

REPORT No. 62/13
CASE 12.547
FRIENDLY SETTLEMENT
RIGOBERTO CACHO REYES
HONDURAS
July 16, 2013

I. SUMMARY

1. On November 30, 2001, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” the “Commission,” or the “IACHR”) received a complaint lodged by Mr. José Antonio Ávila (hereinafter the “petitioner”) against the State of Honduras (hereinafter the “State,” “Honduras,” or the “Honduran State”) on behalf of Mr. Rigoberto Cacho Reyes, a Honduran citizen and member of the Garifuna ethnic group (hereinafter the alleged victim) regarding the alleged violation of the following rights: the duty of the State to adopt domestic legal measures (Article 2), the rights to juridical personality (Article 3), humane treatment (Article 5), personal liberty (Article 7), a fair trial (Article 8), freedom from ex post facto laws (Article 9), compensation for miscarriage of justice (Article 10), and privacy (Article 11); the rights of the family (Article 17) and the child (Article 19); and the rights to property (Article 21), equal protection (Article 24), and judicial protection (Article 25), pursuant to Article 1(1) (obligation to respect rights), all protected under the American Convention on Human Rights (hereinafter the “Convention,” the “American Convention,” or the “ACHR”).

2. The petitioner reported that Mr. Cacho Reyes had been deprived of his liberty for eight years, eight months, and 18 days, beginning on December 23, 1989, by order of the Judge of the First Criminal Court of First Instance on the basis of unproven charges of illicit trafficking in narcotic drugs. Mr. Cacho Reyes had been cleared of all charges by a first instance judgment of March 27, 1998, which was subsequently affirmed by the First Court of Appeals of Tegucigalpa. According to information submitted by the petitioner, Mr. Cacho Reyes had also initiated proceedings for pecuniary compensation against the State, which the Supreme Court had found inadmissible.

3. On February 11, 2009, the parties signed a friendly settlement agreement.

4. In the present friendly settlement report, prepared in accordance with Article 49 of the Convention and Article 40.5 of the Commission’s Rules of Procedure, the Commission summarizes the petitioner’s allegations and the friendly settlement reached. Having reviewed the compatibility of the agreement signed by the parties and its compliance with the principles of the Convention, the Commission decides to approve the report, notify the parties, make it public, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BEFORE THE COMMISSION

5. The Commission received the complaint, dated November 30, 2001, on December 12, 2001. After the appropriate preliminary review, it accepted the complaint for processing and forwarded it to the State on January 9, 2004, requesting a response within two-months. The State provided observations and additional information in communications of March 29 and August 25, 2004; March 16 and August 18, 2005; July 27, 2006, April 16, May 30, and September 7, 2007, and April 9, 2008, all of which were duly forwarded to the petitioner.

6. The petitioner provided observations and additional information in communications of May 21, 2004; June 8, October 5, and November 1, 2005; March 13, May 19, August 16, and November 8, 2006; and February 13 and September 17, 2007, all of which were duly forwarded to the State.

7. On March 14, 2006, the IACHR approved Admissibility Report No. 28/06, which declared the petition relating to alleged violations of Article 7, 8, and 25 in conjunction with Article 1(1) of the American Convention admissible pursuant to the requirements established in Articles 46 and 47 of the Convention. In a communication of March 20, 2006, the IACHR sent this report to the parties and placed itself at the disposal of the parties with a view to reaching a friendly settlement in accordance with Article 48(1)(f) of the American Convention and Article 37(4) of its Rules of Procedure.

8. The petitioner informed the Commission of its willingness to seek a friendly settlement of the matter on April 24, 2006. The Honduran State replied to that request on July 27, 2006, and on April 16, 2007, it asked the petitioner to submit a friendly settlement proposal. The petitioner sent a first proposal on July 16, 2007. A second proposal was sent on October 15, 2007.

9. On September 7, 2007 and January 3, 2008, the State asked the petitioner to submit supporting documentation to be used in an actuarial analysis that would provide the basis for a specific proposal. In response, on May 16, 2008, the petitioner sent an actuarial analysis of the case in question that had been performed for the purpose of calculating damages. The Commission forwarded this information to the State, which submitted a counterproposal on July 9, 2008. The petitioner accepted the amount offered by the Honduran State on September 19, 2008. The parties signed a friendly settlement agreement on February 11, 2009. On June 29, 2011, the petitioner informed the Commission that the State had fulfilled its obligation to pay Mr. Rigoberto Cacho Reyes compensation for damages.

III. THE ALLEGATIONS

10. According to the petition, the victim was wrongly charged with illicit trafficking in narcotic drugs, and deprived of his liberty without proof of the charge for eight years, eight months, and 18 days, beginning December 23, 1989, by order of the judge of the First Criminal Court of First Instance of the Department of Francisco Morazán. The petitioner reported that Mr. Cacho Reyes was acquitted by a judgment of March 27, 1998 of the First Criminal Court of First Instance of the Department of Francisco Morazán. This final judgment was appealed to the First Court of Appeals of Tegucigalpa, Municipality of the Central District, which affirmed the judgment acquitting Mr. Cacho Reyes and barring further the proceedings against him.

11. The petitioner reports that, during the alleged victim's eight and a half years in prison, his family fell apart. His partner, his father, and his brother died, and he was not allowed to be with his partner on her deathbed or to attend his father or brother's funeral. His children and grandchildren were left abandoned. According to the complaint, his incarceration caused him severe psychological harm and severe harm to his family, as well as the loss of his livelihood and material wealth.

12. According to the petition, the State admitted that it was in breach and that the term of Mr. Rigoberto Cacho Reyes' preventive imprisonment had exceeded all of the limits prescribed in the applicable norms. The State also conceded that this protracted term effectively violated his rights and gave rise to State responsibility.

13. Furthermore, according to the case file, the alleged victim submitted petitions to initiate proceedings for compensation to the Attorney General of the Republic and the State Secretary for the Public Security Office. Both institutions rejected the petitions. In view of these decisions, Mr. Rigoberto Cacho Reyes considered the administrative channels to have been exhausted, and he therefore filed action for damages against the State in the Administrative Court of First Instance. The petitioner indicates that after the action had been filed, before agreeing to hear it, the judge ordered the plaintiff to comply with formal admissibility requirements, which were subsequently met within the time limit allowed.

14. According to information provided by the petitioner, a copy of the action was served on the State, and the Attorney General of the Republic responded on August 24, 1999. In her reply, the Attorney General denied the claim for compensation, contending that her Office was not liable for compensatory damages since it had been the defunct National Directorate of Investigation that had accused Mr. Rigoberto Cacho Reyes of trafficking in narcotic drugs.

15. The petitioner asserts that on January 24, 2000 the judge of first instance issued a judgment invalidating the claim for formal defects. The petitioner argues that this judgment contradicted the judge's decision to declare the claim admissible after the petitioner had complied with an order to cure the formal defects in the suit. According to the petitioner, the victim appealed the January 24, 2000 judgment of first instance on these grounds. On June 2, 2000, the Supreme Court upheld the first instance judgment based on formal defects in the suit, which it deemed to be consistent with the law.

16. The petitioner indicates that on July 17, 2000, the alleged victim lodged an appeal in cassation for breach of the law with the Supreme Court of Justice. The Supreme Court issued a judgment denying the appeal on June 14, 2001.

IV. FRIENDLY SETTLEMENT

17. On February 11, 2009, Rosa America Miranda de Galo, Attorney General of the Republic, and José Antonio Ávila, petitioner, signed the friendly settlement agreement transcribed below.

FRIENDLY SETTLEMENT AGREEMENT IACHR CASE 12.547

PREAMBLE

This instrument sets forth the **FRIENDLY SETTLEMENT AGREEMENT IN IACHR CASE 12.547, RIGOBERTO CACHO REYES V. HONDURAS**, signed by Attorney **JOSE ANTONIO AVILA** as the legal representative of Mr. Rigoberto Cacho Reyes pursuant to General and Administrative Power of Attorney No. 126, granted in the City of Tegucigalpa, Municipality of the Central District, on December 10, 2008 before Notary Cesar Dolores Vaquedano Herrera, which gives him full authority to sign instruments of this nature; and by the State of Honduras, duly represented by Attorney **ROSA AMERICA MIRANDA DE GALO** as Attorney General for the Republic by virtue of legislative order No. 2-2006 of January 26, 2006, who is authorized for such purpose by **EXECUTIVE AGREEMENT No. 007-2007**, issued by the President of the Republic and published in Gazette No. 31.298 of May 9, 2007, which grants her the power to compromise. This agreement is

celebrated with the knowledge and consent of the **INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**, as expressed in a letter written to the State of Honduras on March 20, 2006 and signed by Ariel E. Dulitzky, Assistant Executive Secretary of the Commission, in which, pursuant to Article 38(2) of its Rules of Procedure, the Commission places itself at the disposal of that parties with a view to reaching a friendly settlement of the matter in accordance with Article 48(1) of the American Convention on Human Rights.

This Agreement consists of the following terms and conditions:

FIRST: BACKGROUND

On March 14, 2006, the Inter-American Commission on Human Rights issued Report No. 28/06, Petition No. 721-00, Rigoberto Cacho Reyes v. Honduras. Paragraph 43 of the report reads as follows: "The Commission finds that the facts of the case present important matters of controversy that should be determined on the basis of the evidence. Special emphasis should be given to the possibility that, in penal procedure, the victim may have been denied the right to be heard and judged within a reasonable period of time or otherwise set free; and in procedure for matters of administrative contention, the possibility that the victim may have been prevented from exercising his right to justice by means of an effective appeal backed up by the guarantee of due process of law, as contemplated by the Convention, when his appeal was declared inadmissible because of formal defects without entering into consideration of its merits. Accordingly, the Commission, without prejudging the substance of the matter, finds that the issue under consideration, if the alleged facts are proven, could constitute violations to Articles 7 (right to personal liberty), 8 (right to a fair trial) and 25 (judicial protection), pursuant to Article 1(1) of the American Convention. The Commission considers the petition inadmissible with respect to the alleged violations of Articles 3, 5, 9, 10, 11, 17, 19, 21 and 24, because the petitioner has not presented a strong enough case to sustain the alleged violations." On the basis of the foregoing, it **DECIDED** to declare the case admissible with respect Articles 7, 8, and 25 of the American Convention, pursuant to Article 1(1) of the same international instrument.

SECOND: AGREEMENT BETWEEN THE PARTIES

In the context of the friendly settlement process conducted between the **REPRESENTATIVE OF THE PETITIONER AND THE STATE OF HONDURAS**, with the valuable assistance of the **IACHR**, the parties have reached a satisfactory agreement based on the State's acknowledgment of responsibility for the actions violating the human rights of **Rigoberto Cacho Reyes (Case 12.547)** described in in the above-mentioned admissibility report. With regard to the pecuniary aspect, the State of Honduras agrees to verify payment through the State Secretariat for the Finance Office, which shall initiate appropriate procedures upon submission to it of this duly signed instrument and shall complete them in the shortest possible time.

THIRD: OBLIGATION TO MAKE REPARATION

In view of the above acknowledgment, the State of Honduras and the representative of Mr. Rigoberto Cacho Reyes recognize and agree to an equitably determined compensatory amount to be paid in a lump sum of **ONE HUNDRED FIFTY THOUSAND UNITED STATES DOLLARS (\$150,000.00)** or its equivalent in Honduran currency, which shall cover any and all moral or material damages suffered by the victim and members of his family, as well as the related domestic and international expenses; and that, by paying this amount, the State of Honduras shall be released from all further liability under this heading. It is further agreed that, in the event of the appearance of a family member entitled to compensation, such compensation shall be recognized and paid by Mr. Rigoberto Cacho Reyes.

FOURTH: SATISFACTION OF THE PARTIES

The parties express full agreement and satisfaction with the agreed terms as set forth in this instrument.

The Inter-American Commission on Human Rights expresses gratitude to the Honduran State and the petitioner for their willingness to settle this case through its channels, thereby affirming the importance of the friendly settlement mechanism contemplated in the American Convention on Human Rights for settling individual cases in a non-contentious manner.

By virtue of what is set forth above, the parties request that, in accordance with Article 49 of the American Convention, the IACHR should issue a friendly settlement report, which shall be transmitted to the petitioner and the States Parties to the Convention, and shall then be communicated to the Secretary General of the Organization of American States for publication.

Signed in the City of Tegucigalpa, Municipality of the Central District, on Wednesday, February 11, 2009.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

19. The IACHR recalls that, according to Articles 48(1)(f) and 49 of the Convention, the purpose 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 State’s agreement to use this procedure is evidence of its good faith to comply with the purposes and objectives of the Convention in conformity with the principle of *pacta sunt servanda*, according to which States must fulfill obligations assumed under treaties in good faith. It further recalls that the friendly settlement procedure contemplated in the Convention allows individual cases to be terminated in a non-contentious manner and, in cases involving various countries, has proven to be an important settlement vehicle that can be used by both parties.

20. The Inter-American Commission has closely monitored the development of the friendly settlement achieved in this case and highly values the efforts that both parties have made to reach this settlement, which is compatible with the object and purpose of the Convention.

21. With respect to compliance with the agreed terms, the IACHR notes the following, based on information provided by the parties:

22. In a communication of June 27, 2013, the State sent the friendly settlement agreement signed by both parties, together with a receipt dated April 3, 2009 for the delivery of a check in the amount of TWO MILLION EIGHT HUNDRED FIFTY-FOUR THOUSAND ONE HUNDRED TEN LEMPIRAS (L2,854,110.00), equivalent to ONE HUNDRED FIFTY THOUSAND UNITED STATES DOLLARS (\$150,000.00). In a communication of June 29, 2011, the petitioner informed the Commission that Mr. Rigoberto Cacho Reyes had received full payment of the agreed compensation for damages.

VI. CONCLUSIONS

23. On the basis of the foregoing considerations and by virtue of the procedure established in Articles 48(1)(f) and 49 of the American Convention, the Commission would like once again to express its deep appreciation for the efforts of both parties, as well as its satisfaction at the achievement of a friendly settlement of the case based on a respect for human rights and compatible with the object and purpose of the American Convention.

24. By virtue of the considerations and conclusions set forth in this report,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To approve the terms of the agreement signed by the parties on February 11, 2009.
2. To make this 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 11th day of July 2013. (Signed): José de Jesús Orozco Henríquez, President; Tracy Robinson, First Vice-President; Rosa María Ortiz, Second Vice-President; Rose-Marie Belle Antoine, Felipe González, Dinah Shelton and Rodrigo Escobar Gil, Commissioners.