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Institution: Inter-American Commission on Human Rights  
File Number(s): Report No. 49/08; Petition 261-04  
Session: Hundred Thirty-Second Regular Session (17 – 25 July 2008)  
Title/Style of Cause: Ricardo Ucan Seca v. Mexico  
Doc. Type: Decision  
Decided by: Chairman: Paolo Carozza;  
First Vice-Chairwoman: Luz Patricia Mejia Guerrero;  
Second Vice-Chairman: Felipe Gonzalez;  
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich.  
Dated: 24 July 2008  
Citation: Ucan Seca v. Mexico, Petition 261-04, Inter-Am. C.H.R., Report No. 49/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)  
Represented by: APPLICANT: the Indignation Organization for the Promotion and Defense of Human Rights  
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## I. SUMMARY

1. On March 31, 2004, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission" or "the IACHR") received an application from Mr. Ricardo Ucan Seca (hereinafter "the alleged victim") and the Indignation Organization for the Promotion and Defense of Human Rights [Organización Indignación Promoción y Defensa de los Derechos Humanos] (hereinafter "the petitioners") against the State of Mexico (hereinafter "the State" or "the Mexican State"). The application alleges that the State violated Articles 5, 8 and 25, in connection with Article 1(1), of the American Convention on Human Rights (hereinafter "the Convention" or the "American Convention") during the criminal proceedings instituted against Ricardo Ucan Seca, an indigenous Mayan, by failing to provide him with an effective technical defense and an interpreter to defend himself and make himself understood in his language. They also allege State liability under Convention 169 of the International Labor Organization on indigenous and tribal peoples in independent countries (hereinafter "Convention 169") as well as under Article 14(3)(f) of the International Covenant on Civil and Political Rights.

2. Concerning admissibility, the petitioners argue that domestic remedies were exhausted with the ruling by the First Collegiate Tribunal for the Fourteenth Circuit of the State of Yucatan that denied an application for constitutional protection, as notified on October 1, 2004.

3. The State, for its part, disputes the admissibility of the petition, arguing that under Article 47 of the American Convention and Article 34 of the Commission's Rules of Procedure, the

petition is groundless because it describes no events that may be characterized as a violation of rights protected by the Convention. Contending that the petitioners seek to have the Commission act as a fourth instance, the State asks for a finding of inadmissibility.

4. After reviewing the petition and without prejudging the merits of the matter, the IACHR concludes, in keeping with Articles 46 and 47 of the American Convention and Articles 30, 37 and corresponding provisions of its Rules of Procedure, that it has jurisdiction to hear the petition as regards the alleged violation of Mr. Ricardo Ucán Seca's rights under Articles 8.2 and 25 of the American Convention in connection with Article 1(1) thereof. In line with the *iure novit curia* principle, moreover, the Commission concludes that the petition is admissible with respect to the alleged violation of Article 24 of the Convention in connection with Article 1(1) thereof. The Commission finds the petition inadmissible with respect to the alleged violation of Article 5 of the American Convention. The Commission further decides to so notify the parties and to publish this decision in its Annual Report.

## II. PROCESSING BEFORE THE COMMISSION

5. The application was received on March 31, 2004, and assigned the number P-261-04. On January 26, 2005, the IACHR conveyed it to the State of Mexico, asking for comments within two months.

6. On April 28, 2005, the State filed its answer, and on May 27, 2005, it provided attachments to complete its response. On July 18, 2005, the IACHR conveyed to the petitioners the information supplied by the State and gave them one month to comment. On September 6, 2005, they did so, and on June 19, 2006, they provided additional information.

7. On April 16, 2007, the IACHR asked the parties for more information. In a note dated March 13, 2007, received on April 17, 2007, the petitioners provided additional information.

8. On April 26, 2007, the petitioners responded to the IACHR's request for more information. On May 10, 2007, the IACHR conveyed the relevant portions of that information to the State, asking it to comment within one month.

9. On June 15, 2007, the State replied to the IACHR's request for information. This reply was conveyed to the petitioners on June 27, 2007, giving them one month to comment.

10. On July 30, 2007, the petitioners filed their comments, and on August 20, 2007, the IACHR conveyed to the State the relevant portions of those comments.

11. In a note dated August 24, 2007, the State asked for an extension to file comments. On August 30, 2007, the IACHR granted the State an additional 15 days, and on September 17, 2007, the State filed its comments.

## III. POSITION OF THE PARTIES

### A. Position of the petitioners

12. According to the petitioners, Mr. Ricardo Ucán Seca is a member of the Mayan indigenous community and lived in the Community of Akil, located within the municipality of Akil, Department of Yucatan,[FN1] with his family, consisting of his wife and his seven children. Mr. Ucán devoted his time to taking care of his family, making handicrafts and farming his land, the main source of his material and spiritual life. He lived peaceably in his community until he began to have problems with his sister over ownership of the land.

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[FN1] According to the petitioners, 59% of the population of the State of Yucatan is part of the Indigenous Maya People. In the municipality of Akil, official data show, 97.7% of the inhabitants are Maya who live according to their cultural traditions and use their mother tongue, that is to say, the Mayan language.

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13. On June 5, 2000, Mr. Ricardo Ucán went to work as usual and found that his nephew Víctor Manuel Chay and Mr. Bernardino Chan Ek were sowing on his land. Upon seeing them, he asked them to leave his land, as they were, according to him, trespassing. After making that request, Mr. Ucán left, believing that the two men would also depart. However, hours later, Mr. Ucán returned with his wife, Donaciana Chan, and three of his daughters and saw that Mr. Víctor Manuel Chay and Mr. Bernardino Chan were still working on his land.

14. Upon seeing Ricardo Ucán with his family, the petitioners say, Bernardino Chan aimed his gun at them, whereupon Ricardo Ucán, fearing for the life of his wife and his three daughters, took his own rifle and, without meaning to, fired on Bernardino Chan, killing him. Ucán and his family then went back to their house to await his arrest by the police. Hours later, Ucán was arrested by the police and criminally charged with killing Bernardino Chan Ek.

15. Regarding the criminal trial, the petitioners say that the police arrested Mr. Ucán on the same day of the events. Police officer Alex Octavio Tapias took Mr. Ucán to the judicial police building rather than bringing him immediately before an official of the Public Prosecutor's Office. The police officer questioned him about the events without Mr. Ucán having a translator or a lawyer to assist him. When confronting police officer Tapias in court, Mr. Ucán reported to the trial judge that the officer had "slapped" him twice when arresting him.

16. The police officer, the petitioners say, unlawfully held Mr. Ricardo Ucán in detention, exceeding a reasonable period of time, rather than immediately placing him at the disposal of the prosecutor. Mr. Ucán was turned over at 6 p.m. on June 5, 2000, to the Twelfth Unit of the prosecutor's office, where the initial inquiry 406/12/00 was registered.

17. On June 5, 2000, Mr. Ucán gave his first statement to an official of the Public Prosecutor's Office. Even though he said in response to specific questions that he "understands and speaks little Spanish,"[FN2] the officials did not assign him a translator so that he could communicate in his native Mayan. This statement made before the prosecutor, the petitioners point out, is particularly important in the Mexican criminal-law system because, under the principle of procedural immediacy, it takes precedence over subsequent statements.

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[FN2] See initial petition received on March 31, 2004.

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18. On June 8, 2000, during the preliminary hearing before the judge for civil, criminal and family matters of the Second Judicial Department of the State of Yucatan, officials did not procure a translator to assist Mr. Ucán, even though they had before them his first statement in which he stated that he speaks and understands little Spanish. The absence of a translator is evident not only in this hearing but throughout the trial of Mr. Ricardo Ucán. This placed him in a position of defenselessness and at a disadvantage in terms of communication. It was essential for him to have at his disposal a person who could explain in the Mayan language the charges against him, so that he could properly defend himself in his language and refute the accusation.

19. Ricardo Ucán's wife, Donaciana Chan, and his daughter V́ctoria Ucán, testified before the trial judge on September 26, 2000, having been arrested as a result of the injury allegedly suffered by V́ctor Manuel Chay. The judge, the petitioners maintain, did not question Donaciana Chan and V́ctoria Ucán about the events or about Mr. Ucán's self-defense. During her testimony Donaciana Chan was not provided with a translator either, despite the fact she speaks only one language.[FN3]

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[FN3] It may be noted that Donaciana Chan and V́ctoria Ucán were detained as from September 25, 2000, at the Readaptation Center of the Reclusorio Sur facility in Tekax, Yucatan. On September 28, 2000, the Civil, Criminal and Family Court of the Second Judicial Department of the State, Tekax, Yucatan, ruled that the legal action against Donaciana Chan and V́ctoria Ucan had lapsed.

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20. Regarding the technical defense of Mr. Ricardo Ucán, the petitioners indicate that once the matter was in the hands of the public prosecutor on June 5, 2000, one of the first steps taken was to assign Mr. Ucán a public defender who was not an attorney and did not perform effectively, inasmuch as she did not offer the proper evidence to show that he had shot Bernardino Chan Ek in self-defense. In addition, she failed to attend a number of proceedings in which the defender's presence was critical. Taken as a whole, the petitioners contend, the omissions incurred by the State-appointed public defender and the trial judge with respect to Mr. Ricardo Ucán's due process rights resulted in his conviction of the crime of aggravated murder.

21. For that crime, on June 12, 2001, the judge for civil, criminal, and family matters of the Second Judicial Department of the State of Yucatan sentenced Mr. Ricardo Ucán to 22 years in prison and payment of damages.

22. On June 30, 2003, public defender Blanca Isabel Segovia filed an application for constitutional protection based on circumstances she should have raised from the outset, namely, the violations of due process s. On October 1, 2003, the First Collegiate Tribunal of the Fourteenth Circuit of the State of Yucatan denied the application.[FN4]

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[FN4] According to the petitioners, this ruling states; "regarding the argument that Ricardo Ucán speaks and understands little Spanish and does not know how to read or write because he is an indigenous person, and was nevertheless not provided with an interpreter, it should be noted that although it is possible that he speaks Mayan--inasmuch as this may be inferred from the statement made by the accuser Chay Ucan during the witness confrontation that it was in Mayan that the defendant told his wife and daughters to attack him--the record does not show that he belongs to an indigenous community with clearly specified customs, which renders his argument invalid." See the ruling on Application for Constitutional Protection No. 380/2003 by the First Collegiate Tribunal of the Fourteenth Circuit, p. 67, cited by the petitioners in their brief of June 19, 2006.  
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23. The petitioners add that Mrs. Donaciana Chan filed a complaint with the National Commission on Human Rights of the State of Yucatan (hereinafter "CODHEY") based on the alleged violations of Mr. Ucán Seca's human rights. CODHEY opened an investigation and on November 4, 2003, issued recommendation No.40,[FN5] asking the National Commission on Development of Indigenous Peoples to carry out a sociological and anthropological study of Mr. Ricardo Ucán. This study concluded that Mr. Ricardo Ucán Seca is an indigenous Maya, as are his family members and the rest of the inhabitants of the Akil community, inasmuch as he identifies himself as one and the community so recognizes him.

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[FN5] The National Commission on Human Rights of the State of Yucatan made 15 recommendations. On the need to provide Mr. Ricardo Ucán with an interpreter, it stated:  
SIXTH. It recommends that the State Attorney General document the wrongful conduct of the head of the Twelfth Unit of the Prosecutor's Office in not providing on his own initiative a bilingual translator and defender for the defendant Ricardo Ucán Seca when the latter gave his statement to the prosecutor, bearing in mind that the attitude of that official affected the final conviction of the defendant by the State courts.  
SEVENTH. It recommends that the State Attorney General take disciplinary action under the applicable rules against the head of the Twelfth Unit of the Prosecutor's Office for not providing on his own initiative a bilingual translator and defender to the defendant Ricardo Ucán Seca when he gave his statement to the prosecutor, bearing in mind that this agency has found that omission to be a grave violation of human rights.  
EIGHTH. It recommends that the High Court of Justice of Yucatan instruct the judges of the lower courts about national and international rules and guidelines on the due-process rights of members of indigenous groups. See, National Commission on Human Rights of the State of Yucatan, recommendation No. 40 of November 2003, at [http://www.codhey.org/Rec40\\_2003.htm](http://www.codhey.org/Rec40_2003.htm)  
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24. The sociological study also indicates that Ricardo Ucán's mother tongue is the Mayan language, Spanish being a second acquired language that he knows insufficiently. This, according to the anthropological report, places him at a disadvantage in situations requiring communication beyond everyday activities, and presents problems in his understanding of

technical and scientific language. "His ability to understand in these two areas is minimal and he is generally incapable of handling the interpretive level in the second language." [FN6] The experts, according to the petitioners, said they had sufficient information to conclude that Mr. Ricardo Ucán is a person culturally different from the rest of mestizo society.

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[FN6] See initial petition received by the Executive Secretariat of the Commission on March 31, 2004.

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25. The above circumstances, according to the petitioners, constitute violations of the rights of Ricardo Ucán Seca and his family under Articles 5, 8 and 25 of the American Convention. The State violated due process under Article 8 by providing neither an effective technical defense nor an interpreter to enable Mr. Ucán to communicate in Mayan. Concerning Article 25 they point out that Mexican law lacks an appropriate remedy to protect Ricardo Ucán against these violations. Additionally, regarding Article 5, the petitioners indicate that as a result of the events described, the State caused Ricardo Ucán and his family anguish and frustration in addition to the cruel, inhuman and degrading treatment he received while under arrest.

B. Position of the State

26. The State concurs with the petitioners on the events surrounding the death of Mr. Bernardino Chan. [FN7] Upon his death, the State points out, the Public Prosecutor's Office in Valladolid, which is part of the Attorney General's Office of the State of Yucatan, opened inquiry No. 406-2000 against Ricardo Ucán Seca. The public defender appointed to represent him during his detention was Blanca Isabel Segovia.

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[FN7] According to the State, at approximately 8 a.m. on June 5, 2000, Mr. Ricardo Ucán went to his land near the citrus-growing unit named Kab-be in the locality of Akil. Arriving there, he saw his nephew Víctor Manuel Chay and Mr. Bernardino Chay sowing corn on his land. The State maintains that Mr. Ucán asked them to leave and subsequently left himself; when he returned at about 10 a.m. with his wife and his three daughters Mr. Ucán saw that the two men were still there. He took his rifle, which was loaded with one cartridge, aimed it at Mr. Bernradino Chay, fired and wounded him mortally. According to the State, he then tried to reload the weapon but the cartridge jammed. That was when he asked his wife and daughters to hit Mr. Víctor Manuel Chay, and they did so with pieces of wood. The State indicates that Víctor Manuel Chay managed to escape and call the police.

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27. Following the initial legal procedures, Mr. Ricardo Ucán gave a statement to the Public Prosecutor in Valladolid and indicated, among other things, "that he was Mexican, 42 years of age, that he understood and spoke little Spanish, that he did not know how to read, that he could write some, since he had attended elementary school up to second grade."

28. Regarding the alleged lack of assistance from an interpreter or translator, the State contends that in the course of the preliminary hearing before the trial judge there was no indication or evidence that Mr. Ucán did not understand or speak Spanish. He was very precise in referring to the statement he had given to the Public Prosecutor, which, the State argues, refutes the assertion that he neither spoke nor understood Spanish.

29. The court-appointed defender and the court clerk both spoke Mayan. Furthermore, the State maintains, a report by the Director of the Basic Education Center for Adults in the State Center for Social Rehabilitation where Mr. Ucán is being held, indicated that he took part in an educational program conducted in Spanish and that when he began the course he did understand and speak Spanish, though not very fluently. One requirement for taking part in that educational program, according to the State, is the ability to read and write in Spanish, a requirement which Mr. Ucán met.

30. As to the complaint lodged by Mrs. Donaciana Chan with CODHEY, the State confirmed that on November 4, 2003, CODHEY issued its recommendation No. 40-2003, which asked that the office of the Attorney General of the State of Yucatan (hereinafter the "PGJY") submit a report specifying whether the legal formalities had been complied with during Mr. Ucán's preliminary hearing 406/12/2000. On June 26, 2003, the PGJY replied that preliminary hearing 406/12/2000 had met all formalities established in Article 16 of the Constitution.

31. The PGJY's assertions were conveyed to the National Commission on Human Rights of the State (hereinafter the "CNDH") which, in turn, confirmed the recommendations made by CODHEY. In line with those recommendations, appropriate measures have been taken to guarantee judicial safeguards in dealing with members of indigenous communities.

32. The chief reason for the recommendations addressed to the PGJY, according to the State, is that when appearing before the Public Prosecutor Mr. Ucán said that he understands and speaks little Spanish, which in the view of CODHEY should have prompted the assignment of a Mayan translator to assist him.

33. The State says that CODHEY criticized the judge for civil, criminal and family matters of the Second Judicial Department of the State of Yucatan for failing to properly protect the case files in his custody, inasmuch as it became evident that a public document was altered while he was in charge. Likewise, CODHEY found fault with Mr. Ucán's court-appointed defender, Blanca Isabel Segovia, whose performance was complained of to CODHEY for not providing Mr. Ucán with an effective technical defense.[FN8]

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[FN8] Regarding the recommendations issued by CODHEY about Mr. Ricardo Ucán Seca's attorney, the State reports that on June 21, 2004, the Attorney for the Government of the State of Yucatan lodged with officials of the Ministry a complaint against Blanca Isabel Segovia for probable criminal wrongdoing. The complaint was assigned the number 915-2004. On October 11, 2004, criminal charges were brought against her for probable criminal wrongdoing against the administration of justice and other branches of government, attorneys, principals and litigants. The number of the criminal case is 521-2004.

34. Concerning the charge against the judge for civil, criminal and family matters, Mr. José Teodoro Alonso, the State reports that on March 19, 2004, the State's High Court ruled that he was not guilty of administrative wrongdoing.[FN9] As to the charge against Mrs. Blanca Isabel Segovia, on October 29, 2004, the Fifth Social Defense Court of the First Judicial Department of the State refused to order her arrest over charges of wrongdoing against the administration of justice and other branches of government. This ruling was appealed and upheld by the First Division of the High Court of Justice on March 4, 2005.

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[FN9] Recommendation No. 40 of the National Commission on Human Rights of the State of Yucatan states: "it is undeniable in the present case that there is liability on the part of the civil, criminal and family judge of the Second Judicial Department of the State, first of all for failing to properly guard the records in his custody as it is evident that under his management a public document was altered, affixing the signature of the public defender to the minutes of the statement given by the complainant to the prosecutor; and second, for conducting the whole ensuing trial of Mr. Ucán Seca without procuring a translator to assist him in each and every proceeding that Mr. Ucán took part in, especially since there is no evidence whatever to assume that court officials had sufficient mastery of the Mayan language to use it and understand it, such a circumstance not being ever noted in the record of the proceedings." See, National Commission on Human Rights of the State of Yucatan. Recommendation No. 40 of November 4, 2003.

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35. In its response, the State argues that there is no violation of Article 81 of the American Convention on Human Rights because Mr. Ricardo Ucán's rights were fully protected and he had access to every legal remedy provided by domestic law.

36. The petitioners exhausted all domestic remedies and filed their petition within six months, as stipulated by the American Convention. Nevertheless, the State believes that the petitioners seek to have the Commission review judicial decisions and overturn the criminal conviction of Mr. Ricardo Ucán.

37. The petition is groundless, the State argues, because once the legal errors in the decisions of the local judiciary were detected, they were rectified with the strictest regard for individual rights. Mr. Ricardo Ucán had access to all procedures provided by Mexican law, in none of which was there a finding of a violation of procedural safeguards and due process. Similarly, all recommendations from CODHEY aimed at enforcing judicial safeguards for members of indigenous populations were complied with. Signs were placed in the offices of the Public Prosecutor indicating that indigenous persons who do not speak or understand Spanish have the right to be assisted by an interpreter or translator. In addition, a cooperation and coordination agreement was signed with the PGJY and the General Director of the Institute for Development of the Mayan Culture of the State of Yucatan, so that the Institute may provide translators to members of indigenous communities.

38. Finally, the State maintains that the alleged events do not amount to violations of human rights. Instead, the petitioners seek to have the Commission serve as one more appellate body.

#### IV. ANALYSIS OF ADMISSIBILITY

##### A. Jurisdiction of the Commission *ratione materiae*, *ratione personae*, *ratione temporis* and *ratione loci*

39. Article 44 of the American Convention provides that "Any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party." Consequently, the petitioners have standing to file a petition with the Inter-American Commission and the IACHR has jurisdiction *ratione personae* in this case.

40. The State has been party to the American Convention since March 24, 1981, the date on which it deposited its instrument of ratification. The petitioners allege violations of rights protected by the American Convention. Accordingly, the IACHR has jurisdiction *ratione materiae* in this case.

41. The Inter-American Commission has jurisdiction *ratione loci* because the violations of human rights took place within a State party to the American Convention. Similarly, the Commission has jurisdiction *ratione temporis* because the alleged events are said to have taken place at a time when the obligation to respect and ensure the rights protected in the American Convention was already in force for the Mexican State.[FN10]

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[FN10] Mexico acceded to the American Convention on Human Rights on March 24, 1981.

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42. As to the petitioners' request for a finding that Mexico disregarded Article 14.3 of the International Covenant on Civil and Political Rights and Article 12 of ILO Convention 169, the Commission lacks jurisdiction in that regard, but it may use those legal provisions as guidelines to interpret obligations under the Convention, as provided for by Article 29 and in the principles of the Vienna Convention on the Law of Treaties.

##### B. Other admissibility requirements

###### 1. Exhaustion of internal remedies

43. Under Article 46(1)(a) of the American Convention, for a petition lodged in accordance with Article 44 of the Convention to be admitted by the Commission, the remedies provided by domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. This requirement ensures every state party the opportunity to settle human rights cases within its own system of justice before the case is taken up by an international body.

44. The requirement applies when adequate and effective legal remedies are domestically available to repair the alleged violation. Article 46(2) specifies that the requirement does not apply when domestic law does not afford legal remedies to protect the rights allegedly violated; or when the alleged victim has been denied access to those remedies or has been prevented from exhausting them; or when there has been unwarranted delay in rendering a final judgment pursuant to those remedies. Under Article 31 of the Rules of Procedure of the Commission, when the petitioner claims one of these exceptions, it is incumbent upon the State to show that the internal remedies were not exhausted, unless this is clearly evident from the case file.

45. Under the principles of international law, as reflected in the case law established by the Inter-American Commission and the Inter-American Court, a State may waive invocation of this rule, either tacitly or expressly.[FN11] Secondly, to be timely the objection asserting failure to exhaust the remedies under domestic law must be made during the early stages of the proceedings with the Commission; if not the presumption will be that the interested State has waived its right to enter that objection.[FN12] Thirdly, in keeping with the principle of the burden of proof, the State alleging failure to exhaust must indicate the domestic remedies that have not been exhausted and provide evidence of their effectiveness.[FN13] Consequently, if the State does not present timely arguments on this requirement, it will be regarded as having waived its right to allege the failure to exhaust domestic remedies and therefore the corresponding burden of proof.

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[FN11] IACHR, Report N° 69/05, Petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I/A Court H.R., Case of Ximenes López. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, para. 5; Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, par. 49; and the Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 135.

[FN12] I/A Court H.R., Case of the Mayagna (Sumo) Awas Tingni Community. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53; Castillo Petrucci et al. Case. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 56, and Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para. 40. The Commission and the Court have written that “the first stages of the proceeding” must be understood to mean “the admissibility stage of the proceeding before the Commission, in other words, before any consideration of the merits. [...]” See, for example, IACHR, Report N° 71/05, Petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, citing I/A Court H.R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 81.

[FN13] See IACHR, Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and others afflicted with HIV/AIDS, Guatemala, March 7, 2005, para. 33-35; Inter-American Court, Mayagna (Sumo) Awas Tingni Community. Preliminary Objections, supra note 3, para. 53. Durand y Ugarte. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and Cantoral Benavides. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

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46. In the present case, the petitioners claim to have exhausted the internal remedies, which culminated with a decision by the First Collegiate Tribunal of the Fourteenth Circuit of the State of Yucatan, notice of which was given on October 1, 2004. The State has not disputed those assertions. In light of Article 46 of the Convention and Article 31 of the IACHR's Rules of Procedure, the record of the case, particularly the State's assertion that domestic remedies have been properly exhausted and the absence of any specific information to the contrary, the Commission concludes that the requirement of prior exhaustion has been met.

2. Deadline for lodging a petition

47. Under Article 46(1)(b) of the Convention, for a petition to be admitted it must be lodged within a period of six months from the day the party alleging violation of his rights was notified of the final judgment at the national level. This six-month rule guarantees legal certainty and stability once a decision has been adopted.

48. In this case, the IACHR has established that domestic remedies were exhausted with the decision by the First Collegiate Tribunal of the Fourteenth Circuit of the State of Yucatan, notified on October 1, 2003, and that the petition was filed with the IACHR on March 31, 2004. Therefore, the Commission concludes that this requirement has been met.

3. Duplication of international proceedings

49. Nothing in the case file indicates that this matter has been submitted to or is pending in another international proceeding. Nor is there any indication that it is substantially the same as one previously studied by the Commission. The Commission therefore concludes that the requirements of Articles 46(1)(c) and 47.d of the American Convention have been met.

4. Characterization of the facts

50. The Commission finds that it is not appropriate at this stage of the procedure to decide whether or not the alleged violations of due process took place. For purposes of admissibility, all that the IACHR must decide point is whether the facts alleged, if proven, would amount to violations of the American Convention, as established in Article 47(b) thereof, and whether the petition is "manifestly groundless" or "obviously out of order" under paragraph c. of that Article.

51. The standard to be used for those findings differs from the standard required to decide on the merits. The Commission must make a prima facie assessment and determine whether the petition shows an apparent or potential violation of a right protected by the American Convention, rather than establish the existence of that violation.[FN14] This stage thus calls for a summary analysis that does not prejudice or advance an opinion on the merits. The Commission's own Rules of Procedure, by establishing two different stages for admissibility and substance, reflect this distinction between assessments made to admit a petition and to establish State liability for a violation.[FN15]

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[FN14] See IACHR, Report N° 128/01, Case N° 12367, Herrera y Vargas ("La Nación"), Costa Rica, December 3, 2001, para. 50. See IACHR, Report N° 4/04, Petition 12324, Rubén Luis Godoy, Argentina, February 24, 2004, para. 43. See IACHR, Report No. 33-07, Petition 581-05, Víctor Manuel Ancalaf LLaupe, Chile, May 2, 2007, para. 46.

[FN15] See IACHR, Report N° 31/03, Case 12.195, Mario Alberto Jara Oñate at al., Chile, March 7, 2003, para. 41. See IACHR Report N° 4/04, Petition 12.324, Rubén Luis Godoy, Argentina, February 24, 2004, para. 43 See IACHR, Report No. 33-07, Petition 581-05, Víctor Manuel Ancalaf LLaupe, Chile, May 2, 2007, para. 46.

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52. The Commission's case law clearly establishes that the IACHR has no jurisdiction to review rulings by national courts acting within their purview and applying the proper judicial safeguards. The IACHR may not act as a Court of Appeal to examine alleged errors of law or fact that may have been committed by national courts acting within the limits of their jurisdiction. However, within the limits of its own mandate to guarantee observance of rights protected by the Convention, the IACHR does have the authority to find a petition admissible and rule on its merit if it concerns a national-court decision issued in disregard of due process or if it describes a violation of any other right protected by the American Convention.[FN16]

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[FN16] See IACHR, Report N° 1/03, Case 12221, Jorge Omar Gutiérrez, Argentina, February 20, 2003, para. 46, citing Report N° 39/96, Case N° 1.673, Marzioni, Argentina, October 15, 1996, para. 50-51. See IACHR, Report N° 4/04, Petition 12324, Rubén Luís Godoy, Argentina, February 24, 2004, para. 44.

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53. The State contends that the petition is inadmissible because it describes no events capable of being characterized as a violation of rights protected by the American Convention.

54. Specifically in regard to the prosecution of Mr. Ricardo Ucán Seca, the petitioners maintain that the State should have provided Mr. Ucán with an interpreter in the criminal proceedings. They further assert that there are no simple and effective remedies in the domestic jurisdiction to restore to the alleged victim his violated rights.

55. Considering the arguments and documentation supplied by the parties, as well as the inter-American case law, the petition does not appear to the Commission to be groundless or out of order. The IACHR also takes the view that the petitioners' assertions about the absence of a translator enabling Mr. Ricardo Ucán Seca to make himself understood in the Mayan language during his criminal trial could be characterized prima facie as a violation of his rights under Articles 8(2)(a) and 25 of the American Convention, in connection with Article 1(1) thereof.

56. Furthermore, in view of the documentation provided by the parties and their allegations, the Commission notes that the facts denounced regarding the failure to provide Mr. Ricardo Ucán with a translator at his criminal trial, could be characterized as a violation of Article 24 of the American Convention. Accordingly, pursuant to the principle *iure novit curia*, during the merits stage of the procedure the Commission will examine whether there is a possible violation

of Article 24 of the Convention, in relation to the general obligation to respect and ensure rights under Article 1(1) thereof, inasmuch as this article is implied from the facts in the petition though not explicitly mentioned by the petitioners.

57. Based on the above, the Commission finds that the requirements of Article 47(b) and (c) of the American Convention have been met.

58. The Commission finds the events described in the petition insufficient to characterize a violation of Article 5 of the Convention.

## V. CONCLUSION

59. The IACHR concludes that it has jurisdiction to hear this petition and that the petition meets the admissibility requirements of Articles 46 and 47 of the American Convention and Articles 30, 37 and similar of its Rules of Procedure.

## THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

### DECIDES:

1. To find the present case admissible with respect to the alleged violation of the rights of Ricardo Ucán Seca under Articles 8(2) and 25, in connection with Article 1(1), of the American Convention on Human Rights. In addition, pursuant to the principle *iure novit curia*, the Commission concludes that the petition is admissible with respect to the possible violation of Article 24 of the Convention in connection with Article 1(1) thereof.
2. To find the petition inadmissible with respect to the alleged violation of Article 5 of the American Convention.
3. To send this report to the State and the petitioners.
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed in the city of Washington, D.C., on the 24th day of the month of July, 2008. (Signed: Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission).