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REPORT No. 43/19
CASE 13.408
FRIENDLY SETTLEMENT

ALBERTO PATISHTAN GOMEZ
MEXICO

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Organization of
American States

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I. SUMMARY AND RELEVANT PROCEDURAL ASPECTS OF THE FRIENDLY SETTLEMENT PROCESS

1. On August 3, 2010, the Inter-American Commission on Human Rights (hereinafter, the "Commission," or "the IACtHR") received a petition filed by the "Fray Bartolomé de las Casas" Human Rights Center and Alberto Patihtán Gómez (hereinafter "the petitioners") against the Republic of Mexico (hereinafter "the State" or "the Mexican State"), in which they denounced the international liability of the State for alleged violations of due process to the detriment of Alberto Patihtán Gómez - who was a political activist on behalf of indigenous communities in the region (hereinafter "the alleged victim") and a member of the Tzotzil indigenous community - by Mexican State agents, on June 19, 2000 in the state of Chiapas, and for failure to provide an appropriate medical diagnosis and treatment.

2. The petitioners argued that the State is responsible for violation articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 13 (freedom of thought and expression), 16 (freedom of association), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention"), all in conjunction with the general obligation to observe and ensure rights set out in Article 1(1) of said instrument.

3. On December 1, 2017, the Commission adopted Report on Admissibility No. 167/17. In its report, the IACtHR concluded that it was competent to examine the alleged violation of articles 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial), 13 (freedom of thought and expression), 16 (freedom of association), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention"), all in conjunction with the general obligation to observe and ensure rights set out in Article 1(1) of said instrument.

4. In 2018, the parties started the quest for a friendly settlement, which culminated in a friendly settlement agreement (hereinafter "FSA" or "agreement") signed on September 11, 2018 in connection with the petition filed by the Inter-American Commission on Human Rights against the Mexican State. In that agreement, the State acknowledged its international liability for violating the rights proclaimed in Articles 14, 16, and 20 of the Political Constitution of the United Mexican States and in Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights to the detriment of the victim and his family.

5. On September 11, 2018, the parties signed a friendly settlement agreement. In a communication dated October 9, 2018, the State notified the IACtHR of the signing of the FSA with Mr. Alberto Patihtán Gómez, remitted a copy of said agreement, and requested that it be approved as soon as possible. The Commission relayed that information to Mr. Patihtán, who, in a communication dated November 8, 2018, confirmed his consent on the agreement and its prompt approval.

6. Pursuant to articles 49 of the Convention and 40(5) of the Commission's Rules of Procedure, this friendly settlement report includes a summary of the petitioners' allegations and transcribes the friendly settlement agreement signed on September 11, 2018, by the petitioners and representatives of the Mexican State. The Commission hereby approves the agreement signed by the parties and decides to publish this report in its Annual Report to the General Assembly of the Organization of American States.

¹ In accordance with Article 17(2)(a) of the Rules of Procedure of the IACtHR, Commissioner Joel Hernández, a Mexican national, did not participate in the discussion or decision on this case.

II. ALLEGED FACTS

7. The petitioners alleged that Alberto Patishtán Gómez was detained on June 19, 2000, at approximately 9:30 a.m. in the municipality of El Bosque, as he was going to work, by four men dressed in civilian clothes, who allegedly got out of a pickup truck and took him away for no reason, without identifying themselves and without showing any kind of arrest warrant. The petitioners stated that, on the following day, the Second District Court Judge in the state ordered that he be lodged in a hotel room for one month, until July 20, 2000. From the information provided to the IACtHR, it transpires that the arrest warrant was issued on that day, when he was brought before a judge for the first time for a hearing and preliminary statements. According to the petitioners, during that first week of pre-trial detention, the authorities in charge of the Public Prosecutors' Office refused to tell his next-of-kin of his whereabouts: a routine practice in the state of Chiapas. The petitioners also complained about the fabrication and arbitrary assessment of evidence, deficient court-ordered defense counseling, alleged abuse of re-trial detention, and failure to provide legal aid and a translator speaking Mr. Patishtán's native Tzotzil language in the initial phases of the proceedings. As regards legal counseling, the petitioners state that there was no legal representative during Mr. Patishtán's pre-trial detention until June 30, when his defense attorney was ratified.

8. With respect to the criminal proceedings, the petitioners state that on July 25, 2000, the First District Judge of the Twentieth Circuit of Chiapas issued the formal arrest warrant against Mr. Patishtán and imposed a fine. On August 20, 2002, the Second Unitary Tribunal of the Twentieth Circuit confirmed the conviction handed down by the lower court judge. Mr. Patishtán states that he filed an appeal against that decision through an action for immediate protection of a constitutional right [*juicio de amparo directo*]. On June 11, 2003, the First Three-Judge Court of the Twentieth Circuit lowered the fine but rejected the appellant's other claims.

9. The petitioners pointed out that on August 20, 2009, Mr. Patishtán filed recognition of innocence appeal with the same court which rejected it on January 21, 2010 on the grounds that the petitioner had merely pointed to irregularities already considered by the lower-instance courts that had convicted him. The petitioners asserted that the appeal was legitimate given that rulings handed down in four *amparos* by the Supreme Court of the Nation on August 12, 2009 (copies of which were presented in the internal proceedings) had substantiated Mr. Patishtán's innocence.

10. In addition, the petitioners alleged that Mr. Patishtán had been tortured, because he had been beaten while he was being arrested and, during his transfer to the Public Prosecutor's Office he had been forced to lie face down with a cloth bag over his head and forced to stay still. Following his detention, he had kept in solitary confinement for several days, without legal counsel. In addition, he had been kept awake for two or three days, under psychological pressure and had been forced to answer "thousands and thousands of bewildering questions."

11. The petitioners pointed out that Mr. Patishtán had filed suit [*Amparo*] on account of the cruelty endured during his confinement. He was transferred on October 20, 2011, to a prison in the state of Sinaloa, 2,000 km away from his family. The petitioners said that the Fifth District Judge in the state of Chiapas ruled on February 29, 2012 that Mr. Patishtán should serve out his sentence in a detention center near his home in Chiapas. According to Mr. Alberto Patishtán, that decision was confirmed by a second instance court on June 14, 2012 and the transfer took place on July 26, 2012. As regards the allegations of cruelty, the first instance ruling acquitted the prison authorities on the grounds that the evidence provided by the petitioner was insufficient to prove it.

12. The petitioners stated that, as a result of the unhealthy conditions and poor food in the detention centers, in 2010 Mr. Patishtán Gómez was diagnosed with "glaucoma", which, for lack of proper medical care, deteriorated to a point at which he was in danger of becoming blind. They point out that Mr. Patishtán spent six months in the "Vida Mejor" Hospital in Chiapas. They indicated that on May 24, 2012, the Inter-American Commission on Human Rights granted precautionary measure 77-12, instructing the State to perform the medical tests needed to ensure appropriate medical care and to provide access to the medical

records. The petitioners said that the State authorities provided sloppy and incorrect medical diagnoses and had delayed treatment of what they said turned to be a brain tumor.

13. Finally, the petitioners stated that Mr. Patishtán Gómez was released on October 31, 2013 thanks to a Presidential pardon, after having been deprived of liberty for 13 years.

III. FRIENDLY SETTLEMENT

14. On September 11, 2018, the parties signed the following friendly settlement agreement:

FRIENDLY SETTLEMENT AGREEMENT P-1119-10 ALBERTO PATISHTÁN GÓMEZ

Friendly settlement agreement entered into by, on the one hand, the United Mexican States, hereinafter the "**MEXICAN STATE**", represented to that end by Mr. Rafael Avante Juárez, Undersecretary for Human Rights and by Ms. Patricia Colchero Aragonés, head of the Unit for the Defense of Human Rights, both on behalf of the Secretariat of the Interior (hereinafter "**SEGOB**"); by Ambassador Miguel Ruiz Cabañas Izquierdo, Undersecretary for Multilateral Affairs and Human Rights and Dr. Erasmo Lara Cabrera, Director General of Human Rights and Democracy, both on behalf of the Secretariat for Foreign Affairs (hereinafter "**SRE**"); and by Mr. Mario Carlos Culebro Velasco, Secretary General of the Interior for the state of Chiapas (hereinafter "**SG DE CHIAPAS**"); and, on the other, by Alberto Patishtán Gómez, (hereinafter "**THE VICTIM**") and by Pedro de Jesús Faro Navarro of the "Fray Bartolomé de las Casas" Human Rights Center (hereinafter "**FRAYBA**"), as the victim's representative (hereinafter referred to as "**THE REPRESENTATIVE**"); shall be referred to collectively as "**THE PARTIES**", who state as follows:

STATEMENTS

1. Through its representatives, **SEGOB** states that:

1.1. It is a dependency of the Federal Public Administration, pursuant to Article 90 of the Political Constitution of the United Mexican States; Articles 1, 26, and 27 (Subsections VIII and X) of the Organic Law of the Federal Public Administration; and Article 1 of the Rules of Procedure of the Secretariat of the Interior (RISEGOB).

1.2. In accordance with article 27, Subsections VIII and XII of the Organic Law of the Federal Public Administration, the Secretariat of the Interior (SEGOB) is a unit of the executive branch of the Union that, *inter alia*, has stewardship of the interior policy of the federal executive branch where not expressly attributed to another unit thereof; it also oversees compliance with constitutional provisions by the country's authorities, especially with regard to human rights, and adopts the necessary administrative measures to that end.

1.3. The Undersecretary for Human Rights, Mr. Rafael Avante Juárez, is fully empowered to sign the present document, pursuant to article 2, Section A, Subsection IV and Article 6, Subsections XII and XVI of the RISEGOB.

1.4. Ms. Patricia Colchero Aragonés, head of the Unit for the Defense of Human Rights, is authorized under article 9, Subsection V and Article 24, Subsections VI and XI, of the RISEGOB to sign the present Friendly Settlement Agreement.

1.5. The Unit for the Defense of Human Rights is empowered, under article 2, Section B, Subsection VII and Article 24, Subsections VI and XI of the RISEGOB, to attend to the recommendations made by international human rights organizations, whose competence, procedures and decisions are recognized by the **MEXICAN STATE**.

1.6. Its domicile for all legal purposes under this Friendly Settlement Agreement is Bucareli No. 99, Colonia Juárez, Delegación Cuauhtémoc, Postal Code 06600, Mexico City.

2. Through its representatives, **SRE** states that:

2.1. Pursuant to articles 1, 26, and 28 (I) and (III) of the Organic Law of the Federal Public Administration, it is a unit of the executive branch of the Union responsible for, *inter alia*, promoting, fostering, and ensuring the coordination of the foreign policy of the federal executive branch and participating in the international organizations of which the Mexican Government is a member.

2.2. Ambassador Miguel Ruiz Cabañas Izquierdo, Undersecretary for Multilateral Affairs and Human Rights of the **SRE** has, pursuant to Articles 8 (III), (VIII), and (X); and 29 (XI) of the Rules of Procedure of the SRE, authority to represent the Secretariat and sign agreements having regard to the exercise of its powers and those of the administrative units under its charge, including, *inter alia*, to receive and process grievances and complaints brought against the **MEXICAN STATE** in international human rights forums, represent the Government of Mexico in litigation or proceedings deriving therefrom, and promote the adoption of measures necessary to settle such grievances or complaints in accordance to law.

2.3. The Office of the Director General of Human Rights and Democracy is empowered under Article 29 (VIII) of the Rules of Procedure of the Secretariat for Foreign Affairs, to receive and process grievances and complaints brought against the **MEXICAN STATE** in international human rights forums, represent the Government of Mexico in litigation or proceedings deriving therefrom, and promote the adoption of measures necessary to settle such grievances or complaints in accordance to law.

2.4. Its domicile for all legal purposes under this Friendly Settlement Agreement is Avenida Juárez No. 20, Colonia Centro, Delegación Cuauhtémoc, Postal Code 06010, Mexico City.

3. Through its representatives, "**SG de Chiapas**" states that:

3.1. The state of Chiapas is a free and sovereign Federative Entity, with its own legal personality and assets, in accordance with Articles 40, 41 (first paragraph), 42 (I), 43, and 116 of the Political Constitution of the United Mexican States and Articles 1, 2, and 36 of the Political Constitution of the Free and Sovereign State of Chiapas, which forms part of the Federation, in which authority both to represent the state and exercise executive power lies with the Governor of the state.

3.2. Mr. Mario Carlos Culebro Velasco, head of the General Secretariat of the Interior of the state of Chiapas is empowered, under the terms of his appointment by the Constitutional Governor of the state of Chiapas, dated March 30, 2018, and pursuant to Articles 11 and 12 (I and XXIV) of the Rules of Procedure of the General Secretariat of the Interior of the state of Chiapas, the present legal document.

3.3. Its domicile for all legal purposes under this Agreement is Palacio de Gobierno, piso 2, Segunda Oriente Norte esquina S/N, Código Postal 29000, Tuxtla Gutiérrez, Estado de Chiapas.

3.4. For the purposes of this document, the **MEXICAN STATE** recognizes the following persons as indirect victims, in relation to "**THE VICTIM**":

4. "**THE INDIRECT VICTIMS**" state that:

4.1. Lucia Díaz Santiz, wife of the direct victim, a Mexican adult from the municipality of Mitontic, in the state of Chiapas, identified by her voter registration card No. [XXX], issued by the National Electoral Institute.

4.2. María Gabriela Patishtán Ruiz, daughter of the direct victim, a Mexican adult from the municipality of El Bosque, in the state of Chiapas, identified by her voter registration card No. [XXX], issued by the National Electoral Institute.

4.3. Jacinto Héctor David Patishtán Ruiz, son of the direct victim, a Mexican adult from the municipality of El Bosque, in the state of Chiapas, identified by his voter registration card No. [XXX], issued by the National Electoral Institute.

4.4. GIGP², granddaughter of the direct victim, a Mexican minor, legally represented in this deed by her mother María Gabriela Patishtán Ruiz.

4.5. María Gómez Gómez, mother of the direct victim, a Mexican adult from the municipality of El Bosque, in the state of Chiapas, identified by her voter registration card No. [XXX], issued by the National Electoral Institute.

5. THE VICTIM states that:

5.1. Mr. Alberto Patishtán Gómez is a 47-year-old Mexican national from the town of Tsotsil, who was born in the municipality of El Bosque, in the state of Chiapas, accompanied in this act by his representatives and identified by his voter registration card No. [XXX], issued by the National Electoral Institute.

5.2. His domicile for all legal purposes under this Friendly Settlement Agreement is [...], in the State of Chiapas.

6. THE REPRESENTATIVE states that:

6.1. The "Fray Bartolomé de las Casas" Human Rights Center "**FRAYBA**" is a civil association incorporated in accordance with the laws of the United Mexican States, as per registered deed six thousand six hundred and twenty, volume one hundred and ten, dated the eighth day of February, nineteen ninety-six, notarized by Carlos Flores Gómez, head of Public Notary Office No.62 of the state of Chiapas, with "**SRE**" permit No. 09003456, file 9609003373, folio 3528, and entered in the Public Registry under No. 7 of Book One of the Third Section of the Judicial District of Las Casas, on February 23, 1996, for an unlimited duration.

At a Special General Meeting of Members of the Association, held on May 14 and 15, 2015, in San Cristóbal de las Casas, the Governing Board of **FRAYBA** appointed Mr. Pedro de Jesús Faro Navarro Director of the Association. The minutes of the aforementioned meeting were notarized in deed number eight thousand eight hundred and sixty-two, volume one hundred and sixty-one by Gildardo Rojas Cabrera, Public Notary No. sixty-six of the state of Chiapas.

The purpose of **FRAYBA** is, inter alia, to show solidarity, in an ecumenical approach and at every (judicial, legal, cultural, social, and economic) level with any person or group impacted by violation of one or more of their human rights in the State of Chiapas or any other state in the Mexican Republic, and, secondarily, any person or group under duress or in difficulties as a result of those violations.

² The Commission withholds the name of this relative of the victim because she is a minor.

6.2. The Representative, Pedro de Jesús Faro Navarro, is a Mexican adult, participating in this act in his own right as the representative of **FRAYBA** and identified by his voter registration card No. 1133023723702, issued by the National Electoral Institute.

For all legal purposes hereunder, his domicile is Calle Brasil No. 14, Barrio de Mexicanos, Postal Code 29240, in San Cristóbal de las Casas, state of Chiapas.

7. THE PARTIES state that:

7.1. They acknowledge their respective legal capacities and have come together to sign the present Friendly Settlement Agreement (hereinafter "**THE AGREEMENT**", pursuant to Article 48.1f of the American Convention and Articles 37.4, 40, 48, and 64.1 of the Rules of Procedure of the Inter-American Commission on Human Rights (hereinafter "IACRH").

They acknowledge that the present AGREEMENT is reached in connection with the petition lodged with the Inter-American Commission on Human Rights (IACRH) against the **MEXICAN STATE** currently being processed under petition number **P-1119-10 ALBERTO PATISHTÁN GÓMEZ**.

7.2. They recognize that the following took place and that those deeds constitute the factual basis for the present agreement.

Mr. Alberto Patishtán Gómez was detained on June 19, 2000 for allegedly committing the crimes of homicide and stealing, damaging, and bearing arms reserved for the exclusive use of the army. Subsequently, an order was issued for him to be deprived of his liberty in a hotel located in Tuxtla Gutiérrez, in the state of Chiapas, for 29 days.

The Office of the Attorney General of the Republic initiated preliminary investigations, which were later filed under criminal case number 126/2000 with the First District Court in the state of Chiapas, which, on March 18, 2002, reached a final judgment sentencing Mr. Patishtán to 60 years in prison. Against that ruling, Mr. Patishtán filed a direct appeal for protection of his constitutional rights (*amparo directo*), which was denied.

On August 20, 2009, Mr. Alberto Patishtán Gómez filed an appeal for recognition of his innocence, which was declared baseless.

In a decree published in the Official Gazette of the Federation on October 31, 2013, article 97 bis was added to the Federal Criminal Code in order to be able to pardon Alberto Patishtán Gómez with respect to the offenses of which he had been convicted because "the case is exceptional and there is circumstantial evidence of grave violations of human rights."³

Under the powers conferred by that article, the Federal Executive pardoned Mr. Alberto Patishtán Gómez, extinguishing any criminal liability and ordering his immediate release, which was effected on November 1, 2013.

7.3. THE PARTIES acknowledge that since then and during the proceedings various measures of reparation were adopted and that now all of them have been fully complied with and that

7.4. It is their desire to sign the present AGREEMENT, which reads as follows:

CLAUSES:

1. PURPOSE OF THE AGREEMENT

³ Decree of pardon issued at the headquarters of the Federal Executive Branch in Mexico City on October 31, 2013.

Clause 1.1. Purpose of THE AGREEMENT. The purpose of the present agreement is to highlight the reparation measures adopted by the **MEXICAN STATE** on behalf of the **VICTIM**. Based on **THE AGREEMENT, THE PARTIES** shall ask the IACHR to certify full compliance with **THE AGREEMENT** and the closing and archiving of petition **P-1119-10 ALBERTO PATISHTÁN GÓMEZ**.

II. ACKNOWLEDGMENT OF RESPONSIBILITY

Clause 2.1. Acknowledgment of responsibility. The MEXICAN STATE recognizes that the facts described under Point 7.2 of the statements recorded in the present instrument constituted violations of human rights for which it is responsible, specifically the right to due process established in Articles 14, 16, and 20 of the Political Constitution of the United Mexican States (hereinafter CPEUM), as well as Articles 8 and 25 of the American Convention on Human Rights.

III. REPARATION

Clause 3.1 General obligations of the Parties with respect to reparation. **THE PARTIES** recognize the obligation of the **MEXICAN STATE** to make full reparation to **THE VICTIM** and **THE INDIRECT VICTIMS**; and have agreed to their entire satisfaction upon the reparation measures specified in the present Chapter, bearing in mind that prior to the present instrument **THE VICTIM** received the benefits of the measures constituting full reparation.

A. REHABILITATION MEASURES

Clause 3.2. Comprehensive health care. As a health-related rehabilitation measure, since October 4, 2012, Mr. Alberto Patishtán Gómez has received preferential and specialized care in medical institutions, accrediting "satisfactory progress by the patient, with half-yearly tumor control and bodily function evaluations."

With the signing of **THE AGREEMENT, THE PARTIES** state that there has been full compliance with this item. In addition, the **MEXICAN STATE** confirms that it will continue to provide medical care to Mr. Alberto Patishtán Gómez.

Clause 3.3. Agreement on the health care plan. The specialized care provided to **THE DIRECT VICTIM** by the National Institute of Neurology and Neurosurgery has already been guaranteed, with full compliance.

As regards **THE INDIRECT VICTIMS**, all of them are affiliated to the ISSSTE, which guarantees them access to health services, so that **THE PARTIES** agree that this measure has been fully complied with.

Nonetheless, the State points out that all necessary care will continue to be provided. Thus, if the medical care required for **THE VICTIM** or **THE INDIRECT VICTIMS** needs to be provided by institutions far from their homes, the **MEXICAN STATE** shall defray travel expenses and per diem allowances, as long as those services are provided in Mexico and are not available in their places of residence.

In the event that Mexican public or private medical institutions lack the medical services needed to comply with the health measures for **THE VICTIM**, as required under current health legislation and in accordance with the principle of the progressive, non-regressive nature of economic, social, and cultural rights, the **MEXICAN STATE** may coordinate the required medical services with a medical institution abroad.

Clause 3.4. Care in the event of a change of residence. If **THE VICTIM** or **THE INDIRECT VICTIMS** move to another federative entity in the Mexican Republic, medical care shall be provided in the new place of residence by the ISSSTE or related program offering comparable care.

The **MEXICAN STATE** shall be obliged to provide medical or psychological care to **THE VICTIM** or **THE INDIRECT VICTIMS** should they decide to reside, temporarily or permanently, outside the national territory. That shall not, however, preclude a resumption of medical care upon their return to Mexico.

3.5 Work-related Rehabilitation Measure. **THE PARTIES** agree that there has already been full compliance with this measure, given that:

Mr. Alberto Patishtán Gómez's position was reinstated, albeit currently on a seconded basis given his precarious neurological state of health and poor vision, as diagnosed and treated by the National Institute of Neurology and Neurosurgery. The **MEXICAN STATE** commits to preserving this arrangement indefinitely, to avoid his health being affected by physical attendance in a group environment. For his part, the **VICTIM** commits to notifying the Government of the state, once a year, of the diagnosis of his condition.

B. MEASURES OF SATISFACTION.

Clause 3.6. Public act of acknowledgment of responsibility. **THE PARTIES** agree that there has been full compliance with this measures, given that:

On October 31, 2013, the Secretary of the Interior announced at a press conference the granting of the pardon for teacher Alberto Patishtán Gómez because "circumstantial evidence had been found of serious human rights violations, particularly as regards due process."

Clause 3.7. Dissemination of the act of acknowledgment of responsibility. The act was shown on television and published in a number of national-circulation media.

Clause 3.8. Effective investigation. **THE VICTIM** does not want **THE AGREEMENT** to contain an obligation to investigate the facts of the case. Moreover, **THE VICTIM** states that he does not want to take part in any investigations conducted ex officio by the **MEXICAN STATE** in connection with this case.

Nevertheless, the above does not release the **MEXICAN STATE** from its obligations under Mexican law, the American Convention on Human Rights, and the Inter-American Convention to Prevent and Punish Torture, in respect of diligent investigation of the crime of torture. That being so, investigations of this case shall be carried out outside the framework of **THE AGREEMENT**, heeding at all times the best interest of **THE VICTIM** and avoiding any kind of re-victimization of **THE VICTIMS**.

C. NON-REPETITION GUARANTEES.

Clause 3.9. Regarding **non-repetition guarantees**, The **MEXICAN STATE** has notified **THE VICTIM** of the human rights training plans scheduled for law enforcement and justice administration personnel regarding the observance of intervention protocols for ensuring respect for human rights and **THE VICTIM** states his entire satisfaction in that regard.

D. COMPENSATION MEASURES

Clause 3.10. As regards financial compensation, **THE PARTIES** acknowledge that Mr. Alberto Patshán Gómez has already received compensation from the **MEXICAN STATE** to his entire satisfaction for material and immaterial damages. Accordingly, **THE PARTIES** recognize that this measure has been fully implemented to their entire satisfaction, as they consider it fair and in line with national and international human rights standards.

For that reason, on November 22, 2017, **THE VICTIM** gave the **MEXICAN STATE** the most complete certificate of settlement contemplated under Mexican law, as usually practiced under domestic law, and signed that document as agreed to by **THE PARTIES**, while stating that for security reasons and at the request of one of **THE PARTIES**, the sum paid would not be disclosed.

THE PARTIES recognize that there has been full compliance with this measure.

E. RESTITUTION MEASURE

Clause 3.11. As a **restitution measure**, Mr. Alberto Patshán Gómez was released immediately when the decree was issued at its own initiative by the Federal Executive Branch, at the same time as Article 97 bis of the Federal Criminal Code was amended to allow for the presidential pardon. In addition, in order to restore his status prior to the human rights violations, his position as a teacher was reinstated and he was promoted to the rank of indigenous teacher.

THE PARTIES recognize that there has been full compliance with this measure.

IV. CONFIDENTIALITY

Clause 4.1. CONFIDENTIALITY. Disclosure of **THE AGREEMENT** shall be subject to the provisions of the General Law on Transparency and Access to Public Information, the Federal Law on Transparency and Access to Public Information, and the General Law on the Protection of Personal Data in the possession of persons bound by the obligation to keep them confidential (*sujetos obligados*).

THE PARTIES commit to complying with the provisions of the General Law on Transparency and Access to Public Information, the Federal Law on Transparency and Access to Public Information, and its enabling regulations.

In addition, in order to comply fully with the purpose of the present Friendly Settlement Agreement, and in the event that **THE PARTIES** should gain access to personal data for which the counterparty is responsible, they hereby commit to: (i) process those personal data solely for the enactment of the Friendly Settlement Agreement; (ii) refrain from using the personal data for purposes other than those indicated by the other Party; (iii) put in place the security measures envisaged in the Federal Law on the Protection of Personal Data in the Possession of Private Individuals, the General Law on Transparency and Access to Public Information, the Federal Law on Transparency and Access to Public Information, their enabling regulations, and other applicable provisions; (iv) to keep the personal data they handle confidential; (v)

to delete the personal data processed once the Friendly Settlement Agreement expires; and
(vi) refrain from transferring personal data.

Should any of **THE PARTIES** become aware of personal data other than those referred to in the foregoing paragraph, in records, databases or any other medium pertaining to the other Party, both **PARTIES** hereby commit to abide by the provisions regarding them contained in the Federal Law on the Protection of Personal Data in the Possession of Private Individuals, the General Law on Transparency and Access to Public Information, and the Federal Law on Transparency and Access to Public Information, as the case may be, as well as privacy indications in each of them, assuming that the persons to which said personal data refer have not granted consent to their disclosure.

The present document constitutes part of the right to the Truth of **THE VICTIMS** and of society.

V. TERMINATION OF THE AGREEMENT AND ADVANCE COMPLIANCE WITH OBLIGATIONS

Clause 5.1. TERMINATION DUE TO COMPLIANCE WITH THE PURPOSE OF THE AGREEMENT. **THE AGREEMENT** shall be considered terminated once it has fulfilled its purpose and the reparation measures in favor of **THE VICTIM** envisaged in it have been implemented by the **MEXICAN STATE**.

VI. APPLICABLE LAW, INTERPRETATION, AND CONFLICT RESOLUTION

Clause 6.1. APPLICABLE LAW. Any disputes that may arise regarding compliance with **THE AGREEMENT** shall be addressed in accordance with Article 48.f of the American Convention and Article 40 of the Rules of Procedure of the Inter-American Commission on Human Rights. The rights and obligations of **THE PARTIES** under **THE AGREEMENT** shall be governed by the American Convention, the Rules of Procedure of the Inter-American Commission on Human Rights, and the wording of the clauses in **THE AGREEMENT**.

Clause 6.2. INTERPRETATION OF THE AGREEMENT. **THE PARTIES** agree that to resolve any conflict that may arise regarding the interpretation and/or implementation of **THE AGREEMENT**, heed shall be paid, first, to the literal meaning of the terms of **THE AGREEMENT**; second, in the event that the wording of the terms of **THE AGREEMENT** turns out to be ambiguous or manifestly unreasonable, preference shall be given to the interpretation that best protects the rights of **THE VICTIM** and conforms to the appropriate and pro-person principles of interpretation set forth in the CPEUM.

THE PARTIES agree to hold half-yearly meetings to monitor the agreements reached and to clarify any possible difference of interpretation that may arise regarding them.

Clause 6.3. SETTLEMENT OF DISPUTES. **THE PARTIES** agree that, if a dispute arises regarding the interpretation or implementation of **THE AGREEMENT**, they shall be obliged to engage in good faith in effective negotiations to settle their dispute. By signing the present document, **THE PARTIES** expressly waive any other dispute settlement channel there may be under domestic or international law. Specifically, they renounce any proceedings that may derive from the lodging of petition **P-1119-10 ALBERTO PATISHTÁN GÓMEZ** with the IACRH.

VII. APPROVAL OF THE AGREEMENT AND ARCHIVING OF THE PETITION

Clause 7.1. JOINT REQUEST TO THE IACRH. Pursuant to Article 40.5 of the Rules of Procedure of the IACRH, **THE PARTIES** shall request that the IACRH issue an approval report

in the period of sessions following the present Friendly Settlement Agreement, confirming full compliance with **THE AGREEMENT**.

Pursuant to Article 48 of the Rules of Procedure of the IACHR, **THE PARTIES** shall ask the IACHR to certify full compliance with **THE AGREEMENT**, and to archive petition **P-1119-10**, given that the matter was addressed internally and there was full compliance with **THE AGREEMENT**.

VIII. ENTRY INTO FORCE

Clause 8.1. ENTRY INTO FORCE. **THE AGREEMENT** shall enter into force once all **THE PARTIES** have signed it, indicating when it shall expire.

Having read THE AGREEMENT and being aware of the scope and legal content thereof, **THE PARTIES** sign it in the margin and at the bottom of six originals in Mexico City, on June 20, 2018.

IV. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

15. The IACHR reiterates that, under Articles 48(1)(f) and 49 of the Convention, this procedure has the objective of "reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in this Convention." The State's agreement to participate in this procedure is a manifestation of its good faith intention to comply with the purposes and objectives of the Convention based on the principle of *pacta sunt servanda*, under which States must in good faith honor the obligations they enter into in treaties.⁴ The IACHR also wishes to point out that, with the friendly settlement procedure provided for in the Convention, individual cases can be settled in a non-contentious manner. In cases involving a number of countries, the friendly settlement procedure has proven to be a useful vehicle that both parties can utilize to arrive at a solution.

16. The Commission greatly values the efforts that both parties made during negotiations to reach this settlement, which is compatible with the object and purpose of the Convention.

17. As established in the friendly settlement agreement, the Parties have jointly asked the Commission to adopt the report contemplated in Article 49 of the American Convention.

18. The IACHR notes that given the information thus far provided by the Parties and their request to the Commission for approval of the FSA, it is incumbent upon it to assess compliance with the commitments undertaken in the friendly settlement agreement.

19. The Inter-American Commission appreciates declarative clause 2.1 acknowledging the international responsibility of the Mexican State for violating the rights upheld in Articles 8 (judicial guarantees) and 25 (judicial protection) of the American Convention on Human Rights, to the detriment of Mr. Alberto Patishtán Gómez, and articles 14, 16, and 20 of the Political Constitution of the United Mexican States to the detriment of the victim and members of his family.

20. As regards Clause 3.2 of the agreement, regarding comprehensive health care, on October 9, 2018 the State reported that, since October 4, 2012, Mr. Alberto Patishtán Gómez has on several occasions received preferential and specialized care in medical institutions, accrediting "satisfactory progress by the patient, with half-yearly tumor control and bodily function evaluations." In addition, the State confirmed that it will continue to provide medical care to Mr. Alberto Patishtán Gómez. Taking the aforementioned information into consideration, as well as the FSA of September 11, 2018, in which the Parties jointly certified compliance

⁴ Vienna Convention on the Law of Treaties, United Nations 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.

with this item in the agreement, the Commission declares full compliance with Clause 3.2 of the friendly settlement agreement.

21. Regarding paragraph 3.3 of the agreement on the health care plan, the agreement certifies that the medical care provided by the State, through the National Institute of Neurology and Neurosurgery, to meet Mr. Alberto Patishtán's needs, is guaranteed and complies fully with the agreement. The Parties also state that Mr. Alberto Patishtán Gómez's next of kin are affiliated to the ISSSTE, guaranteeing them access to health care. The State will continue to provide the health care required, even if it has to be provided by institutions far from the victims' homes, and shall defray travel expenses and per diem allowances, as long as those services are provided in Mexico and are not available in their places of residence. Based on the above information, the Commission considers that in this aspect of the agreement the State has achieved full compliance and hereby places that on record.

22. Concerning item 3.5 of the agreement, regarding work-related rehabilitation, the agreement notes the reactivation of Mr. Alberto Patishtán's position, although currently on a seconded basis given his precarious neurological state of health and poor vision, as diagnosed and treated by the National Institute of Neurology and Neurosurgery. The State committed to preserving this arrangement indefinitely, to avoid his health being affected. Mr. Patishtán committed to conveying a yearly diagnosis of his health condition to the government of the state. Taking the aforementioned information into consideration, as well as the FSA of September 11, 2018, in which the Parties jointly certified compliance with this item in the agreement, the Commission declares full compliance with Clause 3.5 of the friendly settlement agreement.

23. As regards Clauses 3.6 and 3.7 of the agreement, regarding the public act of acknowledgment of responsibility and the dissemination thereof, the Parties reported that on October 31, 2013, the Secretary of the Interior announced at a press conference the granting of the presidential pardon for the teacher Alberto Patishtán Gómez because "circumstantial evidence had been found of serious human rights violations, particularly as regards due process." The act was also shown on television and published in a number of national-circulation media. Taking the aforementioned information into consideration, as well as the FSA of September 11, 2018, in which the Parties jointly certified compliance with this item in the agreement, the Commission declares full compliance with Clauses 3.6 and 3.7 of the friendly settlement agreement.

24. The Commission further appreciates the statement made in Clause 3.8 regarding effective investigation, whereby, even though the Parties do not want a measure of that kind to form part of the FSA, the State indicated that it will continue investigations outside the FSA framework and will re-victimizing Mr. Alberto Patishtán.

25. The Commission appreciates declarative Clause 3.9 of the agreement, regarding non-repetition guarantees. According to the friendly settlement agreement, the State notified Mr. Alberto Patishtán of the human rights training plans scheduled for law enforcement and justice administration personnel regarding the observance of intervention protocols for ensuring respect for human rights. As the agreement itself points out, Mr. Alberto Patishtán said he was fully satisfied with that.

26. With respect to the financial compensation clause, the State reported that Mr. Alberto Patishtán had received compensation and had acknowledged it as full compensation for material and immaterial damages. In addition, on November 22, 2017, the Parties signed a document stating that for security reasons and at the request of one of the Parties the amount paid was not being disclosed. Taking the aforementioned information into consideration, as well as the FSA of September 11, 2018, in which the Parties jointly certified compliance with this item in the agreement, the Commission declares full compliance with Clause 3.10 of the friendly settlement agreement.

27. Finally, as regards paragraph 3.11 of the Agreement, on restitution, the Parties stated that Mr. Alberto Patishtán Gómez was released immediately when the decree was issued at its own initiative by the Federal Executive Branch, at the same time as Article 97 bis of the Federal Criminal Code was amended to allow for the presidential pardon. In addition, in order to restore his status prior to the human rights violations, as the agreement signed by the Parties points out, his position as a teacher was reinstated and he was promoted

to the rank of indigenous teacher. Taking the aforementioned information into consideration, as well as the FSA of September 11, 2018, in which the Parties jointly certified compliance with this item in the agreement, the Commission declares full compliance with Clause 3.11 of the friendly settlement agreement.

28. In a communication dated November 8, 2018, Mr. Alberto Patishtán Gómez's representative said that he had no observations to make regarding compliance with the FSA.

29. For the above reasons, the IACtHR considers that clauses 2.1 and 3 (1, 4, 8, 9) of the friendly settlement agreement are of declarative nature and places on record that there was full compliance with Clause 3 of the FSA on implementation of reparation measures (2, 3, 5, 6, 7, 10, and 11). The Commission considers the rest of the agreement declaratory and places that on record.

30. In light of the above, the IACtHR concludes that there has been full compliance with the friendly settlement agreement.

V. CONCLUSIONS

31. 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.

32. 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 that the Parties signed on September 11, 2018.
2. To declare full compliance with Clause 3 (2, 3, 5, 6, 7, 10, and 11) of the friendly settlement agreement on reparation measures based on the analysis contained in this report.
3. To make the present 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 30th day of April, 2019. (Signed) Esmeralda E. Arosemena Bernal de Troitiño, President; Antonia Urrejola, Second Vice-President; Francisco José Egüiguren, Margarete May Macaulay, Luis Ernesto Vargas and Flávia Piovesan, Members of the Commission.