

REPORT No. 164/10¹
CASE 12.623
FRIENDLY SETTLEMENT
LUIS REY GARCÍA VILLAGRÁN
MEXICO
November 1, 2010

I. SUMMARY

1. On June 3, 2003, the Inter-American Commission on Human Rights (hereinafter, "Inter-American Commission," "Commission," or "IACHR") received a petition lodged by Martha Martínez de la Fuente—wife of Luis Rey García Villagrán—against the United Mexican States (hereinafter, "State," "Mexican State," or "Mexico"). On February 14, 2007, the Fray Bartolomé de las Casas Center for Human Rights, A.C., joined the case in process as co-petitioner. The petition alleges the responsibility of the State for the alleged illegal detention of Luis Rey García Villagrán in Tapachula, Chiapas, the alleged acts of torture he reportedly suffered at the hands of agents of the State, the lack of investigation of the matter, and irregularities during the criminal trial brought against him.

2. The petitioners affirmed that the Mexican State violated the rights protected in Article 5 (right to humane treatment), 7 (right to personal liberty), 8 (fair trial), and 25 (right to judicial protection) of the American Convention on Human Rights (hereinafter, "Convention" or "American Convention"), in relation to Article 1(1) of the same international instrument. They further alleged that Mexico was responsible for purported violations of Articles 8 and 10 of the Inter-American Convention to Prevent and Punish Torture (hereinafter, "Convention against Torture"). For its part, Mexico maintained that the detention of Mr. Villagrán García was duly justified and that it was carried out in accordance with the law, and indicated that the criminal case pursued against him was handled in accordance with the requirements under the Convention. The State further affirmed that the alleged acts of torture and abuse had been investigated as part of a prior inquiry into the crime of "abuse of authority" and that, based on evidence not having been obtained to order the arrest of those allegedly responsible, the investigation had ended.

3. On July 23, 2007, the IACHR adopted its Admissibility Report No. 49/07 and declared the petition admissible with respect to alleged violations of Articles 5, 7, 8, and 25 of the American Convention, in relation to Article 1(1) of the same international instrument, and with respect to Articles 8 and 10 of the Convention against Torture.

4. On November 3, 2009, the parties signed a friendly settlement proposal, establishing the specific commitments to be fulfilled by the State. Subsequently, on December 22, 2009, they signed a new agreement in which Mexico assumed additional obligations. On December 23, 2009, the parties certified that the commitments made by the State had been fulfilled and requested that this case be considered closed.

5. In accordance with the provisions of Article 49 of the Convention and Article 40.5 of the Commission's Rules of Procedure, this friendly settlement report provides a summary of the facts alleged by the petitioners and the friendly settlement that was reached. Having examined that commitments adopted by the parties comply with the Convention, and having examined the progress made with regard to their fulfillment, the Commission decides to notify the parties, make this report public, and include it in the Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

¹ In accordance with the provisions of Article 17.2 of the Commission's Rules of Procedure, Commissioner José de Jesús Orozco, of Mexican nationality, did not participate in the deliberations or the decision-making in this case.

6. On July 23, 2007, the Commission adopted its Admissibility Report No. 49/07, declared the petition admissible in relation to alleged violations of the rights protected in Articles 5, 7, 8, and 25 of the American Convention, in conjunction with Article (1)1 of the same international instrument, and with respect to Articles 8 and 10 of the Convention against Torture. On September 24, 2007, the IACHR gave notice of the report to the parties and made itself available to them to reach a friendly settlement of the matter, in accordance with the provisions of Article 48 of the American Convention and Article 38.4 of its Rules of Procedure in effect at the time.

7. Subsequently, information was received from the petitioners on the following dates: November 29, 2007; January 5, April 7, April 21, and November 13, 2008; and January 11, March 25, and June 15, 2010. These were duly forwarded to the State.

8. For its part, Mexico submitted observations on December 17, 2007; May 30, 2008; March 6 and October 13, 2009; and March 26 and June 15, 2010. These communications were duly forwarded to the petitioners.

9. On November 4, 2009, during the Commission's 137th regular period of sessions, a working meeting was held with both parties present. On that occasion, the Commission was informed about progress made in the friendly negotiation, and documentation was provided.

- **Friendly Negotiation Process**

10. The petitioners expressed their wish to submit this case to a friendly settlement on November 29, 2007. For its part, the State communicated its willingness to initiate a friendly settlement procedure on December 17, 2007. Documents received subsequently report on the negotiations maintained between the parties.

11. On November 3, 2009, in the city of Washington, D.C., the parties signed a friendly settlement proposal, establishing specific commitments to be fulfilled by the State. Then, on December 22, 2009, in the city of Tuxtla Gutiérrez, state of Chiapas—through the "Working memorandum on follow-up and fulfillment of the friendly settlement proposal between the Mexican State [and] the petitioners with respect to Case 12.623 involving Mr. Luis Rey García Villagrán, which is pending before the Inter-American Commission on Human Rights"—the parties agreed to additional obligations for the State and referred to measures that had already been adopted.

12. Lastly, on December 23, 2009—in the "Working memorandum on fulfillment of the friendly settlement proposal between the Mexican State and the petitioners in Case 12.623 involving Mr. Luis Rey García Villagrán, which is pending before the Inter-American Commission on Human Rights"—the parties verified that the friendly settlement proposal they had signed had been fulfilled and asked that the case be considered closed.

III. THE FACTS

13. The petitioners alleged that Luis Rey García Villagrán was illegally detained by agents of the Mexican State and tortured. They also complained that in the detention centers in which he was held from that point on, he was repeatedly kept in solitary confinement, that he was subjected to abuse, and that he was transferred to detention centers far away from his family's place of residence, apparently as punishment for his protests. In addition, they maintained that violations of due process guarantees were committed in the criminal proceedings brought against him and that the acts of torture to which he allegedly was submitted were not investigated by the Mexican authorities.

14. The petitioners indicated in particular that on July 3, 1997, at 11:30 a.m., Mr. García Villagrán was detained by judicial police officers in the city of Tapachula, Chiapas, for allegedly committing the crime of unlawful deprivation of liberty in the form of abduction or kidnapping (*privación ilegal de persona en su modalidad de plagio o secuestro*) and conspiracy (*asociación delictuosa*). They stated that he was detained without an arrest warrant. They maintained that from that point until 11 p.m.

the next day—when he was turned over to the Public Prosecutor's Office (*Ministerio Público*) in the city of Tuxtla Gutiérrez, located some five or six hours away from where he was arrested—Mr. García Villagrán had remained incommunicado and had been beaten indiscriminately and systematically on different parts of his body and submitted to psychological torture (consisting of threats to kill him or make him disappear). They alleged that he subsequently remained incommunicado and was subjected to torture until July 6, 1997, when he was brought before a judicial authority. They stated that as a result of the beatings he received, he lost his vision in his right eye, having suffered from a detached retina.²

15. The petitioners indicated that 80% of the findings in the preliminary investigation carried out against him were altered with white correction fluid and that some signatures were falsified. They also indicated that the confession that Luis Rey García Villagrán was said to have made during his "supposed statement" to the Public Prosecutor's Office—on July 5, 1997—was allegedly obtained under torture and without him having any legal assistance (either official or private). They indicated that, despite his having denounced the acts of aggression and torture committed against him to the judge of first instance, on September 5, 2002, Mr. García Villagrán was convicted of the crime of unlawful deprivation of liberty in the form of abduction or kidnapping, and sentenced to 38 years in prison and a fine, a judgment that was upheld—following appeal and *amparo* proceedings—by the First Collegiate Regional Criminal Court, Zone 2, in Tapachula, on September 4, 2003.³ The petitioners further maintained that the judicial authorities who handed down the convictions of Mr. García Villagrán had not acted impartially or in accordance with the law, that the defender appointed to help him during the conduct of the case had left him defenseless, and that procedural irregularities were committed during the conduct of the criminal case.

16. On another matter, they alleged that Mr. García Villagrán had been subject to abuse in the various prison facilities in which he was held and that he had not been given adequate medical care. They also alleged that on repeated occasions he was held in solitary confinement—sanctions purportedly motivated by his acts of protest—and that, as an act of repression and punishment for the repeated complaints he lodged with national and international human rights organizations about the situation in Chiapas prisons, he was transferred to various detention facilities located at great distances from where his family lived, on grounds of the "supposed level of danger" he represented.⁴ The petitioners stated that multiple complaints related to the aforementioned transfers, the solitary confinement sanctions, and the prison detention conditions were filed with the State Human Rights Commission (CEDH) of the state of Chiapas and the National Human Rights Commission (CNDH).⁵

17. They further stated that writs of *amparo* were filed in response to the transfer decisions as well as to the solitary confinement sanctions imposed against Mr. García Villagrán, but that these were unsuccessful, given that the decisions issued in his favor were not carried out by the relevant authorities, or that there were procedural irregularities in the processing of the decisions.

18. With respect to his alleged illegal detention and the acts of torture to which Luis Rey García Villagrán had been victim, the petitioners indicated that: 1) a complaint was lodged with the Chiapas State Attorney General's Office over the arrest, torture, and abuse of authority, which named the agents of the state Judicial Police who were involved in his arrest, but that this had been unsuccessful; ii) on July 4, 1997, a complaint was lodged with the CEDH, which—through Recommendation 68/2003—concluded that the arrest had been illegal, that acts of physical and moral violence had been committed

² With respect to this matter, they reported that Mr. Villagrán García had undergone surgery on his right eye prior to his arrest and that the healing process was underway.

³ With respect to this matter, they indicated that the aforementioned decision was issued the same day the court in question received the file of the case.

⁴ The petitioners specified three transfers of this nature, the last one being the transfer to Federal Social Re-adaptation Center No. 3, located in Matamoros, Tamaulipas, approximately 1,700 kilometers from his family's place of residence.

⁵ They stated in particular that, as a result of one of these complaints, on June 25, 2003, the CEDH issued its Recommendation 40/2003, establishing the existence of human rights violations based on the transfer to which Mr. García Villagrán was subject on November 13, 2002.

against Mr. García Villagrán, and that he had been held for a prolonged period of time before being turned over to the Office of the Public Prosecutor; and iii) that in the Amnesty International report "Mexico: Unfair Trials: Unsafe Conditions," Mr. García Villagrán's situation was analyzed as one of the representative cases showing the generalized, systematic use of torture in that country.

IV. FRIENDLY SETTLEMENT

19. On November 3, 2009, the parties agreed to a "Friendly Settlement Proposal" in the following terms:⁶

Case 12.623, which is pending before the Inter-American Commission on Human Rights, lodged by Mrs. Martha Martínez de la Fuente on behalf of her husband, Luis Rey García Villagrán.

In the city of Washington, D.C., United States of America; being gathered at the "Fray Bartolomé de las Casas" Human Rights Center, A.C., it being the hour of 11 a.m. on the third day of November, 2009; there being present Mr. Pedro Raúl López Hernández, the Chiapas state Special Prosecutor for the Protection of Nongovernmental Organizations for the Defense of Human Rights, Mr. Juan Valverde Galindo of the Human Rights Department of the Secretariat of Government, Mr. Ricardo Lagunes Gasca and Rubén Moreno Méndez, representatives of the [sic] this Human Rights Center; the aforementioned, in order to establish the bases and agreements of the CONCILIATION PROPOSAL, to answer and resolve Case 12.623, which is pending before the Inter-American Commission on Human Rights, lodged by Mrs. Martha Martínez de la Fuente on behalf of her husband, Luis Rey García Villagrán; hereby gathered, [the matter] is discharged in the following manner:

BACKGROUND

The Inter-American Commission on Human Rights decided, in July 2007, to admit the petition lodged by Mrs. Martha Martínez de la Fuente on behalf of her husband, Luis Rey García Villagrán.

The wife of Mr. García Villagrán expressed her intention to enter into a friendly settlement proceeding in the case, for which she submitted a draft with minimum requirements, in which she requests the complete release of the person she represents; reparation for damages; and the establishment of non-repetition measures.

Based on the foregoing, the following are established:

AGREEMENTS

First. The Mexican State, through the Government of the State of Chiapas, on October 28, 2009, asked Mr. José Patricio Patiño Arias, Deputy Secretary of the Prison System of the Secretariat of Public Security, for the transfer of Mr. Luis Rey García Villagrán, who is being held in Federal Center for Social Re-adaptation Number Three, located in Matamoros, Tamaulipas, to State Center for the Social Reintegration of the Convicted Number 3, located in the city of Tapachula, Chiapas. This is established in the document consisting of one page that is attached to this agreement.

Second. The petitioners establish the commitment that as of the moment Mr. Luis Rey García Villagrán is transferred to State Center for the Social Reintegration of the Convicted Number 3, located in the city of Tapachula, Chiapas, he will conduct himself in a way that is proper, correct, and disciplined, respecting and following the internal regulations of that prison.

Third. The Mexican State, through the Government of the State of Chiapas, agrees that once Mr. Luis Rey García Villagrán is transferred to State Center for the Social Reintegration of the Convicted Number 3, located in the city of Tapachula, Chiapas, it will take the relevant steps for his case file to be submitted to the Reconciliation Board of the Chiapas State Government for a

⁶ The document was signed by Ricardo Lagunes Gasca and Rubén Moreno Méndez, on behalf of the alleged victims, and by the State of Chiapas Special Prosecutor for the Protection of Nongovernmental Organizations for the Defense of Human Rights, Juan Valverde Galindo, on behalf of the Chiapas state government.

decision, so that it can study and analyze the criminal procedure that was followed and bring it in line with guarantees of legal and judicial security.

Fourth. The Mexican State, through the Government of the State of Chiapas, agrees that at the same time the State Government Reconciliation Board is studying and analyzing the case, in the event that this has a favorable outcome for Mr. Luis Rey García Villagrán, the State Government, by mutual agreement with the petitioners, shall establish the mechanisms and conditions for reparations for damages.

The parties agree that this Conciliation Agreement shall be submitted to the Inter-American Commission on Human Rights for its ratification, and determine that once the agreement has been fulfilled, the aforesaid international body shall be informed, so as to bring to a close the proceedings in Case 12.623, lodged by Mrs. Martha Martínez de la Fuente on behalf of her husband, Luis Rey García Villagrán.

The parties manifest that if this conciliation agreement is not fulfilled, they will assume that this alternate friendly settlement is not possible, and they will return to their initial positions established before the Inter-American Commission on Human Rights.

It being the hour of 11:00 a.m. on the third day of November, 2009, this working memorandum is concluded, with those participating signing below, in the city of Washington, D.C., United States of America.

20. On December 22, 2009, the parties signed the "Working memorandum on follow-up and fulfillment of the friendly settlement proposal between the Mexican State [and] the petitioners with respect to Case 12.623 involving Mr. Luis Rey García Villagrán, which is pending before the Inter-American Commission on Human Rights," in the following terms:

In the city of Tuxtla Gutiérrez, Chiapas; it being the hour of 8:00 p.m. on Tuesday, the twenty-second of December of two thousand nine, gathered at the Office of the Special Prosecutor for the Protection of Nongovernmental Organizations for the Defense of Human Rights, and there being present the citizens Mr. Antonio Gamboa López, General Coordinator of Advisers of State Government, and Pedro Raúl López Hernández, State of Chiapas Special Prosecutor for the Protection of Nongovernmental Organizations for the Defense of Human Rights, the citizen Luis Rey García Villagrán, in his capacity as victim, and the citizen Mr. Diego Cadenas Gordillo, Director of the Fray Bartolomé de las Casas Human Rights Center, A.C., for the purpose of following up on the FRIENDLY SETTLEMENT PROPOSAL submitted to and ratified before the Inter-American Commission on Human Rights in the "Working Meeting" held on the fourth day of November of this year, in the city of Washington, D.C., United States of America; based on which this memorandum proceeds as follows:

BACKGROUND

[...]

Based on the referenced background and following up on the aforementioned memorandum [of November 3, 2009], the following agreements are established:

FIRST: Mr. Luis Rey García Villagrán states that on the ninth of December of this year at 6:00 a.m., he was transferred to State Center for Social Reintegration of the Convicted Number 3, located in the city of Tapachula, Chiapas, from Federal Center for Social Re-adaptation Number Three, located in Matamoros, Tamaulipas.

SECOND: On December 22 of this year, Mr. Luis Rey García Villagrán was released through the application of the Law of Suspension of Conviction [*ley de Sentencia Suspendida*].

THIRD: Mr. Juan José Sabines Guerrero, Constitutional Governor of the State of Chiapas, on behalf of the Mexican State, during a public event held in the "Enrique Robles Domínguez" Auditorium of the Supreme Court of Justice of the State of Chiapas, publicly acknowledged the following:

"...the Mexican State, through the government of Chiapas, accepts and recognizes that Mr. Luis Rey García Villagrán, at the time of the events, which was in 1997, was tortured and illegally deprived of his liberty by the then State Judicial Police, and was submitted to an improper legal process, for which he is asked for pardon, and it is recognized that he was not involved in the acts for which he was incriminated."

With the foregoing, the petitioners and Mr. Luis Rey García Villagrán consider the clarification of facts and public apology to be partially fulfilled, given that still to be unfulfilled is for said clarification and public apology to be published the [sic] national circulation newspaper "La Jornada," as well as in the local newspapers "Cuarto Poder" and "El Orbe."

In addition, still pending is that which is relative to reparation for damages, which is agreed to in the following terms:

1. HEALTH:

Psychological and psychiatric care.

Medical care: Ophthalmological, traumatological, and any others that may be necessary.

The foregoing based on the understanding that Mr. Luis Rey García Villagrán was tortured and arbitrarily deprived of his liberty, which caused damage to his psychological and physical health, it thus being necessary, and is so accepted by the Mexican State, that any treatments, medications, and if necessary surgeries, shall be paid for by the state [sic], for which on this occasion the representatives of the Government of the State of Chiapas undertake to give Mr. Luis Rey García Villagrán, during the first two weeks of next year, the sum of 500,000 pesos in national currency.

2. LOST EARNINGS:

On this occasion, the representatives of the Government of the State of Chiapas undertake to give Mr. Luis Rey García Villagrán, during the first two weeks of next year, the sum of \$1,000,000 (one million pesos in national currency) for income that he was unable to earn during the 12 years and 5 months that he was arbitrarily deprived of his liberty.

3. LIFE PROJECT:

In order for Mr. Luis Rey García Villagrán and his family to be able to resume their life and have an honest way to support themselves in the future, on this occasion the representatives of the Government of the State of Chiapas undertake to give Mr. Luis Rey García Villagrán, during the first two weeks of next year, the sum of \$1,000,000 (one million pesos in national currency) to cover the costs of installing a serigraphy workshop and a legal-accounting office.

The parties agree that as soon as the terms of this memorandum are fulfilled in their entirety, this will be made known to the Inter-American Commission on Human Rights so that once the Mexican State, through the Government of the State of Chiapas, has provided accreditation and ratification to that International Body, Case 12,623, lodged by Mrs. Martha Martínez de la Fuente and the Fray Bartolomé de las Casas Human Rights Center, A.C., would be deemed closed and this file would be archived completely.

It being 9:30 p.m. on the twenty-second day of December of the year two thousand nine, this working memorandum is closed, with those who participated signing below.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

21. 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 consent to pursue this avenue is evidence of its good faith to honor the Convention's purposes and objectives, based on the principle of *pacta sunt servanda*, by which States must act in good faith to carry out the obligations they assume in treaties. The Commission also wishes to reiterate that the friendly settlement procedure provided for in the Convention makes it possible to conclude individual cases in a non-contentious manner and has proven, in cases related to various countries, to offer an important and effective vehicle for settlement that can be used by both parties.

22. In general terms, the IACHR observes that both Mexico and the petitioners recognized that the State had fully complied with the commitments it had assumed in the friendly negotiation process and asked that this case be considered closed.⁷

23. Specifically, the IACHR received information with respect to each of the steps undertaken by the State toward that end. Along these lines, it is noted in the file that on December 9, 2009, Mr. García Villagrán was transferred to State Center for Social Reintegration of the Convicted Number 3, in the city of Tapachula, Chiapas, where his family lives, and that subsequently, on December 22 of that same year, he regained his freedom.

24. In addition, on December 22, 2009, the public act of "clarification of the facts and public apology" took place. On that occasion, the Governor of Chiapas, Lic. Juan José Sabines Guerrero, acting on behalf of the Mexican State, acknowledged that Mr. García Villagrán had been tortured and illegally deprived of his liberty by the State Judicial Police in 1997 and submitted to an "improper" legal process, and he offered public apologies.

⁷ According to the "Working memorandum on fulfillment of the friendly settlement proposal between the Mexican State and the petitioners in Case 12.623 involving Mr. Luis Rey García Villagrán, which is pending before the Inter-American Commission on Human Rights"—Memorandum of December 23, 2009. In addition, in their note dated July 15, 2010, the petitioners state that they "consider this case concluded."

25. With respect to the publication of the referenced "clarification of the facts and public apology," the IACHR observes that the parties stated that "the public apologies were disseminated in all the news media, essentially reproducing the content of those apologies" and "[they] acknowledged the wide dissemination through state and national written and electronic media."⁸

26. On another point, the IACHR observes that the payment of the financial compensation the State had committed to pay as reparation for damages was carried out on December 23, 2009.⁹ At that time, the government of the state of Chiapas gave Mr. García Villagrán a check for \$2,500,000 Mexican pesos, covering the total amount of monetary sums established with respect to each of the categories specified in the agreement (Health, Lost Income, and Future Plans).

27. The Inter-American Commission has closely followed the friendly settlement reached in this case as it has unfolded, and greatly appreciates the efforts undertaken by both sides to reach this solution, which is compatible with the object and purpose of the Convention.

28. Nonetheless, the Commission observes that, as the State acknowledged, Mr. García Villagrán was subjected to illegal arrest and acts of torture, and no concrete information has been received from the State with respect to the investigation and punishment of those responsible for such acts. Consistent with jurisprudence in the inter-American system, any time a prosecutable crime has been committed in an official capacity—such as those indicated—the State has the obligation to conduct an effective criminal investigation designed to clarify the facts and determine the applicable responsibilities.¹⁰

VI. CONCLUSIONS

29. Based on the foregoing considerations and by virtue of the procedures established in Articles 48(1)(f) and 49 of the American Convention, the Commission would like to reiterate its deep appreciation for the efforts carried out by the parties and its satisfaction over the achievement of the friendly settlement agreement in this case, based on the object and purpose of the American Convention.

⁸ Memorandum of December 23, 2009. In addition, the petitioners indicated in a note dated July 15, 2010, that "the particulars of the case" were disseminated in national and state media outlets. For its part, the State forwarded, as annexes to the communication dated July 15, 2010, copies of various news reports that referred to the release of Luis Rey García Villagrán and the public act of apology.

⁹ Memorandum of December 23, 2009, and petitioners' note of June 15, 2010.

¹⁰ In its Admissibility Report 49/07, the IACHR established that internal remedies had been exhausted in relation to the complaint lodged by Mr. García Villagrán regarding "abuse and acts of torture allegedly committed by police officers when arresting García Villagrán in order to force a confession from him." This taking into account, among other factors, that the judicial authority decided to disallow an arrest warrant against the accused based on "the lack of evidence," a decision confirmed by the appeal court.

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

THE INTER-AMERICAN CONVENTION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreements that the parties signed on November 3 and December 22, 2009.
2. To deem these agreements fulfilled.
3. To continue to follow up on the steps taken by the State to investigate and punish the State agents responsible for the illegal detention and torture of Mr. Luis Rey García Villagrán.
4. To publish this report and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 1st. Day of the month of November 2010.
(Signed): Felipe González, President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Silvia Guillén, and Rodrigo Escobar Gil, members of the Commission