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REPORT No. 213/23
CASE 11.734
REPORT ON FRIENDLY SETTLEMENT

MODESTO PATOLZIN MOICEN
MEXICO

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OCTOBER 20, 2023

I. SUMMARY AND RELEVANT PROCEEDINGS OF THE FRIENDLY SETTLEMENT PROCESS

1. On March 11, 1997, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "IACHR") received a petition presented by the Teachers' Human Rights Commission and the Secretary of Legal Affairs of Section XXII of the National Union of Education Workers (hereinafter "the petitioners", "the petitioning party"), claiming the international responsibility of the State of Mexico (hereinafter "State" or "Mexican State" or "Mexico"), for the violation of the human rights contemplated in Articles 1 (obligation to respect), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights, (hereinafter "Convention" or "American Convention"), as well as Articles I, II and III of the Inter-American Convention on Forced Disappearance of Persons, with regard to the alleged disappearance of teacher Modesto Patolzin Moicen (hereinafter "alleged victim") that occurred on February 24, 1988, in the state of Oaxaca, Mexico. Subsequently, on October 4, 1999, the Center for Justice and International Law (CEJIL), assumed the representation of the victims in the case and, on July 7, 2021, the International Institute for Social Responsibility and Human Rights ("IISRHR") was incorporated as a co-petitioner organization. Finally, on December 7, 2021, CEJIL reported the termination of its representation in the case.

2. On October 4, 1999, within the scope of the 104th Regular Session of the IACHR, the parties decided to move forward with the friendly settlement procedure and on February 27, 2002, they signed a friendly settlement agreement (hereinafter "FSA" or "agreement").

3. Furthermore, the Commission facilitated work meetings for the implementation of the friendly settlement agreement on October 11, 2000, February 26 and November 14, 2001, March 7 and July 25, 2002, October 20, 2003, March 5, 2007, October 11, 2007, March 21, 2009 and August 31, 2017.

4. On August 19, 2021, the Commission notified the petitioner of Resolution 3/20 on differentiated actions to address the procedural backlog in friendly settlement procedures. In this regard, the petitioner requested extensions on September 19 and November 7, 2021, which were granted on October 7, 2021 and April 26, 2022. On November 11, 2021, a bilateral technical meeting was held with the petitioner, which expressed its agreement with the approval of the FSA. On September 28, 2022, the Commission reiterated to the petitioning party the request for its position with regard to the course of action of the negotiation process and, as of the date of preparation of this report, the petitioners have not submitted a formal response.

5. This friendly settlement report, in accordance with Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, contains a summary of the facts alleged by the petitioner and a transcription of the friendly settlement agreement signed on February 27, 2002 by the petitioners and representatives of the Mexican State. Likewise, the agreement signed by the parties is approved and it is agreed that this report will be published in the Annual Report of the IACHR to the General Assembly of the Organization of American States.

II. THE FACTS ALLEGED

6. According to the petitioners' allegations, teacher Modesto Patolzin Moicen disappeared on February 24, 1988, after receiving a telephone call summoning him to pick up a school supervision order, for which he had purchased a bus ticket on the Estrella del Valle bus line, bound for Pinotepa Nacional, where he

¹ Commissioner José Luis Caballero Ochoa, a Mexican national, participated neither in the discussion nor in the decision of this case, pursuant to Article 17.2.a) of the Rules of Procedure of the IACHR.

worked as an elementary school teacher. The petitioners alleged that on March 13, 1988, his next of kin learned that he had never arrived at that place to perform his duties, and from that date on, they began searching for him throughout the state of Oaxaca, including prisons, hospitals, amphitheatres, communities and cities, without being able to locate him.

7. The petitioner held that on March 15, 1988, teacher Liberia Miranda Silva, wife of the alleged victim, reported the alleged disappearance of her husband to the State Attorney General's Office, and that days later she was informed that said institution "*was not aware of the complaint, in other words, that it had been deliberately misplaced*". In this regard, the petitioner held that, under the alleged pretext of loss, teacher Miranda Silva filed a new complaint on March 18, 1988, which was reportedly filed on March 15, 1988.

8. According to the information provided by the petitioner, on March 18, 1988, preliminary investigation 433 (PROC)/988 was initiated. Likewise, on May 23, 1988, a criminal action was brought against Luis Lucio Lucio Atenógenas Baños Montero, Antonio Narciso Anaya, Miguel Angel Roa Franco and others as allegedly responsible for the crime of homicide.

9. Likewise, the petitioner argued that, in the statements of the accused, they had provided precise information on the physical location of the body, but that the authorities had not acted diligently to search for it and had diverted the investigation.

10. On the other hand, the petitioner stated that on May 27, 1988, the Third Criminal Judge of First Instance of the Center reportedly received the indictment with the detainees Miguel Ángel Roa Franco and Antonio Narciso Anaya, and referred the casefiles, for reasons regarding competence, to the Mixed Criminal Judge of Puerto Escondido, Oaxaca.

11. In addition, the petitioner held that on September 28, 1988, arrest warrants had been issued for Humberto Mora Samudio, Luis Lucio Atenógenes Baños Montero, Apolinar Domínguez Cortés, Rodolfo Prada Equihua, and Ignacio Rojas Montalbán in criminal case 163/988, as alleged perpetrators of the crimes of homicide. The petitioner added that these arrest warrants had been informed by the judge in the case to the State Attorney General's Office on April 27, 1989, that is, almost a year later, and that on March 6, 1990, the Second Judge of First Instance of Puerto Escondido, Oaxaca, had acquitted the defendants Antonio Narciso Anaya and Miguel Angel Roa Franco, on the grounds that the crime of homicide had not been established.

12. Finally, the petitioners alleged that the entire proceeding was plagued with irregularities and, as of the date the petition was filed, the whereabouts of the victim had not been established, nor had those responsible for his disappearance been identified and punished.

III. FRIENDLY SETTLEMENT

13. On February 27, 2002, the parties signed a friendly settlement agreement, the text of which provides the following:

FRIENDLY SETTLEMENT AGREEMENT CASE 11.734 MODESTO PATOLZIN MOICEN

The United Mexican States, represented by the Undersecretary for Human Rights and Democracy, Lic. Mariclaire Acosta Urquidi, the Director General of Human Rights, Lic. Juan José Gómez Camacho, both from the Ministry of Foreign Affairs; Lic. Santibáñez, Attorney General of Justice of the State of Oaxaca, and Lic. Gloria del Carmen Camacho Meza, General Coordinator of Human Rights of the Executive Branch of Oaxaca, (hereinafter "State"), and on the other hand the petitioners, Mrs. Liboria Miranda Silva, wife of Mr. Modesto Patolzin Moicen; Prof. Alberto Luis Guzmán Rodríguez, Prof. Irene Hernández de Jesús, Lic. Irene Hernández de Jesús, Lic. Juan Carlos Gutiérrez and Lic. Carmen Herrera.

The representation of the Government of Mexico in the procedure is the responsibility of the Ministry of Foreign Affairs and the implementation and compliance with the agreements is the responsibility of the authorities of the Ministry and of the Government of Oaxaca, whose representatives sign this agreement for said purposes.

The parties subject this agreement to the following guidelines:

FIRST. WILL OF THE PARTIES.

The parties express their willingness to resolve the present case through the friendly settlement procedure provided for in Article 48.1 (f) of the American Convention on Human Rights and in Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights.

SECOND. INVESTIGATION OF THE FACTS.

The State's commitments in this respect are as follows:

A) To continue with the investigation until the facts are clarified, in order to determine the whereabouts of Prof. Modesto Patolzin Moicen. Said investigation shall continue to comply with the parameters of seriousness, impartiality and effectiveness in force in the Inter-American System for the Protection of Human Rights.

B) To submit to criminal proceedings and, in due time, to punish the person responsible for the facts and also those public servants who have incurred in crimes against the administration of justice.

C) To enable the realization of new criminological expert studies with the most advanced technological equipment available in foreign institutions, necessary to determine whether the skeletal remains found in Oaxaca belong to the person of Prof. Modesto Patolzin (Sic) Moicen.

THIRD. PROTECTION MEASURES.

In response to the concerns of the petitioners and, specifically, of Prof. Liboria Miranda regarding the possibility that her life and humane treatment and that of her children may be threatened as a result of the case, the government undertakes to reinforce the surveillance rounds that it has been conducting on a regular basis, and to continue to allow the use of the cell phones in the possession of the Patolzin family, and, in due time, to address any concerns that may arise on this point.

FOURTH. FINANCIAL AID.

A) Considering that, in the present case, to date there are no elements to prove the participation of elements of the State in the disappearance of Prof. Modesto Patolzin Moicen, the Government of Oaxaca offers, without this implying an express or tacit recognition of responsibility, as economic support to his family, a lump sum of \$250,000.00 (two hundred and fifty thousand pesos 00/100 m.n.).

The term for the delivery of the referred amount will be of one month, as of the date of signing of the present documents by the intervening parties.

The foregoing regardless of the reparation that, in accordance with the criteria of the Inter-American Jurisprudence, should be granted by the Mexican Government in due time, if as a result of the investigations it is proven in the process that elements of the State were

responsible for the disappearance. In the latter case, the amount granted as economic support will be discounted from the final amount that would result as reparation.

B) In accordance with the Mexican legal system, the petitioners, as of the time of the disappearance, should have filed a proceeding for a declaration of absence and presumption of death, in order to have access to the social security benefits for State workers, since Prof. Patolzin provided his services to the Secretariat of Public Education. The petitioners have stated that they did not initiate such procedures.

The Government, through the Ministry of Foreign Affairs, making its willingness to satisfactorily resolve the present matter clear, undertakes to initiate the necessary procedures before the Institute of Social Security Services for State Workers (ISSSSW), so that it may grant the corresponding pension to the relatives of Prof. Patolzin, without this affecting in any way the investigations into the whereabouts of said person.

FIFTH. SUPPORT FOR THE INITIATIVE OF THE TYPIFICATION OF THE CRIME OF FORCED DISAPPEARANCE OF PERSONS IN THE STATE OF OAXACA.

In order to address the petitioners' proposal to promote the draft reform bill to criminalize forced disappearance in the state of Oaxaca, it was agreed on November 14, 2001, before the IACHR, to hold a meeting in that state in January 2002, with the participation of authorities from the Executive and Legislative Branches, to analyze this matter.

The Executive of the State of Oaxaca will continue to carry out, within the scope of its legal attributions, actions tending to achieve the typification of the crime of disappearance of persons in the state.

SIXTH. DEADLINES FOR COMPLIANCE

The generic term for the fulfillment of the commitments set forth in this agreement shall be four months, at the end of which the progress in the satisfaction of each one of them shall be analyzed and, if appropriate, the extension of said term shall be evaluated by both parties for one single occasion, which shall be communicated to the IACHR.

The Commission shall supervise due compliance with the agreement, in accordance with the powers conferred upon it by Article 48.1.f of the American Convention on Human Rights and Article 41 of its Rules of Procedure.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

14. The IACHR reiterates that in accordance with Articles 48(1)(f) and 49 of the American Convention, the purpose of this procedure is to "reach a friendly settlement of the matter based on respect for the human rights recognized in the Convention." The acceptance to pursue this process expresses the good faith of the State to comply with the purposes and objectives of the Convention pursuant to the principle of *pacta sunt servanda*, by which States must comply with the obligations assumed in the treaties in good faith.² It also wishes to reiterate that the friendly settlement procedure set forth in the Convention allows for conclusion of individual cases in a non-contentious manner, and has proven, in cases involving a variety of countries, to provide an important vehicle for resolution that can be used by both parties.

15. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case and appreciates the efforts made by both parties during the negotiation of the agreement to reach this friendly settlement, which is compatible with the object and purpose of the Convention.

² Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26: "**Pacta sunt servanda**" *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

16. In light of IACHR Resolution 3/20 on differentiated actions to address procedural backlogs in friendly settlement procedures, from the signing of the agreement, the parties will have two years to move towards its homologation by the Inter-American Commission on Human Rights, except for exceptions duly qualified by the Commission. In relation to those cases with a signed agreement and without homologation in which the deadline has expired, the Commission will determine its course of action taking into special consideration the duration of the compliance phase, the age of the petition and the existence of fluent dialogues between the parties and/or substantial progress in the compliance phase. In said Resolution, the Commission established that in assessing whether to homologate the agreement, or to close or maintain the negotiation process, the IACHR shall consider the following elements: a) the content of the text of the agreement and whether it includes a full compliance clause prior to homologation; b) the nature of the agreed measures; c) the degree of compliance with the agreement, and in particular the substantial execution of the undertakings made; d) the will of the parties in the agreement or in subsequent written communication; e) its adequacy with human rights standards; and f) the observance of the will of the State to comply with the commitments agreed upon in the friendly settlement agreement, among other elements.³

17. In view of the fact that twenty-one years have elapsed since the signing of the friendly settlement agreement, which is a request filed twenty-six years ago, on March 11, 1997, it is appropriate to determine the course of action in the present case and to assess the appropriateness of the approval in light of the objective criteria set forth by the Commission in Resolution 3/20.

18. Concerning the content of the agreement's text, the Commission observes that it is not clear from it that its approval depends on full compliance with the measures agreed upon therein.

19. Regarding the nature of the agreed measures, the Commission observes that the agreement provides for instant execution measures such as economic support measures, as well as successive execution measures such as the investigation of the facts, protection measures for the victim's next of kin, establishment of a pension and actions for the criminalization of the crime of forced disappearance. Regarding the latter, the Commission has already considered that the supervision of this type of measures, within the context of a friendly settlement, should in some cases be done in a public manner and after the issuance of the homologation report. The Commission will have to assess the relevance of keeping a successive enforcement measure under supervision before or after the approval, taking into account the particular elements of each case and the factors of analysis described above.⁴

20. With regard to the degree of compliance with the agreement, the Commission will now assess the progress made in relation to each of its clauses.

21. With regard to subparagraphs (a) and (b) of the second clause, on the investigation of the facts and punishment of those responsible, on July 5, 2019, the State held that, on May 21, 2019, the Office of the Attorney General of the State of Oaxaca (FGO), through the Specialized Unit on Forced Disappearance initiated investigation file 156/UEDF/2018, which is currently in the initial phase of investigation. As indicated by the State, the Oaxaca State Attorney General's Office (FGO) reported that, on August 9, 2018, it held a dialogue and coordination table with Mrs. Liboria Miranda Silva, wife of Modesto Patolzin, and her legal representatives. As a follow-up to what was agreed in said meeting, the Vice Prosecutor's Office for Attention to Victims and Society requested the Head of the Specialized Unit for Forced Disappearance to initiate, as soon as possible, a new investigation file for the crime of forced disappearance in grievance of Modesto Patolzin. Within the scope of said file, the elaboration of the photo-flyer and the corresponding diffusion in the electronic media was ordered; the respective official letter was also sent to the commander of the State Investigation Agency, so that he implements investigative actions. The State also reported that the Director of the General Hospital of the

³ In this regard see, IACHR, Resolution 3/20 on differentiated actions to address the procedural backlog in friendly settlement procedures, approved on April 21, 2020.

⁴ On this matter see, IACHR, Resolution 3/20 on differentiated actions to address the procedural backlog in friendly settlement procedures, approved on April 21, 2020. See also, IACHR, Report No. 3/20, Case 12.095. Friendly Settlement. Mariela Barreto Riofano. Peru. February 24, 2020. Para. 51.

Institute of Security and Social Services for State Workers was requested to provide the clinical file of Mr. Patolzin.

22. Next, on December 3, 2019, the State held that, on September 24, 2019, the documentary background and objects related to Preliminary Investigation 23/FEPAM/1996 were extracted from criminal file 163/1988 and from the background agreement C.A/01FEPAM/2011,⁵ and that, on October 3, 2019, the FGO forwarded the documentation and objects secured and related to Preliminary Investigation 23/FEPAM/1996 to the Office of the General Inspectorate. In the same sense, the State reiterated that, on May 21, 2019, the Attorney General's Office of the State of Oaxaca (FGO), through the Specialized Unit on Enforced Disappearance initiated investigation file 156/UEDF/2018, and, that it is currently in the initial phase of investigation. In this regard, it stated that, within the framework of said investigation folder, on September 11, 2019, reference was made to an analysis of the "Patolzin" case, conducted at the beginning of the investigation file, which was made available to the indirect victim, pointing out the basic needs and the proceedings required for the investigation. In addition, it mentioned that within the investigation plan under development, it was agreed that the first acts of investigation would be performed with the agents assigned to the case. In that sense, at that moment, only an interview with the wife of Mr. Modesto Patolzin, related to the facts and subsequent events, was pending. In the same sense, it was reported that the FGO worked on the elaboration of criminal records of persons and networks of links on (i) persons who had contact with the victim at the time of his disappearance; (ii) co-workers; (iii) network of links of officials related to public security. Likewise, the FGO elaborated geo-referential maps of the day of the disappearance and timelines of days, hours, places and persons and the study of the context of events related to the democratic teachers' movement and revolutionary vanguard, as well as the possible intervention of officials of the three levels of government in matters of public security, during the time of the disappearance and subsequent dates, in order to establish lines of investigation. Likewise, the State held that, depending on the lines of investigation considered, the objectives (investigative actions) would be established in the first place, which will be developed through investigative, desk and field techniques, determining the special techniques necessary to establish the truth of the facts, measures to protect the victims, punish those responsible and strengthen the request for reparation for the damage.

23. On the other hand, the State emphasized that from the study and analysis of the background of the investigation, it is clear that for the investigation of the facts of disappearance and possible material search or execution of a search and exploration plan, search procedures would have to be conducted on the route from Oaxaca to Pinotepa Nacional, taking into consideration that the last time the alleged victim was seen was at the IEEPO premises; on the Oaxaca-Isthmus route; on the Pinotepa Nacional to Puerto Escondido route, including the site of the old municipal garbage dumpster, where a search was conducted in relation to the version of the homicide of Mr. Patolzin and, on the route from Puerto Escondido to Pochutla, taking into account the statements of the daughter of Mr. Modesto Patolzin Moicen, in the sense of having seen a person very similar to her father and the comments made by Professor Rodrigo Reyes. In addition, it was mentioned that, for the adequate attention of the investigation file initiated, the threats or adverse conditions of the investigation were analyzed, among them: the elapsed time of the disappearance; the loss or disappearance of possible physical evidence; the non-receipt of useful and pertinent testimonies during the investigation; the age and current physical condition of the victim; that no lines of investigation have been defined regarding the disappearance and the possible obstruction of the investigation. Also from the analysis of the investigation, the following basic needs were established: the assignment of at least three Special Investigation Agents to investigate the facts; vehicles for the personnel in charge of the investigation; travel expenses and fuel; minimum resources for support to informants; telephone communication equipment or radios and a laptop computer.

⁵ According to information available in the casefile, from the State Report dated December 3, 2019: Preliminary Investigation 23/FEPAM/1996; original photographic report and copies of the Preliminary Investigation; two statements dated May 14, 2012, corresponding to the background notebook; promotion dated April 04, 2011, signed by Mrs. Miranda Silva referring to the preliminary investigation; specialized study OAXH001/OAXH002/OAXH003 of August 17, 2012, corresponding to the investigation for the identification of skeletal remains DNA profile; acknowledgement of May 11, 2012; statement of October 17, 2013; photographic series report of July 9, 2012; transparent plastic box 32 with purple cover; cardboard box 33 with the caption C. A./01/FEPAM/2011, AV.23/FEPAM/1996 and with red letters stating: clothing, biological samples and others; cardboard box 34 with the caption "AV.23/FEPAM/1996, box 1 of the opinion of June 20, 2012 made by Lic. Mirsha Eduardo Duarte Padilla -cubicle 1" and cardboard box 35 with the caption "... AV. 23/FEPAM/1996, BOX 2 of the opinion of June 20, 2012 made by Lic. Mirsha Eduardo Duarte Padilla -cubicle 1...".

24. Finally, the State reported that, from the investigation plan developed within folder 15/UEDF/2018, there are two lines of investigation within which the main one establishes that Mr. Modesto Patolzin Moicen was deprived of his liberty by some authority or private individuals who deny the facts. In this sense, it was agreed that the investigating agents in charge of the case will carry out the following acts of investigation: To know all aspects of the victim through an interview with the victim's wife, stipulating a duration of 15 days; to know the facts of disappearance and related events to date, for this purpose an interview will be conducted with the wife, Professor Liboria Miranda Silva, to know the victim's environment and confirm data (also stipulating a duration of 15 days); to secure to the investigation file the skeletal remains and clothes from the exhumation of expert evidence by physically locating the place where said objects are currently located since they are necessary for the practice of investigative actions, (a 30-day term was set for this purpose); to know all the background of the facts contained in the criminal case by consulting the same from the criminal file with the objective of incorporating evidence data to the investigation file, within 3 days and, finally, to know particularities of the useful exhumation by conducting an interview Dr. Jaime Abraham to incorporate photographs of the victim's body and clothes, within 30 days. Finally, the State indicated that all these investigative actions will be the responsibility of the Special Agent of Investigation (A.E.I.).

25. On the other hand, on August 1, 2022, the State indicated that, on May 27, 2022, it was agreed that, from the Coordination for Attention to Cases of International Human Rights Organizations of the Ministry of the Interior, a request for information would be made to the Office of the Attorney General of the State of Oaxaca (FGEO). In this regard, the State held that on July 18, 2022, through official letter number DDH/2375/2022 from the FGEO, it was indicated that the Specialized Unit on Forced Disappearance of the Deputy Attorney General's Office for Attention to Victims and Society indicated that they have search records requested from various government institutions, related to a list of persons who, based on the background of the investigation, have had knowledge of the disappearance of Mr. Modesto Patolzin Moicen and do not have interviews with them. On the other hand, the State informed that it has established collaboration with the Institute of Expert Services of the FGEO, to process bones, biological samples and each of the evidence in the investigation, in order to conduct future comparisons with the genetic profiles of Mr. Patolzin Moicen's next of kin. It also indicated that working meetings have been held with the indirect victim and his legal advisor, where the results of the investigation are presented periodically. Finally, the State added that information has been requested from the National Commission for the Search for Persons and the General Director of Strategies and Attention to Human Rights of the Ministry of the Interior with the purpose of promoting the strengthening of actions to locate and determine the whereabouts of Mr. Modesto Patolzin. In particular, the coordinated intervention with responsible authorities in the process was requested, as well as the possibility of assessing the possible incorporation of the work of the Commission for Access to Truth, Historical Clarification and the promotion of Justice for serious human rights violations from 1965 to 1990.

26. With regard to paragraph (c) of the second clause, on the performance of new expert criminological studies, the State provided no relevant updated information on actions taken to advance in the fulfillment of this aspect of the FSA; nonetheless, the State provided information on dates prior to the signing of the FSA and, specifically, on August 6, 2001, the State informed that, from the DNA studies performed at the Expert Services of the Attorney General's Office of the State of Mexico, it had not been possible to establish a biological relation between the DNA samples of Mrs. Petra Moicen, the deceased of Facundo Patolzin and the skeletal remains attributed to Modesto Patolzin Moicen. In this sense, on September 17, 2001, the State held that 15 genetic markers were used and communicated that the analysis was going to be repeated and on November 12, 2001, the State, through the Special Prosecutor's Office for Magisterial Affairs of the Attorney General's Office of the State of Mexico, informed about the DNA results performed on the bone remains by the Institute of Anthropological Investigations of the National Autonomous University of Mexico and the blood tests obtained. In this sense, it held that the only positive results obtained corresponded to the DNA samples extracted from the peripheral blood of Mrs. Liboria Miranda Silva and Mr. José Patolzin Miranda. Regarding the DNA samples of the skeletal remains, it was noted that partial results were obtained in the sample of Mr. Facundo Patolzin and negative results in the genetic material of the presumed missing person. It also clarified that the bone material could have been affected by the physical, chemical or biological conditions to which this material was subjected, as well as the permanence of PCR inhibitors that limit the process.

27. On September 28, 2001, the petitioner mentioned that, in the context of the IACHR's visit to Mexico, a meeting was held with the State on July 4, 2001, and among the commitments of the meeting, the State indicated that it was going to request support from international laboratories to perform the corresponding studies, and the Argentine Forensic Anthropology Team ("EAAF") was proposed. Thus, on April 9, 2002, the IACHR received the report of the EAAF dated February 18, 2002, in which it informed that the study was difficult to conduct due to the conditions of the sample and recommended that the sample be taken in another foreign laboratory specialized in the recovery of genetic material in degraded bone remains. In addition, on February 20, 2002, the support of the *Forensic Science Service Metropolitan Laboratory* of London was requested, but the request was not successful because the administrative procedures of the institution were not agile and they provided a response 11 months after the request was made and by that time, the contractual conditions had been substantially modified, in particular the amount to be paid was higher than the budget that was available. On October 11, 2007, in the framework of a work meeting during the 100th period of sessions of the IACHR, the State committed to make new arrangements with the Prosecutor's Office of the states of Morelos and Chiguagua to carry out new scientific studies on the skeletal remains. In this regard, on August 25, 2008, the State proposed that the identification of the remains be carried out in the laboratory of the Morelos State Prosecutor's Office and, in a note dated March 4, 2008, explained the reasons for this proposal. Finally, on June 8, 2009, the petitioner indicated and emphasized that the Argentine Forensic Anthropology Team is the appropriate institution to carry out the identification studies of the remains of the alleged victim at the *Bode Technology Group laboratory*, in Virginia, United States, and that, in turn, they were going to request an estimate from the Genetic Anthropology Laboratory of the UNAM in order to have another alternative. Finally, on November 10, 2009, the petitioner indicated that the UNAM stated that they did not have the necessary specifications to perform the studies; they forwarded the budget offered by the EAAF and again indicated that the best alternative due to the experience and equipment is the *Bode Technology Group laboratory*. To date, the State has not provided comments or updated information on the matter.

28. For its part, the petitioner, in relation to paragraphs (a), (b) and (c) of the second clause, on the investigation and punishment of those responsible, on March 2, 2020, stated that there is a lack of significant progress in the fulfillment of the respective measure. In this regard, they argued that the State's failure to comply with this aspect of the friendly settlement agreement has led to additional violations of the right of access to justice of Mr. Patolzin's next of kin, since more than 30 years have passed without his whereabouts being determined or the identity of those responsible for his disappearance being known. In this regard, the petitioners pointed out as examples of these violations that the Prosecutor's Office in charge of the investigation lost the criminal file, and that it was only recently that the investigation was reactivated for the crime of forced disappearance, and that the evidence for the possible identification of the body has not been adequately safeguarded, nor has it complied with the chain of custody. In addition, the petitioners pointed out that the criminal investigation has been promoted mainly by Mrs. Liboria Miranda, and not by the State, *ex officio* and as a result of compliance with the agreements derived from the friendly settlement. All of this has generated, over the years, a prolongation of the suffering of Mr. Patolzin's next of kin due to the impunity in which the facts remain and the lack of knowledge of the truth of what happened.

29. Furthermore, in view of the above, the petitioner indicated that throughout all these years there has been no proper management to carry out the required DNA analyses and that the Mexican State acknowledged its responsibility for the delay in the investigations in the instant case, and for this reason it had committed itself to analyze the possibility of generating a proposal for comprehensive reparations for the damage that would be added to the original friendly settlement proposal, taking into account that the 2002 friendly settlement had become outdated and that this commitment was not fulfilled by the Mexican State either. In the same sense, the petitioner pointed out that, in the opportunities in which Mrs. Liboria Miranda has requested information, the Prosecutor's Office has only informed her that it did not have sufficient resources to investigate and that, criminal file 163/988, the preliminary investigation file 23/FEPAM/96 and other documents of the investigation, including the DNA studies carried out by the Argentine Forensic Anthropology Team (EAAF), had been lost. Likewise, on December 10, 2019, Mrs. Liboria went again to the Prosecutor's Office where she was informed that boxes had been found and that they would be opened in the next few days to determine whether they contained the alleged remains and belongings of the teacher, as well as the DNA studies conducted. In this regard, the petitioners alleged negligent and careless handling by the

Prosecutor's Office of the boxes containing the skeletal remains, taking into account the delicate material they contain.

30. On the other hand, faced with the State's indication of the opening of investigation file 156/UEDF/2018 by the Enforced Disappearance Unit, the petitioners recalled that 32 years have elapsed since the facts until the opening of said investigation and that the same, as of May 2019, still continues in its initial phase without any significant progress having been made. In addition, they confirmed that, on November 17, 2019, the Prosecutor's Office interviewed Mrs. Libora Miranda regarding the characteristics of the teacher, his place of work, the authority he had, the activities he carried out in Oaxaca, the place where he was captured, and other questions that had already been asked and answered by her on other occasions in the course of the investigation. In this regard, the petitioners held that the foregoing not only demonstrates that the investigation has not advanced in 32 years, but also the lack of the State's initiative in conducting proceedings that do not depend on the information that the victim's next of kin could provide.

31. Therefore, taking into consideration the information provided by the parties, the Commission considers that the second clause of the agreement has been partially complied with and it so declares.

32. With regard to the third clause, on measures of protection for the family of Mr. Modesto Patolzin Moicen, on June 9, 2017, the State reported that, through the General Directorate of Public Security, the corresponding security measures were provided to Mrs. Liboria Miranda Silvia, as well as to José Luis, Rocío and Hugo Ángel (all surnamed Patolzin Miranda) until February 22, 2006. In the same sense, on March 2, 2020, the petitioner confirmed the information provided by the State and clarified that Mrs. Liboria Miranda Silvia was notified of the withdrawal of the measures in 2015. Taking into consideration the information provided by the parties, the Commission considers that the third clause of the FSA has been fully complied with and it so declares.

33. With regard to paragraph (a) of clause four on economic support to the family of the alleged victim, on December 3, 2019 and March 2, 2020, the State and the petitioner, respectively, informed that on March 22, 2002, the family of Mr. Modesto Patolzin was granted the sum of \$250,000.00 (two hundred and fifty thousand pesos 00/100 pesos), through check 65, from the account 0132075091 of Banco BBVA BANCOMER, S.A.

34. On the other hand, both parties held that, in a bilateral meeting held on November 11, 2015, the State, through the State Institute of Public Education, undertook the commitment to manage the delivery of \$500,000.00 M.N. (five hundred thousand pesos zero cents m.n.), an amount that would complement the reparation on the part of the Mexican State. In this sense, on October 20, 2016, the check with folio number 0001157 was delivered, signed in favor of Mrs. Liboria Miranda Silva, for the previously mentioned amount and the delivery of the economic support to the family of Professor Modesto Patolzin, by way of integral reparation by the State, was deemed to have been complied with. Taking into consideration the information provided by the parties, the Commission considers that paragraph (a) of the fourth clause of the FSA on economic support to the family of Mr. Modesto Patolzin Moicen is fully complied with and it so declares.

35. Regarding paragraph (b) of clause four, on the granting of pensions to the family of the alleged victim, on December 3, 2019, the State held that, on November 11, 2015, it was agreed that the State would grant the amount of \$394,983.00 for the settlement of the pension and/or reparation for the damage and that this was done on December 16, 2015. In addition, it noted that, since November 11, 2015, the victims were informed that the ISSSSW would grant a pension of \$6,431.52 on a monthly basis, which began to be disbursed as of January 2016 and will be granted for life. In this regard, on March 2, 2020, the Petitioner confirmed the information provided by the State. Therefore, and taking into consideration the information provided by the parties, the Commission considers that paragraph (b) of the fourth clause of the FSA is fully complied with and it so declares.

36. With regard to the fifth clause of the FSA, on the typification of the crime of forced disappearance in the State of Oaxaca, on April 17, 2002, the State informed that the Congress of the State of Oaxaca approved the reform to the Criminal Code of said entity that adds to Title Eighteen, Chapter IV "Forced

Disappearance of Persons", which typifies the crime and establishes the penalties for those who commit it. Likewise, it attached a copy of the publication in the Official Gazette of Oaxaca dated April 1, 2002 and informed that it would enter into effect the following day. On the other hand, on December 3, 2019, the State reiterated that the initiative for the classification of the crime of forced disappearance of persons in the state of Oaxaca was promoted and approved and published on April 1, 2002 in the Official Gazette of Oaxaca. In this regard, at the work meeting held between the parties with the facilitation of the IACHR on June 25, 2002, the petitioners expressed their recognition of the State's actions. Likewise, the petitioners, in their report of March 2, 2020, confirmed the information provided by the State and added that, although the crime of forced disappearance was typified, and therefore the measure is considered to have been complied with, it did not occur in the context of this case, but rather as a necessary consequence of the large number of forced disappearances of persons in Mexico. In view of the foregoing and taking into consideration the information provided by the parties, the Commission considers that the fifth clause of the FSA has been fully complied with and it so declares.

37. Finally, it should be noted in this aspect of the analysis of the case, that the IACHR considers that the rest of the content of the friendly settlement agreement is of a declarative nature, and therefore it is not its responsibility to supervise it.

38. With regard to the will of the parties in the agreement or in subsequent written communication, as mentioned above, there is no clause in the FSA that makes the homologation of the FSA a condition for full compliance with the agreement. It is also observed that the State requested the Commission to homologate the FSA on July 5 and December 3, 2019 and August 1, 2022. Said information was brought to the attention of the petitioner at the time, without it indicating its willingness to terminate the friendly settlement process and resume litigation of the case in a contentious manner.

39. For its part, the petitioner initially requested, in its brief of March 2, 2020, "to dismiss the State's request to approve the FSA". Subsequently, the Commission notified the petitioner of Resolution 3/20 on August 19, 2021, in order to know its position in relation to the course of action of the negotiation process, expressly requesting it to indicate its position on the approval or on the closure of the negotiation space. In this regard, the petitioning party requested two extensions, which were granted at the time, without the Commission receiving the corresponding indications. On November 11, 2021, a bilateral technical meeting was held with the petitioning party, which expressed its agreement with the approval of the FSA.

40. With regard to whether the FSA complies with the human rights standards enshrined in the ACHR and other applicable instruments, the Commission observes that the friendly settlement agreement included elements such as measures of satisfaction and non-repetition and pecuniary compensation, which are considered appropriate within the factual scenario of the particular case, being in accordance with the various rulings of the IACHR and the jurisprudence of the Inter-American Court of Human Rights on reparation for victims of human rights violations.

41. Finally, in relation to the State's willingness to comply with the FSA, it should be noted that, according to the analysis of the case, there has been a commitment by the State to comply with 3 of the 4 clauses of the friendly settlement agreement.

42. In light of the foregoing, the Commission considers that the third (protection measures), fourth (economic support) and fifth (criminalization of the crime of forced disappearance) clauses have been fully complied with and it so declares. On the other hand, the Commission considers that the second clause (investigation of the facts) of the friendly settlement agreement has been partially complied with.

43. Finally, the Commission considers that the rest of the content of the agreement is of a declarative nature and, therefore, it is not appropriate to supervise it and, in this sense, the execution of the agreement has reached a substantial partial level and it so declares.

V. CONCLUSIONS

1. Based on the foregoing and in keeping with the procedure provided for in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its profound appreciation of the efforts made by the parties and its satisfaction that a friendly settlement has been arrived at in the present case on the basis of respect for human rights and consistent with the object and purpose of the American Convention.

2. Based on the considerations and conclusions contained in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on February 27, 2002.

2. To declare full compliance with the third (protection measures), fourth (economic support) and fifth (criminalization of the crime of enforced disappearance) clauses of the friendly settlement agreement, according to the analysis contained in this report.

3. To declare partial compliance with the second clause (investigation of the facts) of the friendly settlement agreement, according to the analysis contained in this report.

4. To declare that the friendly settlement agreement has reached a substantial level of partial implementation, according to the analysis contained in this report.

5. To continue monitoring the second clause (investigation of the facts) of the friendly settlement agreement until it is fully complied with, according to the analysis contained in this Report. To this end, to remind the parties of their commitment to report periodically to the IACHR on their compliance.

6. To make this report public and include it in its Annual Report to the General Assembly of the OAS.

Approved by the Inter-American Commission on Human Rights on the 20th day of the month of October, 2023. (Signed:) Margarete May Macaulay, President; Esmeralda Arosemena de Troitiño, Vice President; Roberta Clarke, Second Vice President; Julissa Mantilla Falcón, Stuardo Ralón Orellana and Carlos Bernal Pulido, Commissioners.