



## THE EFFECTIVENESS OF THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS<sup>\*</sup>

### Quantitative approach on the System's operation and the compliance with its decisions

#### I. Introduction

In a region of failing democracies and persistent violation of rights, the Inter-American Commission on Human Rights (the Commission or the IACHR) and the Inter-American Court of Human Rights (the Court or the Inter-American Court) may contribute to positively shape the behavior of the States. As a matter of fact, both bodies, have provided an answer to thousands of victims by means of the petition-based system established in the American Convention on Human Rights (ACHR) and have set the standards that, to a greater or lower extent, led to significant legal and political reforms in the countries of the region.

All in all, the system's effectiveness is a key and constant concern in the discussions on the performance of the Inter-American System for the Protection of Human Rights (IASPHR). For many observers, the human and financial resources that the IASPHR uses in order to give an answer to the denial of rights are insufficient<sup>1</sup>. Others point to the absence of formal mechanisms or consolidated practices that ensure the State's implementation of the Inter-American decisions<sup>2</sup>. As a matter of fact, for some years now, a debate process has existed on the IASPHR within the framework of the Organization of American States (OAS) Permanent Council's Committee on Political and Juridical Affairs (CPJA), and many states and organizations have drafted proposals aimed at strengthening the IASPHR<sup>3</sup>. The widespread

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\* Document prepared by Fernando Basch, Leonardo Filippini, Ana Laya, Mariano Nino, Felicitas Rossi and Bárbara Schreiber. The authors would like to thank Víctor Abramovich for the review and remarks made on a draft of this document. Obviously, any possible errors and mistakes are the exclusive responsibility of the authors.

<sup>1</sup> From the OAS adjusted budget for 2009, 4.1% is destined to the IACHR and 1.97% to the Court. Ever since the approval of the reforms to the IACHR and the Court's regulations in 2000, the percentage of the OAS total budget destined to the two institutions has increased little more than 1% of the total, in almost ten years, going from 5% in 2000 to 6.07% in 2009. Information available at <http://www.cidh.org/recursos.sp.htm> and at <http://www.corteidh.org.cr/donaciones.cfm>). See also Ventura Robles, "La Corte Interamericana de Derechos Humanos: la necesidad inmediata de convertirse en un tribunal permanente", Annex 1, CEJIL Journal No. 1 (2005), pp. 23-24; Ayala Corao, "Reflexiones sobre el Futuro del Sistema Interamericano de Humanos", IIDH Journal No.30-31, p. 113.

<sup>2</sup> Under article 68.1 of the ACHR, "The States Parties to the Convention undertake to comply with the judgment of the Court in any case to which they are parties."

<sup>3</sup> Cfr. "Meeting in Mexico for the strengthening of the Inter-American Human Rights System. Main issues and trends identified by the chairman of the meeting" CP/doc. 4329/08 corr. 1. On 5 March, 2009, the CPJA held a special session with the civil society on the Inter-American Human Rights System to consolidate their

perception is, so to speak, that the IASPHR could or should exert greater influence on the behavior of the states than it currently does.

This research study sheds some light on a matter strongly related to such widespread concern: the degree of compliance with the decisions adopted within the framework of the ACHR petition-based system. Despite the repeated need for strengthening the IASPHR and increasing its influence, several questions necessary for a richer debate seem to have no final answers, neither have they been analyzed in great detail. To what extent are the decisions of the IASPHR effectively observed? Is it possible for us to reach a shared and empirically sustainable description to provide an answer? Is it possible to consistently *measure* over time the variations in the degree of observance of the Inter-American decisions? Of course, there is no final answer to these questions, but we could conduct an exercise in order to clarify some points of the matter.

Here, we shall focus on the measures used by the IASPHR to answer to the violations of rights of the ACHR, adopted within the framework of the petition-based system. In other words, the remedies offered by the IASPHR in relation to a denial of rights declared as such through the procedures of the ACHR. The information contained in this paper specifies all the remedies adopted -whether recommended, authorized or ordered- in all final decisions of the IACHR and the Court for a 5-year period, and considers the degree of compliance with such remedies up to the present<sup>4</sup>. The simple idea behind this survey is to offer quantitative information about a topic that is still presented, once and again, through narrative approaches mainly in the literature on the IASPHR. Consequently, our job is to give an answer to two main questions by using some quantitative tools: What are the remedies adopted by the Inter-American petition-based system? And, to what extent are they observed?

The results of this research work may lay down the foundations for future trends useful in the discussions on the potential reforms that may streamline the operation of the IASPHR, and the advisable methods to make a strategic use of litigation before the System's protection organs.

First, the work introduces the research methodology. Then, the results are presented through statistical charts and graphs. Last, we analyze the results and make some recommendations to help optimize the effectiveness of the IASPHR.

## **II. Research Methodology**

### **1. Sample universe and main variables**

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perspectives on the thinking process of the IASPHR. The CPJA's work and several proposals can be found at <http://www.oas.org/consejo/sp/cajp/ddhh.asp#dialogo>.

<sup>4</sup> We should not overlook that the concept defined herein as *remedy* is named *reparation* in the practice of the IACHR and the Court. We have decided to use the term *remedy*, commonly used in the Anglo-Saxon legal world, to avoid confusions in the description of the objectives pursued by the Inter-American Commission and the Court when ordering or recommending actions to the states: only some and not all of those requirements pursue strictly *reparatory* purposes of past violations; others seek to prevent future violations or other specific purposes such as the protection of victims and/or witnesses. The use of the term *remedy* instead of *reparation* makes a distinction between those measures seeking reparation in the strict sense, as defined in this section, and the others.

Our study universe includes all the final reports of the Inter-American Commission (art. 51 of the ACHR), all the reports from the Inter-American Commission on the approval of friendly settlements (art. 49 ACHR) and all the sentences passed by the Court between June 1, 2001 and June 30, 2006 in relation to States Parties to the ACHR, which accepted the contentious competence of the Inter-American Court. In this way, we have reviewed 12 final reports, 39 friendly settlement agreements of the Commission and 41 sentences passed by the Court. These 92 decisions include, in turn, 462 remedies adopted by the IASPHR: 45 of which were recommended in IACHR final reports, 160 were agreed in friendly settlements and 257 were ordered by the Court in final sentences.

Also, for all the decisions studied on this work, we have identified the litigants before the IASPHR, the State Party involved, the duration of the process from the date when the petition was filed to the date of the final decision<sup>5</sup>; the remedies adopted; and the date when the remedies were observed<sup>6</sup>.

The decision of restricting the universe of cases to those related to states that accepted the Court's competence aims at avoiding false comparisons in compliance trends. States accepting the Court's jurisdiction have proven commitment -at least formal- to the respect of the decisions made by the organs of the Inter-American system for the protection of human rights. Those who do not accept such competence seem to have adopted a different criterion in relation to subjecting the rules of their legal and political systems to the Inter-American standards. Comparing the level of observance of the Court's sentences, which have been necessarily passed on States that accepted its jurisdiction, with the level of observance of the Commission's recommendations, which are issued both for states which accept and do not accept the Court's contentious jurisdiction, could lead to wrong conclusions about the greater or lower efficacy of each of these decisions.

The research study does not include those cases leading to a friendly settlement, whose agreements have not yet been approved by the Inter-American Commission. A common practice of litigants -particularly, Inter-American litigation-specialized NGOs- is not to request the approval of the agreement until the state complies with the agreed upon measures, since in practice, the Commission's report rules out the possibilities of submitting the case to the Court. Thus, the Commission only publishes a percentage of friendly settlement reports in relation to the number of cases prone to this type of settlement. However, a non-approved friendly settlement is an agreement between the State and the petitioners, which lacks the final judgment passed by the Commission. The Commission's approval report makes such agreement mandatory before the system. From then on, the Commission performs a follow-up of the compliance status. On the other hand, friendly settlement processes are not public, therefore, it is impossible to have the necessary information to include these cases in the surveyed sample. Looking for that information would require a qualitative research that goes beyond the framework of this study.

Neither do we consider the observance of the remedies recommended on the report set forth under article 50 of the ACHR prior to the final report (art. 51, ACHR) or until the application is filed before the Court. Given that the report of art. 50 is confidential, this information could only be taken from the case briefings made by the Commission on the reports of art. 51 or in its

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<sup>5</sup> In cases of multiple petitions, the submission date of the first petition has been considered.

<sup>6</sup> In those cases for which no information was found on the date of observance of a certain remedy, we have considered the date of the annual report of the IACHR or of the Court's sentence supervision resolution declaring full or partial observance of the remedy, for being the first date when the observance is mentioned. In cases of partial observance of remedies, the date of the last specific action adopted by the State regarding the observance has been considered. This is why the results related to the time limit for the observance of the remedies should be read in approximate terms.

applications before the Inter-American Court. However, a thorough analysis of these pieces dating back from 2001 to 2006 offers inaccurate and insufficient information to determine the level of observance of the recommendations issued by the IACHR in the confidential report.

Finally, the time frame used in this study is determined by the enforcement of the reform of the Inter-American Court Regulation in June 2001. The Regulation modified -to some extent- the proceeding before the Court and, thus, the procedural behavior of litigants before the system. The time limit of June 2006 responds to the need to choose a period close enough so as to reflect an updated practice, but also far enough so as to study cases in which states had time to adopt the necessary measures to comply with the recommendations, obligations or orders. In this sense, we consider that two and a half years is enough time for states to comply with the measures recommended, assumed or ordered. In this manner, when analyzing the decisions made between June 2001 and the middle of 2006, the conclusions are hard to refute due to the insufficient time for any state to observe those decisions.

## 2. The level of observance

The level of observance of each of the remedies adopted has been surveyed until the date when this document was prepared<sup>7</sup>, considering the total, partial or no observance at all. To that end, we have reviewed all the annual reports of the Inter-American Commission from 2002 to 2008<sup>8</sup> and all the resolutions that oversee the observance of the sentences passed by the Court up to June 30, 2009.

On this point, some aspects are worth clarifying. In the sentence supervision resolutions, the Court assesses the level of observance of each of the measures ordered through the categories of "total", "whole" or "full observance", "partial observance" and "pending observance". In defining the level of observance of each remedy ordered in the sentences passed by the Inter-American Court, we have always followed the Court's conclusion.

In some cases, the IACHR was also explicit about the observance of some remedies. In these cases, we have also followed the Commission's criterion<sup>9</sup>. Likewise, we also take the Commission's conclusions in cases when the whole observance of the measures was declared, despite that petitioners had expressed their discontent with the State's actions<sup>10</sup>. All the Commission's annual reports include a section related to the observance status of its recommendations. The categories used by the Commission are: 1) Total observance: those cases when the State has fully observed all the recommendations made by the IACHR. The Commission considers as totally observed those recommendations for which the State has started and successfully concluded the procedures for observance. 2) Partial observance: those cases when the State has partially observed the recommendations made by the IACHR, whether due to observing only one recommendation or to having observed all of them incompletely. 3) Pending observance: those cases when the IACHR considers that there has been no observance of the recommendations, since no procedure for such purpose has been implemented; the procedures conducted have not yet produced concrete results; the State has explicitly indicated that it shall not comply with the recommendations made or the State has not informed the IACHR, and the latter has no information from other sources that may indicate a different

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<sup>7</sup> The closing date of the research was June 30, 2009.

<sup>8</sup> The information has been taken from the sections of the annual reports related to the observance status of the Commission's recommendations.

<sup>9</sup> Thus, for instance, in *Juan Ángel Greco vs. Argentina* (Report No. 91/03 from October 22, 2003 - Petition 11,804), in the Annual Report 2008; and in *Alfredo Díaz Bustos vs. Bolivia* (Report 97/05 of October 27, 2005 - Petition 14/04).

<sup>10</sup> For instance, *Alejandro Ortiz Ramírez vs. Mexico* (Report 101/05 of October 27, 2005 - Petition 388/01).

conclusion. Then, a double entry chart classifies each case according to the level of observance of the recommendations to the case and, later on, a case-by-case description is made on the scope of observance of the measures as informed by the parties. If the parties fail to submit reports, the IACHR only informs such circumstance. In a final paragraph and, based on the available information, the Commission concludes whether the State has totally or partially observed the recommendations or if they are pending observance, according to the above-mentioned criteria.

All in all, the Inter-American Commission evaluates the level of observance as a whole without specifying the degree of observance of each of the measures recommended or agreed upon. In this way, for the purpose of this study, the definition of the level of observance will not follow the Commission's criterion. In these cases, we have studied the information available for each case -whether provided by the State or by the petitioners- and the following criterion has been adopted: any time the state carried out actions with specific results aimed at complying with the measure, the remedy was classified as being partially observed. In those cases when the State Party only performed actions with no concrete results, the remedy was considered as non-observed<sup>11</sup>.

### **III. How does the IASPHR work**

#### **1. Remedies and objectives**

In the final decisions on the cases solved through the petition-based system during the research period, the organs of the Inter-American System adopted 462 remedies. The remedies regularly adopted by the IASPHR are aimed at meeting four main goals, which characterize the regional practice. First, the reparation of persons or groups. This is done by means of monetary economic compensations, non-monetary economic compensations, symbolic reparations and restoration of rights. Second, the prevention of future violations of rights by training state workers, raising social awareness, introducing legal reforms, creating or reforming institutions and other preventive measures. Third, the investigation and punishment of violations of human rights, an action that may occasionally require legal reforms. Last, the protection of victims and witnesses. Within this framework, the remedies adopted by the IASPHR may be classified into 13 groups that may be distinguished both in terms of type of action required from the State and in terms of the measure's recipient:

- i. Monetary economic reparation:** measures required from states consisting of the payment of monetary sums to individuals or groups<sup>12</sup>.
- ii. Non-monetary economic reparation:** recommendations, obligations and orders providing access to some specific good or service, or allocating money to the provision or purchase of such good and service. For instance, scholarships and medical care, fund raising for community productive development destined to creating health care, housing and education programs, or land and real estate cession.
- iii. Symbolic reparation:** remedies aimed at dignifying and morally repairing the victims and making public the State's recognition of responsibility. These measures include: placing honorary plates, holding public ceremonies, naming buildings, streets,

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<sup>11</sup> All the sheets containing the data surveyed and the classification decisions are in the hands of ADC.

<sup>12</sup> When the payment of monetary sums corresponds to several compensatory items and fees of one case, it has been considered as one single remedy required from the State.

scholarships, or public spaces after victims, publishing Court sentences or reports from the IACHR and other ways of commemorating the violations and their victims. Symbolic reparation also includes the restoration and transfer of the victims' remains to their relatives<sup>13</sup>.

- iv. Restoration of rights:** remedies used to restore the violated rights to the victims, when the action required is not of pure economic content. For example, appointing an employee to the position from which he had been dismissed, returning illegitimately dismissed judicial officials to their duties, releasing detainees, leaving sentences without effect, filing new lawsuits with the proper procedural guarantees, excluding victims from the criminal records, including a person in the pension system again, or granting security measures so that displaced persons are able to return to their lands.
- v. Prevention through the training of public servants:** training or education for certain subjects related to the protection of human rights, for public employees and officials, as members of the security, police or military forces, and of the public administration or the Judiciary.
- vi. Prevention by raising awareness in the population:** launching programs or campaigns of public dissemination or education in order to generate social awareness about the matters necessary for the effectiveness of human rights. They go beyond the simple commemoration of the violation found in a case and the homage to its victims to disseminate and promote human rights in general.
- vii. Prevention through legal reforms:** legislative, administrative or decree-related reforms to roll out new public policies or reform existing ones. The recommendations, obligations or orders for passing a piece of legislation or approving a decree have been removed from this category with the sole purpose of creating a public institution.
- viii. Prevention by strengthening, creating or reforming public institutions:** creating, reforming and strengthening State institutions. For instance, recommendations, obligations and orders for doing what is necessary to comply with the state law, and whose violation would undermine certain rights.
- ix. Prevention without specifying measures:** remedies for the state to provide what is necessary to avoid the repetition of violations of rights as those of the case. Only those recommendations that do not specify the actions the state must perform in observing the measures, are included.
- x. Investigation and punishment with legal reform:** recommendations, obligations or orders to investigate and punish violations of human rights that require, for their observance, the execution of legal reforms (in broad sense) on the part of the state or reforms in the justice system. For example, the abolishment of amnesty laws or pardons, or the modification of legal or jurisprudential criteria related to the application of the settled matter notion, or the prescription of the action.

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<sup>13</sup> This category does not include measures such as campaign launching or widespread promotional plans. This type of measures correspond to category iv. On the other hand, these remedies are different from those classified in categories i and ii for having no patrimonial content but only a declarative one.

- xi. Investigation and punishment without legal reform:** investigating and punishing identified violations of human rights, whose observance requires no change in the law. These are cases in which justice can be done without having to overcome legal hurdles<sup>14</sup>.
- xii. Protection of victims and witnesses:** recommendations or specific orders for the protection of victims or witnesses based on the fear of being chased for resorting to the Inter-American system or for having participated in the internal investigation process of violations of human rights. We have decided to analyze it separately, for it requires actions which are different and independent from the main process, and because there may be cases in which the state may fully comply with the investigation and punishment and fail in protecting witnesses, and viceversa. On the other hand, this measure does not seek reparation, neither does it aim at preventing general violations of human rights. It is limited to the protection of specific people indicated by the Court or the Commission.
- xiii. Others.** All those measures recommended, assumed or ordered to the state, which cannot be classified within one of the 12 previous categories. Our research identifies three: the order to grant a minor a certificate to leave the country (measure not aimed at his/her protection as witness or victim, but at avoiding paperwork to his/her mother to save her from distress); the order to establish a communication system between certain persons and the authorities of a health service and, the order to deliver a CD to a person, containing legislation.

**Chart 1. Objectives and Remedies of the IASPHR (in %)**

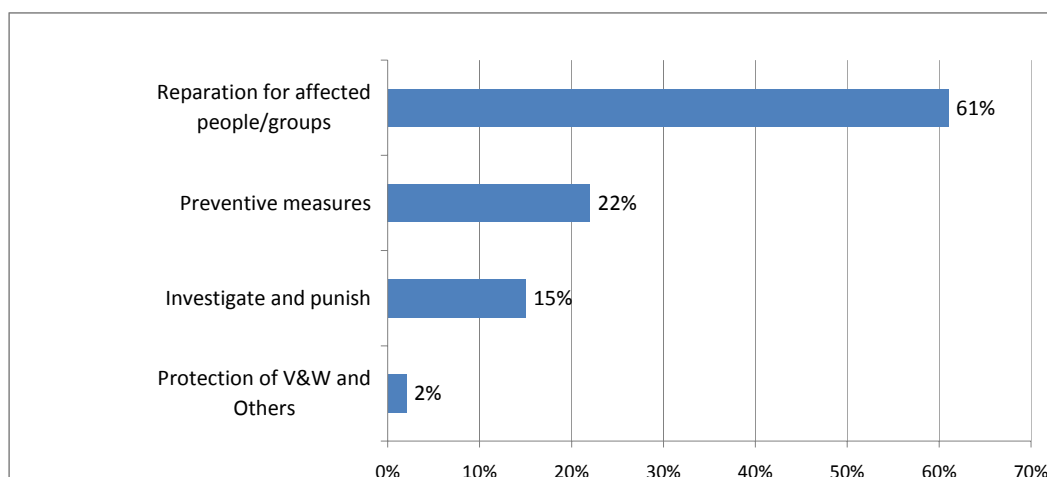
		Objectives	Remedies	Description
I	1	Reparation	Monetary economic	Give sums of money (compensations for material or moral damage, legal costs and fees).
	2		Non-monetary economic	Provide access to some service or specific good, or allocate money to its provision or purchase.
	3		Symbolic	Remedies aimed at dignifying and morally repairing the victims and making public the state's recognition of its responsibility.
	4		Restoration of rights	Restore the violated rights to the victims.
II	5	Prevention	Training of public servants	Provide training or education on human rights to public employees and officials.
	6		Awareness in the population	Dissemination or education programs or campaigns with the purpose of raising social awareness about human rights matters.
	7		Legal reforms	Legal reforms, in the broad sense, aimed at implementing or reforming public policies.
	8		Consolidation, creation and reform of institutions	Creating, reforming and strengthening state institutions and doing what is needed to abide by the law.
	9		Without specification	Measures to avoid repetition of the facts of the case without specifying concrete actions to be implemented in order to achieve it.
III	10	Investigation and	With legal reform	Investigating and punishing violations when it requires legal reforms in the judicial system.

<sup>14</sup> Or, at least, in which the organs of the Inter-American system have not mentioned the existence of any such type of barrier.

	11	punishment	Without legal reform	Investigating and punishing violations when it requires no modification of legal rules or criteria.
IV	12	Protection of victims and witnesses		Protection of victims or witnesses to the case.
V	13	Others		Remedies not included in the previous categories.

Out of the total 462 remedies, the group aimed at repairing affected persons or groups, whether by means of a symbolic, monetary, non-monetary economic reparation or restoration of rights (I), accounts for 62%. The prevention of future violations (II) stands at 22%. Some 15% of the remedies adopted aim at investigating and punishing those responsible for the violations of human rights (III) and the measures for the protection of victims and witnesses (IV), 1.3% of the cases. Four remedies accounting for 0.7% of the sample are grouped in "Others" (V).

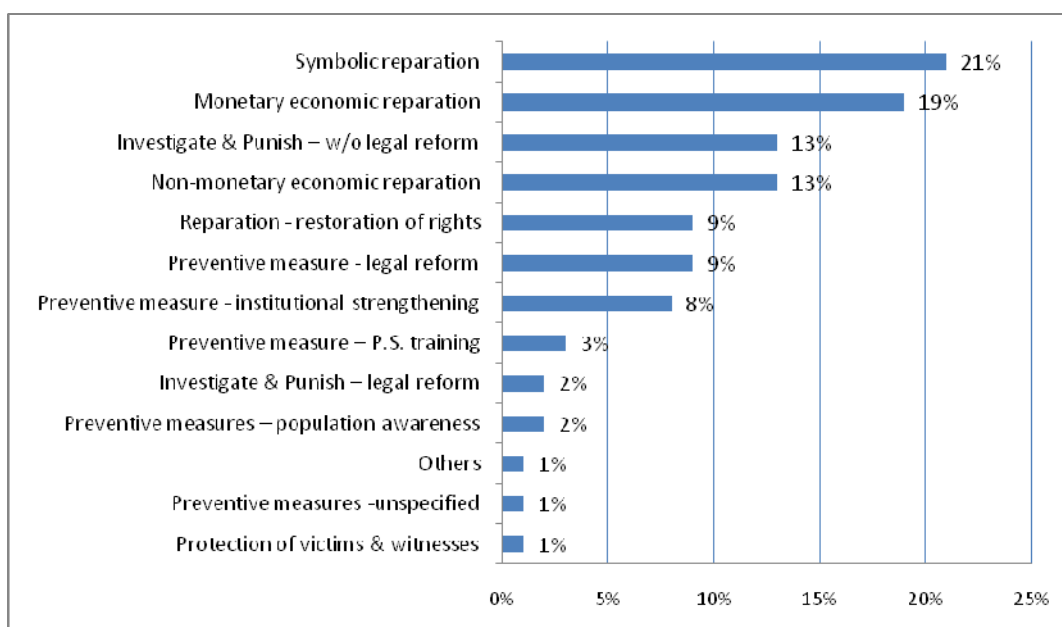
**Graph 1. Number of remedies based on the objectives pursued (in %)**



Total cases: 462 remedies between June 2001 and June 2006. Source: Prepared based on information taken from the IACHR annual reports and the Court's sentences. "Protection of V&W and Others" encompasses "Protection of victims and witnesses" and "Others".

When analyzing the percentage incidence of each remedy, 21% of all the remedies are symbolic reparations (3), 19% are monetary economic reparations (1) and 13% are non-monetary economic reparations (2). The remedies, which entail the duty to investigate and punish without requiring legal reforms (11), account for 13%, whereas the remedies which require reforms (10) represent 9%. Another 9% of the remedies include reparation measures through the restoration of rights (4). Preventive measures through strengthening, creating or reforming institutions (8) account for 8% of the total and, together with the other six categories of remedies, three of preventive type (training of personnel -5-, awareness in the population -6- and prevention with no specification -9- ) account for 5% of the remedies, while the three remaining (investigating and punishing with legal reform -10-, protecting victims and witnesses -12- and others -13) comprise 3.7%.

**Graph 2. Types of remedies (in %)**



Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006.  
Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences.

**Chart 2. Objectives and type of remedies (in number of cases and %)**

Objectives	Total	%	Remedies	Total	%
<b>Investigation and punishment</b>	67	15%	Without legal reform	60	13%
			With legal reform	7	2%
<b>Prevention</b>	101	22%	Legal reforms	43	9%
			Strengthening, creation and reform of public institutions	35	8%
			Training public servants	12	3%
			Population awareness	7	2%
			Without specification	4	1%
<b>Protection of victims and witnesses / Others</b>	10	2%	Protection of victims and witnesses	6	1%
			Others	4	1%
<b>Reparation</b>	284	61%	Symbolic	95	21%
			Monetary	86	19%
			Non-monetary economic	61	13%
			Rights restoration	42	9%

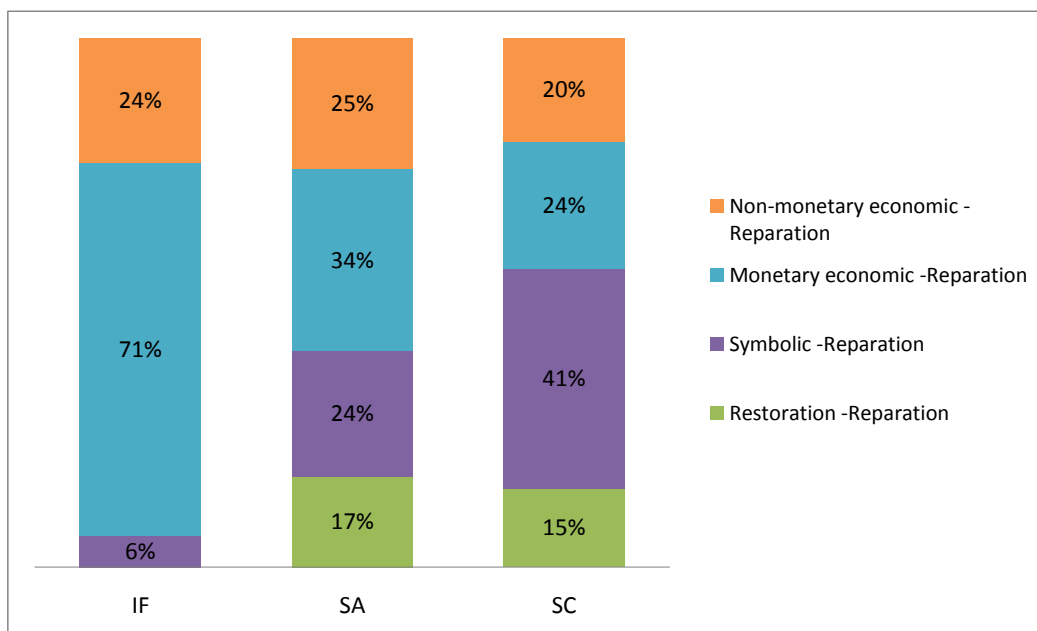
Total	462	100%	Total	462	100%
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Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006. Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences.

## 2. Remedies and types of decisions of the IASPHR

So far, we have detailed the objectives and types of remedies ordered by the control organs of the IASPHR, as well as the proportion in which they were ordered. This section covers the types of remedies based on the decisions made by the IACHR or by the Court. In this sense, it is observed that both the reports of articles 49 and 51 of the ACHR and the Court's sentences are clearly filled with reparations. Out of the 45 remedies recommended in final reports of the Commission, 17 entail a reparation (38%), of which 12 are of monetary-economic nature, 4 are non-monetary economic and 1 is symbolic. On its part, in the Court's sentences, from a total of 257 remedies, 174 reparations have been ordered (68%), of which 72 are symbolic reparations, 42 are monetary, 34 are non-monetary economic and 26 are rights restoration. In friendly settlements, from a total of 160 remedies agreed, 93 are reparations (58%), among which 32 are monetary, 22 are symbolic, 23 are non-monetary economic and 16 are rights restoration.

**Graph 3. Types of reparation remedies required in the various types of decisions (in %)**



Total cases: 284 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006, that entail some type of reparation (non-monetary economic, monetary economic, symbolic and restoration). These are 17 reports, 93 friendly settlements, 174 Court sentences. Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences.

On the other part, when comparing the remedies agreed within the framework of friendly settlement processes with those ordered by the Court, we see that virtually no legal reform measures have been agreed in friendly settlements. In none of the friendly settlements studied have we found the commitment to investigate and punish that would require a legal reform,

and we have only identified 10 remedies requiring legal reforms as a preventive measure. Instead, during the same period on six occasions the Court ordered to investigate and punish, with the additional obligation to reform, internal legal rules, and it ordered legal reforms as a preventive measure 27 times. Something similar occurs with the Commission's recommendations in its reports of art. 51 of the ACHR. Most of the remedies therein identified refer to the duty of investigating and punishing, though without the need of legal reforms.

**Chart 3. Required remedies based on the types of decisions of the IASPHR (in number of cases and %)**

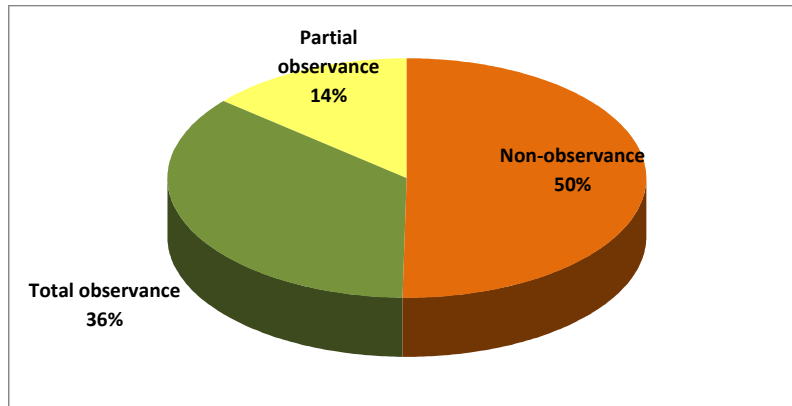
Remedy	Final Report	%	Friendly Settlement	%	Court Sentence	%	Total	%
<b>Reparation</b>								
Restoration	-	0%	16	10%	26	10%	42	9%
Symbolic	1	2%	22	14%	72	28%	95	21%
Monetary economic	12	27%	32	20%	42	16%	86	19%
Non-monetary economic	4	9%	23	14%	34	13%	61	13%
<b>Investigation</b>								
Without legal reform	13	29%	29	18%	18	7%	60	13%
With legal reform	1	2%	-	0%	6	2%	7	2%
<b>Prevention</b>								
Awareness	-	0%	3	2%	4	2%	7	2%
Training	1	2%	4	3%	7	3%	12	3%
Inst. strengthening	3	7%	19	12%	13	5%	35	8%
Legal reforms	6	13%	10	6%	27	11%	43	9%
Without specification	4	9%		0%	-	0%	4	1%
<b>Protection and others</b>								
Others	-	0%	2	1%	2	1%	4	1%
Protection of V&W	-	0%	-	0%	6	2%	6	1%
<b>Overall total</b>	45	100%	160	100%	257	100%	462	100%

Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006.  
Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences.

### 3. Remedies and level of observance

When discussing the level of observance of the remedies recommended, agreed or ordered in the surveyed decisions, it is observed that half of them are unmet. Likewise, only 36% of the surveyed remedies have been totally observed, while 14% have been partially observed (graph 4).

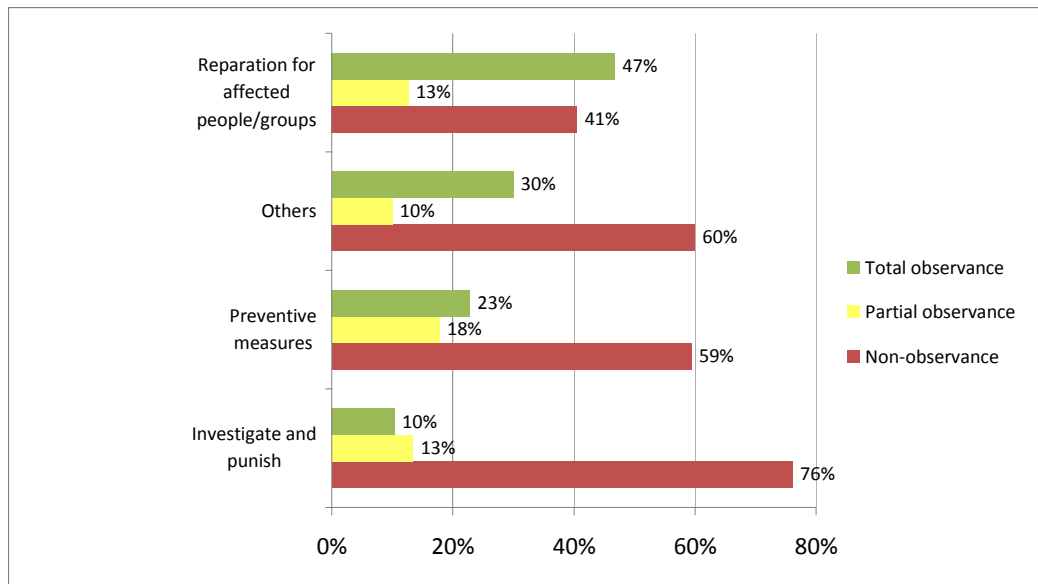
**Graph 4. Level of observance of remedies (in %)**



Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006. Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences.

The remedies with greater level of observance are those demanding some type of reparation: in 47% of the cases they are totally observed and, partially observed in 13%. On the contrary, only 10% of the orders, recommendations or obligations to investigate and punish those responsible for violations, has been totally observed; 13% only partially and 76% non-observed (graph 5).

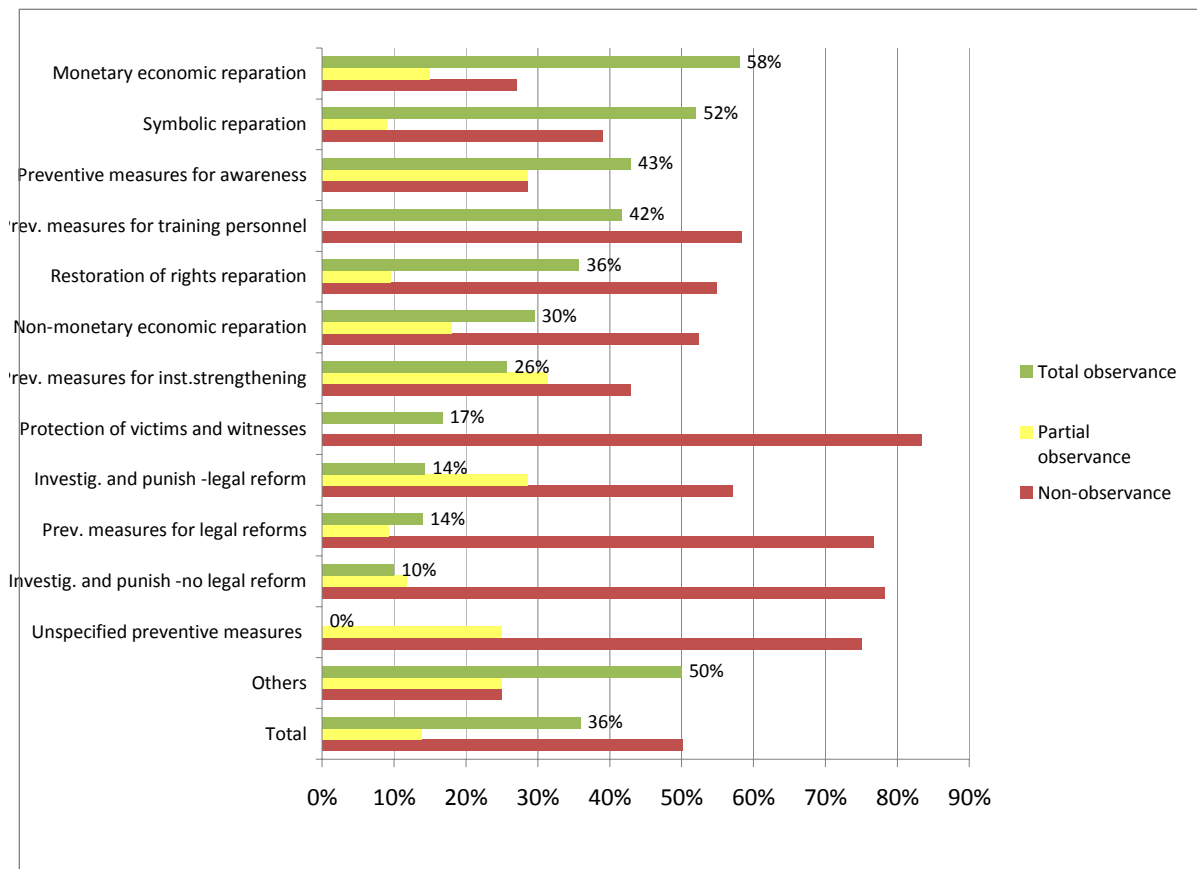
**Graph 5. Level of observance of the remedies based on the objective pursued (in %)**



Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006. Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences. Observation: "Others" encompasses the sub-categories of "protection to victims and witnesses" and "Others".

In relation to the differences in the observance of the various types of remedies, the greater level of observance is seen in those that entail monetary reparation (58%), followed by symbolic reparation (52%), preventive measures by raising awareness in the population (43%) and by training public servants (42%). By contrast, remedies with a lower level of observance require the protection of witnesses and victims (17%), investigation and punishment, regardless of whether the latter actually require legal reforms (14% and 10% respectively) and those that call for legal reforms (14%). Particularly, it is important to highlight that whenever the IACHR recommended the execution of unspecified preventive measures, the observance has been null (graph 6)<sup>15</sup>.

**Graph 6. Level of observance of the various types of remedies (in %)**



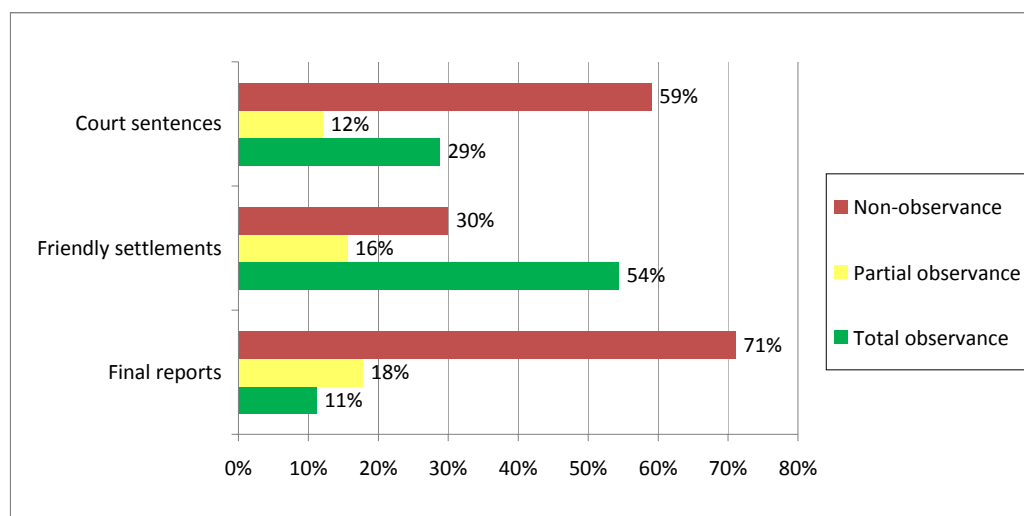
Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006. Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences.

<sup>15</sup> Of course, the lack of a definite order poses a challenge to measurement. How can the observance of these recommendations be verified? Is it necessary that the violation is not effectively repeated or is it enough that the State takes some concrete, though ineffective, action towards prevention?

#### 4. Types of decision and level of observance

The remedies agreed in the friendly settlements approved by the IACHR show the highest level of observance<sup>16</sup>. Some 54% of these were fully observed, accounting for the highest proportion, although not entirely satisfactorily. By contrast, only 29% of the remedies ordered by the Court and 11% of those recommended in the final reports of the Commission have been fully met<sup>17</sup>.

**Graph 7. Level of observance of remedies based on the type of decision upon which they were ordered (in %)**



Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006.  
Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences.

<sup>16</sup> Showing the high observance of the remedies agreed in the friendly settlements is not the same as concluding that such remedies agreed in friendly settlements (approved or not) are those mostly observed in general terms. As we mentioned at the beginning of this work (section II.1), the study universe does not include the friendly settlement agreements not approved by the IACHR during the period surveyed, since conciliatory processes are only made public when the approval report has been published. In this way, it is not possible to know the level at which the remedies established in those unapproved agreements were observed. The failure to publish the unapproved friendly settlement agreements also prevents us from knowing the proportion of the unapproved agreements *vis a vis* the approved agreements during the surveyed period. If we had the missing data (unpublished) we could draw sounder conclusions about the degree of effectiveness of the friendly settlement processes as a way of solving contentious cases.

<sup>17</sup> We might think that, in terms of effectiveness, these bad results primarily respond to the low commitment from just a few States to the many claims and applications before the system. If this were the case, the quantitative data we offer would inadequately reflect the current practice of most of the countries subjected to the IASPHR. However, such an objection does not seem to occur. By excluding from the equation those measures issued against the three most sued States during the period surveyed -Peru, Guatemala and Ecuador- the results would not change significantly. While by excluding these countries from the equation, a greater percentage of total observance of the remedies agreed in the approved friendly settlements is observed (total observance goes from 54% to 65%), also lower levels of observance of the remedies ordered in the Court's sentences and of the remedies recommended in final reports are recorded (from an observance of 29%, it drops to 25%, and from 11% to 4%, respectively).

## 5. Types of decisions, types of remedies and level of observance

By combining the variables illustrated above, the highest percentage of total observance is verified in the monetary reparations agreed in approved friendly settlements (88%). Non-observance is verified in high levels, unfortunately, in every type of decision and for every type of remedy. As mentioned, however, a lower level of non-observance of the remedies agreed in approved friendly settlements has been identified. For instance, the measures for institutional strengthening ordered in the Court's sentences have not been observed in 84% of the cases, and those recommended in final IACHR reports were observed in 67% of the cases, while the percentage of non-observance of the measures for institutional strengthening agreed in friendly settlements have been remarkably lower: 11%. The same applies to the measures related to social awareness: the level of total non-observance has been 50% in those cases ordered by Court's sentences and 0% in those agreed in approved friendly settlements. Lastly, monetary reparations seem to be, in relative terms, the most observed measures in any type of decision.

**Chart 4. Level of observance of the remedies based on the type of decision (in %)**

Final reports															
Level of observance	Monetary Econ. Reparation	Non-monetary economic reparation	Symbolic - Reparation	Restoration of Rights - Reparation	Prev. measures - Training	Prev. meas. - Awareness	Prev. measures - Legal Reforms	Prev. measures - Inst. Strengthening	Prev. measures - Unspecified	Investigate - with legal reform	Investigate - without legal reform	Protection of victims and witnesses	Others	Total final reports	Total
<b>Non-observ.</b>	67	75	100		100		67	67	75		77			71	50
<b>Partial Observ.</b>	17	0	0		0		0	33	25		23			18	14
<b>Total observ.</b>	17	25	0		0		33	0	0		0			11	36
<b>Total</b>	100	100	100	0	100	0	100	100	100	0	100	0	0	100	100

Friendly Settlements															
Level of observance	Monetary Econ. Reparation	Non-monetary economic reparation	Symbolic - Reparation	Restoration of Rights - Reparation	Prev. measures - Training	Prev. meas. - Awareness	Prev. measures - Legal Reforms	Prev. measures - Inst. Strengthening	Prev. measures - Unspecified	Investigate - with legal reform	Investigate - without legal reform	Protection of victims and witnesses	Others	Total Friendly Settlements	Total
<b>Non-observ.</b>	6	17	32	38		0	40	11			72		0	30	50
<b>Partial Observ.</b>	6	17	5	19		33	30	42			7		50	16	14
<b>Total observ.</b>	88	65	64	44		67	30	47			21		50	54	36
<b>Total</b>	100	100	100	100	0	100	100	100	0	0	100	0	100	100	100

Sentences of the Inter-American Court															
Level of observance	Monetary economic - reparation	Non-monetary economic reparation	Symbolic - Reparation	Restoration of Rights - Reparation	Prev. measures - Training	Prev. meas. - Awareness	Prev. measures - Legal Reforms	Prev. measures - Inst. Strengthening	Prev. measures - without specification	Investigate - with legal reform	Investigate - without legal reform	Protection of victims and witnesses	Others	Total Court sentences	Total
<b>Non-observ.</b>	31	74	40	65	57	50	93	84		67	89	83	50	59	50
<b>Partial Observ.</b>	21	21	11	4	0	25	4	15		17	11	0	0	13	14
<b>Partial Total</b>	48	6	49	31	43	25	4	0		17	0	17	50	36	36
<b>Total</b>	100	100	100	100	100	100	100	100	0	100	100	100	100	100	100

Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006.  
Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences.

## 6. The performance of the States

Considering the level to which each State observes the remedies shows that the highest percentages of non-observance are found in Trinidad and Tobago, Venezuela and Haiti. These three states failed to totally observe all of the remedies recommended, agreed or ordered by the IASPHR control bodies, though it must be noted that in the sample analyzed we only have two Court sentences against Trinidad and Tobago, 1 Court sentence against Venezuela and 1 IACHR final report against Haiti. Then, Surinam and the Dominican Republic have a 75% level of non-observance of the remedies, though it should also be noted that during the period studied each of these countries had only one Court sentence against them. The following percentages for the non-observance of remedies in decreasing order correspond to Paraguay -has failed to observe 69% of the remedies- and Colombia -accounting for non-compliance of 68%.

On the other hand, the highest percentages of observance account for Mexico (83%), Bolivia (71%) -although with only 2 friendly settlement agreements approved by the IACHR during the period surveyed- and Chile (59%).

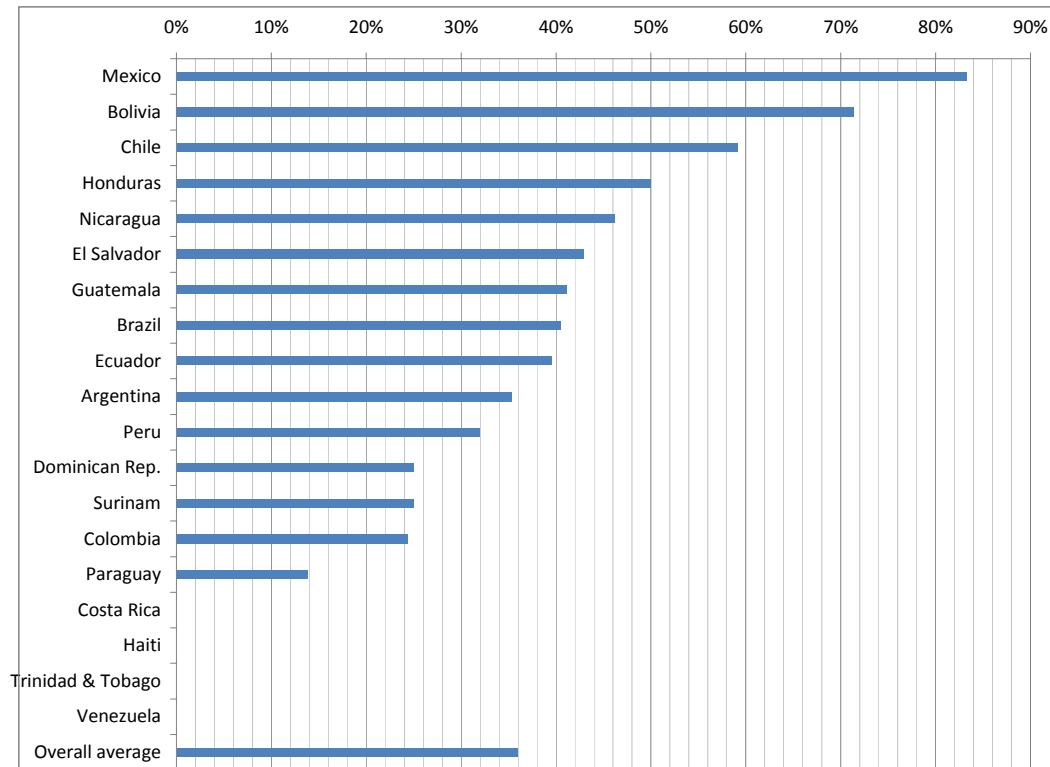
Then, Ecuador, Peru and Guatemala received the highest number of decisions filed against them by the IACHR during the period surveyed: 17, 17 and 13 decisions, respectively. Peru, Guatemala, Colombia and Paraguay faced the highest number of Court sentences against them: 9, 7, 5 and 4, respectively.

**Chart 5. Level of observance of the remedies by each State and based on the type of decision**  
(in %)

State Party	Total Cases	Final Report	Friendly Settl.	Court Sent.	Total Remedies	% of non-observ.	% of partial observance	% of total observance
<b>Mexico</b>	3	1	2		12	17%	0%	<b>83%</b>
<b>Bolivia</b>	2		2		7	29%	0%	<b>71%</b>
<b>Chile</b>	5	1	3	1	22	18%	23%	<b>59%</b>
<b>Honduras</b>	2			2	10	50%	0%	<b>50%</b>
<b>Nicaragua</b>	3	1		2	13	39%	15%	<b>46%</b>
<b>El Salvador</b>	1			1	7	29%	29%	<b>43%</b>
<b>Guatemala</b>	13	1	5	7	90	44%	14%	<b>41%</b>
<b>Brazil</b>	6	4	2		42	36%	24%	<b>41%</b>
<b>Ecuador</b>	17	1	14	2	42	55%	5%	<b>40%</b>
<b>Argentina</b>	5		3	2	17	41%	24%	<b>35%</b>
<b>Peru</b>	17	1	7	9	94	51%	17%	<b>32%</b>
<b>Dominican Republic</b>	1			1	4	75%	0%	<b>25%</b>
<b>Surinam</b>	1			1	8	75%	0%	<b>25%</b>
<b>Colombia</b>	6		1	5	41	68%	7%	<b>24%</b>
<b>Paraguay</b>	5	1		4	29	69%	17%	<b>14%</b>
<b>Costa Rica</b>	1			1	3	33%	67%	<b>0%</b>
<b>Haiti</b>	1	1			3	100%	0%	<b>0%</b>
<b>Trinidad and Tobago</b>	2			2	10	100%	0%	<b>0%</b>
<b>Venezuela</b>	1			1	8	100%	0%	<b>0%</b>
<b>Overall total</b>	<b>92</b>	<b>12</b>	<b>39</b>	<b>41</b>	<b>462</b>	<b>50%</b>	<b>14%</b>	<b>36%</b>

Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006.  
Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences.

**Graph 8. Level of observance of the remedies by each State (in %)**



Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006.  
 Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences.

The performance of States can be broken down for each type of decision issued by the control organs of the IASPHR. The results confirm that -except for Chile, that has a 63% level of observance of the remedies ordered by the Court's sentences - States mostly observe those remedies agreed upon friendly settlements rather than the other two types of decisions<sup>18</sup>.

**Chart 6. Observance of the remedies required in the various types of decisions (in %)**

State	Total	% of observance	Final Report	% of observance	Friendly Settl.	% of observance	Court Sent.	% of observance
Argentina	17	35%			9	44%	8	25%
Bolivia	7	71%			7	71%		
Brazil	42	41%	17	0%	25	68%		
Chile	22	59%	1	100%	13	54%	8	63%
Colombia	41	24%			5	40%	36	22%
Costa Rica	3	0%					3	0%
Ecuador	42	41%	3	33%	31	42%	8	38%

<sup>18</sup> As to the level of observance of the remedies recommended in final reports from the IACHR and of those ordered by Court sentences, it is observed that the States which mostly complied with the remedies ordered in Court sentences have been Chile, Nicaragua and Honduras, and the states, which mostly complied with the remedies recommended in final reports from the IACHR, are Ecuador, Guatemala and Peru.

<b>El Salvador</b>	7	43%					7	43%
<b>Guatemala</b>	90	41%	9	22%	28	50%	53	34%
<b>Haiti</b>	3	0%	3	0%				
<b>Honduras</b>	10	50%					10	50%
<b>Mexico</b>	12	83%	2	0%	10	100%		
<b>Nicaragua</b>	13	46%	2	0%			11	55%
<b>Paraguay</b>	29	14%	3	0%			26	15%
<b>Peru</b>	94	32%	5	20%	32	47%	57	25%
<b>Dominican Republic</b>	4	25%					4	25%
<b>Surinam</b>	8	25%					8	25%
<b>Trinidad and Tobago</b>	10	0%					10	0%
<b>Venezuela</b>	8	0%					8	0%
<b>Total</b>	462	36%	45	11%	160	54%	257	29%

Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006.  
Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences.

Particularly, when analyzing the States' performance in observing the various remedies categorized by the objectives pursued, the low level of general observance of the measures for investigation and punishment is remarkable. Nine countries have zero level of observance of this type of remedies (the case of Argentina, Ecuador, El Salvador, Haiti, Honduras, Nicaragua, Paraguay, Surinam and Venezuela), while the rest reveal a total observance of only 9 to 17% of the cases (Peru, Guatemala, Colombia and Brazil). The only exception is Mexico, which fully complied with the remedies of investigating and punishing in 67% of the cases surveyed.

Regarding preventive measures, Mexico, once again, stands out with 100% observance. The rest of the countries report either an intermediate level of observance (between 40 and 50%, cases in Ecuador, El Salvador, Brazil and Colombia), a low level (between 7 and 25%, cases in Nicaragua, Argentina, Chile, Guatemala and Peru) or zero level (cases in Bolivia, Costa Rica, Venezuela, Honduras and Paraguay, among others).

Bolivia, Chile and Honduras stand out with 100% observance of the reparation measures surveyed. Next are Mexico (86%), Ecuador (67%) and Nicaragua (63%). By contrast, countries such as the Dominican Republic, Colombia and Paraguay show low levels of observance of these remedies (33%, 21% and 15%, respectively). Other States report zero observance of the reparation remedies included in the study: Costa Rica, Haiti, Trinidad and Tobago and Venezuela.

**Chart 7. Observance of the remedies based on the objective pursued (in %)**

	Reparation	Preventive Measures	Investigate and punish	Protection of V&W and others
<b>Argentina</b>	50%	20%	0%	
<b>Bolivia</b>	100%	0%		
<b>Brazil</b>	50%	44%	14%	
<b>Chile</b>	100%	20%		0%

Colombia	21%	40%	17%	0%
Costa Rica	0%	0%		
Ecuador	67%	50%	0%	
El Salvador	50%	50%	0%	
Guatemala	55%	7%	14%	50%
Haiti	0%	0%	0%	
Honduras	100%	0%	0%	
Mexico	86%	100%	67%	
Nicaragua	63%	25%	0%	
Paraguay	15%	0%	0%	50%
Peru	37%	11%	9%	100%
Dominican Republic	33%	0%		
Surinam	40%	0%	0%	0%
Total	47%	23%	11%	30%
Trinidad and Tobago	0%	0%		
Venezuela	0%	0%	0%	0%

Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASPHR between June 2001 and June 2006.  
Source: prepared by ADC based on the information taken from the IACHR annual reports and the Court's sentences.

The analysis about the level of observance of the various types of remedies by each State leads to concluding that preventive measures that require the strengthening, creation or reform of public institutions were only observed to some extent by Brazil, which fully complied with them in 64% of the cases. The other eleven States to which the organs of the IASPHR recommended or ordered this type of measures failed to fully observe them in all cases.

As to the measures for legal reforms, they were fully observed in all cases by Mexico and Ecuador. Other 4 States had a low level of observance of these measures (Argentina, 33%; Chile, 25%; Nicaragua, 25%; Peru 20%) and then, 9 States fully failed to observe them.

Last, Bolivia, Chile and Honduras have fully observed all the reparation remedies required, while Trinidad and Tobago, Venezuela, Colombia, Paraguay and Peru present low or zero levels of observance of these remedies.

**Chart 8. Level of observance of the remedies according to type (in %)**

	Monetary economic reparation	Non-monetary economic reparation	Symbolic reparation	Restoration of rights reparation	Prev. measures - Training	Prev. meas. - Awareness	Prev. measures - Legal Reforms	Prev. measures - Instit. strengthening	Prev. measures - Unspecified	Investigate - with legal reform	Investigate - without legal reform	Protection of victims and witnesses	Others	Total
<b>Mexico</b>	0%	100%	100%		100%		100%				67%			83%
<b>Bolivia</b>	100%			100%			0%	0%						71%
<b>Chile</b>	100%	100%	100%	100%	0%	100%	25%	0%					0%	59%

<b>Honduras</b>	100%		100%		0%			0%			0%			50%
<b>Nicaragua</b>	33%	100%	67%	100%			25%				0%			46%
<b>El Salvador</b>	100%	0%	50%			100%		0%		0%				43%
<b>Guatemala</b>	77%	23%	73%	67%	50%	0%	0%	0%	0%	50%	8%	50%		41%
<b>Brazil</b>	33%	100%	100%	0%	50%	50%	0%	64%	0%		14%			40%
<b>Ecuador</b>	82%		20%	50%	0%		100%				0%			36%
<b>Argentina</b>	75%	0%	67%	0%			33%	0%		0%	0%			35%
<b>Peru</b>	47%	33%	45%	24%		0%	20%	0%		0%	10%		100%	32%
<b>Dominican Republic</b>	100%		0%				0%							25%
<b>Surinam</b>	100%	0%	33%				0%				0%	0%		25%
<b>Colombia</b>	33%	0%	27%	0%	67%			0%		0%	25%	0%		22%
<b>Paraguay</b>	20%	0%	29%	0%			0%	0%	0%		0%	0%	100%	14%
<b>Costa Rica</b>	0%			0%			0%							0%
<b>Haiti</b>	0%							0%			0%			0%
<b>Venezuela</b>	0%		0%		0%		0%				0%		0%	0%
<b>Trinidad and Tobago</b>	0%	0%		0%			0%	0%						0%
<b>Total</b>	58%	30%	52%	36%	42%	43%	14%	26%	0%	14%	10%	17%	50%	36%

Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASHR between June 2001 and June 2006.

Source: prepared based on the information taken from the annual reports of the Inter-American Commission and the sentences passed by the Inter-American Court.

## 7. Observance time limits

After considering the time the States took to implement the necessary measures to fully comply with the remedies (in the cases where this occurred), the following results can be shown: the average delay to fully observe the remedies was around one year and eight months. Based on disaggregated data, the average time used to fully comply with the remedies recommended by the IACHR in final reports has been around 2 years and 7 months, and the average time to comply with the remedies ordered by sentences from the Inter-American Court, 1 year and 8 months approximately.

The following chart also makes a comparison of the average deadline for the delay in the total compliance with remedies on the part of each state.

**Chart 9. Delay in fully observing remedies (number of years)**

Denounced State	Final Report	Court Sentence	General average
<b>Argentina</b>		0.7	0.7
<b>Chile</b>	3.1	1.5	1.4
<b>Colombia</b>		2.0	1.9
<b>Ecuador</b>	4.0	1.9	2.4
<b>El Salvador</b>		1.5	1.5
<b>Guatemala</b>	2.6	1.6	1.7
<b>Honduras</b>		3.0	3.0

<b>Nicaragua</b>		2.3	2.0
<b>Paraguay</b>		2.3	2.3
<b>Peru</b>	0.3	1.4	1.3
<b>Dominican Republic</b>		1.5	1.5
<b>Surinam</b>		1.3	1.3
<b>General average</b>	2.6	1.7	1.7

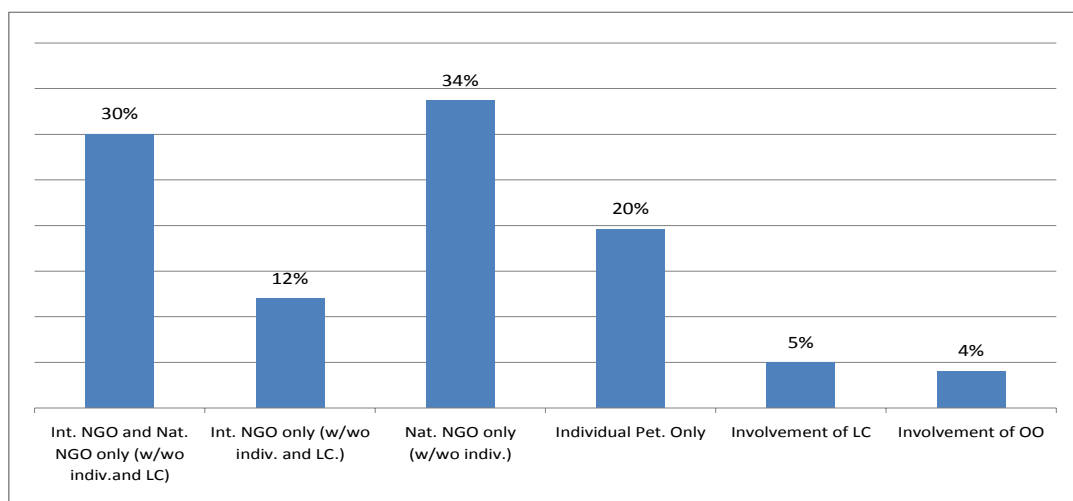
Total cases: 302 remedies recommended or ordered by the organs of the IASHR from June 2001 to June 2006 of the Inter-American Commission and sentences from the Inter-American Court.  
Source: prepared by ADC based on the information taken from the annual reports of the Commission and the sentences passed by the Inter-American Court.

## 8. Litigants and observance

The litigants before the Inter-American System are classified into the following categories according to who files the petition. a) Individuals (includes any person, victim, victim's relative, lawyer); b) Non-governmental organizations (NGOs) from the denounced State (includes professional and union associations)<sup>19</sup>; c) NGOs with international presence (which operate in States other than the denounced one or not only in the denounced State); Ombudsmen from the denounced State); and e) University legal clinics.

In 34% of the cases analyzed, a national NGO filed the lawsuit, in certain cases, the lawsuit was filed along with individual petitioners and/or legal clinics. Some 30% of the lawsuits were filed in combination of at least one international NGO and one national NGO, on occasions along with individual petitioners and/or legal clinics. Some 12% of the cases were filed by an international NGO, whether along with individual petitioners and/or legal clinics or not. Only 20% of the cases were filed by individual petitioners only. Some 4% of the cases were filed by Ombudsmen Offices, but only 2% as individual petitioners. The legal clinics filed only 5% of the cases, but always with an international NGO and, in some cases, with a national NGO as well.

**Chart 9. Litigants before the Inter-American System according to number of cases (in %)**



<sup>19</sup> In the cases in which an NGO represented the victims or relatives, the NGO only was considered the litigant - for statistical purposes. By contrast, in the cases when individual petitioners filed an application for one, and the NGOs for another, the participation of both litigants was taken into account.

Total cases: 92 cases solved by the organs of the IASHR from June 2001 to June 2006.

Source: prepared by ADC based on the information taken from the annual reports of the Commission and the sentences passed by the Inter-American Court.

The remedies established in cases when the litigation before the Inter-American System has been filed by an international NGO show a lower total observance (40%) than the average total inobservance (50%), although this may not be a significant difference.

In turn, while the cases filed by the Ombudsmen Offices that were part of the survey are few (4%), these report a significantly higher level of total observance than the average: 71.4% against 35.7% of all cases.

**Chart 10. Level of remedy observance according to type of litigant before the IASHR**

(in number of cases and %)

Level of observance of remedies	Int. NGO and Nat. NGO (with or without indiv., L.C. and OO)		Int. NGO. (with or without indiv., L.C. and OO)		Int. NGO. (with or without indiv., and OO)		Individual petitioners only		L.C. participation		OO participation		Total	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%
<b>Total Observance</b>	62	33	20	39	50	36	27	36.4	49	36.6	10	45	165	36
<b>Partial Observance</b>	23	12	14	27	19	14	8	11.7	19	14.2	1	5	65	14
<b>Non-observance</b>	103	55	17	33	70	50	40	51.9	66	49.3	11	50	232	50
<b>Total cases</b>	188	100	51	100	139	100	75	100	134	100	22	100	462	100

Total cases: 462 remedies recommended, agreed or ordered by the organs of the IASHR between June 2001 and June 2006.

Source: prepared by ADC based on the information taken from the annual reports of the Commission and the sentences passed by the Inter-American Court. N: Number of remedies required.

## 9. Duration of the proceedings before the IASHR

The average duration of the proceedings from the moment petitioners enter the IASHR to the resolution of the case is around 7 years and 4 months. The median is 6.7 years (6 years and 8 months approximately), meaning that half of the cases are solved in 6.7 years or less, while the other half takes 6.7 years or more to solve.

In turn, the processes solved through friendly settlement agreements have a shorter average duration than the processes completed through Court sentences or final reports by the Commission.

**Chart 11. Average duration of the proceedings before the IASHR (in number of years)**

State	Final Report	Friendly settlement	Court Sentence	General
Argentina		6.5	6.3	6.4
Bolivia		1.5		1.5
Brazil	9.4	6.5		8.5

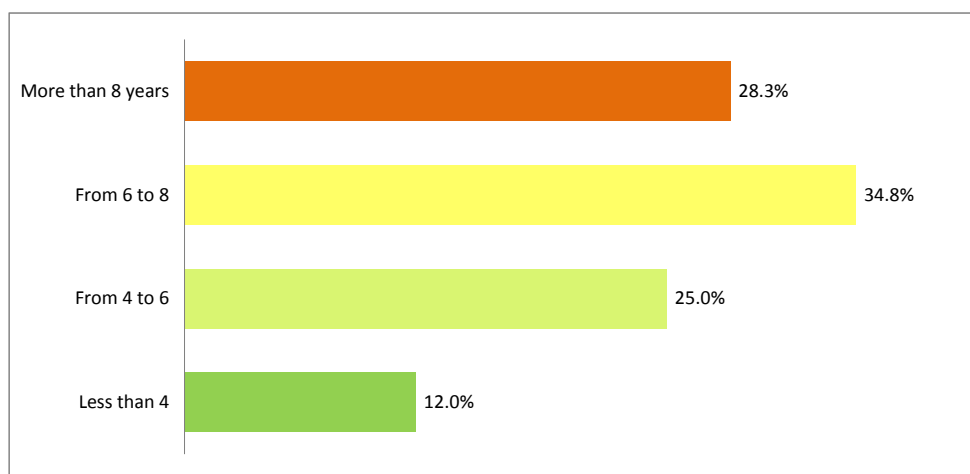
Chile	6.5	1.9	9.7	4.4
Colombia		17.4	8.8	10.1
Costa Rica			3.3	3.3
Ecuador	3.4	5.9	8.3	6.5
El Salvador			6.0	6.0
Guatemala	8.8	10.6	8.6	9.3
Haiti	8.2			8.2
Honduras			7.8	7.8
Mexico	6.9	4.4		5.3
Nicaragua	7.2		5.0	5.7
Paraguay	7.5		6.5	6.3
Peru	12.8	5.5	8.2	7.4
Dom. Republic			6.8	6.8
Suriname			7.9	7.9
Trinidad and Tobago			5.3	5.3
Venezuela			5.3	5.3
General average	8.2	6.3	7.5	7.3

Total cases: 92 cases solved by the organs of the IASHR from June 2001 to June 2006.

Source: prepared by ADC based on the information taken from the annual reports of the Commission and the sentences passed by the Inter-American Court.

Grouped by time intervals, 88% of the cases were solved in 4 years or more. In turn, 25% lasted from 4 to 6 years, 34% from 6 to 8 years and 28.3% were solved in more than 8 years.

**Chart 10. Average duration of proceedings (in time intervals)**



Total cases: 92 cases solved by the organs of the IASHR from June 2001 to June 2006.

Source: prepared by ADC based on the information taken from the annual reports of the Inter-American Commission and the sentences passed by the Inter-American Court.

Some 41.7% of the cases, which ended after a final report from the Inter-American Commission, lasted from 5 to 8 years. Some 33.3% of these lasted from 7 to 11 years, and 16.7% lasted more than 11 years. The proceeding for 56.1% of the cases, which ended with a Court sentence, lasted from 5 to 8 years, 14.6% of those lasted from 2 to 5 years, another 14.6% protracted from 7 to 11 years, and another 14.6% lasted more than 11 years. As to the proceedings which concluded when the IACHR agreed on a friendly settlement, 39.5% lasted from 5 to 8 years until the agreement was reached, some 26.3% lasted from 2 to 5 years to get to the end, and 15.8% lasted less than 2 years. Some 10.5% of the cases lasted from 7 to 11 years to reach an agreement. Considering all the decisions that put an end to the proceedings, some 47.3% took from 5 to 8 years since the proceedings started.

**Chart 12. Duration of proceedings according to type of decision (in %)**

Years	Final Report	Friendly settlement	Court Sentence	General average
<b>Up to 2 years</b>	0.0%	15.8%	0.0%	6.6%
<b>From 2 to less than 5 years</b>	8.3%	26.3%	14.6%	18.7%
<b>From 5 to less than 8 years</b>	41.7%	39.5%	56.1%	47.3%
<b>From 7 to less than 11 years</b>	33.3%	10.5%	14.6%	15.4%
<b>11 or more</b>	16.7%	7.9%	14.6%	12.1%
<b>Overall total</b>	100.0%	100.0%	100.0%	100.0%

Total cases: 92 cases solved by the organs of the IASHR from June 2001 to June 2006.

Source: prepared by ADC based on the information taken from the annual reports of the Inter-American Commission and the sentences passed by the Inter-American Court.

#### **IV. Remarks**

The full observance of the decisions of the Inter-American Commission and Court of Human Rights constitutes an essential element to ensure the full force of the ACHR in the region. It is also an obligation that the States assumed when ratifying the Convention<sup>20</sup> and derives from the fundamental principle to repair the damage caused and from the principle of good faith in the observance of the treaties<sup>21</sup>. The information surveyed in this research study, however, suggests that such actions are not as strongly implemented as the rules so require.

#### *Objectives of the IASHR*

The multiple remedies that the Inter-American Commission and Court adopt seem to confirm the widespread view that the objectives pursued by the IASHR are -with relatively few exceptions- to repair the affected persons or groups, anticipate measures to avoid the repetition of violations of rights, investigate and punish those responsible for the identified violations and protect the victims and witnesses. The objective of repairing the affected people and groups is of great significance. Not only is this the most usual remedy but also the one that States observe to a greater extent. In particular, the mostly used means include the

<sup>20</sup> Articles. 68.1 and 51.2 of the ACHR.

<sup>21</sup> Article 27 of the Vienna Convention on the Law of the Treaties.

measures for symbolic reparation -especially in the Court sentences- and the monetary and non-monetary economic reparations.

For the past years, the organs of the IASHR have evolved in implementing reparations by expanding the type and variety of the remedies ordered. This evolution is particularly observed in sentences from the Inter-American Court, which has built a considerable jurisprudence beyond the mere monetary aspect for the benefit of an integral reparation of the damaging effects of the violations of rights. For its part, the Inter-American Commission has also moved forward in this matter, especially as regards friendly settlement agreements. By nature, this type of procedure seems to move towards determining more specific measures, which might ensure the total satisfaction of the victims.

### *Observance of decisions*

The non-observance of the measures required by the IASHR appears notably widespread. Half of the remedies recommended, agreed or ordered by the decisions are not observed and only 36% have been fully observed. Other than exceptional cases, the total observance takes place after a long period of time. On average, the Inter-American processes require more than seven years from the time a petition enters the system to the final decision. In addition, there is the average time that States take to meet all or part of the remedies required (when they do so), which is 2 and a half years approximately for final reports and little more than a year and a half for the Court sentences<sup>22</sup>. These times are too long and might raise mistrust and frustration among the IASHR users. If we also consider the number of petitions and matters that were filed, it is apparent that in many cases the IASHR fails to offer an effective and timely response from the affected party's perspective.

A possible explanation -which we have not discussed in this research study- about the reasons for such a level of observance according to the type of measure ordered, might be related to the characteristics of the state entity responsible for its implementation. In many cases, the entity involved in the State's foreign relations before the IASHR is not related to the entities that should be engaged in implementing the measures required. For instance, in the cases when the Inter-American Commission recommends or the Court orders the amendment of a specific piece of legislation. The Executive Power is entitled to foster a reform but the measure shall only be observed after the involvement of the Legislative Power, where, in turn, various political forces must gather consensus first. Something similar happens with the decisions that urge to investigate into and punish those responsible for human rights violations. The Executive Power is entitled to urge to comply with such measure but, in general, the only power entitled to enforce it is the Judiciary. If this description is narrow, we should not be surprised that the remedies which require a double order for implementation are the ones that report the lowest observance levels compared to monetary compensations and other measures, whose implementation, in general, is controlled by the Executive Power engaged in managing the relations with the IASHR.

### *Types of decisions*

The relatively low level of observance of the recommendations made on the final reports of the Inter-American Commission on Human Rights suggests that such case-settlement method

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<sup>22</sup> And we should not lose sight of the fact that the cases have probably undergone internal and long processes as well.

is not the most effective one, even when reasonable motives exist for not submitting a case to the Court. The observance rate of the remedies ordered in sentences issued by the Inter-American Court of Human Rights is also low, but is higher than that of the remedies included in the final reports of the Inter-American Commission. The relative effectiveness of the friendly settlement agreements, in turn, tends to strengthen the idea that the Inter-American Commission should make the greatest possible effort to auspice the agreements under its competence. This mechanism seems to provide the petitioner with the possibility of a faster and more effective solution than the one he could obtain from a final report of the Commission.

### *Litigants before the IASHR*

The results of this research work also suggest that the involvement of an international NGO in the proceeding before the IASHR has a low but positive influence on the later observance of the recommendations on the part of the States. A possible explanation might indicate that an expert NGO may have, unlike a particular litigant, greater technical and structural capacity to exert pressure on the States, not only when negotiating the clauses of a friendly settlement agreement but also when demanding effective observance. The observance also tends to increase when the litigant before the IASHR is the Ombudsman's Office of the State Party to a case, although this has been confirmed on a very small number of cases. This might respond to the greater capacity of these offices to carry out the necessary efforts and lobby among the various decision-making powers and state agencies for the implementation of the required measures. The results of the research might suggest, on this point, the need for greater involvement from the Ombudsmen's Offices and public defense entities in general, in the litigation of rights at Inter-American level, thus consolidating a still fledging trend. The results also shed some light on the importance that these state institutions may have in the internal implementation of the IASHR's decisions, regardless of their prior involvement.

### *Involved states*

Finally, it is hard to draw compelling conclusions about the performance of each State. Intuitively, many characteristics can be identified in those States that attain, to a greater or lesser extent, the observance of the IASHR measures. For instance, the federal states are faced with some additional complexities for observance. Thus, federalism *per se* might constitute a hurdle for the observance of the measures required by the Inter-American organs. As a matter of fact, some States have state or provincial officials as part of their delegations before the protection organs of the IASHR. However, this research study is unlikely to offer concluding material to sustain such assertion. Other characteristics of the States might also be considered in relation to the observance level of the remedies, such as the degree of consolidation and quality of their democratic institutions, their background and experience and commitment towards the IASHR, their economic situation, so on and so forth.

Despite that, the research offers an objective and reasonable base to discuss, in each case, the performance of the States before the IASHR. Certainly, the influence of the IASHR is a topic that deserves further discussion, beyond the observance of the remedies that its organs adopt, and the same applies to the actions of the States. Clearly, the limited approach of this research study, as that of any theoretical work, might also overlook some important aspects. However, the research offers an argumental perspective and an objective base unusually found in the specialized literature, that put the states to the question: the remedies adopted within the framework of the petition-based system must be obeyed, and if the level of observance that

this research shows is not satisfactory, it is mainly due to the fact that the states do not behave in a satisfactory manner.

## V. Agenda and final remarks

Throughout the course of this research work, several hypotheses emerged related to the possibilities of increasing the observance of the IASHR decisions. Some of these are briefly described below. Even though these are not remarks related to the statistical data presented herein, they are closely linked to the effectiveness of the IASHR. Probably, a more thorough discussion should be held around them, based on similar formulations as the ones detailed on this paper.

### *Breaking down remedies with low level of observance*

First of all, the discussion around the possible reforms of the Inter-American system should include a chapter about the necessary reforms to increase the level of observance of the decisions made by the organs of the IASHR on the part of the States. A possible exploration path consists in breaking down the obligations with broad content under observance level, such as the duty to investigate and punish. For instance, investigations could be opened (or reopened), and those responsible for the crimes could be punished. In this sense, more specific orders or recommendations could facilitate the control of the various mechanisms through which both obligations could be met. Innovations in this field seem to be necessary, whereas the investigation and punishment for the violations of rights still is one of the most wanted remedies by the Inter-American System, remaining as the lowest in observance.

### *National mechanisms of implementation*

Secondly, it is vital that the States create a national mechanism of coordination among the various powers in order to increase the chances of an effective and timely observance.<sup>23</sup> In terms of academic research, no further studies exist about the incidence of national mechanisms on the level of observance. Similarly, it has been suggested that States adopt formal mechanisms for the effective implementation of international decisions, which shall establish through the constitutional, legal or jurisprudential path, their binding nature, and shall include, in public policy-making and in solving legal cases, the standards drafted by the Inter-American Commission and Court under the construction of the American Convention.

### *Strengthening the friendly settlement processes*

A possible reform aimed at strengthening the friendly-settlement process would modify the practice of the Inter-American Commission in observing these agreements<sup>24</sup>. None of the

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<sup>23</sup> See, for instance, Dulitzky, Ariel. “50 años del sistema interamericano de derechos humanos: una propuesta de reflexión sobre cambios estratégicos necesarios”, Presentation given at the Commemorative Seminar for the American Declaration of the Rights and Duties of Man held by the Inter-American Institute of Human Rights on 28 May, 2008 in Bogota D.C., in cooperation with the Mayorality, Rev. IIDH, Vol. 46, July/December 2007, pag. 40. Also the Document from the *Instituto de Defensa Legal* (IDL), the *Coordinadora Nacional de Derechos Humanos* (CNDDHH), the *Centro de Estudios Legales y Sociales* (CELS), and the *Fundación para el Debido Proceso Legal* (DPLF), submitted before the Commission on Legal and Political Affairs of the OAS on 5 March, 2009, “Remarks on the proposal to reform the Inter-American System for the Protection of Human Rights”, p. 16.

<sup>24</sup> *Instituto de Defensa Legal* (IDL) et al., “Comentarios sobre...”, op. quote., pag. 15 and ss.

provisions in the ACHR makes reference to the consequences derived from failing to observe the Convention on the part of the State or whether, in such situation, the case should be deemed as closed. In practice, if the State fails to observe a friendly-settlement agreement, the case shall not be submitted to the Inter-American Court. Therefore, from the petitioner's perspective, choosing the friendly settlement path may be a disadvantage against the contentious route. In order not to force the petitioner to make this prior assessment at the risk of not solving his case, the Inter-American Commission might similarly deal with the non-observance of a final report and of a friendly settlement. If after the term established in the friendly settlement report, the State failed to observe all or part of the agreement, the Inter-American Commission might reopen the case and initiate the proceedings as if the friendly settlement had not been attained, and eventually, submit the case to the Inter-American Court of Human Rights. Otherwise, the Commission should decide on issuing the report under article 49 of the ACHR only when the obligations assumed in the agreement have been fully met. The chances that the case may be directly submitted to the Court for failing to observe the obligations would encourage the State to make the greatest effort to find the way to honor its obligations<sup>25</sup>. Lastly, as long as the ACHR fails to provide some sort of guidance about the way in which the Commission and the parties should proceed at this stage<sup>26</sup>, the attributions applicable to each of them should be implemented through some regulation. We may think of the possibility that the Inter-American Commission is entitled to establish the terms of the friendly settlement agreement, something that is not currently contained in any provision.

### *The conciliatory process*

Another suggested idea is to alleviate the work of the Commission -particularly, its role in the contentious stage<sup>27</sup>- to strengthen its political role (promotional and technical assistance tasks) and its involvement in the friendly settlement processes, which seem to be the most effective ones<sup>28</sup>. This study proved that the observance percentage on the part of the States

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<sup>25</sup> The mentioned proposal for reform also considers it fundamental that the Commission improves the factual and legal content of the friendly settlement reports so as to equate them with that of the final reports, thus preventing differences in content in both reports from discouraging petitioners to resort to friendly solutions. This is so as long as the reports in art. 49 of the ACHR, in general, fails to include a definition of facts that equals them to those of the reports under article 50 of the ACHR and to contain doctrinal criteria about the breached rights, limiting themselves to transcribing the text of the agreements reached by petitioners and the State and establishing the terms and conditions for meeting the agreed upon reparations. Then, it would be desirable that the Commission also amends this practice so as to enrich the content in the reports of art. 49 of the ACHR.

<sup>26</sup> The Statutes and Rules of the Inter-American Commission have regulated some essential procedural aspects of the conciliatory process, but these provisions fail to be accurate enough.

<sup>27</sup> The CEJIL considers that the role of the Commission in the contentious stage does not necessarily entail an active role but informed, expert and timely interventions, expanding its action from the submission of its memorial to the full execution of the sentence. This would entail situations in which the Commission may independently cooperate to a greater extent with the Court, given the debates on the rights and reparations emerged after submitting the case; as well as responding to specific requests from the Court on these matters (see CEJIL, *Documentos de Coyuntura*, op. quote, page 26). Other proposals are intended to significantly limit the intervention of the Commission in the contentious stage; only the victim and his representatives against the State would file the case before the Court; the Commission would limit itself to playing the role of assisting in the search for justice, entitled to question the parties to the case, present its legal view and opinion and propose a solution for the consideration of the Court; in the previous stage, it would only serve to adopt admissibility reports and open a stage for a friendly solution (see Dulitzky, Ariel. "50 años del sistema interamericano de...", op. quote., page 37). The most radical proposals raise the need for the Commission not to directly intervene in the proceedings before the Court. These have been harshly criticized by many relevant actors of the IASHR (See CEJIL, *Documentos de Coyuntura*, op. quote, page 25 and a document drafted by the IDL and others before the OAS CAJP, op. quote, page 4).

<sup>28</sup> See clarification in footnote 16.

Parties to a friendly settlement agreement is high. Therefore, it is vital to insist on the need for the IASHR to carry out all those reforms, which, directly or indirectly, strengthen this method to conclude a process before the system. For instance, if the Commission managed to limit its participation during the contentious stage, it would be further available to exert a more active role during the friendly settlement process, thus reinforcing its powers and capabilities as mediator and its political and diplomatic role, which is typical of this stage of the process. In this way, the Inter-American Commission might carry out a more exhaustive follow-up during the implementation stage, periodically review the obligations assumed, visit the countries regularly and hold frequent working meetings with representatives from the States and the petitioners.

#### *Follow-up of decisions*

It also seems vital to strengthen the control, monitoring and follow-up capabilities of the system's organs. Particularly, in its category as political organ and main driver for the protection of human rights in the region, the Inter-American Commission should boost the actions aimed at ensuring an effective observance of the decisions made by it and those dictated by the Inter-American Court of Human Rights. Besides, the OAS General Assembly should take on a more active role in this matter, by eventually applying costly political penalties to the states, which are reluctant to observe the measures ordered by the organs of the IASHR.

The Commission might establish some sort of classification of the level of observance of each remedy in particular. The current practice, in which the Commission does not rank the level of observance of each recommendation, creates the perception of attenuated control. This is particularly true in the case of recommendations drafted in too vague or broad terms, for instance, those which recommend the state "to adopt the necessary measures to avoid similar events in the future". This, plus the absence of clear and homogeneous criteria for all cases when it comes to ranking the level of compliance with all recommendations, may constitute a major obstacle for the effective observance of the reparations issued by the Commission. For instance, if the Commission declared the non-observance of a specific recommendation for considering that the measures adopted by the State are insufficient; the State would know the Commission's opinion in the matter and might lead its actions in line with such opinion. The same would occur if the Commission declared that a measure has been partially observed: the State would know that pending measures are still to be adopted and so it would aim its efforts to fully observing the measure in question. Lastly, ranking the level of observance of each recommendation in particular would overcome the contradictions that often emerge when, for one, the petitioners consider that a particular recommendation has not been observed or has been partially observed, and for another, the State expresses that such measure has been fulfilled. In these cases, it is essential that the Commission rules on the controversy in question and makes its point clear in the matter.

On ranking the States' observance the Court should work based on clear and uniform criteria. Today, the Court is limited to qualifying the action of the State regarding each measure without clearly defining each category used (total, whole or full observance, partial observance, or pending observance). This is particularly important in the cases when petitioners express their discontent with the way in which a specific measure has been observed by a State; however, the Court declares the measure has been wholly observed. But in many cases the Court does not account for the reasons of such a decision. Probably this is because it neither explains the criteria to determine the level of observance of the measures.

In these cases, in order to avoid such feelings as unfairness or frustration among petitioners, the Court should at least express the reasons why it concludes that a certain measure has been observed despite the discontent expressed by the petitioner. Beyond this, specifying the content of the qualification criteria would offer greater transparency, security and uniformity to the follow-up process of the ordered measures.