

REPORT No. 1/12
CASE 11.422
FRIENDLY SETTLEMENT
MARIO ALIOTO LÓPEZ SÁNCHEZ
GUATEMALA
January 26, 2012

I. SUMMARY

1. On November 16, 1994, the Center for Legal Action on Human Rights, CALDH, (hereinafter, the “petitioners”), lodged a petition with the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission”, the “Commission” or the “IACHR”) alleging that the State of Guatemala (hereinafter “Guatemala”, the “State” or the “Guatemalan State”) bore international responsibility for state agents’ alleged unlawful detention, torture and murder of Mario Alioto López Sánchez, a student at the Universidad de San Carlos de Guatemala during a November 11, 1994 demonstration at that university.

2. The petitioners alleged that the Guatemalan State had violated the rights protected under articles 4 (right to life) and 5 (right to humane treatment) of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”), read in conjunction with Article 1(1) thereof. For its part, in its early communications the State maintained that the petition was inadmissible, arguing that the remedies under domestic law had not been exhausted since the investigations aimed at identifying and prosecuting those responsible had, as of early 1995, just gotten underway.

3. This friendly settlement report, as established in Article 49 of the Convention and Article 40(5) of the Commission’s Rules of Procedure, sets forth the facts alleged by the petitioners and reproduces the friendly settlement agreement that the relatives of Mario Alioto López Sánchez, their representatives, and the State of Guatemala signed on October 19, 2011. In this report, the Commission approves the settlement agreement signed by the parties and decides to publish this report in the Commission’s Annual Report to the General Assembly of the Organization of American States (OAS).

II. PROCESSING WITH THE COMMISSION

4. The petition was received on November 16, 1994, and was registered as Case No. 11.422. The petitioners supplied additional information on November 24 and December 13, 1994, and on June 6, 1995. These communications were duly forwarded to the State.

5. The State’s response was received on December 19, 1994. It supplied additional information on the following dates: February 15, April 18 and July 10, 1995. Those communications were duly forwarded to the petitioners.

6. In processing this case, various hearings and working meetings between the parties were held during the IACHR’s sessions. At one hearing during the Commission’s 88th session, held in February 1995, the State requested that the case be declared inadmissible, alleging that the remedies under domestic law had not been exhausted.

7. During another hearing, this one held on October 10, 1996 throughout the Commission’s 93rd session, the Guatemalan State agreed to provide assistance to the son of Mario Alioto López Sánchez and reported on the progress of the case within the judicial system. On December 27, 1996, the State sent the Commission the corresponding humanitarian assistance proposal, which the petitioners agreed to. For their part, on January 13, 1997, the petitioners reported that it was their intention to arrive at a friendly settlement.

8. On February 19, 2002, the IACHR placed itself at the disposal of the parties to reach a friendly settlement of the matter, in accordance with Article 48 of the American Convention and Article 38(4) of the Commission's Rules of Procedure in force at that time.

9. On August 4, 2004, the petitioners signaled their willingness to participate in the friendly settlement process and, on October 6, 2005, sent the IACHR a copy of their proposal for a friendly settlement. They also informed the Commission that in June 2005 their proposal had been submitted to the Presidential Steering Committee for Executive Branch Policy on Human Rights (COPREDEH), and observed that the Committee had not yet issued any statement on the matter.

10. During a working meeting during the Commission's 125th session in July 2006, the parties reported on the status of the court cases and the humanitarian assistance provided to the child who was the victim's son because of the child's delicate health condition.

11. By a communication dated October 28, 2011, the petitioners reported that at COPREDEH headquarters on October 19, 2011, the parties had signed a friendly settlement agreement spelling out the specific commitments that the State was to honor. In that same communication, the petitioners asked the Commission: a) to regard their communication as notification of fact that a friendly settlement agreement had been signed; b) to approve and, in due course, make public the report on the settlement reached in the instant case; c) once the friendly settlement report is published, to supervise compliance with the settlement; d) to supervise compliance with each of the commitments set out in the agreement and include it in the annual report to the OAS General Assembly; and e) not to include in its friendly settlement report any information pertaining to the names of the beneficiaries and the amounts agreed upon in the friendly settlement as monetary compensation.¹

12. By a note dated November 30, 2011, the State observed that it had embarked upon the friendly settlement process pursuant to the National Human Rights Policy conducted by COPREDEH and in effect since 2007. The State commented that the National Human Rights Policy had been approved by Government Agreement 552-2007, whose guidelines state, *inter alia*, that the "Government shall continue to foster friendly settlements by way of the Inter-American Commission on Human Rights; this mechanism combines the efforts of the victims' representatives, those of the State's investigative agencies and those of the Inter-American Commission to solve certain especially serious cases and to redress the harm that the human rights violations have caused." In its note, the State added that given the Guatemalan State's international responsibility in the present case and following a series of working meetings held with the next of kin and their legal representatives, the parties had reached agreement on the measures of moral reparation and monetary compensation, with the result that the friendly settlement agreement in Case 11,422, Mario Alioto López Sánchez, was signed at COPREDEH headquarters on October 19, 2011. In that same note, the State wrote that inasmuch as the friendly settlement agreement had been signed, it would respectfully request, pursuant to Article 40(5) of the Commission's Rules of Procedure, that the Honorable Commission supervise compliance with the terms of the agreement the parties had reached, make public the IACHR's eventual report and include it in the Commission's Annual Report to the OAS General Assembly.

- **Precautionary measures**

13. In the petition lodged on November 16, 1994, the petitioners had requested precautionary measures from the IACHR to safeguard the life and physical integrity of the members of Mario Alioto López Sánchez' family and the students who were members of the Universidad de San Carlos Student Association (AEU). The Commission had granted precautionary measures on November 17, 1994.

III. BRIEF SUMMARY OF THE FACTS REPORTED

¹ The petitioners asked the IACHR to keep that information confidential out of concern for the safety of the beneficiaries of the reparations, given the security situation in the area and in the country as a whole.

14. The petitioners alleged that on November 11, 1994, Mario Alioto López Sánchez, a law student at the Universidad de San Carlos de Guatemala, was with a group of students protesting the increase in urban bus fares authorized by the Guatemala City Government. The protest march was blocking traffic on Avenida Petapa. The petitioners reported that approximately 100 members of the National Police Rapid Response Contingent [Fuerzas de Reacción Inmediata – FRI] attempted to disperse the students by hurling tear-gas bombs, firing their weapons and beating the students. A number of the students attempted to escape, but approximately 23 were detained, among them Mario Alioto López Sánchez, who had sustained a gunshot wound to the left thigh. The petitioners stated that Mario Alioto López Sánchez was also beaten by police at the time of his apprehension.

15. The petitioners alleged that although Mario Alioto was hemorrhaging from the gunshot wound, he did not receive immediate medical attention. He was not taken to the National Hospital until approximately two hours after being taken into custody, and died the following day as a result of the hemorrhage, and from thoracic and cranial trauma. At the time of his death, Mario Alioto López Sánchez had a newborn son who was just 27 days old.

16. As for the judicial proceedings in the domestic courts, on November 9, 1995 the Public Prosecutor's Office asked the Second Criminal Court of First Instance for Criminal Matters, Drug Trafficking and Environmental Crimes of the Department of Guatemala to commence proceedings for the murder of Mario Alioto López Sánchez and for lesser injuries inflicted upon two other students, and to formally indict then Interior Minister Danilo Parinello Blanco; Vice Interior Minister Mario Alfredo Mérida Escobar; the Chief of the National Police Force Salvador Estuardo Figueroa, and two members of the National Police Force's special anti-riot squad "Rapid Response Contingent" (FRI), Carlos Enrique Sánchez Gómez and Carlos Venancio Escobar Fernández.

17. On July 30, 1997, the Third Sentencing Court for Criminal Matters, Drug Trafficking and Environmental Crimes sentenced Danilo Parinello Blanco, Mario Alfredo Mérida Escobar, Salvador Estuardo Figueroa and Carlos Enrique Sánchez Gómez to ten years for the felony murder [*homicidio preterintencional*] of Mario Alioto López Sánchez, and for battery committed against students Julio Alberto Vásque Méndez and Hugo Leonel Cabrera, resulting in less serious bodily injury. Carlos Venancio Escobar Fernández was sentenced to 30 years in prison as the material author of the felony murder of Mario Alioto López Sánchez and for the less serious bodily injuries sustained by two other students.

18. On appeal, the ruling was partially overturned, the first four defendants were acquitted, and Escobar Fernández' sentence was reduced to 10 years in prison

IV. FRIENDLY SETTLEMENT

19. On October 19, 2011, the parties signed the “Friendly Settlement Agreement.” The following is the text of the agreement. At the express request of the petitioners and relatives of Mario Alioto López Sánchez, any information pertaining to the names of the beneficiaries and the amounts agreed as monetary compensation has been omitted.

Friendly Settlement Agreement in Case 11.422 Mario Alioto López Sánchez

I

Persons appearing and the will of the parties

Appearing for the Guatemalan State is **Dora Ruth del Valle Cóbar**, age fifty (50), a single Guatemalan female and a political scientist residing in this country. Her means of identification is identity booklet category B dash two (B-2), registration number eleven thousand nine hundred forty-nine (11,949), issued by the Municipal Mayor of San Lucas, department of Sacatepéquez. She is serving in her capacity as Chair of the Presidential Steering Committee for Executive Branch Policy on Human Rights (COPREDEH), certified by Government Appointment Decision number forty-eight (48) of the thirtieth day of January in the year two thousand eight and the record of swearing-in number seven dash two thousand eight (7-2008) of the thirty-first day of January in the year two thousand eight, on file in record book number thirty-eight thousand seven hundred sixty-two (38762) of COPREDEH, authorized by the Office of the Comptroller General of Accounts; **María Elena de Jesús Rodríguez López**, age forty-three (43), a married Guatemalan female, attorney and notary residing in this country. Her means of identification is identity booklet category M dash 13 (M-13), registration number one thousand five hundred sixty-nine (1569), issued by the Municipal Mayor of Malacatancito, department of Huehuetenango, who is serving in her capacity as Coordinator of the Department for Follow up of International Human Rights Cases, under COPREDEH, and Special Agent with Powers of Representation in Court by virtue of the authority vested in her by the Attorney General of the Nation, as stated in public writ number one hundred sixty-nine (169) authorized in Guatemala City on the twenty-sixth day of May in the year two thousand ten by the Clerk of the High Court and of Government and registered as number one (1) of power of attorney one hundred ninety-six thousand seven hundred sixteen dash E (196716-E) in the database of powers of attorney in the General File of Protocols of the Supreme Court of Justice and writ of amplification; appearing for the petitioner [...] and **Hugo Rene Morales Díaz**, whose means of identification is identity booklet category A dash one (A-1), registration number fifty-six thousand three hundred twenty-four (56,324), issued by the Municipal Mayor of Amatitlán, department of Guatemala, serving in his capacity as legal counsel and representative of the petitioners for follow-up of the cases that the Center for Legal Action in Human Rights –CALDH– represents with the Inter-American Commission on Human Rights, as certified by the affidavit issued by the Executive Director of CALDH on the twenty-fourth (24) day of March in the year two thousand eleven (2011). These are the persons appearing in this proceeding to sign the Friendly Settlement Agreement in case 11.422 Mario Alioto López Sánchez.

II

Background

On November 11, 1994, Mario Alioto López Sánchez was one of a group of students at the Universidad de San Carlos de Guatemala who were protesting the urban bus fare increase that the Guatemala City government had authorized. The protest march was blocking traffic on Avenida Petapa.

A group of some 100 members of the Rapid Response Contingent [*Fuerza de Reacción Inmediata – FRI*] attempted to disperse the students by hurling tear-gas bombs, firing their weapons and beating the students.

A number of students attempted to flee, and approximately 23 of them were detained, among them Mario Alioto López Sánchez, who sustained a bullet wound to the left thigh and was beaten by the police when he was apprehended.

Although Mario Alioto was hemorrhaging from the bullet wound, he did not receive immediate medical attention. He was not taken to the National Hospital until approximately two hours after being taken into custody, and died the following day as a result of the hemorrhage, and from thoracic and cranial trauma.

On November 14, 1994, the Center for Legal Action in Human Rights (hereinafter CALDH) requested precautionary measures to protect the life and physical safety of members of the family of Mario Alioto López Sánchez and the students who were members of the Student Association of the Universidad de San Carlos de Guatemala –AEU–.

On December 17, 1994, CALDH lodged a petition with the Inter-American Commission on Human Rights (hereinafter the Commission or the IACHR), in which it alleged violations of articles 4 and 5 of the American Convention on Human Rights, read in conjunction with Article 1(1) thereof. It also reiterated some of its requests for protective measures for the victim's family and other persons associated with the case.

On February 19, 2002, the IACHR, in keeping with Article 48(1)(f) of the American Convention on Human Rights, placed itself at the disposal of the parties with a view to reaching a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention.

III

The Guatemalan State's Policy, Its Acknowledgment of International Responsibility and the Legal Basis for the Present Agreement

On behalf of the Guatemalan State, the Chair of COPREDEH hereby acknowledges to the Honorable Inter-American Commission on Human Rights that the State bears international responsibility for violations of human rights. This acknowledgement is without prejudice to any individual responsibility that may be established at the domestic level for the commission of acts against Mario Alioto López Sánchez and violations of his human rights, as set forth in the provisions of the American Convention on Human Rights, specifically the right to life (Article 4), the right to humane treatment (Article 5), freedom of association (Article 16), the right to judicial protection (Article 25), and the obligation to respect the rights recognized in the American Convention on Human Rights (Article 1(1)).

IV

Commitments That Follow from the State's Acknowledgement of International Responsibility

1. The State's Acknowledgement of Its International Responsibility and Admission of the Facts

The Guatemalan State acknowledges the international responsibility it has incurred by virtue of the direct involvement of State agents in the perpetration of acts committed against Mario Alioto López Sánchez and violations of his human rights, as set forth in the provisions of the American Convention on Human Rights, specifically the right to life (Article 4), the right to humane treatment (Article 5), freedom of association (Article 16), the right to judicial protection (Article 25), and the obligation to respect the rights recognized in the American Convention on Human Rights (Article 1(1)).

The main purpose to be served by complying with the commitments undertaken in this Agreement is to achieve national reconciliation through a quest for the truth and to see that justice is served in those cases where the truth can be ascertained and justice done; to honor the victim and his next of kin; to provide the assistance or reparations owed by virtue of the violation alleged, and to strengthen the international system for promotion and protection of human rights.

2. Private Apology

a) The Guatemalan State pledges to hold a private ceremony, with high-ranking officials from the Ministry of the Interior and the Chair of the Presidential Steering Committee for Executive Branch Policy on Human Rights (COPREDEH) in attendance. At that ceremony it will acknowledge its international responsibility for the human rights violations committed against Mario Alioto López

Sánchez and will deliver a letter signed by the President of the Republic of Guatemala in which he asks pardon of the victim's family for the harm done.

The parties hereby agree that the ceremony will be held within the three months following the date on which the present agreement is signed.

b) The parties agree that the private ceremony will take place at the premises now home to the Ministry of the Interior; the precise date, program and time of the ceremony shall be determined in due course.

c) At the specific request of the victim's relatives, the State pledges not to disclose the information contained in the present Agreement; accordingly, the parties shall also ask the Honorable Inter-American Commission on Human Rights that at the appropriate time, it acknowledge the State's compliance with the commitments undertaken in the present case, without disclosing the details.

3. Measures to pay tribute to the memory of the victim

d) The State pledges to place and unveil a commemorative plaque in memory of the victim at the residence [...]; the material for and content of the plaque shall be determined by agreement with his relatives.

e) The State pledges to make arrangements with the Universidad de San Carlos de Guatemala, to obtain books and videos documenting the history of Mario Alioto López Sánchez' struggle, which will be turned over to the victim's relatives for preservation.

4. Economic Reparations

a) The State recognizes that acknowledging international responsibility for violation of the victim's human rights protected under the American Convention on Human Rights, implies a responsibility to pay just compensation to the petitioners according to the criteria that the parties mutually agree upon and the parameters established by domestic and international law.

The State, through COPREDEH and in accordance with the actuarial study prepared by an expert on April 27, 2011, pledges to pay monetary compensation for a [...] which breaks down as follows:

Compensation for pecuniary damages: - <i>Lucrum Cessans</i> - <i>Damnum Emergens</i>	[...] [...]
Compensation for non-pecuniary (moral) damages:	[...]
Total Compensation	[...]

[...]

5. Investigation, trial and punishment of the guilty parties

The Guatemalan State pledges to pursue, through the appropriate institutions, the investigation, prosecution and punishment of those persons against whom criminal proceedings have been instituted and who stand accused in the death of Mario Alioto López Sánchez; it also pledges to pursue the present case in the Justice Promotion Committee [*Comité de Impulso*].

The Guatemalan State pledges to convene the Justice Promotion Committee [*Comité de Impulso*] every four months for the purpose of submitting a report on the progress made in the investigation. That report will be forwarded to the Inter-American Commission on Human Rights, to the legal representatives in the case, and to the victim's relatives.

V Acceptance

For her part, the petitioner [...], states her acceptance of the monetary compensation and moral reparations set out in this agreement; as the Guatemalan State complies with each of its

commitments, she pledges to regard the commitment as fully discharged and settled; she further pledges that she will claim no further monetary compensation in connection with this case. The reparations agreed upon before the Honorable Inter-American Commission on Human Rights shall be the only ones required of the State. The exceptions are the cases currently being heard in the domestic courts, whose purpose is to have the courts perform their constitutional function and administer justice.

VI Interpretation

The meaning and scope of this Friendly Settlement Agreement shall be interpreted in accordance with articles 29 and 30 of the American Convention on Human Rights, wherever pertinent and in keeping with the principle of good faith. In case of doubt or disagreement between the parties as to the content of this Friendly Settlement Agreement, the Inter-American Commission on Human Rights shall decide how the agreement is to be interpreted.

VII Notification to the Inter-American Commission on Human Rights

Under the specified terms, the parties pledge, individually and separately, to notify the Inter-American Commission on Human Rights of the commitments contained in the settlement agreement and how those commitments are to be fulfilled. Further, the Inter-American Commission on Human Rights is being asked to continue supervising compliance with the agreement that the parties agree to this day and include it in its annual report to the General Assembly of the Organization of American States (OAS).

VIII Deadlines

The parties shall later agree upon the deadline by which the Guatemalan State must comply with the pecuniary damages.

Extensions of the pre-established deadlines shall only be permissible if the parties mutually agree, once a justified cause, a situation of *force majeure* or unforeseen circumstance has been shown.

IX Legal Basis

The basis of the agreement being signed is respect for the human rights recognized in the American Convention on Human Rights and other international instruments ratified by Guatemala and the fundamental principles set forth in the Constitution of the Republic of Guatemala.

Guatemala, October 19, 2011.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

20. The IACHR reiterates that in accordance with Articles 48(1)(f) and 49 of the Convention, the objective of this procedure is to “reach a friendly settlement of the matter on the basis of respect for the human rights recognized in the Convention.” The agreement to conduct this procedure is an expression of the State’s willingness to fulfill the purposes and objectives of the Convention in good faith, by virtue of the principle of *pacta sunt servanda*, under which States must comply with the obligations undertaken in treaties in good faith. The Commission also wishes to reiterate that the friendly settlement procedure enshrined in the Convention allows individual cases to be concluded in a non-contentious manner and, in different cases in different countries, has proven to be an important and effective means of settlement that can be used by both parties.

21. The Inter-American Commission has followed closely the development of the friendly settlement reached in this case. The Commission greatly appreciates the efforts of the parties to reach this agreement. The IACHR especially welcomes the fact that in the agreement the parties signed on October 19, 2011, the Guatemalan State acknowledged its international responsibility, incurred as a result of the direct involvement of agents of the State in the perpetration of acts committed against Mario Alioto López Sánchez and violations of his human rights as set forth in the provisions of the American Convention on Human Rights, specifically with respect to articles 4 (right to life), 5 (right to humane treatment), 16 (freedom of association), 25 (right to judicial protection) and 1(1) (obligation to respect and ensure the Convention-protected rights).

22. It attributes great value to the reparations measures the State agreed to and the commitments it undertook with respect to justice.

23. On January 17, 2012, the State reported that on November 18, 2011, in a commemorative ceremony, the Guatemalan State acknowledged its responsibility and asked pardon of the family of Mario Alioto López Sánchez. It also reported that the amounts agreed upon as monetary reparations owed to each beneficiary were paid in full on December 28, 2011; and that on December 20, 2011, a ceremony was held to unveil the commemorative plaque honoring Mario Alioto López Sánchez.

24. The IACHR appreciates the measures that the State is taking to comply with the friendly settlement agreement and, at the appropriate time, will evaluate the information that the parties provide in order to issue its finding with respect to the points that it deems have been fulfilled.

25. The Commission reiterates that it greatly appreciates the efforts made by the parties in arriving at this settlement and declares that the settlement agreement is compatible with the objective and purpose of the Convention.

VI. CONCLUSIONS

26. Based on the foregoing considerations and by virtue of the procedure provided for in articles 48(1)(f) and 49 of the American Convention, the Commission must again underscore its deep appreciation for the efforts made by the parties and is gratified that a friendly settlement agreement was reached in this case, based on the objective and purpose of the American Convention.

27. Given the observations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**DECIDES:**

1. To approve the terms of the agreement that the parties signed on October 19, 2011.
2. To urge the State to take the measures necessary to comply with the pending commitments.
3. To continue to supervise compliance with each and every point of the agreement signed, and to that end, remind the parties of their pledge to periodically inform the IACHR concerning compliance with the agreement.
4. To make the present report public and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 26th day of the month of January 2012.
(Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Felipe González, Rosa María Ortiz, Rose-Marie Antoine, Tracy Robinson, Miembros de la Comisión.