiga Vásquez, Colombia, November 30, 2016; IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016; IACHR, Report No. 82/15, Petition 577-06, Friendly Settlement, Gloria González and Family, Colombia, October 28, 2015.

can obtain and maintain adequate work.[103] 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.[104]

116. Some examples of friendly settlements include many victims and immediate family members who 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;[105] petitioners and States have agreed on fellowships for study at institutions of higher learning,[106] technical training in electronics,[107] offer the means so that the victims and their relatives can access technical or professional education of their choosing[108], training in the management of funds handed over as compensation,[109] and public accounting.[110] Finally,

103 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.

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

105 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.

106 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.

107 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.

108 IACHR, Report No. 102/14, Case 12.710, Friendly Settlement, Marcos Gilberto Chaves and Sandra Beatriz Chaves, Argentina, November 7, 2014.

109 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.

110 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.

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[111] In some cases, the friendly settlement agreement has specified that when the educational measure cannot be implemented in the beneficiary's home community, the educational assistance includes the beneficiary's maintenance costs.[112] In addition, sometimes the measure implies the beneficiary enrolling in locally available education and employment programs.[113] A particularly important good practice is the adoption of a differential approach when including beneficiaries of friendly settlement agreements in such programs that takes account of the fact that they are older persons, for example.[114]

117. In some friendly settlements, States have pledged to provide moneys to establish businesses or seed funding to agricultural projects, or even for the reincorporation of the victim in to the job market[115] 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."[116] In two friendly settlement agreements, the Guatemalan State pledged to provide seed funding to breed hogs[117] and acquire staple crops, thereby taking a

111 See IACHR, Report No. 33/02 (Friendly Settlement), Monica Carabantes Galleguillos, Petition 12.046, Chile, March 12, 2002. This friendly settlement agreement was implemented in full by the Chilean State. See IACHR, 2007 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, pars. 191-194; 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; IACHR, Report No. 81/15, Case 12.813, Friendly Settlement, Blanca Olivia Contreras Vital et al., Mexico, October 28, 2015; IACHR, Report No. 82/15, Petition 577-06, Friendly Settlement, Gloria González and Family, Colombia, October 28, 2015; IACHR, Report No. 15/16, Petition 1171-09, Friendly Settlement, Ananías Laparra Martínez et al., United Mexican States, April 14, 2016; IACHR, Report No. 43/16, Case 11.538, Friendly Settlement, Herson Javier Caro, Colombia, October 7, 2016; IACHR, Report No. 38/15, Petition 108-00, Friendly Settlement, Segovia Massacre, Colombia, July 24, 2015.

112 IACHR, Report No. 59/14, Case 12.376, Friendly Settlement, Alba Lucía Rodríguez Cardona, Colombia, July 24, 2014.

113 IACHR, Report No. 81/15, Case 12.813, Friendly Settlement, Blanca Olivia Contreras Vital et al., Mexico, October 28, 2015; IACHR, Report No. 82/15, Petition 577-06, Friendly Settlement, Gloria González and Family, Colombia, October 28, 2015; IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016; IACHR, Report No. 10/15, Case 12.756, Friendly Settlement, El Aracatazzo Bar Massacre, Colombia, January 13, 2015; IACHR, Report No. 16/16, Case 12.847, Friendly Settlement, Vicenta Sánchez Valdivieso, Mexico, April 14, 2016.

114 IACHR, Report No. 43/16, Case 11.538, Friendly Settlement, Herson Javier Caro, Colombia, October 7, 2016; IACHR, Report No. 67/16, Case 12.541, Friendly Settlement, Omar Zúñiga Vásquez, Colombia, November 30, 2016.

115 IACHR, Report No. 102/14, Case 12.710, Friendly Settlement, Marcos Gilberto Chaves and Sandra Beatriz Chaves, Argentina, November 7, 2014; IACHR, Report No. 59/14, Case 12.376, Friendly Settlement, Alba Lucía Rodríguez Cardona, Colombia, July 24, 2014.

116 See, IACHR, Report No. 164/10 (Friendly Settlement), Luis Rey García Villagrán, Mexico, November 1, 2010.

117 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

productive approach to the improvement of the quality of life of the victims of human rights violations.[118]

118. In other cases, the social reintegration measure has entailed technical vocational training.[119] For instance, in the case of Vicenta Sánchez Valdivieso, involving due process violations in a civil proceeding, the Mexican State furnished property to the victim and her family under the "Self-Employed Occupational Initiative" that included a chicken rotisserie machine for the beneficiary of the agreement and equipment to start her own business. In addition, the petitioners were given training in the use and operation of the chicken rotisserie, in keeping with the plan for self-employment[120] as part of a seed program focused on business project development through the financing of activities to help launch entrepreneurial endeavors.[121]

119. Furthermore, in the case of Irineo Martínez Torres and Calendario Martínez Damián, concerning alleged violations of due process in the criminal prosecution of two individuals who were denied the guarantee of access to an interpreter who spoke their language, the Mexican State rehabilitated the two families' artisan workshops through the Program to Support Indigenous Productivity and the Program for the Productive Organization of Indigenous Women, in accordance with the beneficiaries' wishes.[122] Furthermore, in the case of M.M., concerning a woman raped by a doctor at a public hospital, the Peruvian state helped the victim relocate to another city of her choosing, provided her with a property for her initial lodging in optimal living conditions, and later gave her ownership of an area of land in that city together with the materials and support required to build a home, at no cost to her. The Peruvian State also gave the beneficiary ownership of a vendor's stand at a specific market and provided her with

other measures. See, IACHR, Report No. 19/00, José Sucunú Panjoj, Guatemala, February 24, 2000.

118 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.

119 IACHR, Report No. 59/14, Case 12.376, Friendly Settlement, Alba Lucía Rodríguez Cardona, Colombia, July 24, 2014; IACHR, Report No. 16/16, Case 12.847, Friendly Settlement, Vicenta Sánchez Valdivieso, Mexico, April 14, 2016.

120 IACHR, Report No. 16/16, Case 12.847, Friendly Settlement, Vicenta Sánchez Valdivieso, Mexico, April 14, 2016.

121 IACHR, Report No. 16/16, Case 12.847, Friendly Settlement, Vicenta Sánchez Valdivieso, Mexico, April 14, 2016.

122 IACHR, Report No. 65/14, Case 12.769, Friendly Settlement, Irineo Martínez Torres and Candelario Martínez Damián, Mexico, July 25, 2014.

merchandise of a specific amount in value so that she might begin conducting commercial activities from the market stand.[123]

120. Another type of reparation measures identified is to exempt the victim and their relatives from compulsory military service as well as issue them military ID cards[124] or the relevant document in countries with that obligation. For instance, in Case 11.538 involving Herson Javier Caro regarding Colombia, which involved the extrajudicial execution of a child, the State promised to implement that measure for the victim's brother.

121. Finally, several friendly settlement agreements have included collective social assistance measures involving the implementation of productive projects for the community,[125] such as job creation projects for young people, for example,[126] and business development loans.[127] In addition, petitioners and states have agreed on the provision of land and sums of money for building homes,[128] the titling of homes,[129] and the inclusion of the beneficiaries of friendly settlement agreements in housing programs and other State-run social programs.[130]

123 IACHR, Report No. 69/14, Case 12.041, Friendly Settlement, M.M, Peru, July 25, 2014.

124 IACHR, Report No. 43/16, Case 11.538, Friendly Settlement, Herson Javier Caro, Colombia, October 7, 2016.

125 IACHR, Report No. 65/14, Case 12.769, Friendly Settlement, Irineo Martínez Torres and Candelario Martínez Damián, Mexico, July 25, 2014. IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016.

126 In the friendly settlement agreement concluded in the Villatina Massacre case, the State of Colombia pledged to implement a job creation project specifically targeting young people in the Villatina neighborhood in Medellín. As a result of the friendly settlement agreement, the process began of establishing a building materials yard that ultimately became a grocery store. See IACHR, Report No. 105/05, (Friendly Settlement), Case 11.141, Villatina Massacre, Colombia, October 27, 2005.

127 IACHR, Report No. 90/10, (Friendly Settlement), Case 12.642, José Iván Correa Arévalo, Mexico, July 15, 2010.

128 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; IACHR, Report No. 15/16, Petition 1171-09, Friendly Settlement, Ananías Laparra Martínez et al., United Mexican States, April 14, 2016.

129 IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016.

130 IACHR, Report No. 43/06, (Friendly Settlement), Cases 12.426 and 12.427, Emasculated Children of Maranhao, Brazil, March 15, 2006; IACHR, Report No. 81/15, Case 12.813, Friendly Settlement, Blanca Olivia Contreras Vital et al., Mexico, October 28, 2015; IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016.

C. Satisfaction Measures: Truth, Acknowledgment, and Justice

122. The friendly settlement procedure 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 measures of non-repetition tailored to prevent future human rights violations.

123. These measures of reparations are known as "satisfaction" measures and aim at the disclosure of truth as the first pre-requisite to justice.[131] 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. 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.

124. Satisfaction measures can take various forms, depending on the circumstances of each case.[132] Nevertheless, in the Commission's experience, satisfaction measures break down into five categories:[133] 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.[134]

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131 "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° Sessio.E/CN.4/Sub.2/1993/8, July 2 1993.

132 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.

133 These measures appear in 90 friendly settlement agreements approved and published by the IACHR through a report.

134 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 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

1. Acceptance of Responsibility and Public Acknowledgment

125. 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.[135]

126. Clauses requiring a State's acceptance of responsibility have been included in 85 friendly settlement agreements published by the Commission. A total of 66 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[136], and in 30 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.

127. 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."[137] They also serve as an opportunity to restore the victim's reputation and have a pedagogical value that will help prevent similar human rights violations in the future.

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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, para. 22.

135 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.

136 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.

137 Supra, note 65, p. 59.

128. 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.

129. In the friendly settlement agreement that the State of Colombia and the next of kin of Roinson Mora Rubiano signed,[138] 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.[139]

130. 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.[140]

131. Where federal unions are involved, if friendly settlements contain clauses requiring acts of atonement, state or provincial authorities may also have

138 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.

139 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.

140 IACHR, Report No. 30/12 (Friendly Settlement), Case 12,546, Juan Jacobo Arbenz Guzmán, Guatemala, March 20, 2012.

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.[141]

132. Although recognition-of-responsibility clauses are not always included in friendly settlement agreements, in a society such as Colombia's, which has been blighted by more than 50 years of violent armed conflict, such clauses and the way in which they are implemented are deeply significant and help to mend the social fabric in the wake of the conflict. Thus, several friendly settlement agreements in Colombia refer to incidents connected with the armed conflict, such as massacres and extrajudicial executions, in relation to which the Colombian State has adopted a policy of friendly settlement for dealing with disputes and has staged public recognitions of responsibility for violations. For example, six friendly settlement agreements of that nature were concluded in 2014 and 2015.[142] One example is the case of the Trujillo Massacre, which related to a wave of violent incidents in the Municipality of Trujillo Valle that included cases of torture, extrajudicial execution, forced disappearance, and intimidation over a period of several years at the end of the 1980s in Colombia. During the negotiation of the friendly settlement agreement, on January 31, 1995, the then-President of the Republic of Colombia, Ernesto Samper Pizano, made a public act of recognition of responsibility and, in his capacity as the country's highest political authority, acknowledged the State's responsibility for the acts of violence that had occurred in Trujillo.[143] 21

141 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.

142 IACHR, Report No. 82/15, Petition 577-06, Friendly Settlement, Gloria González and Family, Colombia, October 28, 2015; IACHR, Report No. 43/16, Case 11.538, Friendly Settlement, Herson Javier Caro, Colombia, October 7, 2016; IACHR, Report No. 38/15, Petition 108-00, Friendly Settlement, Segovia Massacre, Colombia, July 24, 2015; IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016; IACHR, Report No. 67/16, Case 12.541, Friendly Settlement, Omar Zúñiga Vásquez, Colombia, November 30, 2016; IACHR, Report No. 10/15, Case 12.756, Friendly Settlement, El Aracatazzo Bar Massacre, Colombia, January 30, 2015.

143 "Those who have closely followed the events in the Trujillo case will surely have felt the same revulsion and horror. We are and we want to be a different country from the one that we seem from those awful nightmarish events that occurred in Trujillo. A country where such things are never repeated. A country where such things are never repeated. A country in which we are able to feel ashamed, as ordinary human beings, at such deranged and abhorrent violence. A country remembered for something other than our endless capacity to harm, mistreat, and murder one another without regard. That is why this is a historic occasion, and I say that without any sense of euphemism. For we have come here to express our sincere contrition on behalf of all Colombians for this case of ungodly violence. (...) Recalling, in the presence of their relatives, the victims of torture and disappearance in the violent events in Trujillo: As President of Colombia, I accept the responsibility that the Colombian State rightly bears for the acts and omissions of public servants in the violence that occurred in Trujillo between 1988 and 1990. As President of Colombia, I accept

years later, living up to one of the commitments adopted in the friendly settlement agreement signed on April 6, 2016, at a public ceremony held on April 23, 2016, the then-Minister of Justice and Law, Yesid Reyes Alvarado, read out loud the names of each of the 76 victims recognized as such in the friendly settlement agreement, after which he said:

> "As a State we remember those acts; we do not forget them. We emphatically repudiate them and are ashamed that they were committed against innocent people. For that reason, we ask forgiveness from you, your fathers, your mothers, your sons and daughters, your brothers and sisters, wives and friends.
>
> We regret having made you travel such a long road to obtain justice. We know that nothing can replace your family members or make up for the grief that you have felt. However, we hope that this statement compensates you in some way.
>
> We wish to express our solidarity with the families of the victims and we hope that this meeting will allow us to restore your confidence in our institutions, repair the social fabric, and undertake an active process of national reconciliation."[144]

133. In the case of Omar Zuñiga Vásquez and Amira Vásquez de Zúñiga, which concerned the torture and extrajudicial execution of a male youth by Colombian Army personnel because they suspected him of collaborating with or belonging to a guerrilla group, the Minister of Justice and Law said the following:

> "It is precisely in acknowledging the particular harm done to Omar Zuñiga, Mrs. Amira Vasquez de Zuñiga, and their family members that today the State asks for their forgiveness, complying in this way with one of the measures agreed upon in the friendly settlement agreement, which was to hold this act of recognition of responsibility and public apology as one part of a comprehensive reparation agreement. [...] Taking that path leads us to gather together in this beautiful spot to commemorate the life, the existence, of a hard-working man, a

the financial liability arising from these gross acts and omissions by the State and pledge to introduce before the Congress of the Republic a bill authorizing the National Government to cover that compensation, which will be settled in accord with the relevant national and international authorities." IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016.

144 IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016.

> good and cheerful member of his family, who was treated so appallingly.
>
> I am convinced that forgiveness has enormous restorative power, to help reconstruct the social fabric, to re-establish trust in the State and its institutions. Indeed, it is the cornerstone of a true process of national reconciliation. In that steadfast belief, the Colombian State expresses its solidarity with the family and friends of Mr. Omar Zuñiga and Mrs. Amira Vasquez and acknowledges the harm done to them. What happened to Omar Zuñiga and Mrs, Amira Vasquez was a tragedy our Nation mourns. It was a repugnant and shameful act cast in the irrationality of violence.
>
> […] In this way, the Colombian State not only honors its international commitments; it also seeks to commemorate the memory of Omar Zuñiga Vasquez and praise his legacy. Omar Zuñiga was a man cherished by his community and by his family, who today lives on in the example he set for those dear to him. As a father, son, brother, and worker."[145]

134. Finally, in the case of the Segovia Massacre,[146] the Colombian State also promised to hold an act of recognition of responsibility, which it did on December 20, 2015, for the massacre of 43 people in the Municipality of Segovia, Antioquia, on November 11, 1988. With regard to the aforementioned case, the State informed the IACHR that "[i]n memory of the people murdered in the massacre perpetrated by a paramilitary group 27 years ago, the day began with a procession from the cemetery to the main park, where an ecumenical service was held. In addition, there were a symbolic act of remembrance and lighting ritual, and a documentary film was shown. Remarks were also delivered by the victims and the Presidential Adviser for Human Rights, Guillermo Rivera Flórez, who presided over the ceremony and on behalf of the State of Colombia apologized and acknowledged responsibility for the acts."[147]

135. In other cases, depending on the type of violation or the facts, the agreement beneficiaries prefer to agree on specific terms to protect the identity of children, adolescents, victims, or relatives in acts of recognition

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145 IACHR, Report No. 67/16, Case 12.541, Friendly Settlement, Omar Zúñiga Vásquez, Colombia, November 30, 2016.

146 IACHR, Report No. 38/15, Petition 108-00, Friendly Settlement, Segovia Massacre, Colombia, July 24, 2015.

147 Press release, *Cancillería participó en el acto de reconocimiento de responsabilidad del Estado colombiano por la Masacre de Segovia*, December 22, 2015, Photographic record. Available online: http://www.cancilleria.gov.co/newsroom/news/cancilleria-participo-acto-reconocimiento-responsabilidad-estado-colombiano-masacre (Last visited July 13, 2017).

of responsibility, in order to prevent their identification. For example, in the matter of Miriam Beatriz Riquelme Ramirez concerning the arbitrary detention of a woman while she was nursing her child, the Paraguayan State undertook to hold a public act of recognition and apology to her relatives, with the express provision that the identity of the child CME would be withheld.[148] The friendly settlement agreement signed in this case was implemented in full by the Paraguayan State.[149]

136. 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[150] or that the friendly settlement agreement be published once it is approved by the IACHR.[151]

148 IACHR, Report No. 25/13, Petition 1097-06, Friendly Settlement, Miriam Beatriz Riquelme Ramírez, Paraguay, March 20, 2013.

149 See IACHR, 2014 Annual Report, Chapter II.D, Status of compliance with the recommendations of the IACHR, pars. 1101-1105.

150 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. ; IACHR, Report No. 39/15, Petition 279-03. Friendly Settlement, Fredy Rolando Hernández Rodríguez et al., Guatemala, July 24, 2015; IACHR, Report No. 15/16, Petition 1171-09, Friendly Settlement, Ananías Laparra Martínez et al., United Mexican States, April 14, 2016.

151 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; This friendly settlement agreement was implemented in full by the Chilean State. See IACHR, 2010 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, pars. 298-302; 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 Ucán Seca, Mexico, July 15, 2010; and Report No. 160/10 (Friendly Settlement), Petition 242-03, Inocencia Luca Pogoraro, Argentina, November 1, 2010. IACHR, Report No. 24/13, Case 12.358, Friendly Settlement, Octavio Rubén González Acosta, Paraguay, March 20, 2013; IACHR, Report No. 25/13, Petition 1097-06, Friendly Settlement, Miriam Beatriz Riquelme Ramírez, Paraguay, March 20, 2013; IACHR, Report No. 61/13, Case 12.631, Friendly Settlement, Karina Montenegro at al., Ecuador, July 16, 2013; IACHR, Report No. 63/13, Case 12.473, Friendly Settlement, Jesús Manuel Naranjo Cárdenas et al., Venezuela, July 16, 2013; IACHR, Report No. 101/14, Petition 21-05, Friendly Settlement, Ignacio Cardozo et

137. 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,[152] sexual assault[153] and extrajudicial execution[154] 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

138. 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.

139. 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.[155]

140. 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.

141. 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,[156] 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.

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al., Argentina, November 7, 2014; IACHR, Report No. 103/14, Case 12.350, Friendly Settlement, MZ, Bolivia, November 7, 2014.

152 IACHR, Report No. 67/03 (Friendly Settlement), Case 11,766, Irma Flaquer, Guatemala, October 10, 2003.

153 IACHR, Report No. 82/08 (Friendly Settlement), Petition 477-05, X and relatives, Colombia, October 30, 2008.

154 IACHR, Report No. 1/12 (Friendly Settlement), Case 11,422, Mario Alioto López Sánchez, Guatemala, January 26, 2012.

155 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, par. 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, par. 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, para. 171.

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

142. 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.

143. 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.[157] On October 30, 1998, the petitioners and 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. The friendly settlement agreement signed in this case was implemented in full by the Mexican State.[158]

144. 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.[159] 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.[160]

145. Another good practice is to combine psychological rehabilitation measures in processes for the return of the remains of victims of human rights violations, through coaching that can have a positive impact on the emotional and mental state of the beneficiary.[161] For example, in the case of

[157] 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 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.

[158] See IACHR, 2007 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, pars. 552-560.

[159] 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.

[160] IACHR, 2012 Annual Report, OEA/Ser.L/V/II.147.Doc.1, March 5, 2012, Chapter III.D, Status of compliance with the recommendations of the IACHR, par. 451.

[161] IACHR, Report No. 82/15, Petition 577-06, Friendly Settlement, Gloria González and Family, Colombia,

Omar Zuñiga Vásquez mentioned above, the Colombian state provided the family psychosocial coaching before and during the delivery of the victim's mortal remains, which took into account the "psychological and social needs of the family, to agree on measures of accompaniment that were consistent with the reality of the family, and that could allow them to make informed decisions about how best to take part in the process of handing over the earthly remains of the victim."[162] During that psychosocial coaching, the opportunity was provided to rebuild the family's customs and have a dignified approach to the process of returning the body. In addition, the family was helped, through that coaching, to "evok[e] memories, anecdotes, and experiences shared with Omar Zuñiga Vasquez when he was alive, so they could be passed them on to his children. This created a space for psycho-social service in which the family could jointly create a poem to pay tribute to him. During one of those sessions, the next of kin prepared letters and posters to celebrate the meaning of Omar Zuñiga Vasquez's life and his legacy within the family; symbols were used in the ceremony to symbolize the return of his earthly remains, in the form of seeds and trees representing what he had planted in each member of the family, earth representing Omar's parents, vases representing the rural traditions that Omar observed and passed on, and nine plants representing all Omar Zuñiga Vasquez's brothers and sisters and how life goes on."[163]

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

146. 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.

147. 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.

October 28, 2015; IACHR, Report No. 67/16, Case 12.541, Friendly Settlement, Omar Zúñiga Vásquez, Colombia, November 30, 2016.

162 IACHR, Report No. 67/16, Case 12.541, Friendly Settlement, Omar Zúñiga Vásquez, Colombia, November 30, 2016.

163 IACHR, Report No. 67/16, Case 12.541, Friendly Settlement, Omar Zúñiga Vásquez, Colombia, November 30, 2016.

148. 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.[164]

149. During the friendly settlement procedure, States have pledged to restore the victim's reputation and honor by erasing his or her name from criminal[165] and administrative[166] records, and by issuing press releases[167] and official statements.[168]

150. 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

164 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 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.

165 In the friendly settlement agreement concluded between Myriam Larrea Pintado and the State of Ecuador, the State pledged to eliminate the name of Myrian [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. IACHR, Report No. 15/16, Petition 1171-09, Friendly Settlement, Ananías Laparra Martínez et al., United Mexican States, April 14, 2016.

166 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. This friendly settlement agreement was implemented in full by the Chilean State. See IACHR, 2011 Annual Report, Chapter II.D, Status of compliance with the recommendations of the IACHR, paras. 346-354.

167 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.

168 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.

acknowledged the miscarriage of justice and for publicly restoring his honor in a "truly historic" ceremony.[169] The friendly settlement agreement signed in this case was implemented in full by the Chilean State.[170]

151. In the case of Ananías Laparra mentioned above, in its friendly settlement report, the commission considered that the State had complied substantially with the friendly settlement agreement and it underscored the importance of the recognition of Mr. Ananías Laparra's innocence, the expungement of his criminal record, and the issue of a certificate of no criminal record in his name as fundamental components of the friendly settlement agreement whose fulfillment is at the core of the reparations and of critical significance to the victim in the case.[171] One notable good practice in that case in particular is that the parties included the facts as accepted by them in the text of the agreement, so that with its confirmation the victim was provided for the first time with an official version of what happened.

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

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

153. 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

169 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.

170 See IACHR, 2007 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, paras. 187-190.

171 IACHR, Report No. 15/16, Petition 1171-09, Friendly Settlement, Ananías Laparra Martínez et al., United Mexican States, April 14, 2016.

are not fulfilled, namely full knowledge of the facts, identification of the authors, and their punishment.[172]

154. 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 48% of the friendly settlement agreements.[173]

155. 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.

156. Important victories in the matter of justice have been won thanks to the friendly settlement mechanism.[174] An example is the State's compliance with the agreement signed in the case of José Alberto Guadarrama García[175], 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

172 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, para. 258.

173 As of December 30, 2017, the Commission had approved and published a total of 137 friendly settlement agreements. Of that number, 66 reports included a commitment from the State to investigate and punish those responsible for the violations.

174 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.

175 IACHR, Report No. 69/03 (Friendly Settlement), Petition 11,807, José Alberto Guadarrama García, Mexico, October 10, 2003.

responsible for his forced disappearance. They were brought before the local courts and charged with the crimes of kidnapping and homicide.

157. 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[176] 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.[177] The friendly settlement agreement signed in this case was implemented in full by the Brazilian State.[178]

158. 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.[179] 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.*

159. 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.

160. Where serious human rights violations are involved, the investigations must be conducted in accordance with the standards established by

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

177 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.

178 See IACHR, 2008 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, paras. 162-175.

179 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.

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."[180]

161. 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[181] and the jurisdiction of military and police courts over crimes that belong in criminal courts of ordinary jurisdiction.[182] It also notes that, at the domestic level, it is difficult to reopen cases once decisions have been delivered and have become *res judicata.*[183]

162. The *jurisprudence constante* of the Inter-American system is that the duty to investigate and prosecute exists even when domestic difficulties make it impossible to identify the individuals responsible[184] and when the statute of limitations denies victims of human rights violations the reparations to which they are entitled.[185]

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180 I/A Court H.R., Case of Barrios Altos v. Peru. Order Monitoring Compliance with the Judgment, September 7, 2012, para. 27 [Commission's translation].

181 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.

182 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, par. 4; and Report No. 47/06 (Friendly Settlement), Petition 533-01, Fausto Mendoza Giler and Diógenes Mendoza Brav, Ecuador, March 15, 2006, para. 9.

183 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, 2011 Annual Report, par. 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.

184 I/A Court H.R., Case of Castillo Páez v. Peru, Merits, Judgment of November 3, 1997, Series C. No. 34, para. 90.

185 I/A Court H.R., Case of Castillo Páez v. Peru, Reparations and Costs. Judgment of November 27, 1998, Series

163. Under the friendly settlement agreement that the Colombian State signed in the case of Germán Enrique Guerra Achurri,[186] 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.[187]

164. Another example of administrative penalties can be seen in the case of M.M. mentioned above, where the Peruvian State undertook to inform the Peruvian Medical Association of the acts of sexual violence carried out by a doctor at a public hospital against the victim, and that individual received an administrative punishment.[188]

165. Finally, a good practice worth highlighting is the establishment of the undertaking to bring actions for review against decisions that preclude, dismiss, or issue acquittals in investigations concerning alleged violations of rights enshrined in the American Convention, or the inclusion of non-repetition clauses against officials involved in the facts.[189]

5. Tributes and Monuments to Honor the Victims

166. 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

C No. 43, para. 105.

186 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.

187 See IACHR, 2010 Annual Report, OEA/Ser.L/V/II. Doc.5 corr.1, pars. 329-333. Available at: http://www.cidh.org/annualrep/2010eng/TOC.htm

188 IACHR, Report No. 69/14, Case 12.041, Friendly Settlement, M.M, Peru, July 25, 2014.

189 IACHR, Report No. 67/16, Case 12.541, Friendly Settlement, Omar Zúñiga Vásquez, Colombia, November 30, 2016; IACHR, Report No. 43/16, Case 11.538, Friendly Settlement, Herson Javier Caro, Colombia, October 7, 2016.

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.[190]

167. In the friendly settlement agreements signed, petitioners and States have agreed upon measures of reparation intended to recognize the victims' dignity, to 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 17 of the agreements approved by the Commission: the construction of monuments in the victims' honor,[191] the elaboration of documentaries that dignify the memory of the victims and its relatives,[192] naming public spaces and buildings after the victims,[193] and installing commemorative plaques.[194]

168. The fulfillment of the friendly settlement agreement signed between the Colombian State and the petitioners in the case of the Villatina Massacre[195] 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:

190 IACHR, Press Release No. 1/10, January 11, 2010.

191 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. IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016.

192 IACHR, Report No. 63/13, Case 12.473, Friendly Settlement, Jesús Manuel Naranjo Cárdenas et al., Venezuela, July 16, 2013; IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016.

193 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.

194 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; IACHR, Report No. 39/15, Petition 279-03. Friendly Settlement, Fredy Rolando Hernández Rodríguez et al., Guatemala, July 24, 2015; IACHR, Report No. 36/17, Case 12.854, Friendly Settlement, Ricardo Javier Kaplun and Family, Argentina, March 21, 2017.

195 IACHR, Report No. 105/05 (Friendly Settlement), Case 11,141, Villatina Massacre, Colombia, October 27, 2005.

"This Health Center was built in memory of Johanna Mazo Ramírez, age 8, Giovanny Alberto Vallejo Restrepo, age 15, Johny 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 Higuita 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…"

169. 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.

170. In the case of Octavio Rubén González Acosta, concerning the alleged arbitrary detention, torture, and forced disappearance of an individual on December 3, 1975, in Paraguay, during the dictatorship of Alfredo Stroessner, as well as the detention and arbitrary deprivation of liberty of his wife, Adela Elvira Herrera de González, and his then-minor sons, Guillermo and Mariano González, by agents of the then-Department of Investigations of the Police of the capital city, on March 20, 2012, the Paraguayan State held an act of acknowledgment of the legitimacy of the Paraguayan Communist Party prior to the coup d'état of February 2 and 3, 1989, honoring the memory of the direct victim and of the citizens who have been members of that Party.[196]

[196] IACHR, Report No. 24/13, Case 12.358, Friendly Settlement, Octavio Rubén González Acosta, Paraguay, March 20, 2013.

171. In addition, in the case of Jesús Naranjo Cárdenas *et al*., concerning the failure to comply with judicial decisions that safeguarded the right to social security of 18 individuals, the Venezuelan State pledged to produce a special television program on the State-owned network with the largest nationwide audience in tribute to the deceased pensioner Jesús Manuel Naranjo, President of the National Association of Retired Workers and Pensioners of VIASA, and in recognition of the perseverance of the pensioners in fighting for their rights.[197] A similar measure was agreed in the aforementioned case of the Trujillo Massacre, where the Colombian State promised to produce a documentary film on the efforts made over the years by the victims' relatives to obtain truth and justice in order to restore the reputations of the victims and their relatives. In relation to that provision in particular, a good practice worth mentioning was the inclusion of measurement elements that will allow the Commission to better monitor implementation of the clause, specifically the fact that the parties agreed that the documentary should be 45 minutes long and produced, presented, and broadcast by a national state-owned television network.[198]

172. In the case of Ricardo Javier Kaplun de Argentina, concerning injuries allegedly inflicted on him by police officers while he was detained at a police station, resulting in his death, as well as the lack of an effective investigation with a view to prosecuting and punishing those responsible for the acts, the Argentine State undertook to put up a commemorative plaque in the police station where the victim was detained, which shall include an account of the facts in the case and an acknowledgment of international responsibility.[199]

173. In the matter of Fredy Rolando Hernández et al., relating to the alleged torture and extrajudicial execution of three individuals, the State of Guatemala promised to build a wall and place plaques in them at a prominent location in the community Parcelamiento la Esperanza, Suchitepequez, detailing the victims' names and the violations committed by the Army against them, as a measure to recover and dignify their memory. The State pledged to hold the ceremony two months after the date on which the agreement was signed.[200]

197 IACHR, Report No. 63/13, Case 12.473, Friendly Settlement, Jesús Manuel Naranjo Cárdenas et al., Venezuela, July 16, 2013.

198 IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016.

199 IACHR, Report No. 36/17, Case 12.854, Friendly Settlement, Ricardo Javier Kaplun and Family, Argentina, March 21, 2017.

200 IACHR, Report No. 39/15, Petition 279-03. Friendly Settlement, Fredy Rolando Hernández Rodríguez et al., Guatemala, July 24, 2015.

D. Economic Compensation

174. 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."[201]

175. 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."[202] 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.*[203]

176. 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.[204]

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201 I/A Court H.R., Case of Velásquez Rodríguez v. Honduras, Reparations and Costs. Judgment of July 21, 1989. Series C No. 7, par. 26; and Case of Godínez Cruz v. Honduras, Reparations and Costs. Judgment of July 21, 1989. Series C No. 8, para. 24.

202 I/A Court H.R., Case of Castillo Páez v. Peru, Merits. Judgment of November 3, 1997. Series C No. 34, par. 92.

203 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, par. 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, para. 27.

204 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 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, para. 13.

177. Of the 137 friendly settlement reports that it has adopted and published, 104 include the commitment to indemnify the victims of human rights violations, and in 77 percent 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.

178. 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*[205] and *damnum emergens.*[206] 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.

179. In friendly settlement agreements, clauses calling for compensatory damages may also include a provision that the compensatory damages awarded shall be tax exempt, or may require that interest be paid on any unpaid amount,[207] in addition to litigation costs at the national and international level.[208] Some economic compensation clauses have also included provisions on assistance in the area of housing, which encourages such social rehabilitation measures to be implemented more promptly.[209]

180. 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

205 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, para. 48.

206 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, para. 77.

207 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.

208 IACHR, Report No. 62/13, Case 12.547, Friendly Settlement, Rigoberto Cacho Reyes, Honduras, July 16, 2013. This agreement was implemented in full by the Honduran State. See IACHR, 2014 Annual Report, Chapter II.D, Status of compliance with the recommendations of the IACHR, pars. 956-960.

209 IACHR, Report No. 81/15, Case 12.813, Friendly Settlement, Blanca Olivia Contreras Vital et al., Mexico, October 28, 2015; IACHR, Report No. 15/16, Petition 1171-09, Friendly Settlement, Ananías Laparra Martínez et al., United Mexican States, April 14, 2016.

negotiations, its functions do not include that of determining the amounts to be paid or how they will be disbursed.

181. 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."[210] 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.

182. 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 it's monitoring of the compliance with the agreement, to follow applicable international standards.

183. 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,[211] published by the State of Colombia during the negotiation of the friendly settlement agreement in the case of Trujillo Massacre[212], in which

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210 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. This friendly settlement agreement has been implemented in full. See IACHR, 2011 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, pars. 159-164; IACHR, Report No. 109/13, Case 12.182, Friendly Settlement, Florentino Rojas, José Sergio del Franco and Pablo Ignacio Pita. Argentina, November 5, 2013; IACHR, Report No. 101/14, Petition 21-05, Friendly Settlement, Ignacio Cardozo et al., Argentina, November 7, 2014.

211 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 […]".

212 IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016. See also, IACHR, Report No. 10/15, Case 12.756, Friendly Settlement, El Aracatazzo Bar Massacre, Colombia, January 13, 2015; IACHR, Report No. 43/16, Case 11.538, Friendly Settlement, Herson Javier Caro, Colombia, October 7, 2016; IACHR, Report No. 67/16, Case 12.541, Friendly Settlement, Omar Zúñiga

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.[213] 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.

184. 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 "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.[214]

185. A third way of determining compensation amounts that is highlighted as a good practice, is to use the amounts set by the Inter-American Court of Human Rights in similar matters as objective criteria or points of reference for reaching a decision on financial reparation.[215]

186. 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.

Vásquez, Colombia, November 30, 2016; IACHR, Report No. 82/15, Petition 577-06, Friendly Settlement, Gloria González and Family, Colombia, October 28, 2015; IACHR, Report No. 135/17, Case 12.712, Ruben Darío Arroyave, Colombia, October 25, 2017; IACHR, Report No. 136/17, Case 12.714, Belén de Altavista Massacre, Colombia, October 25, 2017.

213 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.

214 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.

215 IACHR, Report No. 16/16, Case 12.847, Friendly Settlement, Vicenta Sánchez Valdivieso, Mexico, April 14, 2016.

E. Non-Repetition Measures: legislative reforms and adoption of public policies

187. 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.[216] 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.[217]

188. 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.

189. 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."[218]

190. Guarantees of non-repetition appear in 45 of the 137 friendly settlement agreements that the Commission has approved through issuance of a report. In these agreements, the States have undertaken to introduce legislative reforms regarding rights of women, indigenous peoples, and migrants, freedom of expression, torture, forced disappearance and just reparation. However, the Commission has not identified advances

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216 I/A Court H.R., Case of Garrido and Baigorria v. Argentina, Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, par. 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, para. 110.

217 IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II.Doc. 57, December 31, 2009, para. 41. p. 17.

218 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.

regarding friendly settlements on people of African descent, among other populations.

191. On the other hand, there have been advances in the implementation of 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.[219] 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

192. 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.[220] 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.

193. 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.

194. 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

219 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.

220 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, par. 165; Case of Cantos v. Argentina, Merits, Reparations and Costs. Judgment of November 28, 2002. Series C No. 97, par. 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, para. 113.

guarantee the rights and freedoms protected under the Convention[221] and enacting new laws a particular matter is unaddressed.[222] Such commitments have been included in 32 of the 137 friendly settlement agreement published by the IACHR.

195. Human rights organizations (which include non-governmental organizations, academic institutions, and public defenders) have served as petitioners in 27 out of the 32 cases that have resulted in friendly settlement agreements published by the IACHR and that feature legislative reform as a guarantee of non-repetition.

196. 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.[223]

197. 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 vulnerable, such as women, indigenous peoples and migrants. It

221 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 p. 18.

222 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.

223 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, para. 30.

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

198. 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.[224] 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.

199. 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.[225]

200. 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

[224] 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

[225] See, IACHR, Report No. 103/01 (Friendly Settlement), Case 11,307, María Merciadri de Morini, Argentina, October 11, 2001. This friendly settlement agreement has been implemented in full. See IACHR, 2008 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, pars. 38-40.

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 agreement have still not been complied with and that it will continue to monitor the situation.[226]

201. In the same regard, 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.[227] The friendly settlement agreement signed in this case was implemented in full by the Chilean State.[228]

202. Lastly, in the case of M.Z., relating to the failure to investigate and impose punishment in a rape case, the Bolivian State committed to including in the regulations governing the procedures for evaluating sitting judges the variable "degree of knowledge of human rights, particularly issues associated with gender discrimination."[229] In relation to this example, it is worth noting that the Bolivian State implemented in full the commitments adopted in the friendly settlement agreement. In that connection, taking into account the wishes of the parties, which indicated that that measure would be considered satisfied with the approval of the Regulations for the Judicial Career, and bearing in mind that pursuant to Article 100 of those Regulations, knowledge regarding international agreements and regulations ratified by the Bolivian State in the area of human and gender rights became part of the main themes for testing the knowledge of male and female candidates for judgeships, the Commission deemed that point of the agreement to have been satisfied.[230]

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226 IACHR, 2012 Annual Report, OEA/Ser.L/V/II.147. Doc.1, March 5, 2013, Chapter III.D, Status of compliance with the recommendations of the IACHR, paras. 971-973.

227 See, IACHR, Report No. 81/09 (Friendly Settlement), P-490-03, "X", Chile, August 6, 2009.

228 See IACHR, 2010 Annual Report, Chapter II.D, Status of compliance with the recommendations of the IACHR, paras. 303-306.

229 IACHR, Report No. 103/14, Case 12.350, Friendly Settlement, MZ, Bolivia, November 7, 2014.

230 IACHR, Report No. 103/14, Case 12.350, Friendly Settlement, MZ, Bolivia, November 7, 2014.

b. Indigenous Peoples' Rights

203. 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.[231]

204. In Report No. 30/04,[232] approved on March 11, 2004, the Commission approved a friendly settlement agreement resulting from the petition filed by Mercedes Julia Huenteao 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.

205. 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.

206. 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.

207. 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

[231] 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

[232] See, IACHR, Report No. 30/04 (Friendly Settlement), Petition 4617-02, Mercedes Julia Huentao Beroiza et al., Chile, March 11, 2004.

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.

208. 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.[233] The Commission continues to monitor compliance with the commitments undertaken in the friendly settlement agreement.

c. Migrants' Rights

209. 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.[234]

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

211. 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.

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233 IACHR, 2012 Annual Report, OEA/Ser.L/V/II.147. Doc.1, March 5, 2013, Chapter III.D, Status of compliance with the recommendations of the IACHR, pars. 367-398.

234 IACHR, Report No. 85/11- Friendly Settlement. Petition 12,306, Juan Carlos de la Torre, Argentina.

212. 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.

213. 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.

214. 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.[235]

[235] 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-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.

d. Freedom of Expression

215. 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.

216. 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.

217. 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.[236] The friendly settlement agreement signed in this case was implemented in full by the Uruguayan State.[237]

218. 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.[238]

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236 See, IACHR, Report No. 18/10 (Friendly Settlement), P-228-07, Carlos Dogliani, Uruguay, March 16, 2010.

237 See IACHR, 2012 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, paras. 1033-1039.

238 Chapter III. A. 2 examines the friendly settlement procedure and the results obtained as a result of the

e. Torture

219. 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.[239]

220. 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. The friendly settlement agreement signed in this case was implemented in full by the Mexican State.[240]

221. 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.

222. 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.

223. Finally, in the case of Ananías Laparra mentioned above, concerning the torture to which he and his family were subjected in order to extract a

agreement signed in the case mentioned above.

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

240 See IACHR, 2007 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, paras. 561-562.

confession, the Mexican State pledged to arrange a debate in the legislature on recognition of innocence in cases of human rights violations.[241]

f. Forced Disappearance

224. 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.

225. 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 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.[242]

226. 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.[243]

227. 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

241 IACHR, Report No. 15/16, Petition 1171-09, Friendly Settlement, Ananías Laparra Martínez et al., United Mexican States, April 14, 2016.

242 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.

243 IACHR, Report No. 160/10 (Friendly Settlement), Petition 242-03, Inocencia Luca de Pergoraro et al., Argentina, November 1, 2010, para. 26.

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.[244] The friendly settlement agreement signed in this case was implemented in full by the Mexican State.[245]

g. Right to Reparations

228. 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."[246]

229. 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

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

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

246 IACHR, Application to 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, par. 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, para. 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, para. 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, para. 143.

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.[247]

230. 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. The friendly settlement agreement signed in this case was implemented in full by the Argentine State.[248]

231. 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.[249] 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.[250]

h. Military Justice

232. Measures of non-repetition under friendly settlements have also been instrumental in bringing about legislative reforms in the area of military justice. Examples include the friendly settlement agreements that the parties signed in the cases of Roinson Mora Rubiano[251] and Faride Herrera

247 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.

248 See IACHR, 2013 Annual Report, Chapter III.D, Status of compliance with the recommendations of the IACHR, paras. 165 – 175.

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

250 See, IACHR, 2012 Annual Report, OEA/Ser.L/V/II.147. Doc.1, March 5, 2013, Chapter III.D, Status of compliance with the recommendations of the IACHR, para. 164.

251 See, IACHR, Report No. 45/99 (Friendly Settlement), Case 11,525, Roison Mora Rubiano, Colombia, March 9, 1999.

Jaime *et al.* v. Colombia,[252] These are the first friendly settlements with the Colombian State that resulted in the IACHR's approval.

233. 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 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.

234. 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".[253] The friendly settlement agreement signed in this case was implemented in full by the Argentine State.[254]

235. 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.[255]

252 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, Rua Álvarez.

253 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."

254 See IACHR, 2015 Annual Report, Chapter II.D, Status of compliance with the recommendations of the IACHR, para. 104-114.

255 IACHR, Report No. 15/10 (Friendly Settlement), Petition 11,758, Rodolfo Correa Belisle, Argentina, March 16, 2010.

i. Rights of Persons with Disabilities

236. 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.[256]

237. 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.[257]

238. 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.[258]

239. 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.

240. 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

256 IACHR, Application in the case of Damião Ximenes Lopes (Case 12,237) against the Federative Republic of Brazil, October 1, 2004, para. 5.

257 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, para. 7.

258 IACHR, Report No. 86/11 (Friendly Settlement), Petition 12,232, María Soledad Cisternas Reyes, Chile, July 21, 2011.

travel of persons with disabilities be widely disseminate among the various carriers, public and private agencies, and the general public.

241. In furtherance of the friendly settlement, in April 2008, the Office of the Director General of Chile's Civil Aeronautics (DGAC) published the aeronautical standards regulating air travel by persons with disabilities, ailments or special needs, as part of the National Air Travel Facilitation Program. The friendly settlement agreement signed in this case was implemented in full by the Chilean State.[259]

242. 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.[260]

j. Access to Justice and Social Security

243. 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.

244. 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.

245. 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

259 See IACHR, 2012 Annual Report, Chapter II.D, Status of compliance with the recommendations of the IACHR, paras. 408-412.

260 IACHR, 2012 Annual Report, OEA/Ser.L/V/II.147. Doc.1, March 5, 2013, Chapter III.D, Status of compliance with the recommendations of the IACHR, para. 411.

provisions of the law that had become an obstacle for the handling of legal cases.[261]

246. 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. The friendly settlement agreement signed in this case was implemented in full by the Argentine State.[262]

2. Adoption of Public Policies

247. 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.[263]

248. 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.[264] 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.[265]

249. Through the friendly settlement procedure, petitioners and States have agreed on commitments that have entailed the implementation of programs and lines of action designed to change the conditions in which thousands of people live. The experience of the IACHR shows how States have promised to implement public policies on such issues as working

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

262 See IACHR, 2013 Annual Report, Chapter II.D, Status of compliance with the recommendations of the IACHR, paras. 225-252.

263 See, IACHR, Report on Citizen Security and Human Rights, OEA/Ser.L/V/II.Doc. 57, December 31, 2009, para. 52.

264 Ibid, para. 54.

265 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, pp. 58-60.

conditions and pensions,[266] children,[267] conditions of detention,[268] women,[269] and indigenous peoples.[270]

250. 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 the judiciary, punishment of perpetrators. The State also pledged to adopt measures to raise awareness of slave labor through a nationwide campaign.[271]

251. Likewise, the friendly settlement agreement signed in the case of the "Emasculated Boys of Maranhão"[272] 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.

252. 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

266 See IACHR, Report No. 95/03 Friendly Settlement, Case 11. 289, José Pereira, Brazil, October 24, 2003; IACHR, Report No. 63/13, Case 12.473, Friendly Settlement, Jesús Manuel Naranjo Cárdenas et al., Venezuela, July 16, 2013.

267 See IACHR, Report No. 43/06 Friendly Settlement, Cases 12.426 y 12.427, Emasculated Children of Maranhao, Brazil, March 15, 2006.

268 IACHR, Report No. 36/17, Case 12.854, Friendly Settlement, Ricardo Javier Kaplun and Family, Argentina, March 21, 2017; IACHR, Report No. 61/13, Case 12.631, Friendly Settlement, Karina Montenegro at al., Ecuador, July 16, 2013.

269 See IACHR, Report No. 71/03, (Friendly Settlement), Case 12.191, María Mamérita Mestanza Chávez, Peru, October 10, 2003; IACHR, Report No. 61/13, Case 12.631, Friendly Settlement, Karina Montenegro at al., Ecuador, July 16, 2013.

270 See IACHR, Report No. 30/04 Friendly Settlement, Petition 4617-02, Mercedes Julia Huenteao Beroiza et al., Chile, March 11, 2004; IACHR, Report No. 32/12 Friendly Settlement, Petition 11.706, Yanomami Indigenous People of Haximu, Venezuela, March 20, 2012.

271 See, IACHR, Report No. 95/03 (Friendly Settlement), Case 11, 289, José Pereira, Brazil, October 24, 2003.

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

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.

253. 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 violations in health establishments, in order to prevent and redress any injury caused.*[273]

254. Furthermore, in the case of Karina Montenegro, concerning the imprisonment of pregnant women, the Ecuadorian State undertook, among other things, to provide the necessary personnel and inputs to safeguard the guarantee of house arrest; to establish a home or correctional facility for women; to set up and equip childcare facilities in the country's prisons; and to create a special health care program for pregnant women.[274]

255. In the case of Ricardo Javier Kaplun, the Argentine State undertook to "[a]dapt detention areas allocated in the police stations for the provisional

[273] See, IACHR, Report No. 71/03 (Friendly Settlement), Case 12,191, María Mamérita Mestanza Chávez, Peru, October 10, 2003.

[274] IACHR, Report No. 61/13, Case 12.631, Friendly Settlement, Karina Montenegro at al., Ecuador, July 16, 2013.

accommodation of detainees, while they wait to be transferred to a court or wait to be definitively released, so that they meet international standards in that area, with the installation of closed-circuit video surveillance in the areas for internal security and access to the jail cells and the gradual removal of those facilities that cannot meet the required conditions for the provisional accommodation of detainees."[275]

256. 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[276]

257. Finally, pursuant to the agreement reached in the case of M.Z., the Bolivian State created a specialized unit to support the victims of sexual violence as well as to conduct investigations and take public criminal action with respect to these crimes. It also created a special unit to develop the scientific-technical studies needed for the investigation of crimes against sexual freedom and made the necessary adjustments to ensure that the physical locations where victims of sexual violence submit their statements offer the necessary infrastructure conditions to guarantee their privacy.[277]

258. The Commission understands that 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 multiple friendly settlement reports, petitioners and States have agreed to commitments to provide training to government officials on different topics, including sexual and reproductive rights,[278] torture,[279] police

275 IACHR, Report No. 36/17, Case 12.854, Friendly Settlement, Ricardo Javier Kaplun and Family, Argentina, March 21, 2017.

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

277 IACHR, Report No. 103/14, Case 12.350, Friendly Settlement, MZ, Bolivia, November 7, 2014.

278 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

violence,[280] gender-related violence and/or discrimination,[281] labor rights,[282] human rights to members of the police,[283] and training for judges in the treatment of relatives of victims of forced disappearance.[284] Furthermore, in a number of cases, training clauses have provided for the inclusion of sessions specifically devoted to acts relating to the matter that gave rise to the complaint presented to the inter-American human rights system. For example, in the cases of the Segovia Massacre and El Aracatazzo Bar Massacre, the Colombian State included the facts surrounding the respective cases in extracurricular education courses given at the training schools of the Colombian security forces.[285]

259. In regard to the following, the Commission considers that it is essential, for the purposes of following up on implementation of measures of this sort 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*

Ramírez Jacinto, Mexico, March 9, 2007; IACHR, Report No. 61/13, Case 12.631, Friendly Settlement, Karina Montenegro at al., Ecuador, July 16, 2013.

279 IACHR, Report No. 15/16, Petition 1171-09, Friendly Settlement, Ananías Laparra Martínez et al., United Mexican States, April 14, 2016.

280 In the case of Ricardo Javier Kaplun, the Argentine State pledged to "provide more in-depth training activities to officers, non-commissioned officers, and cadets of the Federal Security Forces and also for medical and nursing staff who perform their duties in said institutions, which would focus on fulfilling obligations that have been accepted internationally, regarding the rules for the use of force by the police, especially the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials adopted at the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, as well as rules for the treatment of prisoners and principles for the protection of all persons under any form of detention or imprisonment." See, IACHR, Report No. 36/17, Case 12.854, Friendly Settlement, Ricardo Javier Kaplun and Family, Argentina, March 21, 2017.

281 See IACHR, Report No. 80/09 Friendly Settlement, Case 12.337, Marcela Andrea Valdez Díaz, Chile, August 6, 2009; IACHR, Report No. 59/14, Case 12.376, Friendly Settlement, Alba Lucía Rodríguez Cardona, Colombia, July 24, 2014; IACHR, Report No. 102/14, Case 12.710, Friendly Settlement, Marcos Gilberto Chaves and Sandra Beatriz Chaves, Argentina, November 7, 2014; IACHR, Report No. 103/14, Case 12.350, Friendly Settlement, MZ, Bolivia, November 7, 2014.

282 See IACHR, Report No. 95/03, (Friendly Settlement), Case 11. 289, José Pereira, Brazil, October 24, 2003.

283 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; IACHR, Report No. 36/17, Case 12.854, Friendly Settlement, Ricardo Javier Kaplun and Family, Argentina, March 21, 2017.

284 See IACHR, Report No. 160/10 Friendly Settlement, Petition 242-03, Inocencia Luca de Pegoraro et al., Argentina, November 1, 2010.

285 IACHR, Report No. 10/15, Case 12.756, Friendly Settlement, El Aracatazzo Bar Massacre, Colombia, January 13, 2015; IACHR, Report No. 38/15, Petition 108-00, Friendly Settlement, Segovia Massacre, Colombia, July 24, 2015.

the prosecutor of X municipality, on the subject of the Protocol of Istanbul, with the participation of the petitioners as observers."[286]

260. Another way in which the parties can promote the proper implementation of such measures is to define what they deem necessary to consider the measure satisfied. That can be done either in the text of the agreement itself, or through minutes or memorandums of understanding or of interpretation of the friendly settlement agreement. For example, in the case of M.M., the Commission had been following up on the friendly settlement agreement's implementation for 14 years prior to its publication,[287] and though the State had made progress with implementing the measure concerning training for officials, the petitioners considered that it did not satisfy the victim's interests. As part of the follow-up on the agreement, the Commission facilitated a working meeting in the framework of its 150th session, where the parties signed a memorandum of commitment in which the State undertook to pass a resolution modifying its regulations and including gender awareness training in the curriculum of the programs for basic and/or specialized training of judges and prosecutors. The petitioners, for their part, undertook to take the agreement as concluded once the State had fulfilled that commitment. That formula allowed the implementation of the measure to move forward and three months later the Commission received information from State indicating that the provisions of the memorandum of understanding had been met and enclosing a copy of the regulations, whereupon the Commission declared the friendly settlement agreement implemented in full, which concluded the matter pending before the IACHR.[288] The use of instruments such as memorandums and minutes that, subject to the will of the parties, facilitate the IACHR's monitoring of the implementation of friendly settlement agreements is therefore worth highlighting as a good practice.

261. 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 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.[289] A similar

286 IACHR, Handbook on the Use of the Friendly Settlement Mechanism, p. 11.

287 The friendly settlement agreement was signed on March 6, 2000. The memorandum of understanding on the clause dealing with training for officials was signed on March 26, 2014. The Commission approved the friendly settlement agreement on July 25, 2014, declaring it implemented in full.

288 IACHR, Report No. 69/14, Case 12.041, Friendly Settlement, M.M, Peru, July 25, 2014.

289 See, IACHR, Report No. 101/05 (Friendly Settlement), Petition 388/01, Alejandro Ortiz Ramírez, Mexico, October 27, 2005.

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.[290]

262. 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.[291] 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.

263. 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.[292]

264. 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.

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

291 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.

292 IACHR, Second Report on the situation of human rights defenders in the Americas, OEA/Ser.L/V/II.Doc.66, December 31, 2011, para. 142.

CHAPTER 4

CHALLENGES AND GOOD PRACTICES IN NEGOTIATING AND IMPLEMENTING FRIENDLY SETTLEMENT AGREEMENTS

CHALLENGES AND GOOD PRACTICES IN NEGOTIATING AND IMPLEMENTING FRIENDLY SETTLEMENT AGREEMENTS

265. As the introduction to this report mentions, between 1985 and 2017, under the auspices of the Commission's good offices, petitioners and States have signed friendly settlement agreements in cases concerning a variety of alleged violations of human rights, 137 of which have been approved by the IACHR based on an assessment of their contents in relation to international human rights standards.

266. The IACHR follows up on implementation of friendly settlement agreements through such mechanisms as working meetings, public hearings, requests to parties for information, and the publication of detailed information about progress and setbacks in the implementation of its decisions in the Commission's Annual Report to the General Assembly of the Organization of American States.

267. Thus, of the 137 friendly settlement agreements approved and published by the IACHR, 117 are the subject of public follow-up through the Annual Report of the IACHR. According to information gathered in 2017, 41 of the reports have been implemented in full, 74 have been partially implemented, and 2 are pending implementation.

268. In its monitoring of the implementation of friendly settlement agreements, the IACHR has identified a number of obstacles to the execution of certain measures, which are impeding some countries from attaining complete implementation of agreements and providing comprehensive reparation to victims of human rights violations.

269. As a result, the IACHR opened a dialogue among experts in dispute settlement, academics, petitioners, and States in the context of two special meetings held at the headquarters of the IACHR on September

21 and December 2, 2017,[293] in order to share experience, good practices, and challenges in implementing friendly settlement agreements, as well as to formulate proposals to advance toward their full implementation.

270. The challenges identified included, among others, lack of political will on the part of States to fulfill the commitments adopted in friendly settlement agreements; lack of permanent channels for dialogue between the parties; lack of structures to facilitate the implementation of satisfaction, rehabilitation, non-repetition, and financial compensation measures; lack of agency interaction for the implementation of reparation measures; lack of clarity in some agreement clauses with respect to their performance, measurement indicators, and competent authorities; and chronic noncompliance with measures relating to the investigation, trial, and punishment of those responsible.

271. At the same time, the Commission has identified as a good practice the establishment of legislative and other mechanisms to facilitate the implementation of certain reparation measures. [294] For example, in relation to legal frameworks, the Commission has noted Law 286 of 1996 as a good practice in Colombia,[295] by which mechanisms were established for compensating victims of human rights violations pursuance to the decisions of international human rights organs. More recently, the Colombian State passed Decree 507 of March 30, 2016,[296] which granted authority to the Committee of Ministers created by Law 288 of 1996 to designate the entities in charge of processing and payment of compensatory damages under that law. The decree is a good practice as it provides clarity about the government entity in charge of giving effect to financial compensation under the friendly settlement agreement, which facilitates implementation of the measure.

272. The IACHR also welcomed the adoption in Bolivia of Law 936 of May 3, 2017 (Conciliation and Arbitration Law), which authorizes the State to

293 See, in that regard, IACHR website, Friendly Settlements, Activities and Initiatives. Available at: http://www.oas.org/en/iachr/friendly_settlements/activities.asp

294 See IACHR, Impact of the Friendly Settlement Procedure, para. 155.

295 IACHR, Report No. 68/16, Case 11.007, Friendly Settlement, Trujillo Massacre, Colombia, November 30, 2016, par. 40; See IACHR, Impact of the Friendly Settlement Procedure, OEA/Ser.L/V/II. Doc. 45/13, December 18, 2013. Original: Spanish, para. 155 and ff.

296 See Ministry of Justice and Law, Decree 507 of March 30, 2016. Available online: http://es.presidencia.gov.co/normativa/normativa/DECRETO%20507%20DEL%2030%20DE%20MARZO%20DE%202016.pdf

sign friendly settlement agreements.[297] The Commission regarded this as an important stride toward the introduction of legal mechanisms for the negotiation and implementation of friendly settlement agreements in the region.[298]

273. The IACHR has identified in Chile's Law 20885 another legislative model that could expedite the negotiation and implementation of friendly settlement agreements. The Law creates the Office of the Undersecretary for Human Rights and gives it authority to "collaborate with the Ministry of Foreign Affairs, within the area of its responsibility, in the preparation and follow-up of periodic reports to human rights bodies and mechanisms; in the implementation of precautionary and provisional measures, friendly settlements, and international judgments in which Chile is a party; and in the implementation, as appropriate, of decisions originating in the inter-American and universal human rights systems, without prejudice to the powers of other organs of the State."[299]

274. Regarding administrative frameworks or structures for negotiating and implementing friendly settlement agreements, the Commission notes as a good practice the creation of specialized groups or units for advancing negotiations, staffed with personnel trained in human rights, the inter-American human rights system, and alternative conflict resolution. For example, in the case of Colombia, the State Legal Defense Agency (*Agencia de Defensa Jurídica del Estado*) reported the creation of a Friendly Settlement Group in the directorate, with the aim of strengthening the institution's policy of promotion of friendly settlements and advancing negotiations of that nature with a view to the early termination of the process, restoring confidence in institutions, and ensuring reparations, where appropriate, through direct and affirmative work with victims and organizations. That has had a considerable impact in terms of increasing the number of cases against the country that are under negotiation as well as on follow-up on the implementation of agreements.

297 See Law 936 of May 3, 2017. Available online (Spanish only): http://senado.gob.bo/sites/default/files/leyesdiputados/LEY%20N%C2%B0%20936-2017.PDF

298 See IACHR, Press release, IACHR Welcomes Approval of Legislative Amendment that Could Facilitate the Use of Friendly Settlements in Bolivia, August 2, 2017. Available online: http://www.oas.org/en/iachr/media_center/PReleases/2017/113.asp

299 See Law 20885 of January 5, 2016. Available (in Spanish) online: https://www.leychile.cl/Navegar?idNorma=1086063

275. In the area of implementation of friendly settlement agreements, the IACHR also underscores the importance of creating administrative structures to allow interaction among different state entities in order to effectively implement reparation measures for victims of human rights violations. In that regard, the IACHR considers as a good practice Mexico's reparations trust fund model, which includes not only financial compensation, but also other aspects of the implementation of satisfaction and rehabilitation measures, such as educational scholarships, medical and psychological care, and other types of redress.[300]

276. The commission considers that such legislative and administrative frameworks are good practices as being conducive to the development of public policies for implementing the decisions of the organs of the Inter-American human rights system, which will allow the negotiation and implementation of decisions to be less dependent on the political changes that come with each new administration, as well as enabling swifter and more coordinated progress in cases under the friendly settlement procedure.

277. The Commission also believes it immensely important for protocols to be developed for the negotiation and implementation of agreements and review mechanisms in States in order to achieve their fulfillment. In that regard, the IACHR considers it essential that such protocols provide for the involvement in negotiations of agencies that play a material role in the implementation of the agreements and that there are interagency coordination mechanisms at both the federal and provincial level to help expedite the processes of negotiation and implementation of reparation measures.

278. The Commission also believes it is important to create and/or strengthen mechanisms and methods for ensuring full participation for alleged victims and their representatives in negotiation and implementation processes of friendly settlement agreements that include mechanisms for consultation on the content and form of implementation of reparation measures that ensure coordination with the beneficiaries of such measures.

279. Finally, states should develop and strengthen their own negotiation and follow-up capability within the public administration through

[300] See Official Gazette of the Federation, Secretariat of the Interior, Operational Rules on the Trust Fund for the Fulfillment of Obligations in the Area of Human Rights [*Reglas de operación del fideicomiso para el cumplimiento de Obligaciones en Materia de los Derechos Humanos*], May 29, 2014. Available online: http://www.dof.gob.mx/nota_detalle.php?codigo=5346590&fecha=29/05/2014

programs that provide periodic training to actors through an independent, decentralized agency.

280. The frameworks described above in Bolivia, Chile, Colombia, and Mexico, coupled with other proposed laws for building frameworks to enable swifter implementation of the decisions of the IACHR, such as Bill 3528-S-2000 in Argentina (concerning a mechanism for implementing the operative resolutions of verification bodies for international treaties of constitutional rank)[301] or Bill 4.667/2004 in Brazil[302] (on the legal effects of decisions of international agencies for protection of human rights and other decisions) represent efforts by States to create and inter-American public policy on friendly settlements.

281. The Commission considers that such frameworks, along with the adoption of clear and measurable clauses, the use of schedules for negotiations and follow-up, and the determination of measurement indicators, can have a positive influence: in terms of reducing the negotiation and implementation times of friendly settlement agreements; on the level of implementation of agreed commitments; and, finally, with respect to redress for victims that turn to the inter-American system to claim their rights.

301 See Bill 3528-S-2000 of Argentina, Implementation of the Decisions of the Inter-American Human Rights System, CEJIL, 2007. Annexes, p. 167.

302 Bill 4.667/2004 on the legal effects of decisions of international agencies for protection of human rights and other decisions (sent to the Senate on November 18, 2010). Available online: http://www.camara.gov.br/proposicoesWeb/fichadetramitacao?idProposicao=273650

CHAPTER 5
CONCLUSION

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282. 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.

283. 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.

284. 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.

285. 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,[303] held on June 7 and 8, 2013, in La Antigua, Guatemala. The Conference

[303] 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.

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.

286. 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 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.

287. 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.

288. 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.

289. 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.

290. 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.

291. The Commission took note of the observations of the States and civil society representatives, which suggested, among other measures, gradually strengthening work in the area of friendly settlement; increasing the availability of the friendly settlement process by including it in the analysis of processability stage of the petition; the preparation of a manual or guide on the procedure and a compendium of successful experiences or good practices in that regard, and the organization of training on facilitation of friendly settlement for staff of the Executive Secretariat.[304]

292. Addressing those observations, among other measures, the IACHR created the Friendly Settlements Section to give impetus to cases under the mechanism; amended its rules of procedure to include the possibility of applying the *per saltum* criterion to examine requests from states to initiate a friendly settlement procedure out of the chronological sequence; prepared this Report on the Impact of the Friendly Settlement Procedure, which was first published in 2013; released the Handbook on the use of the friendly settlement mechanism in the IACHR petition and case system; and provided training through seminars and workshops to government officials, representatives of civil society organizations, petitioners, victims, and staff of the Executive Secretariat of the IACHR on dispute settlement and the use of the friendly settlement procedure.

293. In addition, the Commission included in its Strategic Plan 2017-2021 the goals of strengthening State institutions and public policies with a human rights approach and developing civil society capacities in defense of human rights. Thus, the Commission considers that the joint efforts of States, civil society, and the organs of the inter-American human rights system should be directed toward creating and buttressing administrative, legislative, and other frameworks in order to facilitate and expedite the negotiation and implementation of friendly settlement agreements and consolidate the efforts made thus far to promote the mechanism's use.

304 See, IACHR, Reply to the Permanent Council of the Organization of American States regarding the recommendations contained in the Report of the Special Working Group to Reflect on the Workings of the IACHR with a View to Strengthening the Inter-American Human Rights System, October 23, 2012. Available online: http://www.oas.org/en/iachr/strengthening/respuesta.asp

294. The Commission values the efforts of the users on the system within the framework 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.

295. The commission has identified several challenges with respect to the negotiation and implementation of friendly settlement agreements that highlight the need for more work to be done in establishing frameworks and structures to facilitate agreement negotiation and implementation processes. Therefore, the Commission invites States to continue designing policies and practices that encourage respect for human rights, the use of the friendly settlement mechanism, and the materialization of the undertakings given by them to fully implement reparation measures for victims of human rights violations.