

TECHNICAL INFORMATION SHEET
CASE 13.408 ALBERTO PATISHTÁN GÓMEZ
FRIENDLY SETTLEMENT REPORT No. [43/19](#)
TOTAL COMPLIANCE
(MEXICO)

I. SUMMARY OF THE CASE

Victim(s): Alberto Patishtán Gómez.

Petitioner(s): Centro de Derechos Humanos “Fray Bartolomé de las Casas” and Alberto Patishtán Gómez.

State: Mexico

Beginning of the negotiation date: 2018

FSA signature date: September 11, 2018

Report on Friendly Settlement Agreement No. [43/19](#), published April 30, 2019

Estimated length of negotiation phase: 4 years

Associated Rapporteurship: Persons Deprived of Liberty, Rapporteurship on the Rights of Indigenous Peoples.

Topics: Persons deprived of liberty /Conditions of detention /Investigation/ Forced Disappearance / Violence/ Judicial branch/ Arbitrary or illegal detention

Facts: Alberto Patishtán Gómez was detained on June 19, 2000, at approximately 9:30 a.m. in the municipality of El Bosque, when headed to work, by four men in plainclothes, who got out of a pickup truck and took him with no motive whatsoever, without identifying neither themselves, nor having shown any arrest warrant whatsoever. The next day, the Second District Judge in the State ordered he be confined to a hotel room for one month until July 20, 2000. From the information produced it appears that on that date the arrest warrant was signed and was presented for the first time to a judge to take the preliminary statement for a probable cause determination. During the first week of the confinement the prosecutorial authorities refused to give any information to his family members as to his whereabouts, which is a repeated practice in the state of Chiapas. The petitioners also denounced the fabrication of evidence, the arbitrary weighing of the evidence, the deficient assistance of the public defender, the alleged arbitrary application of a restraining order prohibiting him from leaving the jurisdiction (*arraigo*), and the failure to provide legal assistance or an interpreter who spoke Mr. Patishtán’s native language, Tzotzil, during the first stages of the process. With respect to legal assistance he had no representation during his confinement in the hotel room and up to June 30, the date his defense counsel was ratified.

Rights found admissible: The Commission concluded that it was competent to consider the case, as per Articles 46 and 47 of the American Convention, to examine the alleged violations of Articles 5 (humane treatment), 7 (personal liberty), 8 (judicial guarantees), 13 (freedom of thought and expression), 16 (freedom of association), and 25 (judicial protection) of the American Convention, all in conjunction with the general obligation to respect and ensure the rights, enshrined in Article 1(1) and Article 2 of the same instrument.

II. PROCEDURAL ACTIVITY

1. The IACHR published the homologation report on April 30, 2019, reporting full implementation of the agreement.

III. ANALYSIS OF COMPLIANCE WITH THE CLAUSES OF THE FRIENDLY SETTLEMENT AGREEMENT

| Clause of the Agreement | Status of Implementation |
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| <p>II. RECOGNITION OF REPSONSIBILITY</p> <p>Clause 2.1 Recognition of responsibility. The “MEXICAN STATE” recognizes that the facts narrated at point 7.2. of the declarations set out in this instrument constituted violations of human rights, specifically of the right to due process, as per Articles 14, 16, and 20 of the Constitution of Mexico, as well as Articles 8 and 25 of the American Convention on Human Rights (hereinafter ACHR), which are attributable to it.</p> | Declarative Clause |
| A. MEASURES OF REHABILITATION | |
| <p>Clause 3.2 Comprehensive health care. As a measure of rehabilitation in the area of health, as of October 4, 2012, Mr. Alberto Patishtán Gómez has received care in medical institutions on a preferential and specialized basis on several occasions, which has shown the “satisfactory evolution of the patient, with evaluations every six months for tumor control and functional status.”</p> <p>With the signing of “THE AGREEMENT” “THE PARTIES” state that this item has been fully implemented. In addition, the “MEXICAN STATE” ratifies that it will continue providing medical care to Mr. Alberto Patishtán Gómez.</p> | Total¹ |
| <p>Clause 3.3 Agreement on the health route. The particular care needs provided for by the National Institute of Neurology and Neurosurgery to “THE DIRECT VICTIM” are now guaranteed and have been fully implemented.</p> <p>As regards “THE INDIRECT VICTIMS,” all have been affiliated with the ISSSTE, which guarantees them access to health services, thus “THE PARTIES” agree that this measure is fully implemented.</p> <p>Nonetheless, it is clarified that the care needed will continue to be provided. Accordingly, in the event that the medical or psychological care required by “THE VICTIM” or “THE INDIRECT VICTIMS” should be provided at facilities far from their place of residence,</p> | Total² |

¹ IACHR, Report No. 43/19, Case 13,408. Friendly Settlement. Alberto Patishtán Gómez. Mexico, April 30, 2019. Available at <http://www.oas.org/es/cidh/decisiones/2019/MXSA13408ES.pdf>.

² IACHR, Report No. 43/19, Case 13,408. Friendly Settlement. Alberto Patishtán Gómez. Mexico, April 30, 2019. Available at <http://www.oas.org/es/cidh/decisiones/2019/MXSA13408ES.pdf>.

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| <p>the “MEXICAN STATE” shall cover the respective costs for travel and per diem, so long as it is within Mexican territory and these services are not viable in their place of residence.</p> <p>In the event that the Mexican public or private medical institutions do not have the medical services required for granting the health measures to “THE VICTIM” in terms of the health legislation in force at the time and in keeping with the principle of progressivity and non-regressivity that governs economic, social, and cultural rights, the “MEXICAN STATE” may coordinate with some medical institution abroad to have the medical services needed provided to him.</p> | |
| <p>Clause 3.4 Care in the event of a change in the place of residence. If “THE VICTIM” or “THE INDIRECT VICTIMS” change domicile to another state of the Mexican Republic, the medical care will be provided in the new place of residence through the ISSSTE or a related program that offers the same level of care.</p> <p>The “MEXICAN STATE” will not be obligated to provide medical or psychological care to “THE VICTIM” or “THE INDIRECT VICTIMS” if they decided to change their place of residence to a place outside the country on a temporary or permanent basis. Yet it may resume if they return to Mexican territory.</p> | <p>Declarative Clause</p> |
| <p>3.5 Measure of Rehabilitation on Labor Matters. “THE PARTIES” agree that this item has been fully implemented, in light of the following:</p> <p>The position that Mr. Alberto Patishtán Gómez had occupied was reactivated; it is currently commissioned given the precarious neurological and ocular health of Mr. Alberto Patishtán Gómez, diagnosed and treated by the National Institute of Neurology and Neurosurgery; accordingly the commitment is stated to keep the current commission indefinitely to ensure that his presence before the group not put his health at risk; “THE VICTIM” undertakes to inform the Government of the state, annually, of his health diagnosis.</p> | <p>Total³</p> |
| <p>B. MEASURES OF SATISFACTION</p> | |
| <p>Clause 3.6. Public Ceremony to Recognize Responsibility. “THE PARTIES” agree that this measure of reparation has been fully implemented, in light of the following:</p> <p>On October 31, 2013, the Minister of Interior announced a in a press conference that the federal</p> | <p>Total⁴</p> |

³ IACHR, Report No. 43/19, Case 13,408. Friendly Settlement. Alberto Patishtán Gómez. Mexico, April 30, 2019. Available at <http://www.oas.org/es/cidh/decisiones/2019/MXSA13408ES.pdf>.

⁴ IACHR, Report No. 43/19, Case 13,408. Friendly Settlement. Alberto Patishtán Gómez. Mexico, April 30, 2019. Available at <http://www.oas.org/es/cidh/decisiones/2019/MXSA13408ES.pdf>.

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| executive was extending a pardon to teacher Alberto Patishtán Gómez since it identified “indicia consisting of serious violations of human rights, particularly due process.” | |
| Clause 3.7 Dissemination of the Ceremony for Recognition of Responsibility. The ceremony was broadcast on free-to-air television and in several national media outlets. | Total⁵ |
| Clause 3.8 Effective investigation. It is the desire of “THE VICTIM” that “THE AGREEMENT” not include an obligation related to investigating the facts of the case. In addition, “THE VICTIM” states that it is his desire not to participate in the investigations undertaken into the case by the “MEXICAN STATE” at its own initiative. Nonetheless, this does not relieve the “MEXICAN STATE” of its obligation under Mexican legislation, the American Convention on Human Rights, and the Inter-American Convention to Prevent and Punish Torture, to diligently investigating the crime of torture. Accordingly, the investigations in the case will be promoted outside of the framework of “THE AGREEMENT,” according priority at all times to the best interest of “THE VICTIM,” avoiding any possible revictimization of “THE VICTIMS.” | Declarative Clause |
| C. GUARANTEES OF NON-REPETITION | |
| Clause 3.9. Regarding the Guarantees of non-Repitition. The “MEXICAN STATE” informed “THE VICTIM” of the training programs in human rights that have been scheduled to be given to personnel in law enforcement and administration of justice on the observance of protocols for action that guarantee respect for human rights, with which “THE VICTIM” is entirely satisfied. | Declarative Clause |
| D. COMPENSATION | |
| Clause 3.10. As regards economic compensation, “THE PARTIES” recognize that to date Mr. Alberto Patishtán Gómez has received compensation from the “MEXICAN STATE”; and so he recognizes that the payment for pecuniary and non-pecuniary damages has been satisfied. In this regard, they recognize that it is fully satisfied, and recognizes that this measure has been received to their complete satisfaction, considering it fair and in keeping with national and inter-American human rights standards. | Total⁶ |

⁵ IACHR, Report No. 43/19, Case 13,408. Friendly Settlement. Alberto Patishtán Gómez. Mexico, April 30, 2019. Available at <http://www.oas.org/es/cidh/decisiones/2019/MXSA13408ES.pdf>.

⁶ IACHR, Report No. 43/19, Case 13,408. Friendly Settlement. Alberto Patishtán Gómez. Mexico, April 30, 2019. Available at <http://www.oas.org/es/cidh/decisiones/2019/MXSA13408ES.pdf>.

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| <p>For this reason, on November 22, 2017 “THE VICTIM” gave the “MEXICAN STATE” the broadest release admissible by law, in keeping with the day-to-day practice in the domestic law, said document being signed by agreement of “THE PARTIES,” stating that for reasons of security and at the request of the party, the amount paid is omitted. “THE PARTIES” recognize that this measure of reparation has been fully implemented.</p> | |
| <p>E. MEASURE OF RESTITUTION</p> | |
| <p>Clause 3.11. As a measure of restitution, Mr. Alberto Patishtán Gómez was immediately released upon issuance of the decree that was done at the initiative of the Federal Executive, at the same time that Article 97 bis of the Federal Criminal Code was amended to establish the basis of the presidential pardon power. In addition, and in order to restore him to his conditions prior to the acts violative of human rights, his position as teacher was restored and he was promoted to indigenous teacher. “THE PARTIES” agree that this measure has been fully implemented.</p> | <p>Total⁷</p> |

IV. LEVEL OF COMPLIANCE OF THE CASE

2. In its Homologation Report the IACHR decided to find total implementation of clauses 3 (2, 3, 5, 6, 7, 10, and 11) of the friendly settlement agreement, on measures of reparation, in keeping with the analysis contained in said report.

3. By virtue of the foregoing, the IACHR found full implementation of the friendly settlement agreement and, accordingly, decided to conclude its supervision of compliance with this friendly settlement agreement.

V. INDIVIDUAL AND STRUCTURAL OUTCOMES OF THE CASE

A. Individual outcomes of the case

- The State carried out the ceremony to acknowledge responsibility.
- Mr. Patishtán received preferential and specialized care in medical institutions on various occasions, with which he has shown “satisfactory evolution of the patient, with evaluations every six months for tumor control and functional status.”
- Coverage of Mr. Alberto Patishtán’s particular care needs was guaranteed, provided by the State through the National Institute of Neurology and Neurosurgery.
- The job position the victim had occupied was reactivated and is available to him.
- The victim received compensatory damages for all pecuniary and non-pecuniary harm.

⁷ IACHR, Report No. 43/19, Case 13,408. Friendly Settlement. Alberto Patishtán Gómez. Mexico, April 30, 2019. Available at <http://www.oas.org/es/cidh/decisiones/2019/MXSA13408ES.pdf>.

- On October 31, 2013, the Minister of Interior announced at a press conference that the federal executive was pardoning teacher Alberto Patishtán as it had identified “consistent indicia of serious human rights violations, particularly due process.” In addition, the ceremony was broadcast live on free-to-air television and in several national media outlets.

B. Structural outcomes of the case

- The State drew up human rights training plans scheduled to be given to personnel in law enforcement and the administration of justice about observing protocols for action that guarantee respect for human rights.
- The victim was immediately released upon the issuance of the decree that was done at the initiative of the Federal Executive, at the same time as Article 97 bis of the Federal Criminal Code was amended to establish a foundation for the presidential pardon power.