Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2025 – ISSN 2582-7820

Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

A Comparative Analysis of the Inter-American Human Rights System and the European Human Rights System

Dr. Efiong Osung[a]

[a]Lecturer, Topfaith University, Mkpatak, Nigeria

Received 08 September 2025; *Accepted* 08 October 2025; *Published* 13 October 2025

The present paper conducts a thorough investigation into the Inter-American Human Rights System and the European Human Rights System. It initiates this exploration by delineating the historical trajectories that have shaped both systems, subsequently moving to an analytical assessment of their operational frameworks, normative standards, and regulatory mechanisms. Through a structured comparative analysis, the strengths and weaknesses inherent in each system are identified, thereby illuminating opportunities for refinement and enhancement. In addition, the processes involved in submitting petitions and cases are scrutinised, revealing the underlying dynamics that influence these procedures. This paper proposes a series of recommendations aimed at improving the efficacy of the friendly settlement processes utilised by the Inter-American Commission on Human Rights. These suggestions are intended to facilitate the advancement of human rights throughout America.

Keywords: *human rights, commission, regulatory mechanism, operative frameworks.*

INTRODUCTION

The establishment of the Inter-American Commission on Human Rights (IACHR) by the Council of the Organisation of American States (OAS) in 1959 marked a significant

development in the promotion of human rights.[1] Within the region. This commission was assigned the responsibility of advancing respect for human rights, a mandate that was subsequently reinforced through an amendment to the OAS charter, enacted under the 1967 Protocol of Buenos Aires. In the ensuing years, particularly in 1969, a specialised conference convened to address human rights issues, which facilitated the OAS's[2] Adoption of the American Convention on Human Rights, which became operational in 1978[3]. This convention not only served to elucidate and enhance the powers of the IACHR but also led to the establishment of the Inter-American Court of Human Rights (IACTHR)[4]. As a result, the IACTHR, along with the IACHR, constitutes the primary adjudicative framework for the Inter-American human rights system, thereby fulfilling the initial objectives set forth by the OAS to protect and promote fundamental human rights across the Americas.[5]

The Inter-American human rights system has been instrumental in promoting human rights throughout the Western Hemisphere; however, both the Inter-American Court of Human Rights (IACHR) and the Inter-American Commission on Human Rights (IACHR) face significant challenges as they contend with a high volume of human rights complaints annually, resulting in a substantial backlog. This accumulation of cases generates administrative difficulties that necessitate innovative adjudicative solutions. To address these challenges, a comparative examination of the friendly settlement practices utilised by various adjudicative bodies, such as the European Court of Human Rights, the African Court of Human Rights, and the domestic court system of the United States, suggests the identification and incorporation of several exemplary practices into the existing friendly settlement mechanisms of the IACHR.

---

[1] 'Introduction' (*Inter-American Commission on Human Rights*) <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/basics/intro.asp> accessed 07 September 2025; David Weissbrodt et al., *INTERNATIONAL HUMAN RIGHTS: LAW, POLICY, AND PROCESS* (4th edn, Carolina Academic Press 2009)

[2] Introduction (n 1)

[3] *Ibid*

[4] The establishment of the court has conferred upon the Inter-American Commission on Human Rights (IACHR) a dual function regarding its adjudicative responsibilities. The IACHR possesses the authority to render decisions on individual complaints, thereby issuing judgments. Concurrently, it is also able to escalate individual complaints to the court. In such cases, the IACHR relinquishes its role as both judge and advocate for one of the parties, allowing the court to deliver the final adjudication on the matter at hand.

[5] The Inter-American Commission on Human Rights (IACHR) performs various functions beyond its primary role as an adjudicator and advocate for individual complaints. This organization possesses the authority to independently conduct visits to states that are parties to the relevant conventions, thereby assessing and reporting on the human rights conditions prevailing within those nations. Such assessments serve to enhance the understanding of human rights practices and to facilitate dialogue concerning necessary reforms

Consequently, this paper aims to provide an overview of the historical development of both the Inter-American Human Rights System and the European Human Rights System. A critical analysis will be conducted to compare the operational efficacy of these systems, focusing on their respective frameworks of norms and regulations, to ascertain which system demonstrates greater functionality and effectiveness. Moreover, this study will explore the processes through which petitions and cases are submitted, whether by individuals or sovereign states, thereby facilitating a comprehensive understanding of the operational dynamics at play. The paper will culminate in a set of recommendations designed to enhance the effectiveness of the IACHR's friendly settlement procedures.

INTER-AMERICAN SYSTEM

The Organisation of American States (OAS) serves as an international entity headquartered in Washington, D.C., comprising thirty-five independent nations throughout the Americas. In response to the geopolitical shifts that characterised the 1990s, including the conclusion of the Cold War, the resurgence of democratic governance in Latin America, and an intensified movement toward globalisation, the OAS undertook significant initiatives aimed at redefining its role within the evolving international landscape. The organisation has articulated several key priorities, which encompass the following areas:

1. The fortification of democratic institutions,
2. The pursuit of peace,
3. The safeguarding of human rights,
4. The fight against corruption,
5. The advocacy for the rights of indigenous peoples, and
6. The promotion of sustainable development.

Additionally, the Inter-American Commission on Human Rights (IACHR), functioning as an autonomous body within the framework of the American states, is also situated in Washington, D.C. This commission, together with the Inter-American Court of Human Rights located in San José, Costa Rica, constitutes integral components of the Inter-American system dedicated to the advancement and protection of human rights.[6]

[6] 'InterAmerican Court of, and Commission on, Human Rights' (*Medecins Sans Frontieres*) < https://guide-humanitarian-law.org/content/article/3/inter-american-court-of-and-commission-on-human-

The Inter-American Commission on Human Rights (IACHR) operates as a permanent entity, convening in both regular and special sessions throughout the year to address claims of human rights infractions occurring within the hemisphere. The duties of the IACHR in the realm of human rights are derived from three foundational documents:[7] the Charter of the Organisation of American States (OAS), the American Declaration of the Rights and Duties of Man, and the American Convention on Human Rights.

Established in 1979, the Inter-American Court of Human Rights serves the critical function of enforcing and interpreting the provisions articulated in the American Convention on Human Rights. The Court possesses two principal tasks: adjudicatory and advisory. In its adjudicatory capacity, the Court is responsible for hearing and rendering decisions on specific cases about alleged human rights violations that have been submitted for its consideration. Conversely, in its advisory role, the Court provides legal opinions on interpretative issues brought forth by other OAS entities or member states, thereby contributing to the broader understanding of human rights law within the region.

The Inter-American Court of Human Rights (commonly referred to as IACHR) was established significantly later than its European counterpart. This chronological difference provided an opportunity for the absorption of lessons derived from the experiences of other international human rights mechanisms. Additionally, it facilitated an understanding of the necessity for the development of a robust framework dedicated to the safeguarding of human rights.[8] Finally, the Inter-American Convention drafters wrote down Article 63, the source of the IACHR remedial power. This article reads as follows:

1. Article 63(1) If the court finds that there has been a violation of a right or freedom protected by this Convention, the court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate,

rights/#:~:text=InterAmerican%20Court%20of%2C%20and%20Commission,the%20end%20of%20this%20entry).> accessed 07 September 2025

[7] 'Inter-American Commission on Human Rights' (*European Parliament*) <https://www.europarl.europa.eu/meetdocs/2004_2009/documents/fd/iachr_/iachr_en.pdf> accessed 07 September 2025; 'Inter-American Commission on Human Rights: Overview' (*A Conscientious Objector's Guide to the International Human Rights System*) <https://co-guide.info/mechanism/inter-american-commission-human-rights-overview - :~:text=Legal Bases&text=Article 106 of the Charter,the Organization in these matters".> accessed 07 September 2025

[8] Jo M Pasqualucci, *The Practice and Procedure of the Inter-American Court of Human Rights* (2nd edn, CUP 2014)

that the Consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

2. In cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the court shall adopt such provisional measures as it deems pertinent in matters it has under Consideration. With respect to a case not yet submitted to the court, it may act at the request of the commission.
3. The text of Article 63 exhibits a greater depth and complexity compared to its counterpart in the European System. An exploration of its unique characteristics is warranted. The initial clause of this article confers upon the court the authority to ensure the complete realisation of the violated right. This provision can be viewed as analogous to the notion of cessation as an obligatory aspect in international law; however, its scope is more expansive. The primary objective of this clause is to empower the court to secure the exercise of the right or freedom implicated to effectuate cessation.

This provision, therefore, establishes a competency that is fundamentally oriented towards individual human rights. The second sentence of the first paragraph can be analytically divided into two distinct competencies, each of which may be exercised at the court's discretion as deemed appropriate. The first competency acknowledges a broad authority to remedy the consequences arising from the measures or actions that constituted the infringement of rights. Thus, the remedial power is explicitly designated to address the repercussions resulting from the violation of rights and freedoms enshrined in the convention.

The second competency, comparable to one permitted to the European court, empowers the court to award compensation to the aggrieved party. In a similar vein, the second paragraph of Article 63 grants the court the authority to implement provisional measures aimed at safeguarding individuals whose rights face significant threats, particularly in situations characterised by ‘extreme gravity and urgency.’ The remedial power of the Inter-American Court of Human Rights (IACHR) extends beyond mere compensation, encompassing a variety of injunctions designed to protect rights effectively.

EUROPEAN SYSTEM

Human Rights in Europe: Established in 1949, the Council of Europe represents the earliest initiative aimed at fostering European integration. As an international organisation, it possesses legal personality as recognised by Public International Law and holds observer status with the United Nations.

The administrative headquarters of the Council is situated in Strasbourg, France. Its mandates encompass the oversight of the European Convention on Human Rights and the European Court of Human Rights, thereby affirming its commitment to the protection and promotion of human rights across member states.[9] The institutions in question impose a human rights code upon the members of the Council that, while stringent, exhibits greater flexibility compared to the standards established by the United Nations Charter concerning human rights. Furthermore, the Council actively advocates for the European Charter for Regional or Minority Languages alongside the European Social Charter[10], thereby enriching its commitment to the protection of diverse linguistic and social rights. Membership is open to all European States which seek European integration, accept the principle of the rule of law and are able and willing to guarantee democracy, fundamental human rights and freedoms.

The Council of Europe is separate from the European Union, but the latter is expected to accede to the European Convention on Human Rights, and the Council of Europe includes all the member states of the European Union. The EU also has a separate human rights document, the Charter of Fundamental Rights of the European Union. The European Convention on Human Rights has defined and guaranteed 1950 human rights and fundamental freedoms in Europe. The Convention has been signed by all 47 member states of the Council of Europe, thus placing them under the jurisdiction of the European Court of Human Rights located in Strasbourg. To address the issue of torture and to prohibit inhumane or degrading treatment, as articulated in Article 3 of the Convention, additional

[9] 'Consolidated guideline on sexual and reproductive health and rights of women living with HIV' (*World Health Organization*) <https://iris.who.int/bitstream/handle/10665/254885/9789241549998-eng.pdf> accessed 07 September 2025

[10] 'The European Social Charter' (*Social Rights*) <https://www.coe.int/en/web/european-social-charter> accessed 07 September 2025; 'Who we are' (*The Council of Europe in Brief*) <https://www.coe.int/en/web/about-us> accessed 07 September 2025

measures have been instituted. In this regard, the establishment of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment represents a significant step towards reinforcing human rights protections across the member states.[11]

In May 2005, the Council of Europe enacted the Convention on Action against Trafficking in Human Beings, which aims to protect against human trafficking as well as sexual exploitation. Subsequently, in May 2011, the Council adopted the Convention on Preventing and Combating Violence against Women and Domestic Violence, further solidifying its commitment to addressing issues related to violence against women and domestic abuse. The European Court of Human Rights serves as the sole international judicial body authorised to adjudicate cases initiated by individuals, in contrast to those brought forth by states. As of early 2010, this court faced a considerable backlog, with over 120,000 pending cases, resulting in a waiting list extending over multiple years. It is noteworthy that only approximately one out of every twenty cases submitted for consideration is recognised, as in 2007, the court issued 1,503 verdicts. At the current rate of proceedings, it would take 46 years for the backlog to clear.[12]

Background of Friendly Settlements in the Inter-American System: In order to incorporate any of the procedures and mechanisms outlined in the various systems discussed above, the basic issues causing of backlog of individual claims in the Inter-American system must be understood. Furthermore, analysing the current role of friendly settlement in the system helps identify the most obvious places for improvement and innovation.

While the IACHR pursues a variety of methods to promote human rights in the region, it serves a unique dual role in its central legal duties. As codified in articles 44-51 of the convention, the IACHR performs an adjudicative role as if it receives, analyses, and investigates individual petitions which allege human rights violations. In its role as advocate and petitioner, the IACHR recommends and presents a case before the IACTHR. The number of individual complaints accepted by the IACHR has more than doubled since the late

[11] 'European Committee for the Prevention of Torture (CPT)' (*Medecins Sans Frontieres*) <https://guide-humanitarian-law.org/content/article/3/european-committee-for-the-prevention-of-torture-cpt/> accessed 07 September 2025

[12] 'ECHR cases have 46-year backlog' (*Cyprus Mail*, 24 January 2008) <https://archive.cyprus-mail.com/2008/01/24/echr-cases-have-46-year-backlog/ - :~:text=cmarchives,all European countries but Belarus.> accessed 07 September 2025

1900s[13]. The lack of funding and ability to quickly expedite these often-complex claims has helped lead to a significant backlog. In 2007, the LACHR's team of thirty lawyers faced 1,250 open cases. With over 1,400 petitions coming each year and the IACHR unable to settle all open cases in a year, the growing backlog means that the IACHR will not be able to adjudicate a majority of the cases promptly and risk losing credibility as an effective agent for the protection of human rights.

The Approach of Friendly Settlements in the Inter-American System: If an individual petition submitted to the IACHR meets preliminary requirements for review,[14] the IACHR then engages in an initial fact-finding phase to gather relevant information from the specific country through the course of its investigation into the claims. The IACHR may request comments and observations regarding the claims from both parties and, in some cases, carry out an on-site investigation within the country. If the IACHR remains unsatisfied with the information gathered from this process, it may hold a hearing into the claim in which both sides present the legal and factual claims of the dispute. While the rules of procedure authorise the IACHR to facilitate a friendly settlement at any time during this process,[15] it is usually towards the end of the factfinding period that the commission will alert the parties that it will be available to facilitate a settlement for a fixed period of time.

Background of the European Court of Human Rights: As the largest, most well-funded of the regional human rights systems, the ECHR provides the appropriate starting point for analysing in a regional human rights context. While the ECHR's overall structure differs somewhat from the Inter-American System, its development of innovative, friendly settlement procedures and mechanisms provides the best blueprint for the Inter-American System to emulate. Like the American Convention on Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms[16] provides the

[13] Robert K Goldman, 'History and Action: the Inter-American Human Rights System and the Role of Inter-American Commission on Human Rights' (2009) 31 Human Rights Quarterly <https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1027&context=facsch_lawrev> accessed 07 September 2025

[14] Fergus MacKay, 'A Guide to Indigenous Peoples' Rights in the Inter-American Human Rights System' (*Forest People Programme*, October 2001) <https://www.hrea.org/wp-content/uploads/2020/11/A-Guide-to-Indigenous-Peoples-Rights-in-the-Inter-American-Human-Rights-System-English.pdf> accessed 07 September 2025

[15] Rules of Procedure of the Inter-American Commission on Human Rights 2009, art 40(1)

[16] European Convention on Human Rights 1953

overarching structure and content for the European Human Rights System[17]. The court is financed by the Council of Europe, whose member states make contributions annually based on their GDP and population.[18] The European Convention is composed of three sections - the first guarantees fundamental human rights[19], the second establishes the ECHR[20], and the third contains miscellaneous provisions[21].

PROCEDURE

Article 19 of the European Convention established the European Court of Human Rights (ECHR), which is comprised of one elected representative from each of the forty-seven High Contracting Parties. The organisational structure of the ECHR consists of Committees, which are formed by three judges; Chambers, which are composed of seven judges; and a Grand Chamber that includes seventeen judges.

The jurisdiction of the ECHR encompasses both interstate disputes and individual claims. In order to determine admissibility, the Committees exercise the authority to issue declarations of inadmissibility through a unanimous vote, thereby eliminating claims that are deemed manifestly inadmissible. In contrast, the Chambers adjudicate on both the admissibility and the substantive aspects of cases based on a majority vote. Each Chamber is constituted by the president of the respective section, the national judge selected in relation to the defendant state, and five additional judges appointed by the section president in a rotating manner. In instances where cases present exceptional circumstances, they may be escalated to the Grand Chamber. This elevation occurs either through relinquishment by a Chamber or upon mutual agreement by the parties involved to accept a referral request.

The Grand Chamber is comprised of the President of the Court, the Vice-presidents, the Section Presidents, the national judge, and other judges selected through a random process. Once a complaint is lodged, it is first assigned to either a chamber or a committee, depending on the complaint's complexity, and these bodies rule administratively on the claim's admissibility. When a claim is initially ruled admissible, it can either be immediately

[17] Gregory S Weber, 'Who Killed the Friendly Settlement? The Decline of Negotiated Resolutions at the European Court of Human Rights' (2007) 7(2) Pepperdine Dispute Resolution Law Journal <https://digitalcommons.pepperdine.edu/drlj/vol7/iss2/4/> accessed 07 September 2025
[18] 'Budget' (*European Court of Human Rights*) <https://www.echr.coe.int/budget> accessed 07 September 2025
[19] European Convention on Human Rights 1953, arts 1-18
[20] European Convention on Human Rights 1953, arts 19-51
[21] European Convention on Human Rights 1953, arts 52-29

relinquished to the Grand Chambers jurisdiction.[22] Submitted to a joint procedure where the admissibility and merits are considered together[23], or admissibility and merits may be considered separately by the Chamber. If the admissibility and merits are taken separately, as is most common. The Chamber first rules on the admissibility before granting a judgment. After determining that a case is admissible, the Chamber examines the case, investigates the facts if necessary, and offers parties the option of friendly settlement.

In either the joint or separate procedure, a judgment may state that just satisfaction is reserved. If included, the respondent state must carry out the judgment (be it monetary, remedial or legislative) under the supervision of the Committee of Ministers. If a judgment is entered on reserved just satisfaction, the respondent state reserves the right to request a re-hearing by the Grand Chamber.[24]

FRIENDLY SETTLEMENT

The provisions outlined in Articles 38 and 39 of the European Convention pertain to the mechanism of friendly settlement.[25] In accordance with Article 38, once a case has been deemed admissible by the court, the court is obliged to offer its assistance to the involved parties, aiming to facilitate a resolution that respects human rights. Subsequently, Article 39 stipulates that, should a friendly settlement be successfully achieved, the court is mandated to remove the case from its docket. This dismissal is executed through a decision accompanied by a concise summary of the pertinent facts and the resolution attained. The Rules of the Court also affect the implication of friendly settlements in the ECHR. Rule 43 iterates the Committee of Ministers' role in supervising settlement enforcement.[26] And Rule 54A states that the court may require parties to include settlement proposals in their initial responses to a joint procedure.[27]

Procedurally, Rule 62 governs the initiation of friendly settlement proceedings, stating that after a declaration of admissibility, the Registrar shall enter into contact with a view to securing a friendly settlement. Furthermore, it reinstates that the proceedings are

[22] European Convention on Human Rights 1953, art 30
[23] European Convention on Human Rights 1953, art 29
[24] European Convention on Human Rights 1953, art 43
[25] European Convention on Human Rights 1953, arts 38 and 39
[26] European Convention on Human Rights 1953, r 43
[27] European Convention on Human Rights 1953, r 62

Confidential and without prejudice to the parties' arguments in the Contentious proceedings, and that no offers, concessions, or statements made in friendly settlement discussions may be referred to in subsequent Contentious proceedings.[28] Although judges are not specifically trained in conducting friendly settlements, an experienced lawyer in the Registry of the Court, usually a Registrar familiar with the case, directs the proceedings and encourages settlement. Throughout the history of the ECHR, friendly Settlements have been applied to every one of the European Convention's guaranteed freedoms. From 1999 to 2007, friendly settlements represented 12% of the resolved cases.[29] The ratio, however, has seen a significant decline, and in 2007, only 4% of the claims resulted in friendly settlement.[30]

Moreover, a large variance exists between the states that utilise friendly settlement and those that do not. As of 2007, eight states had not settled a case since November 1, 1998, including two Countries (the Russian Federation and Ukraine), which faced a significant number of adverse judgments entered against them. Indeed, the five nations with the largest number of adverse final judgments in 2008 did not enter into a single friendly settlement, despite the fact that they comprised 62% of the overall judgments that year. Conversely, the six nations that engaged in friendly settlements were countries with the least number of judgments, comprising only 11% of total cases in 2008[31]. In the decade from 1998 to 2008, five nations comprised 71% of the total friendly settlements[32].

The great disparity between nations that settle and those countries that do not seems to suggest that certain countries have an unstated policy against friendly settlement. Between 1999 and 2005, the two most frequent subjects of judgments on the merits were Article 6 claims (right to fair trial) or length of proceedings. And protocol claims. Those were also the most common cases to lead to friendly settlement, including 620 Article 6 cases and 202 protocol-related claims in those six years. The ECHR increasingly encourages parties to accept offers made in friendly settlements and has begun removing cases where individuals refuse reasonable State remedies.[33]

---

[28] *Ibid*
[29] Weber (n 17)
[30] *Ibid*
[31] Matthew Webster and Sean Brian Burke, 'Facilitating Friendly Settlements in the Inter-American Human Rights System: A Comparative Analysis with Recommendations' (2010) SSRN <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1676603> accessed 08 September 2025
[32] *Ibid*
[33] *Akman v Turkey* [2001] App No 37453/97 ECtHR

PILOT JUDGEMENTS

A significant advancement in the application of amicable resolutions within the framework of the European Court of Human Rights (ECHR) is represented by the implementation of the pilot judgment mechanism. This mechanism emerges as an effective alternative, particularly in light of the observed decline in the frequency of individual friendly settlements. By addressing a collective of similar claims, it has the capacity to facilitate the resolution of a greater number of cases in contrast to isolated friendly settlements.

The initiation of this process occurs when the ECHR identifies a substantial cohort of potential claimants likely to submit analogous claims. Upon this determination, the Court issues a ruling on a selected pilot case. During the remedy implementation phase by the state party, all other cases categorised within the same class of similarly situated parties are effectively suspended. The suspension remains applicable until the remedy has been fully enacted or a determination is made that the state has failed to comply, at which point additional lawsuits may proceed.

Through the adoption of multiple pilot judgments, the ECHR has successfully administratively resolved in excess of twenty standing cases, while also addressing approximately 1.1 million related individual claims. Among the notable instances of pilot judgment cases were two decisions about friendly settlements, issued in 2005 and 2008, respectively. This innovative approach not only streamlines the case management process but also enhances the overall efficiency and effectiveness of the ECHR in dealing with human rights claims.

In Bronlowski v Poland[34], the plaintiff sued over the confiscation of his land beyond the Bug River, which had been repatriated after Poland's republican agreements with Ukraine. Poland had ceded Bronowski's land to Ukraine through these peace-making agreements, along with the land of 80,000 other Polish residents, but the antiquated compensation ceiling in Poland. The ECHR urged Poland to reform its laws to allow for more adequate compensation. In the decision, Poland responded by passing the 2005 Act, which increased the ceiling to 20% of the estimated value, monitoring the country's progress. Through the

[34] *Broniowski v Poland* [GE] [2004] App No 3144/96 ECtHR

friendly settlement, Bronowski was awarded 54,300€ for non-pecuniary damages and 6,100 ε for costs and expenses.

The full facts of the case are that, post-Second World War, Poland implemented a policy aimed at compensating individuals who had been repatriated from areas referred to as the territories beyond the Bug River, territories subsequently excluded from Polish jurisdiction. These individuals were entitled to offset the value of their abandoned properties against either the purchase price of immovable assets acquired from the State or the fee associated with perpetual use of State property, which encompasses a maximum duration of 99 years. The estimated population eligible for such compensatory measures was notably high, reaching into the tens of thousands.

In 1968, the applicant's mother became the heir to her grandmother's estate, which included a house and a parcel of land abandoned during the repatriation process. Following this inheritance, the applicant's mother acquired the right to perpetual use of a designated plot of State land, incurring an annual fee of PLZ 392. For compensation, the value of the abandoned estate was assessed at PLZ 532,260, which was offset against the total fee for perpetual use amounting to PLZ 38,808. After inheriting his mother's estate, the applicant sought the disbursement of the remaining compensation owed to him.

However, he was informed that the implementation of the Local Self-Government Act in 1990, which facilitated the transfer of a majority of State land to local authorities, precluded the fulfilment of his claim. In 1994, the Supreme Administrative Court dismissed the applicant's grievance regarding the Government's alleged failure to enact legislation addressing such claims. Between 1993 and 2001, several legislative measures were adopted that further diminished the already limited stock of properties allocated for compensating repatriated individuals. In December 2002, the Constitutional Court ruled certain statutory provisions unconstitutional, which had imposed restrictions on the fulfilment of compensation entitlements for abandoned properties.

The Court noted that excluding specific categories of State-owned land rendered the right to credit effectively illusory. In practice, claimants were often required to engage in auctions for State property, frequently facing exclusion due to the imposition of additional conditions. Following the Constitutional Court's ruling, the State Agricultural and Military Property

Agencies suspended all auctions pending the enactment of revised legislation. Subsequently, a law enacted in December 2003 stipulated that the State's obligations towards individuals, such as the applicant, who had previously been awarded compensatory property under earlier statutes, were considered fulfilled.

Additionally, since this was a pilot judgment, the Committee of Ministers was responsible for periodically assessing Poland's remedial actions, remedies which will continue to impact this substantial class of potential plaintiffs. Poland is still implementing the remedies of this pilot judgment as the Committee of Ministers continues monitoring the country.

Also in Hutten-Czapski v Poland,[35] A landlord sued Poland on the bases of Art. 1, protocol 1, stating that she was unable to enjoy property because holdover communist-era regulations prohibited landlords from raising rent; as a result, landlords could not even afford to pay maintenance costs The ECHR ruled that Poland had a structured problem with its national legislation and ordered It to remedy its laws to balance the landlord and community interests with the property rights principles of the European Convention. The Court determined that this case might potentially affect 100,000 landlords and between 600,000 and 900,000 tenants, so it postponed the eighteen standing applications similar to Hutten-Czapski until Poland had a chance to enact appropriate remedies. In addition, the friendly settlement agreements between Poland and Hutten-Czapski resulted in 300,000 € non-pecuniary damages and 22,500 E for costs and damages. As with the friendly settlement in Bronowski, Poland is still remedying its related violations, and the while the ECHR struggles to encourage all its member states to actively engage in friendly settlements, its convention procedures, the Rules of its Court, its modification of procedures and rules through the implementation of new protocols, and its creative use of pilot Judgments all promote friendly settlements and make them efficient procedures for both states and individuals. Furthermore, the use of the Committee of Ministers to monitor state compliance with friendly settlement remedies lends 'teeth' to these judgments and ensures their continued judicial significance.[36]

[35] *HUTTEN-CZAPSKA v POLAND* [2006] App No 35014/97 ECtHR
[36] Webster (n 31)

IN THE INTER-AMERICAN SYSTEM

Processing Individual Claims: If an Individual petition submitted to the IACHR meets preliminary requirements for review, the IACHR then engages in a united fact-finding phase to gather relevant information from the specific government named in the claim. Through the course of its investigation into the claims, the 1ACHR may request comments and observations regarding the claims from both parties and, in some cases, carry out an on-site investigation within the country. If the IACHR remains unsatisfied with the information gathered from this process,[37] it may hold a hearing into the claim in which both sides present the legal and factual claims of the dispute.

While the rules of procedure authorise the IACHR to facilitate a friendly settlement at any time during this process, it is usually towards the end of the fact-finding period that the commission will alert the parties that it will be available to facilitate a settlement for a fixed period of time. If the settlement satisfactorily meets the IACHR standard of respecting human rights.[38] It will approve the settlement and consider the claim fully resolved

Challenges of Friendly Settlements: Various factors discourage the settlement process within the Inter-American system, including uncooperative states, the demands of full justice by complainants, and the logistical and financial limitations of the commission. All of these factors contribute to a settlement rate of 10% (4 out of 40) of reports issued by the IACHR in 2008[39]. Its cooperating states are often unwilling to heed contentious claims or friendly settlement negotiations until the case is actually brought before the IACHR or IACTHR for a final judgment. The backlog of cases and the considerable volume of inadmissible claims have led numerous countries to recognise that the majority of cases may not achieve a timely judicial decision; such delays can function as a tactic for stalling proceedings. The Inter-American Commission on Human Rights (IACHR), lacking a comprehensive mandate to compel amicable settlement, frequently encounters challenges in promoting early resolutions unless the involved parties demonstrate a willingness to settle. Moreover, it has been observed that settlements serve as viable alternatives solely for specific categories of claims.

[37] InterAmerican Court of, and Commission on, Human Rights (n 6)
[38] While there is no formal time limit mandated by the Rules of Procedure or the conventions the IACHR usually states that it is available to facilitate settlement for set period of time depending on the complexities of the claim
[39] Webster (n 31)

Particularly, cases addressing the right to life and the right to humane treatment may evoke a sense of injustice among advocates and petitioners when they culminate in confidential friendly resolutions, as opposed to receiving a pronounced judicial opinion.

Given that cases presented before the IACHR typically undergo substantial discovery and litigation through the Commission's own protocols, the parties involved are often significantly invested, leading to a reluctance to pursue settlements. In the absence of judicial pressure from the presiding judge within the IACHR, parties frequently overestimate their prospects for success during the adjudication process, which contributes to their hesitance in entering into friendly settlements. Additionally, under the current guidelines and lacking an official office or committee dedicated to the facilitation and processing of settlements, the proportion of cases resolved through settlement remains significantly lower than both the European Court of Human Rights (ECHR) and the African Court on Human and Peoples' Rights (ACHR), as well as markedly lower than the rates observed in domestic courts within the United States.

In 2008, the IACHR only facilitated a total of 4 friendly settlements out of a total of 1323 complaints received! With no procedures in place to evaluate the large numbers of backlogged cases, which have exceeded the window of settlement time suggested by IACHR, it is not possible to gauge how many may be amenable to settlement with the proper facilitation and guidance.

Categories of Friendly Settlement: A discernible pattern has emerged within the settlements of the Inter-American Commission on Human Rights (IACHR) over the past decade, characterised by what has been termed the 'binding phenomenon.' This phenomenon entails the tendency of states to face multiple cases concerning similar human rights violations. However, it is noteworthy that the IACHR presently lacks a dedicated mechanism to identify states willing to engage in settlements for a variety of alleged offences. Although certain trends can be observed through the frequency of various case types that ultimately settle, experts who monitor political and judicial developments within the Americas must formulate robust tools. Such tools would facilitate the IACHR in anticipating and selecting nations and cases that are particularly suitable for settlement.

The individual petitions presented to the IACHR encompass a wide array of alleged violations of human rights as enshrined in the relevant conventions. In order to systematically categorise claims that may be conducive to friendly settlement, these individual petitions can be organised into two overarching categories based on the norms implicated in the claims.

The two primary categories that exhibit a greater propensity for friendly settlement are those concerning the rule of law and the right to life. Analysis of the past decade reveals that approximately fifty percent of cases that have settled relate to rule of law issues. Furthermore, nearly sixty per cent of the claims concerning the right to life incorporate one or more rule of law elements linked to the central assertion. This data appears to corroborate the established understanding, as recognised by the European Court of Human Rights, that cases involving the rule of law and those about the right to life are inherently interconnected. Furthermore, they are often repetitive in nature, rendering them more amenable to settlement. It is, therefore, essential that future developments in this domain aim to optimise the interest in these particular types of claims.

Procedural Changes: In order to enhance the capacity of the Inter-American Commission on Human Rights (IACHR) to safeguard human rights, it is imperative for the commission to undertake fundamental measures that would establish a more effective framework for settlements. A primary recommendation involves empowering the IACHR with the authority to compel settlements at any stage of the process and to restructure the existing settlement procedures into a more robust mechanism. A distinguishing feature between the procedural rules governing settlements in the European Court of Human Rights (ECHR) and those in the Inter-American system, specifically the Latin American Court of Human Rights (LACHR), is the former's encouragement of settlements throughout the various stages of the legal process. Notably, the LACHR does not impose a strict temporal limitation on settlements following the initial discovery phase; however, the incentives for parties to pursue settlements diminish significantly once the matter is referred to the IACHR or the LACHR for adjudication.

This challenge can be attributed to an underlying issue that contributes to the perceived ineffectiveness of the LACHR in facilitating settlements. The procedural language employed is primarily focused on the creation of a friendly settlement subcommittee, which does not

sufficiently empower the IACHR to compel or strongly advocate for the settlement process. Therefore, the rules of procedure must be revised to grant the IACHR the discretion to encourage friendly settlements proactively. Concerns may arise regarding whether procedural changes should be enacted prior to the establishment of a formal settlement process.

However, it appears more advantageous for the IACHR to amend its rules and procedures initially, even in the absence of a comprehensive structural overhaul, to cultivate an environment conducive to its aspirational goals. An analogous approach is currently observable within the European system, particularly in relation to Protocol 14, which was specifically designed to facilitate amicable settlements in the ECHR. Although the actual implementation of this protocol faced delays due to political resistance from Russia,[40] several nations have nonetheless committed to its provisions through the Madrid Agreement until Russia's recent ratification.

RECOMMENDATIONS FOR IMPROVING INTER-AMERICAN

Commission's Case Management: The examination of the processes employed by the Inter-American Commission on Human Rights (IACHR) and the European Court of Human Rights (EUHR) reveals opportunities for enhancing the mechanisms associated with friendly settlements. In this context, recommendations can be categorised into five principal domains. The first domain involves the promotion of a robust culture of friendly settlement, which is essential for fostering an environment conducive to amicable resolutions. Secondly, the establishment of a dedicated subcommittee focused on friendly settlements is recommended to identify opportunities, encourage participation, and ensure the enforcement of amicable agreements.

Additionally, it is advisable to implement training programs for facilitators of friendly settlements, alongside mandates for comprehensive statistical analyses of case data. This training is vital for equipping facilitators with the necessary skills to navigate disputes effectively. The fourth area of recommendation pertains to the formulation of appropriate procedures and rules that would support the implementation of these changes. Such procedural modifications are crucial to safeguarding the integrity of any newly developed

[40] *Ibid*

system. Lastly, the introduction of pilot judgments, facilitated through judicial training and procedural amendments, is advocated. While these pilot judgments should be perceived as one of numerous tools in refining existing mechanisms, they warrant special consideration due to their complexity and the innovative nature of their application compared to other suggested measures. Emphasis on these judgments could significantly contribute to the evolution of friendly settlement practices within the IACHR framework.

CONCLUSION

In 1959, the Inter-American Commission on Human Rights (IACHR) was assigned the responsibility of promoting the respect for human rights. However, in recent years, both the IACHR and the European Union Human Rights system have encountered challenges related to maintaining fairness and efficiency in the adjudication of individual complaints.

To address these shortcomings, several strategies aimed at enhancing the existing friendly settlement mechanism of the IACHR have been proposed. First, the establishment of a comprehensive judicial framework that favours friendly settlements may facilitate this process. Additionally, the creation of a dedicated subcommittee focused on friendly settlements could serve to identify, facilitate, and enforce the judgments resulting from such agreements. Furthermore, the implementation of training programs for facilitators of friendly settlements, coupled with thorough analyses of statistical data, would contribute to improved outcomes.

Moreover, amending judicial procedures and the terminology used in procedural rules to permit the encouragement of friendly settlements at any stage of the proceedings has been deemed necessary. Lastly, the introduction of pilot judgments through procedural reforms, alongside targeted training for judges and advocates, could streamline the Inter-American Human Rights System. Such recommendations are intended to enhance the efficacy of the human rights framework, thereby providing better protection for the rights of individuals and states throughout the Western Hemisphere.