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REPORT No. 16/16
CASE 12.847
REPORT ON FRIENDLY SETTLEMENT

VICENTA SANCHEZ VALDIVIESO
MEXICO

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I. SUMMARY

1. On September 12, 2003, the Inter-American Commission on Human Rights (hereinafter, “the Commission” or “IACHR”) received a petition submitted by Isidoro Santiago Sánchez (hereinafter, “the petitioner”), which alleged the international responsibility of the United Mexican States (hereinafter, “the State,” “the Mexican State,” or “Mexico”), for having violated the human rights of his mother, Vicenta Sánchez Valdivieso, a widowed Zapotec indigenous woman (hereinafter, “the alleged victim”), stemming from the failure to enforce a labor action decision issued in her favor on August 13 of 1999.

2. On November 2, 2011, the IACHR ruled that the petition was admissible for purposes of examining the alleged violation of the rights enshrined in Articles 5(1) (humane treatment), 8(1) (fair trial), and 25 (judicial protection) of the American Convention on Human Rights, in connection with Article 1 (the obligation to respect rights) thereof. Furthermore, the Commission decided to notify the parties of this ruling, as well as publish and include it in its Annual Report to the General Assembly of the Organization of American States.

3. In February 2012, the parties initiated negotiation proceedings in which the Commission acted as facilitator. The parties signed a friendly settlement agreement on September 25, 2012.

1. Pursuant to Articles 49 of the Convention and 40(5) of the Commission’s Rules of Procedure, this friendly settlement report includes a summary of the petitioners’ allegations, transcribes the friendly settlement agreement signed on September 25, 2012 by the petitioner and representatives of the Mexican State, analyzes the agreement’s compatibility with the ACHR, and assesses its implementation. Finally, the Commission has decided to publish this report in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE COMMISSION

4. On November 2, 2011, the IACHR issued Admissibility Report No. 159/11, ruling the petition was admissible for purposes of examining the alleged violation of rights enshrined in Articles 5(1) (humane treatment), 8(1) (fair trial), and 25 (judicial protection) of the American Convention on Human Rights, in connection with Article 1(1) (the obligation to respect rights) thereof.

5. In September 2012, the parties initiated negotiations in Mexico in pursuit of a friendly settlement agreement, which was signed on September 25, 2012.

6. On July 23, 2015, the State submitted up-to-date information on compliance with the agreement and requested approval thereof; such information was forwarded to the petitioner.

7. On September 24, 2015, the parties held a working meeting in Mexico, with the support of Commissioner James Cavallaro, in his capacity as country rapporteur.

¹ Commissioner José de Jesús Orozco, a Mexican national, did not take part in the discussion or decision in this case, in keeping with Article 17(2)(a) of the IACHR’s Rules of Procedure.

III. THE FACTS ALLEGED

8. The petitioner alleged that the human rights of Vicenta Sánchez Valdivieso, a widowed Zapotec indigenous woman, had been violated due to the Mexican State's failure to provide judicial protection. According to the allegations, the victim filed a labor action with the Local Conciliation and Arbitration Board of the municipality of Tehuatepec, State of Oaxaca, against Mr. Mariano Santana López Santiago, in his capacity as the employer of her deceased husband, Luciano Santiago Guerra.

9. The petitioner indicated that claim no. 165/98 concluded with a decision in favor of the victim on August 13, 1999, wherein the employer was ordered to pay \$97,827.60 Mexican pesos. According to the petitioner, said payment was reportedly ordered by the Board on March 2, 2000, and when it was not made, the debtor's automobile was attached and Ms. Esther Jiménez Guerra was named depositary of that asset.

10. According to the petitioner, on March 2, 2000, Mariano Santana López Santiago arrived in the company of several persons at the domicile of the depositary of the attached asset and allegedly used violence to take the vehicle. Once learning of this incident, the victim and the depositary reportedly filed a criminal complaint for larceny on March 3, 2000 with the Office of the Public Prosecution Ministry in Juchitan. The action was filed as case number 104/2000, under which an arrest warrant was issued for Mariano Santana López Santiago. Nevertheless, according to what the petitioner alleged, the authorities did not enforce the arrest warrant, claiming that Mr. López Santiago's whereabouts were unknown. The petitioner held that the authorities had not enforced the arrest warrant despite the fact that Mr. Santana Lopez was a district candidate in the federal elections—i.e., that he was a person publically known as a political leader. Due to the foregoing, the petitioner alleged that the State had not provided judicial protection to Vicenta Sánchez Valdivieso.

IV. FRIENDLY SETTLEMENT

11. On September 25, 2012, the petitioning party, represented by Isidoro Santiago Sánchez and Vicenta Sánchez Valdivieso, and the Mexican State, represented by Ambassador Alejandro Negrín, Director General of Human Rights and Democracy of the Secretariat of Foreign Relations; Max Alberto Diener Sala, Undersecretary for Legal Affairs and Human Rights of the Secretariat of the Interior; Omeheira Lopez Reyna, Head of the Unit for the Promotion and Defense of Human Rights of the Secretariat of the Interior; and Eréndira Cruz-Villegas, Coordinator for Human Rights Assistance of the Government of the State of Oaxaca, signed a friendly settlement agreement, which reads as follows:

FRIENDLY SETTLEMENT AGREEMENT CASE 12.847 VICENTA SÁNCHEZ VALDIVIESO

Friendly settlement agreement for case no. 12.847 Vicenta Sánchez Valdivieso, entered into by and between, on the one hand, the Mexican State, represented herein by Mr. Max Alberto Diener Sala, Undersecretary for Legal Affairs and Human Rights, and Ms. Omeheira Lopez Reyna, Head of the Unit for the Promotion and Defense of Human Rights, both of the Secretariat of the Interior, Ambassador Alejandro Negrín Muñoz, Director General of Human Rights and Democracy of the Secretariat of Foreign Relations, and Ms. Eréndira Cruz-Villegas, Coordinator for Human Rights Assistance of the Government of the State of Oaxaca, and, on the other hand, Ms. Vicenta Sánchez Valdivieso and Isidro Santiago Sánchez (hereinafter, the petitioners), pursuant to the following facts, statements, and clauses:

FACTS

1. Mexico has been a State party to the American Convention on Human Rights (hereinafter, "the Convention") since March 24, 1981. Furthermore, the Mexican State recognized the contentious jurisdiction of the Inter-American Court of Human Rights on December 16, 1998.

2. On September 12, 2003, the Inter-American Commission on Human Rights (hereinafter, “the IACHR”) received a petition submitted by Isidro Santiago Sánchez claiming the State’s international responsibility for violating the human rights of his mother, Ms. Vicenta Sánchez Valdivieso, a Zapotec indigenous woman, for having denied her effective judicial protection.

3. On November 2, 2011, via Report No. 159/11, the IACHR ruled the case was admissible, and it was registered under case No. 12.847. Without prejudging the merits, the IACHR ruled the case was admissible for purposes of examining the alleged violation of the rights enshrined in Articles 5(1), 8(1), and 25, in connection with Article 1(1) of the Convention.

4. In keeping with the provisions of Article 48(1)(f) of the Convention and Article 41 of the Rules of Procedure of the Inter-American Commission on Human Rights, the Mexican State and the petitioners agreed to enter into this friendly settlement agreement.

THE PARTIES’ STATEMENTS

I. By the Secretariat of the Interior (SEGOB):

- a) Its representatives state that in keeping with Articles 26 and 27, Paragraphs XII and XIII of the Federal Public Administration Act (*Ley Orgánica de la Administración Pública Federal*), the Secretariat of the Interior (SEGOB), is an agency of the executive branch of the Union, that is responsible, *inter alia*, for directing all of federal executive branch’s domestic security policy that is not expressly granted to other agencies, as well as to oversee Mexican authorities’ compliance with constitutional precepts, especially with regard to individual guarantees and issuance of administrative measures necessary for such purpose.
- b) That the Undersecretary for Legal Affairs and Human Rights, Mr. Max Alberto Diener Sala, in accordance with Articles 2(A)(111) and 6(XII) of the Internal Regulations of the Secretariat of the Interior, has, *inter alia*, the authority to sign documents related to the exercise of his duties.
- c) That the Head of the Unit for the Promotion and Defense of Human Rights, Ms. Omeheira López Reyna, in keeping with Article 2(B)(XIII) and 21(VI) of the Internal Regulations of the Secretariat of the Interior, has the authority to follow recommendations regarding human rights issued by international organizations whose jurisdiction, proceedings, and rulings are recognized by the Mexican State.
- d) That the Unit for the Promotion and Defense of Human Rights has sufficient resources to meet the obligations stemming from this Agreement.
- e) That the domicile it provides for all legal purposes of this Agreement is located at Bucareli No. 99, Colonia Juárez, Delegación Cuauhtémoc, Postal Code 06600, Mexico, Distrito Federal.

II. By the Secretariat of Foreign Relations:

- a) That, in accordance with Article 29(XI) of the Internal Regulations of the Secretariat of Foreign Relations, the Directorate General of Human Rights and Democracy has the authority to accept and process complaints and reports filed with international human rights organizations against the Mexican State and to represent the government of Mexico in litigation or proceedings stemming therefrom, in

coordination with the Office of the General Counsel, and to promote adoption of the measures necessary to resolve said complaints or reports in keeping with the law.

- b) That the domicile it provides for all legal purposes of this Agreement is located at Avenida Juárez #20, Col. Centro, Postal Code 06010, Delegación Cuauhtémoc, Mexico, Distrito Federal.

III. By the State of Oaxaca:

- a) That it is an integral part of the Mexican State, in keeping with the provisions of Article 43 of the Constitution of the United Mexican States and Article 1 of the Constitution of the Sovereign and Free State of Oaxaca.
- b) That, for purposes of this Agreement and its implementation, the responsibility falls to the Office for Human Rights Assistance of the Government of Oaxaca, in accordance with the powers set forth in the Article 52(II) and (VIII) of the Executive Branch Act of the State of Oaxaca (*Ley Orgánica del Poder Ejecutivo del estado de Oaxaca*).
- c) That the domicile it provides for all legal purposes of this Agreement is located at Bustamante, esquina Flores Magón, Colonia Centro, Postal Code 6800, Oaxaca de Juárez, Oaxaca.

IV. By the petitioners:

- a) That they are Mexican citizens of legal age as shown by the following voting IDs issued by the Federal Electoral Institute:
 - 1. ID number [...].
 - 2. ID number [...].
- b) That the domicile they provide for all legal purposes of this Agreement is located at [...].

Having set forth the foregoing facts and statements, the parties express their desire to be bound in the manner and under the terms provided for below:

CLAUSES

FIRST. The State and the petitioners agree to comprehensive redress for the victim, taking into consideration the case *Cabrera García and Montiel Flores v. Mexico*, as well as other case law of the Inter-American Court of Human Rights.

SECOND. The State commits to providing, in accordance with the Inter-American Court of Human Right's case law, as comprehensive redress for harm caused, a total of \$498,927.00 Mexican pesos (four hundred and ninety-eight thousand, nine hundred and twenty-seven and 00/100).

The amount of \$378,927.00 Mexican pesos (three hundred and seventy-eight thousand, nine hundred and twenty-seven and 00/100) will be paid by the Secretariat of the Interior, via the Unit for the Promotion and Defense of Human Rights, by means of delivery of the pertinent commercial documents within 30 business days as from the signature of this friendly settlement agreement.

The amount of \$120,000.00 Mexican pesos (one hundred and twenty thousand and 00/100) will be paid by the Government of the State of Oaxaca, via the Office for Human Rights Assistance, by means of delivery of the pertinent commercial documents within 30 business days as from the signature of this friendly settlement agreement.

THIRD. The Mexican State commits to including Ms. Vicenta Sánchez Valdivieso in the following programs offered by the government of the State of Oaxaca:

- 1) "Productive program" under the Institute for Employment Training and Productivity of the State of Oaxaca;
- 2) Seed program and job training stipend;
- 3) Medical insurance through the State of Oaxaca's public insurance program;
- 4) Housing improvement support;
- 5) Educational stipends for children between the ages of 4 and 14.

The Government of Oaxaca commits to presenting in writing, within 10 days of the signing of this agreement, a list of the programs in which the victim is to be included, as well as of those responsible for assisting and following up with her. Said list shall be signed by Ms. Eréndira Cruz-Villegas and will be an integral part of this agreement, as if it were literally inserted herein.

FOURTH. In keeping with Article 49(1)(f) of the American Convention on Human Rights, the Inter-American Commission on Human Rights will monitor the definitive compliance with the items that comprise this agreement.

SIGNATORIES:

The parties express their full agreement and satisfaction with the agreements reached and provided for in this document, in witness whereof they hereby sign at the bottom and in the margin as effective proof of their full and complete consent, in the city of Oaxaca, Oaxaca, September 25, 2012.

V. DETERMINATION OF COMPATIBILITY AND COMPLIANCE

12. The IACHR reiterates that in keeping with Articles 48(1)(f) and 49 of the American Convention, the purpose of these proceedings is to "reach a friendly settlement of the matter based on respect for the human rights recognized in the Convention." Agreement to engage in this process is an expression of the State's good faith to comply with the intent and purpose of the Convention pursuant to the principle of *pacta sunt servanda*, by which States must comply in good faith with the obligations undertaken in treaties.² The IACHR further wishes to reiterate that the friendly settlement procedure provided for in the Convention allows individual cases to be settled in a non-adversarial manner, and has proven to be, in cases in different countries, an important vehicle that can be used by both parties for settlements.

13. The Inter-American Commission has closely followed the process of the friendly settlement reached in the instant case and highly values the efforts undertaken by both parties during the negotiation of the agreement to reach a friendly settlement that is consistent with the intent and purpose of the Convention.

14. With regard to implementation of the friendly settlement agreement contained herein, the IACHR will proceed to conduct the relevant assessment based on the information furnished by the parties.

² Vienna Convention on the Law of Treaties, U.N. Doc A/CONF.39/27 (1969), Article 26: "**Pacta sunt servanda.**" *Every treaty in force is binding upon the parties to it and must be performed by them in good faith.*

15. Regarding the second clause of the friendly settlement agreement, in the State's July 23, 2015 report, it indicated that it had delivered two checks payable to Ms. Sanchez Valdivieso: one check issued by the government of Oaxaca in the amount of one hundred and twenty thousand Mexican pesos (MX\$120,000.00), as well as a check issued by the Secretariat of the Interior in the amount of three hundred and seventy-eight thousand nine hundred and twenty-seven Mexican pesos (MX\$378,927.00). The State provided the IACHR with a record of check delivery, dated October 24, 2012, signed by the parties, together with a uncertified copy of one of the checks. The Commission therefore deems that this item of the agreement has been duly completed.

16. With respect to the third clause, the State provided information on actions taken to satisfy the items that comprise it. As regards the productive program, the State reported that on December 10, 2012, the government of Oaxaca furnished property to the victim and her family under the "Self-Employed Occupational Initiative" that included a chicken rotisserie machine for Ms. Vicenta Sánchez Valdivieso and equipment to start her own business, "Rosticería Ña Vicenta." The State indicated that it had conducted several follow-up visits to verify the functioning of the assets furnished as well as the proper implementation thereof. The State furnished photographic records of the business' equipment, as well as a document with a list of assets provided, signed by the petitioner and a representative of the Office of the National Employment Service of Oaxaca. The list consisted of "a freezer with heavy duty copper pipes, a lock, removable baskets, and a drainage system with handles, and a 21-27 chicken rotisserie machine, which has a stainless steel interior with 3 spits, interior lighting, and a tempered-glass door."

17. Regarding the seed program and job training stipend, the State indicated that the petitioners had received training on the use and operation of the chicken rotisserie, in keeping with the plan for self-employment. The State specified that the seed program focuses on business project development through the financing of activities to help launch entrepreneurial endeavors.

18. With respect to health insurance, the State reported that the victim had indicated she did not need the public health insurance coverage since she had insurance provided by the Secretariat of Health of the State of Oaxaca because her son works there. Nevertheless, according to minutes provided by the State, the parties agreed to the following during a working meeting held on February 13, 2015:

First: The representative of the Secretariat of Health shall see to having the beneficiary, C. Vicenta Sanchez Valdivieso, treated at the Aurelio Valdivieso General Hospital in Oaxaca. To this end, the Secretariat of the Interior will be asked to intervene to determine whether or not it is possible to absorb the costs such that the knee surgery needed by [the beneficiary] may be performed, where appropriate. [...]

19. As to housing support, the State reported that the State Housing Commission had paid a visit to the victim's home on November 7, 2012 in order to conduct a technical assessment of the damage that needed to be repaired; however, Ms. Sanchez Valdivieso indicated that she what she needed was a new house, not repairs. The State furnished a copy of the State Housing Commission's Official Memo 2543 on its technical assessment, which included a record of the petitioner's request and as well as an invitation for her to join the landowner building assistance program. In this regard, during a working meeting held in Mexico City on September 24, 2015 at the behest of the IACHR, the State indicated that it remained willing to make improvements to the house if the petitioner and the victim so desired, but also stated that it would be impossible to provide a new house as that went beyond the stipulations of the agreement.

20. Regarding educational stipends for children between the ages of 4 and 14, the State indicated that stipend checks had been issued for the petitioner's next of kin. The State provided, for the Commission to see, uncertified copies of both the canceled checks and of each child's birth certificate.

21. For their part, the petitioners indicated in a brief read out during the September 24, 2015 working meeting that from their standpoint, the provisions of the second clause had all been met, but that clause three had not been satisfied in its entirety. They likewise asked the IACHR to assess whether the agreement was consistent with international provisions as far as redress for the harm caused to Ms. Vicenta

Sanchez Valdivieso was concerned, and if not, that the friendly settlement agreement be reconsidered. The petitioners indicated at that time that the agreement should be published by the IACHR.

22. The IACHR takes note of the petitioners' request and in such regard observes that the clauses of the friendly settlement agreement reached between the parties are consistent with the medical and social rehabilitation measures³ as well as the economic compensation measures⁴ provided for in international human rights law. In this respect, the IACHR has determined that:

[T]he purpose of rehabilitation measures is to assist victims of human rights violations in their recovery from the physical and psychological harm, and from the living conditions caused by those violations. The inclusion of rehabilitation measures in friendly settlements has served to relieve persons who have appealed to the Commission as victims and to mitigate the effects of the events that led to their petitions.⁵

[And] [b]y signing friendly settlement agreements, victims of human rights violations and their heirs have received monetary payments as reparation for the harm caused by the violations. The payment of monetary compensation as a reparation measure has in some cases allowed the next of kin of victims of human rights violations to have a decent life.⁶

23. With respect to the second clause of the friendly settlement agreement reached between the parties, the IACHR likewise observes that no contradiction exists in connection with the fulfillment thereof, and it should therefore be declared completed in its entirety.

24. Regarding the third clause of the agreement, the IACHR observes that it consists of five items that must be evaluated in light of the information furnished by the parties. In such regard, the IACHR takes note of the evidence presented by the State in the form of photographic records and proof that the rotisserie equipment had been provided, as well as the cancelled checks for the student stipends, and thus considers that items 1, 2, and 5 of clause three of the friendly settlement agreement have been satisfied in their entirety.

25. The IACHR also takes note of the victim's medical coverage through the Secretariat of Health of the State of Oaxaca's health insurance policy; it nonetheless observes that, pursuant to the minutes of the February 13, 2015 work meeting, there is still an unfulfilled commitment in connection with a knee operation. The victim reiterated her interest therein during the September 2015 working meeting presided by the country rapporteur, Commissioner James Cavallaro. Based on the foregoing, the IACHR believes that item 3 has been fulfilled in part and encourages the State to take all necessary steps to ensure that the victim receives treatment for her knees.

26. As to the matter of housing, the IACHR lacks sufficient information to make a determination as to whether this item has been taken care of. However, given the victim's advanced age and her health, as well as the fact that it would be impossible for her to make the improvements to her home herself, the IACHR encourages the State to explore all feasible options to ensure that Ms. Vicenta Sanchez Valdivieso is able to access other programs that help to improve her home and, as a result, enhance her quality of life in an environment that is safe, healthy, accessible, and adaptable to her needs as an older person.

³ See, IACHR, Impact of the Friendly Settlement Procedure, OEA/Ser.L/V/II. Doc. 45/13, December 18, 2013. Original: Spanish, paragraphs 91-104.

⁴ IACHR, Impact of the Friendly Settlement Procedure, *supra*, paragraphs 146-157.

⁵ IACHR, Impact of the Friendly Settlement Procedure, *supra*, paragraph 91.

⁶ IACHR, Impact of the Friendly Settlement Procedure, *supra*, paragraph 148.

VI. CONCLUSIONS

27. In view of the above, the IACHR declares that clause two, and items 1, 2, and 5 of clause three of the agreement have been satisfied in their entirety, and believe that the remaining items are currently being addressed. The Commission will thus continue to monitor compliance with items 3 and 4 of the third clause—having to do with health and housing—in its Annual Report to the OAS General Assembly.

28. Based on the foregoing considerations, and by virtue of the procedure set forth 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, as well as its satisfaction that a friendly settlement was reached in this case—a settlement founded on respect for human rights and consistent with the intent and purpose of the American Convention.

29. 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 September 25, 2012;
2. To continue to monitor the commitments still pending fulfillment by the Mexican State. And to that end, to remind the parties of their commitment to periodically inform the IACHR about the fulfillment thereof;
3. 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 14th day of the month of April of 2016. (Signed): James L. Cavallaro, President; Francisco José Eguiguren, First Vice President; Margarete May Macaulay, Second Vice President; Paulo Vannuchi, Esmeralda E. Arosema Bernal de Troitiño, and Enrique Gil Botero, Commissioners.