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REPORT No. 167/17
PETITION 1119-10
REPORT ON ADMISSIBILITY

ALBERTO PATISHTÁN GÓMEZ
MEXICO

Approved by the Commission at its session No. 2111 held on December 1, 2017.
166th Special Period of Sessions.

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México. December 1, 2017.

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 DECEMBER 1, 2017

I. INFORMATION ABOUT THE PETITION

Petitioner:	Fray Bartolomé de las Casas Human Rights Center and Alberto Patishtán Gómez
Alleged victim:	Alberto Patishtán Gómez
State denounced:	Mexico
Rights invoked:	Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 13 (Freedom of Thought and Expression), 16 (Freedom of Association) and 25 (Judicial Protection), in connection with Article 1.1 (Obligation to Respect Rights) of the American Convention on Human Rights ²

II. PROCEDURE BEFORE THE IACHR³

Date on which the petition was received:	August 3, 2010 ⁴
Additional information received at the initial study stage:	March, 12, 27 and 28, April 16, July 14 and August 9, 2012; October 17 and December 16, 2013; May 15, 2014
Date on which the petition was transmitted to the State:	May 29, 2014
Date of the State's first response:	September 3, 2014
Additional observations from the petitioner:	May 5 and 22 and December 30, 2015
Additional observations from the State:	August 24, 2015
Precautionary measure granted:	PM 77-12 (in force), granted on May 24, 2012

III. COMPETENCE

Competence <i>Ratione personae</i>:	Yes
Competence <i>Ratione loci</i>:	Yes
Competence <i>Ratione temporis</i>:	Yes
Competence <i>Ratione materiae</i>:	Yes; American Convention (deposit of ratification instrument on March 24, 1981)

¹ Pursuant to Article 17.2.a of the IACHR Rules of Procedure, Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion or the decision on this matter.

² Hereinafter "the Convention" or "the American Convention."

³ The observations presented by each party were duly transmitted to the opposing party.

⁴ The petition was received by telefax on August 3, 2010 at 7:57 p.m. and sealed by the IACHR Executive Secretariat on August 4, 2010, as stated in the submission report that appears in the case filed.

IV. ANALYSIS OF DUPLICATION OF PROCEDURES AND INTERNATIONAL *RES JUDICATA*, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

Duplication of procedures and International <i>res judicata</i> :	No
Rights declared admissible	Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 13 (Freedom of Thought and Expression), 16 (Freedom of Association) and 25 (Judicial Protection), in connection with Articles 1.1 and 2 of the American Convention
Exhaustion of domestic remedies or applicability of an exception to the rule:	Yes, under the terms of Section VI
Timeliness of the petition:	Yes, under the terms of Section VI

V. ALLEGED FACTS

1. The petitioners claim that the facts matter of this petition began on June 12, 2000, in the context of the national presidential elections and the aftermath of the Zapatista uprising in the state of Chiapas, when an armed group of individuals attacked a van in which the son of the governor of El Bosque municipality and eight police officers travelled, seven of which were killed. The petitioners indicate that Mr. Alberto Patishtán (hereinafter “the alleged victim” or “the petitioner”), a member of the Tzotzil indigenous people, was declared guilty of the attack, in judicial proceedings flawed by the lack of judicial safeguards. The petitioners submit that his detention and subsequent punishment were based on his political activity in favor of the indigenous communities of the region and the denunciations of corruption that he filed against the governor of El Bosque municipality. They also assert that he worked as a teacher and, as such, has been part of the National Union of Education Workers.

Alleged violations of due process in criminal proceedings

2. The petitioners submit that the alleged victim was arrested on June 19, 2003 without a warrant and taken to the Republic’s Attorney General’s Office. They submit that on the following day, the State District Second Judge ordered to hold him under arrest in a hotel room under the legal figure of *arraigo* for a month, until July 20, 2000. The available information indicates that, on that date, an arrest warrant was executed and he was brought to court for the first time for his preliminary examination statement. They stress that during his first week in detention, the Public Prosecution Office authorities refused to inform his family on his whereabouts, a common practice in Chiapas. The petitioners moreover allege fabrication of evidence, arbitrary assessment of proof, inappropriate assistance by public defense counsel, arbitrary application of detention, and lack of legal assistance and translation into Mr. Patishtan’s native language during the first stages of the proceedings. In relation to legal assistance, they indicate that during his time in *arraigo* detention, until June 30, when the defense counsel confirmed his post, the alleged victim had no legal representation.

3. According to information from the case file, on July 25, 2000 the Twentieth Circuit District First Judge of Chiapas ruled the alleged victim’s imprisonment and on March 18, 2002, declared him criminally responsible of the attack, sentencing him to 60 years in prison and to compensation payment. On August 20, 2002, the Twentieth Circuit Second Unitary Court confirmed the judgment in second instance. Mr. Patishtán claims that he challenged this decision by filing an appeal for legal protection that the Twentieth Circuit First Collegiate Court settled on June 11, 2003, reducing the compensation amount but rejecting the rest of his claims.

4. On August 20, 2009, the alleged victim lodged a petition for recognition of innocence before the same court that on January 21, 2010 declared it unfounded, on the grounds that the petitioner’s claims only concerned irregularities already heard by the lower courts issuing the conviction. The petitioners assert that the remedy was appropriate because the decisions that the Supreme Court of Justice issued on August

12, 2009 on the four constitutional appeals –the copies of which were submitted in the domestic proceedings– would revealed Mr. Patishtán’s innocence. They claim that the four resolutions are public documents supervening on his conviction and that these indicate the materialization of one of the conditions set forth in Part II of Article 560 of the Federal Code of Criminal Procedure.⁵ The petitioners submit that domestic remedies were exhausted through the rejection of his motion for recognition of innocence, notified on February 3, 2010.

5. The petitioners indicate that the alleged victim was held in detention for 13 years in total, until October 31, 2013, when he was released from prison by a presidential pardon. They assert that the legislation allowing for presidential pardon was promoted to be applied on Mr. Patishtán’s case, and that statements by high-level state authorities show that the Mexican State admits that in his case there have been serious violations of due process.

6. According to the information submitted, many national and international civil society organizations such as Amnesty International have publicly expressed that Mr. Patishtán’s case reveals a bigger problem in the Mexican administration of justice and have requested his release in view of his unfair conviction. The petitioners stress that there is discrimination in access to justice because “due to poverty, social exclusion or language” thousands of people “are clearly at a disadvantage in an inquisitorial systems [sic] that violates (...) the basic rights of due process of law.” Finally, the petitioners request that the Commission order the State to annul the criminal proceedings filed against Mr. Patishtán.

7. The State argues that, based on the Commission’s decisions, domestic remedies were exhausted on June 11, 2003 by the Court’s settlement of the appeal for legal protection. It asserts that given that the petition was filed seven years after the facts took place, it is untimely and, thus, inadmissible. Moreover, it submits that the exhaustion of the motion for recognition of innocence was not necessary for the purpose of admissibility because Mr. Patishtán did not submit information about supervening facts or facts that had not been heard by the date that his conviction was issued. By referring to an IACHR report,⁶ the State indicates that in view of its special nature, this remedy was not appropriate to seek a review of the purported irregularities and inconsistencies that the domestic courts hearing the case failed to correct or consider. It also indicates that even if the decision on the motion for recognition of innocence was considered as final, the petition would still be untimely in its presentation, for it was made one day after the six-month presentation period established in the American Convention was due.

8. The State reports that on October 31, 2013 Mr. Patishtán was released from prison by the first presidential pardon, one day after this power was legally established. It explains that the pardon was granted in light of the existence of “signs of serious human rights violations to the detriment of the convict.” According to the information submitted by the State, the reform in the legislation was unanimously voted by both Chambers of Congress and was proposed “in order to seek justice in cases where procedural violations were such that the convicted person was unable to defend themselves, and as an alternative in cases presenting serious violations of due process or infringements of the defendant’s right of proper defense that may have cause [sic] the inability to prove someone’s innocence.” Moreover, it indicates that in the statements it was explicitly affirmed that the initiative was based on Mr. Patishtan’s case as a paradigmatic example of injustice caused by the manifest violation of due process of law.

Detention conditions and alleged lack of proper health treatment

9. The petitioners assert that the alleged victim, during his deprivation of liberty, was subjected to maltreatment and harassment that harmed his indigenous habits and customs. They submit that, in prison, he became part of a group of prisoners known as “The Voice of *Amate*,” by which he publicly expressed his

⁵ Federal Code of Criminal Procedure, Article 560: “Recognition of a convict’s innocence is subject to any of the following circumstances: [...] II.- When after the condemnatory judgment has been issued, there appear public documents that invalidate the evidence supporting said judgment, or the evidence presented to the jury that was used to found the charges and the verdict [...]”

⁶ IACHR, Report No. 72/10, Irineo Martínez Torrez and Candelario Martínez Damián, Admissibility, Mexico, July 12, 2010, par. 41.

claims of innocence and denounced detention conditions and human rights violations in the prison system of Chiapas. They claim that due to said denunciations and to inhibit his complaints, he was many times forcedly taken from one prison to another, which badly affected his health and family relationships.

10. They claim that he lodged an appeal for legal protection against purported maltreatment and a transfer made on October 20, 2011 to a prison in the state of Sinaloa, 2000 kilometers from his family. They indicate that on February 29, 2012 the District Fifth Judge of Chiapas state ruled that he had to serve his sentence in a detention center near his domicile in Chiapas. Mr. Patishtán explains that this decision was confirmed in second instance on June 14, 2012 and that his transfer took place on July 26 of that same year. According to the trial court's judgment, the prison authorities were acquitted of the charge of maltreatment, as the evidence that the petitioner had submitted was allegedly insufficient to support them.

11. Likewise, they assert that as a result of the alleged poor health and feeding conditions in the detention centers, in 2010 Mr. Patishtán was diagnosed with glaucoma, and due to poor health assistance, his condition worsened, putting his sight at risk. They indicate that the alleged victim was in hospital for six months at the "*Vida Mejor*" Hospital, in Chiapas. They also indicate that on May 24, 2012 the Inter-American Commission granted Precautionary Measure 77-12, ruling that the State undertake health examinations that would him receive proper medical treatment and that access to his medical records be granted. The petitioners report that the State "showed its good faith (...) when the IACHR imposed the current precautionary measure." However, they claim that state authorities were negligent about their provision of several medical studies –later allegedly proven wrong– that delayed his treatment for what was eventually found to be an intracranial tumor. Therefore, they conclude that the State is responsible of causing irreparable damages to the alleged victim's health and life project, and his family's life project in view of its failure to provide him with proper and timely medical assistance.

12. For its part, the State indicates that it did provide Mr. Patishtán with adequate medical assistance during the time he was held in custody, and that it timely applied the precautionary measure issued by the Commission to preserve the alleged victim's life and physical integrity, particularly to lower the risk of his losing the sight.

VI. EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION

13. The petitioners claim that the domestic remedies were exhausted on February 3, 2010 through the notification of the settlement of the petition for recognition of innocence. The State asserts that the petition is untimely because the domestic remedies were exhausted on June 11, 2003 through the settlement of the constitutional appeal that confirmed Mr. Patishtán's conviction. Likewise, it explains that even if the petition for recognition of innocence was considered, the petition's presentation would still be untimely because it was lodged one day after the six-month presentation period was due.

14. Based on the available information, the Commission notes that Mr. Patishtán was sentenced on March 18, 2002, a decision confirmed on August 20 of the same year in proceedings that did not respect the safeguards of due process, according to the petitioners. The proceedings on the constitutional appeal lodged by the alleged victim were rejected on June 11, 2003. On August 20, 2009, the alleged victim filed a petition for recognition of innocence claiming that there was supervening evidence, but on January 21, 2010 this remedy was dismissed as groundless; this decision was notified on February 3, 2010. On October 31, 2013, Mr. Patishtán was released from prison through the first presidential pardon in view of signs of serious human rights violations. The State itself, for its part, submits documents showing that the initiative of presidential pardon was inspired in Mr. Patishtán's case.

15. The Commission warns that the petition for recognition of innocence is a special remedy, thus its exhaustion is unnecessary. Under certain conditions,⁷ this remedy, if filed, might be appropriate if,

⁷ IACHR, Report No. 10/03, Admissibility, Tomás de Jesús Barranco, Mexico, February 20, 2003, par. 27. IACHR, Report No. 72/10, Irineo Martínez Torrez and Candelario Martínez Damián, Admissibility, Mexico, July 12, 2010, par. 15.

once granted, it leads to the annulment of criminal proceedings with a final judgment, and to the person's release from prison. In the case of this petition, the Commission believes that the presentation of this special remedy was not unreasonable and considers it in order to analyze this petition. According to the case file, the petitioners were notified of the final resolution on February 3, 2010 and the Commission received the petition on August 3 of that same year. Consequently, the Commission concludes that the alleged victim met the requirement set forth in Article 46.1.b of the Convention.

16. Furthermore, the Commission notes that the state authorities were informed about the alleged health problems and poor detention conditions on the following dates: (a) on February 6, 2010, when he was taken to the "*Vida Mejor*" hospital; (b) in October 2011, when he participated in a hunger strike; (c) through several communications sent to different authorities between August and December 2011; (d) on October 20, 2011, through his filing of proceedings on indirect constitutional appeal No. 1374/2011; and (e) on April 5, 2012, when the IACHR sent a request for information to the State in the framework of the precautionary measures granted. The State, for its part, does not allege non-exhaustion of remedies concerning these claims or inappropriateness of the remedies filed. In light of the foregoing, the Commission believes that the alleged victim denounced situation to the competent authorities, and that the petition was timely presented; and that, as a result, the admissibility requirement established in Article 46.1.b of the Convention is met.

VII. COLORABLE CLAIM

17. In view of the elements of fact and law presented by the parties and the nature of the matter brought to its attention, the IACHR believes that the claims of arbitrary detention, pre-trial detention, flaws in the criminal proceedings, lack of adequate medical diagnosis and treatment, and prohibition to protest, during his time in detention by the State and allegedly caused by the alleged victim's political participation in favor of indigenous communities, all could establish possible violations of the rights enshrined in Articles 5 (Humane Treatment), 7 (Personal Liberty), 8 (Fair Trial), 13 (Freedom of Thought and Expression), 16 (Freedom of Association) and 25 (Judicial Protection), in light of Articles 1.1 and 2 of the American Convention.

VIII. DECISION

1. To declare the instant petition admissible in relation to Articles 5, 7, 8, 13, 16 and 25 of the American Convention, in connection with its Articles 1.1 and 2;
2. To notify the parties of this decision;
3. To continue with the analysis on the merits; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 30th day of the month of November, 2017. (Signed): Francisco José Eguiguren, President; Margarette May Macaulay, First Vice President; Esmeralda E. Arosemena Bernal de Troitiño, Second Vice President; Paulo Vannuchi, James L. Cavallaro, and Luis Ernesto Vargas Silva, Commissioners.