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Session:	Hundred Thirty-Fourth Regular Session (16 – 27 March 2009)
Title/Style of Cause:	Reyes Penagos Martinez, Enrique Flores Gonzalez and Julieta Flores Castillo v. Mexico
Doc. Type:	Decision
Decided by:	First Vice President: Victor Abramovich; Second Vice President: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo G. Carozza.
Dated:	20 March 2009
Citation:	Penagos Martinez v. Mexico, Petition 11.822, Inter-Am. C.H.R., Report No. 24/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)
Represented by:	APPLICANTS: the Comision Mexicana de Defensa y Promocion de los Derechos Humanos, Miguel Angel de los Santos, and the Center for Justice and International Law
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I. SUMMARY

1. On October 14, 1997, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition submitted by the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), Miguel Ángel de los Santos, and the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”) against the State of Mexico (hereinafter “the State,” the Mexican State,” or “Mexico”) for alleged violations of rights protected by the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) to the detriment of Mr. Reyes Penagos Martínez, Mr. Enrique Flores González and his daughter Julieta Flores Castillo (hereinafter “the alleged victims”).

2. In the petition it is alleged that the State was responsible for the violation of rights enshrined in Article 4 (right to life), Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 25 (right to judicial protection), and Article 1(1) (obligation to respect rights) of the American Convention, since on December 16, 1995, Reyes Penagos Martínez, Enrique Flores González, and Julieta Flores Castillo, who belonged to the Unión Campesina Popular Francisco Villa, would have been unlawfully detained by public employees of the state of Chiapas, interrogated, and tortured; and that on December 18, 1995, Mr. Reyes Penagos Martínez was allegedly extrajudicially executed by public employees.

3. In its first responses, the State indicated that in the instant case it had shown its determination and its efforts to clarify the facts and to determine the administrative and criminal liability of the public employees involved in the facts alleged, and that it was shown that there were no indicia that might lead one to presume the acquiescence or tolerance of the Mexican authorities in the commission of the crimes alleged. In view of the foregoing, and in keeping with Article 47 of the American Convention, it asked that the petition be found inadmissible because no facts were alleged that constituted violations of human rights, there was no unjustified delay in the imparting of justice, and the petitioners had failed to exhaust domestic remedies.

4. On March 1, 1999, the Mexican State and the petitioners undertook to pursue a friendly settlement, and on November 3, 2006, they signed an agreement on reparation for the harm to the victims and their family members in which the Mexican State recognized that the facts giving rise to the petition before the IACHR resulted from a violation of human rights.[FN1]

[FN1] Agreement signed November 3, 2006, on reparation for the harm to the victims and their next-of-kin. Case 11,882 Reyes Penagos, Julieta Flores, and Enrique Flores. I.1. e: Recognition by the Mexican State of the facts put before the IACHR.

5. In the working meeting held on October 24, 2008, during the 133rd regular period of sessions of the IACHR, the parties asked that a friendly settlement report be issued.

6. As established in Article 49 of the Convention and Article 41(5) of the Commission's Rules of Procedure, this friendly settlement report outlines the facts alleged by the petitioners and the friendly settlement reached. Having reviewed the conformity of the agreement with the principles of the Convention, the Commission resolves to notify the parties, make this report public, and include it in the Annual Report.

II. PROCESSING BEFORE THE COMMISSION

7. The petition of October 8, 1997, was received on October 14, 1997, and transmitted to the State on October 31, 1997; it was given two months to submit its observations. Mexico's answer was received on March 5, 1998.

8. In addition, the IACHR received information from the petitioners on the following dates: July 28, 1998, November 16, 1998, December 2, 1998, June 9, 1999, October 4, 1999, March 1, 2000, March 20, 2000, December 20, 2001, March 7, 2002, January 14, 2003, March 13, 2003, March 4, 2004, July 22, 2004, August 4, 2004, June 14, 2006, February 6, 2007, July 17, 2007, and October 3, 2008. Those communications were duly forwarded to the State.

9. The IACHR received communications from the State on the following dates: September 3, 1998, December 24, 1998, April 8, 1999, October 5, 2001, December 10, 2001, August 5, 2002, December 26, 2002, February 10, 2006, November 8, 2006, February 9, 2007, February

15, 2007, March 19, 2007, May 29, 2007, and July 19, 2007. Those communications were duly transmitted to the petitioners.

10. As regards the friendly settlement process, on November 23, 1998, the IACHR placed itself at the parties' disposal to reach a friendly settlement, and on December 2, 1998, the parties expressed interested in pursuing a friendly settlement.

11. On March 1, 1999, at the headquarters of the IACHR, the parties signed the commitment to pursue a friendly settlement, and on November 3, 2006, in the city of Tuxtla Gutiérrez, state of Chiapas, they signed an agreement on reparation for the harm to the victims and their family members.

12. Working meetings were held before the IACHR on the following occasions: December 2, 1998, October 4, 1999, March 2, 2000, November 14, 2001, March 7, 2002, July 26, 2002, October 18, 2002, February 26, 2003, October 20, 2003, October 19, 2005, October 20, 2006, March 5, 2007, October 11, 2007, and October 24, 2008.

13. At the working meeting held October 24, 2008, during the 133rd regular period of sessions of the IACHR, the parties, considering the progress made by the State in carrying out its obligations, asked that a friendly settlement report be issued.

III. THE FACTS

- Background

14. According to the petitioners, the ejido of Nueva Palestina was founded in 1944, and based on population increase, the peasant farmers allegedly sought its expansion on several occasions. Nonetheless, the authorities are said to have denied that request.

15. They add that in March 1994 residents of the ejido of Nueva Palestina who belonged to the peasant organization Unión Campesina Popular Francisco Villa took over the "Liquidambar" farm, situated in the municipality of Ángel Albino Corzo, for a period of eight months, until they were evicted by the use of force. They indicate that as of that incident, a series of sit-ins and protests began that were repeatedly violently repressed by combined elements of Public Security forces, the state-level Judicial Police, and the Army.

16. Reyes Penagos Martínez, Enrique Flores González, and Julieta Flores Castillo belonged to the Francisco Villa organization.

- Detention of Reyes Penagos Martínez, Enrique Flores González, and Julieta Flores Castillo

17. The petitioners state that on December 16, 1995, more than 600 members of the Public Security forces, state-level Judicial Police, and Army, using 25 vehicles and three helicopters, evicted a sit-in of women at the bridge that provides access to the ejido of Nueva Palestina, using tear gas. During the operation, the inhabitants of the ejido who were at the sit-in were violently

evicted, several homes were searched, and 17 persons were unlawfully detained, among them Reyes Penagos Martínez, Enrique Flores González, and Julieta Flores Castillo.

18. After they were detained they were placed in an automobile of the Office of the Attorney General of Chiapas, and questioned about the Unión Campesina Popular Francisco Villa. The petitioners indicate that when the family members of Mr. Reyes Penagos Martínez went to the Office of the Attorney General of Chiapas, the authorities denied he had been detained.

19. They note that on December 17, 1995, the alleged victims were transferred at approximately 4:00 a.m. to the city of Tuxtla Gutiérrez, Chiapas, where they were placed in another vehicle and taken to an unknown place.

20. They argue that Reyes Penagos Martínez, Julieta Flores, and Enrique Flores were tortured during their detention. They report that the judicial police introduced gasses into their nasal cavities, placed crushed glass on their feet, they were beaten, and during the days that they were deprived of liberty clandestinely, they did not receive water or food. Unknown substances were injected into Mr. Reyes Penagos Martínez and pressure was applied to his testicles. On the morning of December 18, 1995, Reyes Penagos Martínez and Enrique Flores were tortured, beaten, and forced to do 2,000 sit-ups. They state that Ms. Julieta Flores was also the victim of electric shocks applied to her nipples and legs, carbonated water with chili pepper was poured in the her nose, which, together with the treatment described above, caused her to lose consciousness. She alleges she was raped while detained.

21. They recount that on December 18, 1995, during the early morning hours, Reyes Penagos Martínez was taken to an unknown location; his dead body was found that same day near Jaltenango. They state that according to the authorities at the time, during this detention Mr. Reyes Penagos Martínez recognized his participation in the kidnapping of José Rito Solís, an activist with the Partido Revolucionario Institucional (PRI) murdered on September 17, 1995, and while guiding the special prosecutor and a group of Judicial Police agents to the place where José Rito Solís was supposedly buried, they had been ambushed, as a result of which Mr. Reyes Penagos Martínez was killed and two Judicial Police agents were wounded. The National Commission on Human Rights of Mexico (hereinafter “CNDH”) considered this version inconsistent and improbable.

22. Enrique and Julieta Flores were taken to the Cerro Hueco prison, where they remained for approximately two months.

- Investigation

23. In connection with the detention and subsequent death of Mr. Reyes Penagos Martínez, Preliminary Inquiry 153/CAJ3/96 was initiated in the Office of the Attorney General for the State of Chiapas. According to the petitioners, the investigation had numerous defects, and was not carried out in proper fashion, as they detailed during the initial processing of the petition.

24. The petitioners note that on July 15, 1996, the CNDH issued Resolution 61/96[FN2] in which it concluded the “Mr. Reyes Penagos Martínez was unlawfully detained, held

incomunicado, and subjected to acts of physical torture by the public servants of the Office of the Attorney General for the State of Chiapas, who had him under their control as of the moment of his detention.” In that same resolution the CNDH concluded that with “a high degree of probability, Mr. Reyes Penagos Martínez was summarily executed by the agents of the Judicial Police of the state who were entrusted with his custody during the operation to locate the corpse of José Rito Solís Martínez,” adding that the “official version of the events in which Mr. Reyes Penagos Martínez lost his life is inconsistent and improbable.”

[FN2] National Commission on Human Rights of Mexico. Recommendation 61/96 of July 15, 1996, was sent to the Governor of the State of Chiapas, and referred to the case of the homicides of Reyes Penagos Martínez, Antelmo Roblero Roblero, Ausel Sánchez Pérez, and José Rito Solís Martínez, as well as the abuse of authority committed against the inhabitants of the ejido Nueva Palestina, in Chiapas.

25. They state that given these conclusions, the CNDH recommended to the Governor of the state of Chiapas, to “as soon as possible order the appointment of a special prosecutor to continue preliminary inquiry 153/CAJ3/96, which was initiated to look into the homicide of Mr. Reyes Penagos Martínez, so as to cure its possible shortcomings and omissions, and to undertake, promptly, the steps necessary for such appointment. Also, that the special prosecutor to whom reference is made should take cognizance of, institute, and formalize the preliminary inquiries that may be brought against the public servants of the state of Chiapas, who are specified in the recommendations set forth herein.”

26. In the context of the agreement signed by the parties on November 3, 2006, the State recognized “that the facts that gave rise to the petition before the IACHR were the result of a violation of human rights.”[FN3]

[FN3] Agreement on reparation for the harm to the victims and their family members Case 11,882 Reyes Penagos, Julieta Flores, and Enrique Flores. I.1.e: Recognition by the Mexican State of the facts put before the IACHR.

IV. FRIENDLY SETTLEMENT

27. On March 1, 1999, the parties signed a “Friendly Settlement Agreement” in the following terms[FN4]:

...

SECOND

The parties undertake to initiate the friendly settlement procedure in case 11,822, concerning the events of which Mr. Reyes Penagos Martínez was victim, and the torture of Enrique and Julieta

Flores, the investigation into which is entrusted to the Office of the Attorney General for the state of Chiapas (hereinafter PGJCH). Also assisting in that friendly settlement procedure, in representation of the State, will be the Ministry of Foreign Relations (hereinafter SER), through the periodic monitoring of the investigations of the PGJCH. The petitioners are represented by the CMDPDHAC and CEJIL, who participate in this friendly settlement agreement.

THIRD

The objective of this friendly settlement agreement is:

- a) “To investigate the events of which Mr. Reyes Penagos Martínez was victim, bringing the persons responsible to trial, so that they may be punished in keeping with the final judicial resolution.
- b) To continue the investigations and, in due course, bring the corresponding criminal actions, based on the statements made by Enrique Flores and Julieta Flores and all other evidentiary elements for the acts of torture that they note they suffered. This is for the purpose of bringing to trial and punishing those who turn out to be responsible for these facts.
- c) To determine and deliver the amount of economic aid or compensation and reparation to the victims and their family members, with the participation of the petitioners without this somehow implying the tacit acceptance of international responsibility by the State, and without prejudice to the procedural actions that may lawfully be brought.

FOURTH

The term for fulfilling the objectives of this agreement shall be six months, without prejudice to an evaluation being performed, at the end of this period, of the progress made, so as to continue or not continue with the friendly settlement procedure.

FIFTH

In the terms of Article 48(1)(f) of the American Convention on Human Rights, the Commission will supervise this procedure until the objectives set forth in this agreement are definitively attained.

[FN4] The Agreement was signed, for the petitioners: by Mariclaire Acosta Urquidi, President of the CMDPDH, AC; Salvador Tinajero, CMDPDH, AC; Carmen Herrera, CEJIL/MESOAMERICA; Viviana Krsticevic, CEJIL. For the Mexican State: by Eleazar Ruiz y Avila, Director General for Human Rights of the Ministry of Foreign Relations; Jorge Ulises Carmona Tinoco, Director for Mexico Cases before the IACHR of the Ministry of Foreign Relations. For the IACHR: Commissioner Carlos Ayala Corao, Rapporteur for Mexico; Jorge E. Taiana, Executive Secretary; Mario López Garelli, attorney IACHR.

28. In the Agreement on Reparation for the harm to the victims and their family members, signed on November 3, 2006, the parties[FN5] agreed as follows:

“AGREEMENT ON REPARATION FOR THE HARM TO THE VICTIMS AND THEIR NEXT-OF-KIN

CASE 11,822

REYES PENADOS, JULIETA FLORES, AND ENRIQUE FLORES

(Friendly Settlement Procedure before the IACHR)

Appearing for the first party, Everilda Roblero Villatoro, Julieta Flores Castillo, and Enrique Flores González, victims in the instant case, as well as the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C. (CMDPDH), the Grupo de Mujeres de San Cristóbal las Casas A.C. (COLEM), and the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”), and for the second party, the Mexican State, the General Bureau for Human Rights and Democracy of the Ministry of Foreign Relations (SRE), and the Office of the Attorney General for the State of Chiapas (Office of the Attorney General -Fiscalía General-) through the General Bureau for Relevant Matters (hereinafter “the State”). Both parties agree on implementing reparation for the harm referenced in section (c) of the Friendly Settlement Agreement of March 1, 1999, regarding case No. 11,822 before the Inter-American Commission on Human Rights (IACHR), as per the following clauses:

[FN5] The Agreement was signed, for the beneficiaries, by: Everilda Roblero Villatoro, Julieta Flores Castillo, and Enrique Flores González. For the petitioners: by Fabián Sánchez Matus, CMDPDH, AC; Soraya Long Saborio, CEJIL; Martha Figueroa Mier, Colectivo de Mujeres San Cristóbal, Chiapas. For the Mexican State: by José Ignacio Martín del Campo, Director of International Litigation for the Ministry of Foreign Relations; José Feliciano Espinosa Nolasco, Attorney for Special and Relevant Matters of the Office of the Attorney General of Chiapas.

I. BACKGROUND

1. FACTS OF THE CASE

a. Facts recognized by the Office of the Attorney General for the State of Chiapas

In the course of 1995, political campaigns were waged to elect mayors in the state of Chiapas. On September 17, 1995, the then-candidate for the Partido de la Revolución Democrática (PRD) for mayor of Ángel Albino Corzo, Antelmo Roblero Roblero, was killed by a gunshot wound. That same day Mr. José Rito Salís Martínez, a PRI activist, was kidnapped and killed. The next day Mr. Ausel Sánchez Pérez, candidate of the Partido Revolucionario Institucional (PRI), was also kidnapped; his corpse was found a few days later.

In the wake of those events the Office of the Attorney General (then known as the Procuraduría General de Justicia, now known as the Fiscalía General) of the state of Chiapas decided to

appoint a special prosecutor (Fiscalía Especial) to investigate both incidents (the Jaltenango case).

While the events were being investigated, on December 16, 1995, a roadblock was placed on the road that leads to the municipal seat by the residents of the community of Nueva Palestina.

During the operations that were carried out to clear the road the authorities detained 17 peasant farmers, including Mr. Reyes Penagos Martínez, Julieta Flores Castillo, and Enrique Flores Castillo (sic).

Based on the statements by Mr. Reyes Penagos Martínez, the Public Ministry took the statement in which Mr. Reyes Penagos allegedly said he had participated in the kidnapping of Mr. Rito Solís and that he knew where the dead body was, to the special prosecutor for the Jaltenango case, who agreed that the next day he would go to the site noted by the declarant, accompanied by Judicial Police agents, and that they would be guided by Reyes Penagos Martínez himself.

On September 18, 1995, the special prosecutor for the Jaltenango Case, José Uriel Estrada Martínez, Mr. Reyes Penagos, and two groups from the Judicial Police of Chiapas went in a helicopter of the Office of the Attorney General of the Republic to a place in the uplands called “El Chaparral,” located in the ejido of Nueva Palestina, municipality of Jaltenango. To cover the path from where the helicopter left them to where the body of José Rito Solís was alleged to be, they decided to divide into two groups. Detainee Reyes Penagos Martínez would go in the first group with police agents, while the second the special prosecutor and the members of the other group would go in the second.

According to those now accused in the operation in which they participated as judicial police, they were ambushed by a group of persons who shot at them, and Mr. Reyes Penagos Martínez was killed.

Preliminary inquiry number 153/CAJ3/96 was initiated before the Office of the Attorney General of the State of Chiapas to look into the homicide of Mr. Reyes Penagos, and another was initiated in 2002 to look into the torture inflicted on Julieta and Enrique Flores stemming from their direct complaint, DAR/004/2002-02.

On October 2, 2005, the agent of the Public Ministry filed criminal charges in Preliminary Inquiry 153/CAJ3/96 for the crime of TORTURE committed to the detriment of Mr. Reyes Penagos Martínez. Similarly, on October 5, 2005, Preliminary Inquiry DAR/004/2002-02 was formally instituted for the crime of TORTURE, committed to the detriment of Enrique Flores González, separating out the continued investigations into to the acts of which Julieta Flores Castillo was the victim.

b. Facts recognized in Recommendation 61/96 of the National Commission on Human Rights (CNDH)

On July 15, 1996, the CNDH issued Recommendation 61/96 related to the homicides of Reyes Penagos Martínez, Antelmo Roblero Roblero, Ausel Sánchez Pérez, and José Rito Solís

Martínez, as well as the abuse of authority committed against the inhabitants of the ejido of Nueva Palestina, Chiapas.

After undertaking the corresponding investigations, the CNDH concluded that:

1. “Mr. Reyes Penagos Martínez was illegally detained, held incommunicado, and subjected to acts of physical torture by the public servants of the Office of the Attorney General of the State of Chiapas, who had custody of him as of the moment of his detention.
2. It is highly likely that Mr. Reyes Penagos Martínez was summarily executed by the agents of the Judicial Police of Chiapas, who were in charge of his custody, during the operation to locate the corpse of José Rito Solís Martínez.
3. The detention of at least eight of the persons allegedly responsible for blocking the road to the seat of Ángel Albino Corzo, was done illegally, for there was no longer any flagrant conduct.
4. The conduct assumed by the persons who participated in the blockade, who kidnapped five individuals and caused damage to real property does not represent a legal means for putting forward petitions and protests to the authorities; to the contrary, they are crimes that must be investigated so as to take action against the persons allegedly responsible; nonetheless, that criminal conduct cannot justify the excesses of the authorities.
5. The official version of the events in which Mr. Reyes Penagos Martínez lost his life is inconsistent and improbable.
- ...
9. The deficient manner in which the inquiries have been pursued ... has fostered impunity in the homicides of Messrs. Antelmo Roblero Roblero, Ausol Sánchez Pérez, José Rito Solís Martínez, and Reyes Penagos Martínez; in addition, impunity has been fostered in relation to the acts of abuse of authority committed to the detriment of the inhabitants of the community of Nueva Palestina.”

c. Acceptance of the CNDH’s recommendation by the State of Chiapas

The State of Chiapas, through then-Governor Julio César Ruiz Ferrero, accepted the recommendation issued by the CNDH on July 15, 1996.

d. Other facts raised by the petitioners before the IACHR

During the operation of December 16, 1995, the inhabitants who were in the sit-in that blocked access to the ejido of Nueva Palestina were violently evicted, several homes were searched, and 17 persons were unlawfully detained, including Reyes Penagos Martínez, Julieta Flores Castillo, and Enrique Flores González.

The detainees were kidnapped in a car of the Office of the Attorney General of Chiapas, and, under its custody, were subjected to grave physical and psychological torture to extract information from them on the kidnappings and homicides that were committed in the context of the political campaigns for the election of municipal mayors in the region.

Mr. Reyes Penagos Martínez was separated from the group and later summarily executed. Julieta Flores Castillo and her father Mr. Enrique Flores González were detained at the Cerro Hueco prison and were released almost two months later. During their unjust imprisonment they suffered grievous acts of torture, and cruel, inhumane, and degrading treatment.

A preliminary inquiry was instituted to look into the homicide of Mr. Reyes Penagos, and in 2002, in response to a direct complaint, the investigation was begun into the torture inflicted on Julieta Flores Castillo and Enrique Flores González.

e. Recognition by the Mexican State of the facts raised before the IACHR

The Mexican State recognizes that the facts that gave rise to the petition before the IACHR were the result of a violation of human rights, and in that sense reiterates its commitment to carry out the friendly settlement agreement.

2. PROCEDURE BEFORE THE IACHR

As a result of the facts described, on October 8, 1997, a petition was presented before the Inter-American Commission on Human Rights (IACHR) for violations of the right to life (Article 4), the right to humane treatment (Article 5), the right to personal liberty and security (Article 7), judicial guarantees (Article 8), and judicial protection (Article 25), all enshrined in the American Convention on Human Rights.

On October 31, 1997, the IACHR processed the petition, and on March 10, 1998, the State answered it. On December 1, 1998, a working meeting was held before the IACHR in which it placed itself at the parties' disposal to pursue a friendly settlement. On December 11, 1998, the IACHR communicated the parties' acceptance to pursue that procedure.

2. 1 Friendly Settlement Agreement

On March 1, 1999, the parties undertook to pursue a friendly settlement; the State assumed four commitments, namely:

- a) To investigate the acts of which the victim was Mr. Reyes Penagos Martínez, bringing those responsible to trial, and punishing them in keeping with the final judicial resolution.
- b) To continue the investigations and, in due course, bring the corresponding criminal charges, based on the statements made by Enrique Flores González and Julieta Flores Castillo, and all other evidence, for the acts of torture they note they suffered. This is with the aim of bringing to trial and punishing those who turn out to be responsible for these acts.
- c) To determine and pay the amount of the economic assistance or compensation and reparation to the victims and their family members, with the participation of the petitioners.
- d) The State will inform the IACHR every 45 days of progress in the actions referred to in sections a, b, and c above.

For the purposes of this case, the Ministry of Foreign Relations, in representation of the State, shall assist in the effort to pursue a friendly settlement by periodically monitoring the

investigations of the Office of the Attorney General of Chiapas, and implementation of all the other points of the friendly settlement agreement.

On October 19, 2005, we, the petitioners and the Mexican State, represented by the General Bureau of Human Rights and Democracy of the Ministry of Foreign Relations and the Director of Relevant Matters of the Office of the Attorney General of Chiapas, held a working meeting in the context of the 123rd Period of Sessions of the IACHR in which it was agreed to hold a meeting for the purpose of carrying out the commitment regarding the payment of compensation as reparation for the material injury caused the victims and their family members. In addition, at that meeting, the representation of the State undertook to send quarterly reports on progress in the investigations.

3. AGREEMENT ON REPARATION OF THE HARM

The parties identified in the preamble of this document, in keeping with Article 48(1)(f) of the American Convention on Human Rights, Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights, and the relevant case-law, agree to carry out the reparation of the harm caused subject to the following agreements:

FIRST. The following persons shall be beneficiaries of this reparation of the harm, insofar as they are “injured party” either as victim or as victim’s family members:

- I. For the death of Mr. Reyes Penagos Martínez:
 1. Everilda Roblero Villatoro (the victim’s wife)
 2. María del Rosario Penagos Roblero (daughter)
 3. Gregoria Penagos Roblero (daughter)
 4. Adrián Penagos Roblero (son; minor)
 5. Bersabeth Penagos Roblero (daughter; minor)
 6. Reyes Penagos Roblero (son; minor)
- II. Julieta Flores Castillo, as direct victim of torture and unlawful detention
- III. Enrique Flores González as direct victim of torture and unlawful detention

SECOND. Following the criteria developed by the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), the reparation under this agreement should be paid for the material and non-material injury caused, and should also include other measures of reparation (measures of satisfaction and guarantees of non-repetition).

a) Material Injury

The Court has noted that material injury

[i]nvolves the loss of, or detriment to, the income of the victims, the expenses incurred as a result of the events and the pecuniary consequences that may have a cause-effect link with the events in

the instant case for which, if applicable, the Court fixes a compensatory amount seeking to redress the economic consequences of the violations that were determined [...] [FN6]

b) Non-material injury

As regards non-material injury, the Inter-American Court has established that it

[m]ay include distress and suffering caused directly to the victim or his next of kin, tampering with individual core values, and changes of a non-pecuniary nature in the everyday life of the victim or of his next of kin. Since it is impossible to assess the value of the non pecuniary damage sustained in a precise equivalent amount of money, for the purposes of full reparation to the victim, compensation may be made effective by paying an amount of money or by delivering property or services whose value may be established in money, as the Court may reasonably determine at its judicial discretion and based on equitable standards; and on the other hand by public actions or works aimed at acknowledging the victim's dignity and avoiding new violations of human rights [...]

[o]wing to the circumstances of the instant case, the suffering the events have caused the victim and his next of kin, the change in their way of living and other consequences of a non pecuniary nature they bore, the Court considers appropriate to order payment of a compensation, assessed on equitable grounds, for the non pecuniary damage sustained.” [FN7]

THIRD. Measures of Satisfaction and Guarantees of Non-Repetition. This section complies with the second form of reparation of the non-material injury, to which the Court’s case-law makes reference, which, given its characteristics, cannot be compensated economically but which rather has as its purpose restoring the dignity of the victims, and at the same time guaranteeing that the human rights violations not recur.

a) Public Recognition of the International Responsibility of the Mexican State

The State undertakes to make a public pronouncement in which it recognizes ITS RESPONSIBILITY IN the facts described in the first section, considering that the death of Reyes Penagos Martínez and the detention and torture of Julieta Flores Castillo and Enrique Flores González, committed by various public servants of the state of Chiapas, are imputable to it.

The State also undertakes to apologize publicly to the victims and their family members for the facts reported to the IACHR, which were the result of a violation of human rights.

This pronouncement may be made at the moment the payment is made to make reparation for the material and non-material injury agreed upon in the preceding paragraphs.

Likewise, the State undertakes to publish the public pronouncement in two local newspapers.

b) Investigation and punishment of the persons responsible

In addition, the State undertakes to continue the investigations until attaining the sanction of the persons responsible for those crimes, through a serious and impartial investigation according to the international human rights standards, for the purpose of avoiding their re-victimization due to lack of access to justice.

FOURTH. In this regard, it should be understood that the friendly settlement process will continue until such time as the investigations and proceedings that derive from the prosecution of the persons responsible for the facts that motivated the petition have fully concluded.

FIFTH. For purposes of the foregoing, and in keeping with the agreements reached in the IACHR in October 2005, the State shall submit periodic reports on progress in the investigations and proceedings to the Inter-American Commission on Human Rights, in keeping with the friendly settlement procedure which the parties have accepted.

SIXTH. Material injury. In general, to establish the actions or amounts of reparation, one takes as a reference the impact on the life, integrity, liberty, public image, and life project. The amounts assigned below are those agreed upon by the parties, and shall be distributed as per the following categories:

In this regard, the following sums have been agreed upon:

Beneficiary	For	Amount
1. Penagos Roblero family*	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 105,354.00 MN
	SUBTOTAL	\$ 157,902.00 MN
2. Julieta Flores Castillo	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 12,640.00 MN
	SUBTOTAL	\$ 65,187.00 MN
3. Enrique Flores González	Actual damages	\$ 52,548.00 MN
	Lost profit	\$ 12,640.00 MN
	SUBTOTAL	\$ 65,187.00 MN
	TOTAL 1	\$ 288,278.00 MN

SEVENTH. Non-material injury. Following we refer to the first form of making reparation for this type of injury. The sums agreed upon are as follows:

Beneficiary	For	Amount
1. Penagos Roblero family	Non-material injury	\$ 342,098.00 MN
2. Julieta Flores Castillo	Non-material injury	\$ 228,951.00 MN
3. Enrique Flores	Non-material	\$ 228,951.00 MN

González	injury	
	TOTAL 2	\$ 800,000.00 MN

EIGHTH. Total amounts (material and non-material injury)

Material injury	\$ 288,278.00 MN
Non-material injury	\$ 800,000.00 MN
TOTAL	\$1,088,278.00 MN

NINTH. Considering the changes in the living conditions of the victims and their family members, the Office of the Attorney General of Chiapas undertakes to take whatever efforts necessary, before the competent authorities, so that scholarships be granted to the three youngest children of Mr. Reyes Penagos. While the Office of the Attorney General cannot guarantee that the result of those efforts will be positive, it nonetheless expresses its commitment to diligently pursue such requests, and to seek a favorable outcome for the children of Mr. Reyes Penagos.

TENTH. Along the same lines, the State undertakes to make efforts for the beneficiaries to obtain medical insurance.

ELEVENTH. The reparations shall be delivered directly to the victims who are the beneficiaries of this agreement at the place and date agreed upon by the parties.

TWELFTH. The parties ratify their commitment for the representatives of each of them to meet for the purpose of drawing up a work plan with respect to the preliminary inquiry initiated into the rape of Julieta Flores.

THIRTEENTH. This agreement does not limit the right of the petitioners to bring any legal remedy which, by law, may be available with respect to the facts that are the subject of the petition before the IACHR.

Signed in the city of Tuxtla Gutiérrez, Chiapas, November 3, 2006.

[FN6] I/A Court H.R., Baldeón García v. Peru Case. Judgment of April 6, 2006. Series C No. 147, para. 183. Quote from the Agreement signed November 3, 2006, on reparation for harm to the victims and their family members.

[FN7] Id. para. 188 and 189. In Agreement signed November 3, 2006, on reparation for the harm to the victims and their next-of-kin.

* The total amount of the reparation for the harm to the Reyes Roblero (sic) family shall be paid as stipulated in the case-law of the Court, 50% to Ms. Everilda Roblero Villatoro and the remaining 50% shall be divided in equal parts to each of her children. In Agreement signed November 3, 2006, on reparation for the harm to the victims and their next-of-kin.

* The total amount of the reparation for the injury to the Reyes Penagos Roblero family will be paid in keeping with the case-law of the Inter-American Court of Human Rights, 50% to Ms. Everilda Roblero Villatoro and the remaining 50% will be divided in equal parts to each of his children.

29. On October 8, 2008, taking as antecedent the agreement on reparation make reparation for the harm to the victims and their family members, the parties signed an agreement in the following terms:

CLAUSES

First: The Mexican State, by means of the Secretary of Interior for the state of Chiapas, shall seek the means to guarantee that Bersabé de Jesús Penagos Roblero can enter, in the next academic period, the program of studies in tourism at the Universidad Autónoma de Chiapas (UNACH), as the first option, or at the Universidad Intercultural de Chiapas, campus in the city of San Cristóbal de las Casas, Chiapas, as the second option.

Second: The Mexican State, through the state of Chiapas, shall grant monthly economic compensation equivalent to the sum of \$2,500.00 (two thousand five hundred and 00/100 Mexican pesos) to Bersabé de Jesús, \$2,000.00 (two thousand and 00/100 Mexican pesos) to Reyes Norberto, and \$2,000.00 (two thousand and 00/100 Mexican pesos) to José Adrián, all with the last names Penagos Roblero, which shall be granted permanently until they complete their professional program of study, and which should be increased each year based on inflation.

...

Fourth: The State and the petitioners recognize that complete coverage has been granted with respect to health insurance, in keeping with their interests. The State confirms its commitment to that health coverage lasting the whole life of the beneficiaries.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

30. The IACHR reiterates that in keeping with Articles 48(1)(f) and 49 of the Convention, this procedure has as its purpose “reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention.” The acceptance of this procedure expresses the good faith of the State for carrying out the purposes and objectives of the Convention, by virtue of the principle of *pacta sunt servanda*, by which the states must carry out, in good faith, the obligations assumed in the treaties. It also wishes to reiterate that the friendly settlement procedure provided for in the Convention allows for the termination of individual cases in a non-contentious manner, and has proven, in cases related to various countries, to offer an important vehicle for reaching a settlement that can be used by both parties.

31. The IACHR observes that the Mexican State recognized that the facts that led to the petition before the IACHR were the result of a violation of human rights. The declaration of recognition of the State’s responsibility for the unlawful detention, torture, and extrajudicial execution of Mr. Reyes Penagos Martínez and the arbitrary detentions and torture of Ms. Julieta Flores Castillo and Mr. Enrique Flores González took place on February 20, 2007; present in their capacity as representatives of the state of Chiapas were the governor of Chiapas, Juan Sábines Guerrero, and the attorney general of Chiapas, Mr. Mariano F. Herran Salvatti. During

the ceremony, the responsibility of the Office of the Attorney General of Chiapas (formerly the Procuraduría General de Justicia, now the Fiscalía General de Estado) was recognized, as it failed to guarantee the rights to life, humane treatment, liberty, and guarantees of legal protection for the victims, and apologies were extended to the victims and their family members for those actions.[FN8]

[FN8] On February 15, 2007, the first act of recognition of responsibility was held, but mindful of the absence of the Attorney General of Chiapas, and, as they were not allowed to speak, the victims and their representatives left.

32. On February 16, 2007, the text of the act of public recognition of state responsibility for the illegal detention, torture, and extrajudicial execution of Mr. Reyes Penagos Martínez and the arbitrary detention and torture of Ms. Julieta Flores Castillo and of Mr. Enrique Flores González was published on page 5 of the Diario de Chiapas and on page 9 of El Heraldo. In addition, the publication of that text was repeated on March 2, 2007, on page 127 of the Diario de Chiapas and on page 11 of El Heraldo.

33. With respect to the obligation to identify, prosecute, and punish the persons responsible for the unlawful detention, torture, and extrajudicial execution of Mr. Reyes Penagos Martínez and of the unlawful detention and torture of Enrique Flores and Julieta Flores, the Mexican State undertook to continue the investigations, through the Ministry of Justice of the state of Chiapas, until securing the punishment of the persons responsible for those crimes through a serious and impartial investigation according to the international human rights standards for the purpose of avoiding their re-victimization due to the lack of access to justice.

34. Specifically with respect to Ms. Julieta Flores, the Mexican State undertook, through the Ministry of Justice of the state of Chiapas, to follow up on the investigation into the rape of which she was victim.

35. In addition, the payment of compensation as reparation for the harm suffered by the victims and their family members, by virtue of the violations of human rights, was formalized on November 3, 2006, through the delivery of checks to Ms. Everilda Roblero Villatoro, Ms. Julieta Flores, and Mr. Enrique Flores, in the amounts agreed upon with the petitioners, as per the agreement on reparation for the harm to the victims and their family members.[FN9]

[FN9] As appears in Communication OEA-02765 from the Permanent Mission of Mexico, of November 8, 2006; similarly, communication from the petitioners of February 6, 2006. It should be noted that on September 28, 1999, Ms. Everilda Roblero Villatoro, Mr. Enrique Flores, and Ms. Julieta Flores received, from the Government of the State of Chiapas, the sums of \$42,500.00 MN, \$25,000.00 MN, and \$25,000.00 MN respectively, in the understanding that these consisted of economic assistance provided by the government that did not stand in the way of their right to fair compensation.

36. In addition, the Mexican State, through the government of the state of Chiapas, will grant monthly economic compensation of \$2,500 (two thousand five hundred Mexican pesos) to Bersabé de Jesús, and \$2,000 (two thousand Mexican pesos) to each of the other two minor children of the victim, Reyes Norberto and José Adrián, all with the last name Reyes Penagos, until they complete their professional program of studies; and through the Secretariat of Interior of the state of Chiapas the means will be sought to ensure that Bersabé de Jesús enters to the tourism program at the Universidad Autónoma de Chiapas or, if that were not possible, at the Universidad Intercultural de Chiapas. In this way, the State will carry out the obligations assumed in relation to student scholarships for the minor children of the victim Reyes Penagos Martínez.[FN10]

[FN10] Agreement in the Case of Reyes Penagos Case 11,822, of October 8, 2008, executed in the city of Tuxtla Gutiérrez, first and second clauses.

37. Mr. Enrique Flores and Ms. Julieta Flores have been included in the health program of the Popular Insurance System.[FN11] The petitioners have recognized that complete coverage has been granted with respect to health insurance, in keeping with their interests.[FN12]

[FN11] As appears in the Minutes of the Working Meeting of October 11, 2007, item 2 section e. and in Official Note SAM/5003/4084/2007 from the Office of the Assistant Director for Medical Care, of February 26, 2007; similarly, Communication OEA-00624 from the Permanent Mission of Mexico, March 16, 2007.

[FN12] Agreement in the case of Reyes Penagos Case 11,882, of October 8, 2008, executed in the city of Tuxtla Gutiérrez, fourth clause.

38. In addition, the Commission observes that the parties signed the respective agreements in the understanding that the monitoring of the “friendly settlement process will continue until such time as the investigations and proceedings that derive from the prosecution and punishment of the persons responsible for that facts that led to the petition have concluded.”[FN13]

[FN13] Agreement on reparation for the harm to the victims and their family members. Case 11,882 Reyes Penagos Martínez, Julieta Flores, and Enrique Flores. Point 3, fourth clause.

39. The Inter-American Commission has closely followed the process culminating in the friendly settlement achieved in this case, and highly values the efforts made by both parties to reach this settlement, which is compatible with the object and purpose of the Convention.

VI. CONCLUSIONS

40. Based on the foregoing considerations and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission wishes to reiterate its profound appreciation for the efforts made by the parties and its satisfaction that a friendly settlement agreement has been reached in the instant case grounded in the object and purpose of the American Convention.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties on March 1, 1999, and November 3, 2006.
2. To urge the State to take the measures necessary to carry out the commitments pending, in particular the obligation to investigate, prosecute, and punish the persons responsible for the unlawful detention, torture, and extrajudicial execution of Mr. Reyes Penagos Martínez and the unlawful detention and torture of Mr. Enrique Flores and Ms. Julieta Flores.
3. To continue to supervise implementation of the commitment to administer justice and, in this regard, to remind the parties of their commitment to periodically inform the IACHR of its implementation.
4. To make this report public and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 20th day of the month of March, 2009.
(Signed): Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez and Paolo G. Carozza, members of the Commission.