

REPORT No. 91/10¹
CASE 12.660
FRIENDLY SETTLEMENT
RICARDO UCÁN SECA
MEXICO
July 15, 2010

I. SUMMARY

1. On March 31, 2004, the Inter-American Commission on Human rights (hereinafter “the Inter-American Commission,” “Commission,” or “IACHR”) received a petition submitted by Mr. Ricardo Ucán Seca, the *Organización Indignación Promoción y Defensa de los Derechos Humanos*, and the National Commission on Human Rights of the State of Yucatan² (hereinafter “the petitioners”) against the State of Mexico (hereinafter the “State,” “Mexican State,” or “Mexico”). The petition alleged responsibility on the part of the Mexican State for alleged irregularities affecting the criminal process against Mr. Ucán Seca, an indigenous Mayan, who was not assisted by an interpreter who would have allowed him to defend himself and make himself understood in his own language and who did not have an effective public defender.

2. The petitioners maintained that Mexico violated rights protected by Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention on Human Rights (hereinafter the “Convention” or the “American Convention”) in connection with Article 1.1 of that same international instrument, to the detriment of Ricardo Ucán Seca. They also alleged international responsibility on the part of the Mexican State for the alleged violation of rights protected by Article 12 of Convention 169 on Indigenous and Tribal Peoples in Independent Countries of the International Labor Organization, and Article 14.3.f of the International Covenant on Civil and Political Rights.

3. For its part, the State asserted that the judicial proceedings instituted against Ricardo Ucán Seca were conducted in accordance with national and international standards of due process. It alleged that the absence of an interpreter did not put him in an indefensible position and that he had an adequate defense. It also maintained that Mr. Ucán Seca had access to all the remedies provided in domestic law and the intent of his petition to the IACHR was to have the actions of domestic judicial authorities reviewed.

4. On July 24, 2008 the IACHR approved Admissibility Report No 49/08 and declared the petition admissible with respect to the alleged violation of rights protected by Articles 8.2 and 25 of the American Convention, in connection with Article 1.1 of the same international instrument. In accordance with the principle of *iure novit curia*, it also declared the petition admissible with respect to the alleged violation of Article 24 of the Convention, in connection with Article 1.1 thereof. It also declared the petition inadmissible with respect to the alleged violation of Article 5 of the Convention.

5. On December 31, 2009, the parties signed a Friendly Settlement Agreement.

6. This friendly settlement report, as established by Article 49 of the Convention and Article 40.5 of the Commission’s Rules of Procedure, summarizes the facts alleged by the petitioners and the

¹ Commissioner José de Jesús Orozco Henríquez, a Mexican national, did not participate in the discussion or the decision of this case, in accordance with Article 17.2.a of the IACHR’s Rules of Procedure.

² On June 19, 2006, the petitioners incorporated as a petitioner the *Red Nacional de Organismos Civiles de Derechos Humanos Todos los Derechos para Todos y Todas*.

friendly settlement reached. Having reviewed the agreement's consistency with the principles of the American Convention, the Commission resolves to notify the parties, make this report public, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE IACHR

7. On July 24, 2008 the IACHR adopted Admissibility Report No. 49/08 and declared the petition admissible with respect to the alleged violations of the rights protected by Articles 8.2 and 25 of the American Convention, in connection with Article 1.1 of the same international instrument; in addition, in accordance with the principle of *iure novit curia*, it also declared the petition admissible with respect to an alleged violation of Article 24 of the Convention, in connection with Article 1.1 of that treaty, and declared it inadmissible with respect to the alleged violation of Article 5 of the Convention. That report was sent to the parties in a communication dated August 4, 2008, in which the IACHR placed itself at the disposal of the parties to reach a friendly settlement of the matter, in accordance with Article 48.1.f of the American Convention and Article 40 of its Rules of Procedure.

8. Subsequently, the IACHR received information from the petitioners on the following dates: October 23 and November 12, 2008; June 30, 2009; and February 11, 2010. Those communications were duly forwarded to the State.

9. For its part, the State sent observations to the IACHR on April 7, 2008 and on November 6 and December 31, 2009. Those communications were duly forwarded to the petitioners.

10. In addition, on November 5, 2009, during the 137th Regular Period of Sessions of the IACHR, a public hearing was held at the Commission's headquarters in Washington, D.C., which was attended by both parties. During that meeting, oral arguments with respect to the merits of the case were presented, as well as other evidence through audiovisual media.

Friendly settlement process

11. On December 31, 2009, the parties signed a friendly settlement agreement. On the same date, the State asked the IACHR that the agreement be signed by the IACHR President at the time, Commissioner Luz Patricia Mejía, or by the Commissioner considered relevant. The document, endorsed by Commissioner Mejía, was again sent to the State and the petitioners through communications dated January 29 and February 2, 2010, respectively.

12. In the agreement, the parties asked that a friendly settlement report be published.

III. THE FACTS

13. The petitioners alleged that Ricardo Ucán Seca, an indigenous Mayan, would have been a victim of violations of his basic human rights during a criminal process conducted against him, because he was not assisted by an interpreter so that he could express himself in his own language and because he did not have an effective public defender.

14. According to the petitioners, Ricardo Ucán Seca belongs to the Mayan people and is a native of the Community of Akil, municipality of Akil, State of Yucatán, where he cared for his family and farmed his land –his principal source of material and spiritual life-. They asserted that at the time of the events, he spoke and understood little Spanish because his native language is Mayan.

15. They reported that on June 5, 2000, while he was working his land as he did every day, land that he had held for many years – and because of which he had disputes with his sister – Mr. Ucán Seca found his nephew, Víctor Manuel Chay Ucán, and Bernardino Chan Ek sowing corn. When he saw them, Ucán Seca asked them to leave and departed, thinking they would do the same. However, when he returned some hours later along with his wife and three of his daughters, Ucán Seca found that they were still working his land.

16. They reported that when Bernardino Chan Ek saw them he pointed at them with his gun. They maintained that given this attitude and motivated by fear that his family would be hurt, Ucán Seca picked up his rifle and, allegedly without intending to do so, shot Chan Ek, leaving him with a wound that caused his death. Later, Ucán Seca, his wife, and three daughters returned home where they waited for the security forces to arrive.

17. They asserted that Mr. Ucán Seca was arrested on the same day by an officer of the State Judicial Police who “slapped” him twice during the procedure. They alleged that, following his arrest, Ucán Seca was held for longer than he should have been before being brought before the Public Prosecutor’s Office. They reported that from that time until the time they filed their petition with the IACHR, Mr. Ucán Seca continued to be deprived of his freedom.

18. They allege that the judicial proceeding was conducted in a manner inconsistent with international standards applicable to this area. In particular, they note the failure to appoint an interpreter to assist Ucán Seca during the initial inquiry and the criminal trial against him, who would have enabled him to express himself adequately, relate his own version of what happened, and understand the questions and interrogation of the Public Prosecutor. They allege that no interpreter was requested by the public defender who assisted Ucán Seca nor was this ordered *ex officio* by the officials participating in the case, despite the initial statement that Ucán Seca made to the Officer of the Public Prosecutor’s Office in which he said he spoke and understood little Spanish. They maintained that this situation put him in an indefensible position and at a disadvantage based on an inability to communicate.

19. In addition, they asserted that the public defender provided by the State did not carry out this role in a timely, diligent, and effective manner. On this subject, they indicate that the public defender appointed by the Public Prosecutor’s Office to assist Ucán Seca was not an attorney and performed passively and negligently during the course of the entire criminal case. In addition, they indicated that the series of omissions she committed – added to the failure to request an interpreter – had resulted in the conviction of Ricardo Ucán Seca.

20. They reported that on June 12, 2001, the judge for civil, criminal, and family matters of the Second Judicial Department of the State of Yucatán declared Ricardo Ucán Seca guilty of the crime of aggravated homicide and sentenced him to 22 years in prison and payment of compensation to the relatives of the deceased. This decision was upheld on February 22, 2002 by the First Chamber of the Superior Tribunal of Justice of the State of Yucatán. They reported that the decision was challenged with the filing of the Application for Direct Constitutional Protection No. 380/2003, which was decided by the First Collegiate Tribunal of the Fourteenth Circuit of the State of Yucatan on September 24, 2003, denying the protection sought and confirming the first instance decision.³

21. In addition, they reported that the facts that led to this petition were submitted to the National Commission on Human Rights of the State of Yucatán (hereinafter “CEDHY”) on July 3, 2002. They maintain that in the context of the investigation conducted as a result, the National Commission on Development of Indigenous Peoples submitted a sociological and anthropological study of Mr. Ucán Seca, in which experts found that Mr. Ucán Seca is an indigenous Mayan, whose mother tongue is Mayan, for whom Spanish was a second language and could not be used in areas beyond everyday activities, making it difficult for him to understand technical and scientific terms.

22. They stated that on November 4, 2003, CEDHY issued its Recommendation 40/2003, establishing, *inter alia*, that in the context of the criminal proceeding against Ucán Seca, his right to be assisted by an interpreter was not respected and he was not provided with an adequate defense. In

³ The petitioners indicated that the appeal was filed by the public defender on July 14, 2003, one year and five months after the issuance of the decision that was the subject of the appeal. In this regard, they question not only the timing of this filing but emphasize that was recently in this instance where the defender argued the alleged violations of due process guarantees that should had been reported before the lower courts, among them the failure to appoint an interpreter to assist Ricardo Ucán Seca.

addition, they reported that the document contained very specific recommendations, some of which had been carried out by Mexican authorities. Nonetheless, they allege that Mr. Ucán Seca's rights have not been reinstated.

23. They asserted that, based on the recommendation from CODHEY, on November 25, 2003 Ricardo Ucán Seca and the *Organización Indignación Promoción y Defensa de los Derechos Humanos* filed a Recognition of Innocence Remedy with the State Superior Tribunal of Justice. They reported that although Mr. Ucán Seca did have the assistance of an interpreter in this proceeding, the competent court denied the appeal through a ruling dated February 9, 2004. This decision was challenged in an Appeal for Indirect Constitutional Protection, which was denied on April 28, 2004 by the Fourth District Judge sitting in Mérida.⁴

24. In conclusion, the petitioners allege that the provisions of the Convention were violated in the context of the process conducted in the domestic courts, to the detriment of Mr. Ricardo Ucán Seca.

IV. FRIENDLY SETTLEMENT

25. On December 31, 2009, the parties signed the following friendly settlement agreement:⁵

Case 12.660 - Ricardo Ucán Seca (Mexico)
Friendly Settlement Agreement

One. This friendly settlement agreement is signed with respect to Case no. 12.660 (Ricardo Ucán Seca), being processed by the Inter-American Commission on Human rights (hereinafter referred to as "the Commission" or "the IACHR") by the United States of Mexico, represented by the Secretariat of Foreign Affairs and the Government of the State of Yucatán, for the first part, and by the petitioners, Mr. Ricardo Ucán Seca, the *Red Nacional de Organismos Civiles de Derechos Humanos Todos los Derechos para Todos y Todas* and *Organización Indignación Promoción y Defensa de los Derechos Humanos* represented respectively by José Miguel Edgar Cortéz and María Cristina Muñoz Menéndez (hereinafter referred to as "the petitioners") for the second part.

The parties enter into this agreement in accordance with Articles 48.1.f and 49 of the American Convention on Human Rights and Article 40 of the IACHR's Rules of Procedure.

Two: the parties indicate their full consent to the commitments for the definitive resolution of case 12.660, as follows:

- a) The Mexican State agrees as of the signing of this agreement to legally consider and, as appropriate, administratively grant the release of Mr. Ricardo Ucán Seca. To this end, the Mexican State, through the Government of Yucatán, shall make the appropriate determinations based on the legal system in effect in the entity and with full respect for the judicial independence of the Superior Tribunal of Justice of the State of Yucatán.
- b) The Mexican State shall guarantee that the right to compensation shall remain intact with

⁴ With respect to the Recognition of Innocence Remedy and the Appeal for Indirect Constitutional Protection, the State maintained that the admissibility report of the IACHR did not include or analyze these two remedies. For this reason, based on the fact that the information had not been considered but was part of the record, the State asked that the IACHR revise its report and decree the inadmissibility of the petition.

In this regard, the petitioners allege that the aforementioned remedies are not part of the ordinary remedies established by domestic law and they represent remedies of a special and exceptional nature. In this respect, they maintain that the ordinary remedies had been exhausted separately from them.

⁵ The document was signed by Mr. Ricardo Ucán Seca and his representatives, José Miguel Edgar Cortéz (*Red Nacional de Organismos Civiles de Derechos Humanos Todos los Derechos para Todos y Todas*) and María Cristina Muñoz (*Organización Indignación Promoción y Defensa de los Derechos Humanos*). Representing the State of Mexico, the agreement was signed by Minister Alejandro Negrín (General Director for Human Rights and Democracy of the Secretariat of Foreign Affairs) and Sergio B. Cuevas González, Legal Counsel for the Executive Branch of the State of Yucatán.

respect to the relatives of Bernardino Chan Ek, who lost his life in the events that occurred on July 5, 2000, as stated in the record of Case No. 12.660 before the IACHR.

c) As a consequence of the above, the Mexican State agrees, through the Government of Yucatán, to process for the benefit of Mr. Ricardo Ucán Seca and his family the social benefits that are applicable based on their socio-economic situation.

d) The authorities of the Government of Yucatán indicate their willingness to analyze cases similar to this case that are submitted for its consideration and are properly documented. This shall be done with full respect for judicial independence and the division of powers; in addition, the rights of the victims or injured parties of the crimes involved shall in all cases be protected.

e) The authorities of the Federal Government and the Government of Yucatán indicate their willingness to continue strengthening access to justice and the effectiveness of human rights on behalf of indigenous communities, as well as to consider the proposals the petitioners refer to them on such topics.

f) The parties shall inform the IACHR periodically regarding progress made in carrying out this friendly settlement agreement. In addition, by mutual agreement, they ask the Commission to prepare the report referred to in Article 49 of the American Convention on Human Rights and to proceed in accordance with that article for purposes of publishing that report.

The State shall disseminate, through the Official Journal of the Federation and the corresponding journal of the State of Yucatán, the friendly settlement report published by the Inter-American Commission.

This agreement presupposes the principle that both parties are acting in good faith, so that in the event of any doubt regarding the scope thereof, it shall in principle be the parties themselves that resolve the matter and, in the event they do not reach agreement, they may seek the intervention of the IACHR to assist for that purpose within the scope of its powers.

The parties who sign this friendly settlement agreement indicate their free and spontaneous willingness and their acceptance of each and every one of its clauses and, as a result, they agree that processing of the petition in case 12.660 before the Inter-American Commission should be considered terminated once the release of Mr. Ricardo Ucán Seca proceeds and the right referred to in clause two (b) of this agreement has been satisfied.

They sign to indicate their agreement on December 31, 2009.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

26. The IACHR reiterates that in accordance with 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 acceptance of this procedure expresses the good faith of the State to satisfy the purposes and objectives of the Convention, by virtue of the principle of *pacta sunt servanda*, whereby States must in good faith honor the obligations they assume in treaties. It also wishes to reiterate that the friendly settlement procedure contemplated in the Convention allows individual cases to be concluded in a non-contentious manner, and has demonstrated, in cases involving various countries, that it offers an important resolution vehicle that may be used by both parties.

27. With respect to the instant case, the IACHR has been informed of the measures adopted by the State to comply with the friendly settlement agreement.

28. In this sense, the Commission notes that on December 31, 2009, Mr. Ricardo Ucán Seca recovered his freedom. As reported, that measure was adopted as a result of the application of the benefits of early release granted by the Executive Branch of the State of Yucatán.

29. The Inter-American Commission has closely followed the development of the friendly settlement reached in this case. The Commission highly values the efforts the parties made to achieve this solution that is consistent with the object and purpose of the Convention.

30. Nonetheless, the IACHR makes note of the other obligations assumed by Mexico in the friendly agreement that have not yet been carried out properly, and urges to State to do so as soon as possible.

VI. CONCLUSIONS

31. Based on the foregoing considerations and the procedure provided in Articles 48.1.f and 49 of the American Convention, the Commission wishes to reiterate its profound appreciation for the efforts made by the parties and its satisfaction that the friendly settlement agreement reached in this case is consistent with the object and purpose of the American Convention.

32. Based on the considerations and conclusions presented in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To approve the terms of the friendly settlement agreement signed by the parties on December 31, 2009.

2. To urge the State to take the measures necessary to carry out the commitments that are still outstanding.

3. To continue supervising compliance with each and every one of the points in the agreement and, in that context, to remind the parties of their commitment to periodically inform the IACHR in this regard.

4. To publish this report 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 15th day of the month of July 2010. (Signed: Felipe González, President; Paulo Sérgio Pinheiro, Vice-President; Dinah Shelton, Second Vice-President; Luz Patricia Mejía Guerrero, María Siliva Guillén, and Rodrigo Escobar Gil, Members of the Commission).