

**REPORT Nº 74/02<sup>1</sup>**  
ADMISSIBILITY  
PETITION 320/00  
FERMÍN RAMÍREZ AND/OR FERMÍN RAMÍREZ ORDOÑEZ  
GUATEMALA  
October 9, 2002

**I. SUMMARY**

1. On June 9, 2000 the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a complaint submitted by the Public Criminal Defense Institute (IDPP) (hereinafter "the petitioners"), on behalf of Mr. Fermín Ramírez or Fermín Ramírez Ordoñez (hereinafter "the alleged victim"), against the Republic of Guatemala (hereinafter "the State," "the Government," or "Guatemala"). The petition addresses the death sentence handed down to Mr. Fermín Ramírez on March 6, 1998 by the Sentencing Court for Criminal, Drug, and Environmental Offenses in Escuintla department, after the defendant was found guilty of the crime of murdering the minor child Grindi Yasmín Franco Torres. On that same occasion, the petitioners asked the Commission to grant precautionary measures to protect the alleged victim.

2. The petitioners maintain that the State is responsible for violating the right to life, the right to a fair trial, and the right to judicial protection contained in Articles 4, 8, and 25 of the American Convention on Human Rights (hereinafter "the American Convention") with respect to Fermín Ramírez, along with its general obligation of respecting and ensuring the rights enshrined in the Convention.

3. The State, in turn, holds that the trial that imposed the capital sentence on the alleged victim was conducted within the strict framework of Guatemalan law and that in addition, the alleged victim had access to all the means of defense necessary to challenge the unfavorable court rulings. It therefore asks the Commission to rule the petitioners' claim inadmissible.

4. Based on its analysis of the parties' positions, the Commission concludes that it is competent to hear this claim and that the petition is admissible under the provisions of Articles 46 and 47 of the American Convention.

**II. PROCESSING BY THE COMMISSION**

5. The petition was lodged with the Commission on June 9, 2000. On that same occasion, the petitioners also requested precautionary measures on behalf of the alleged victim. On June 27, the petitioners once again contacted the IACHR, requesting that it ask the Inter-American Court of Human Rights to adopt provisional measures on the convicted man's behalf. In consideration of that request, the IACHR forwarded the relevant documents to the Guatemalan State on June 19, 2000, and asked it to submit information regarding the precautionary measures sought within the following seven days. Shortly after, on June 21, 2000, the State told the IACHR that its request would be satisfied as soon as possible by the competent courts of law, to which the case file had already been forwarded.

6. In a communication dated August 11, 2000 the State informed the Commission that this case entailed no violations of rights enshrined in the Convention and that, in addition, the fact that the domestic remedies available to Mr. Ramírez had not been exhausted further disqualified the IACHR from granting any kind of precautionary measures for the alleged victim

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<sup>1</sup> Commissioner Marta Altolaguirre, a Guatemalan national, did not participate in discussing and deciding on this case in accordance with Article 17(2)(a) of the Commission's new Rules of Procedure, which came into force on May 1, 2001.

or from asking the Inter-American Court of Human Rights to extend provisional measures on his behalf.

7. On December 7, 2000 the petitioners again requested the Commission to grant precautionary measures on behalf of the alleged victim; this was because all the ordinary remedies offered by domestic law had been exhausted and the authorities were close to setting a date for the execution.

8. On May 3, 2001 the Commission began processing the petition; it forwarded the relevant parts of the complaint to the Guatemalan State and, pursuant to Article 30 of its Rules of Procedure, asked it to submit its response within a period of two months. The State sent its comments on July 11, 2001, asking the IACHR to declare the case inadmissible and to refrain from extending precautionary measures on Mr. Ramirez's behalf.

9. On October 3, 2001 the Commission forwarded the relevant parts of the State's reply to the petitioners and asked them to submit their comments within the following 30 days. On November 12, the petitioners presented their comments on the Government's report, in which they once again asked the Commission to adopt precautionary measures and to continue with its processing of this case.

10. Finally, the petitioners submitted a new report, elaborating on the comments made on November 12, 2001.

### **III. POSITIONS OF THE PARTIES**

#### **A. Petitioners**

##### **Regarding the Facts**

11. The petitioners maintain that the death sentence handed down to Mr. Fermín Ramírez at a trial that failed to respect several of the minimum guarantees enshrined in Article 8; as a result, in the petitioners' opinion, the imposition of the sentence violates Article 4 of the American Convention.

12. First of all, the petitioners told the IACHR that in this case, the Guatemalan public prosecution service (MP) initially charged the accused with the crime of aggravated rape, to which, under that country's criminal law, the death penalty does not apply if the victim is at least 10 years of age.<sup>2</sup> The petitioners claim that the trial commencement papers also cited the charge of aggravated rape and that the entire proceedings were conducted with respect to that crime. They note that irrespective of this, in its judgment the court classified the incident as murder and, in light of the "dangerous nature" of the alleged victim, handed down the maximum sentence. The petitioners report that during the hearings phase, the court told the parties about a possible change in the legal classification of the incident, under a legal mechanism provided for by Guatemala's criminal procedure,<sup>3</sup> and that the public prosecution service, in its final conclusions, sought to have the crime legally classified as murder.

13. The petitioners thus claim that the judgment changed the facts on which the indictment and the hearings were based and that the accused was not given the opportunity to be heard

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<sup>2</sup> Article 175 of Guatemala's Criminal Code states that:

Should the victim die by reason of or as a result of the rape, a prison term of between 30 and 50 years shall be imposed. The death penalty shall apply if the victim was aged under ten years.

<sup>3</sup> Article 388 of the Code of Criminal Procedure states that:

The judgment may not uphold facts or circumstances other than those described in the indictment and the trial commencement papers or, when applicable, in the expanded indictment, except when favorable to the accused.

In the judgment, the court may give the facts a different legal classification from the one given in the indictment or the trial commencement papers, or it may impose punishments more or less severe than the ones sought by the public prosecution service."

with respect to the new charges, to present evidence relating to the crime of murder, or to challenge, in any practical or effective manner, the accusations that led him to be classified as "dangerous." They maintain that it was the defenselessness to which the alleged victim was subjected that gave rise to the radical infringement of the minimum guarantees due to all persons tried in criminal proceedings, particularly when the trial culminates with a capital sentence.

14. Secondly, the petitioners claim that the defendant was not given timely notice of his classification as dangerous, since neither the indictment, the trial commencement papers, nor the hearings referred to that determination which, in accordance with Guatemalan criminal law, represents the only circumstance under which the death penalty can be applied to the crime of murder. They point out that in order to hand down a death sentence, the defendant's dangerousness must be proven,<sup>4</sup> and that at no point in Mr. Ramirez's trial did the public prosecution service make any charges regarding his dangerousness; moreover, argue the petitioners, the court was not qualified to uphold such allegations—its authority for determining the facts was limited to the charges in the indictment as heard by the defense, and so, the petitioners claim, the defense was unable to plan or carry out a strategy to refute those allegations of dangerousness.

15. The petitioners also allege a violation of the presumption of innocence which, in cases involving the death penalty, means that capital sentences cannot be handed down on the basis of assumptions that admit the possibility of a different interpretation of the facts. In the case at hand, they claim, the first-instance court did not address the facts on the basis of which it upheld the aggravating circumstances and, instead, merely referred to them as being involved. The petitioners also claim that the failure of the first-instance judgment to address the facts underlying most of the aggravating circumstances identified by the court, together with its failure to ground those circumstances in accordance with the principles of sound and critical reasoning, effectively restricted the defense's ability to challenge relevant matters of law related to the aggravating circumstances in the special appeal and annulment remedies filed in the subsequent instances.

16. Finally, the petitioners report that the remedies pursued to appeal against the first-instance judgment invoked the incorrect classification of the crime and the inclusion of aggravating circumstances, but given the structure of legal proceedings in Guatemala, whereby questions of fact can only be discussed in the first instance, the challenges were restricted exclusively to matters of law and ignored the questions of fact on which the aggravating circumstances were based. Ultimately, this meant that the alleged victim did not enjoy the right of judicial protection.

17. The petitioners hold that the State of Guatemala violated the provisions of Article 4 of the Convention by failing to observe the due judicial guarantees that, in cases involving the death penalty, must be upheld with much greater zeal. They refer both to the jurisprudence of the

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<sup>4</sup> Article 132 of the Criminal Code stipulates that:  
Murder is committed by a person who kills another:

- 1) Treacherously.
- 2) For a price, reward, promise, or in pursuit of financial gain.
- 3) By means of or during a flood, fire, poisoning, explosion, demolition or collapse of a building, or other contrivance capable of causing great devastation.
- 4) With notorious premeditation.
- 5) With malice.
- 6) With brutal perversity.
- 7) To prepare, facilitate, consummate, or conceal another crime, or to ensure the results thereof or immunity for self or accomplices, or because the other punishable act did not secure the result sought.
- 8) For purposes of terrorism or in the pursuit of terrorist activities.

Those convicted of murder shall receive prison terms of between 25 and 50 years. However, the death penalty shall apply instead of the maximum prison term if the circumstances of the incident, the timing thereof, the way in which it was carried out, and the motivation behind it reveal a particularly higher level of dangerousness on the part of the perpetrator. Those not sentenced to death for this crime shall not be eligible for reductions in their sentence for any reason whatsoever.

Inter-American Court of Human Rights and to the opinion of the Human Rights Committee<sup>5</sup> on the compulsory observance of the guarantees of due process in cases in which capital punishment is a possibility in order to prevent the death sentence from being handed down on an arbitrary basis.

### **Regarding the Exhaustion of Domestic Remedies**

18. The petitioners report that the judgment of March 6, 1998, that handed down Mr. Fermín Ramírez's death sentence was challenged by means of an appeal, which was dismissed by the Guatemalan Court of Appeals in a ruling dated May 27, 1998; that the defense filed an appeal for annulment against that ruling, which was dismissed by the Supreme Court of Justice on August 17, 1998; that the defense later lodged an *amparo* constitutional relief suit with the Constitutional Court, which was dismissed on February 18, 1999; and that it finally filed a review remedy with the Supreme Court of Justice, which was dismissed on July 12, 1999. They also report that on July 27, 1999, an appeal for clemency was lodged with the President of the Republic, and that this request was rejected on May 31, 2000.

### **B. State**

19. In its response, the Government of Guatemala stated that it would not address all the points related to the right of defense invoked by the petitioners in their complaint because, in its view, that would mean discussing the interpretation and enforcement of domestic legal precepts, which would clearly imply the creation of a fourth instance, the weakening of Guatemalan institutions, and the reexamination of an issue that has already gone through all the stages and proceedings set by the Code of Criminal Procedure (hereinafter "the CCP") and other applicable laws.

20. The State maintains that in the case at hand, the change in the legal classification of the crime made by the first-instance court upon handing down its judgment did not undermine Mr. Ramírez's right of defense since it took place in strict compliance with the judicial guarantees implicit in due process. Thus, the State argues that the defendant was remanded in custody for the crimes of murder and aggravated rape and that, as recognized by the petitioners, his defense team was informed at trial of a possible change in the legal classification—a situation that is explicitly provided for in the CCP<sup>6</sup>—and that later, in the final conclusions, the change was also requested by the public prosecution service.

21. The State further argues that the Sentencing Court merely assessed the evidence in the case file, which does not indicate that the child's death was caused by the rape or by secondary circumstances related thereto; on the contrary, it maintains that in this case, it was clearly shown and proven, in the forensic report presented at trial, that the cause of death was asphyxia through strangulation. The State adds that this case involves the doctrine known as the "real or material combination of crimes" in that the defendant, according to the trial documents, performed two actions: that of "killing" the girl and that of "raping" her. These two actions constitute separate crimes, and the Sentencing Court ruled that the action of killing the girl, with the applicable aggravating circumstances, led to the activation of the legal provision that governs the taking of a life. For that reason the State believes that the alteration of the facts that the petitioners allege—and that, according to the petitioners' arguments, led to the violation of the defendant's rights—did not in fact take place; the State also maintains that even if those arguments were true, all the necessary means for presenting a defense were available to the defendant.

22. Regarding the petitioners' claims that the presumption of innocence was violated, the State holds that if a conviction was handed down in this case it was because it was duly proven that

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<sup>5</sup> Human Rights Committee, General Comment 6, Article 6 (sixteenth session, 1982), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 6 (1994).

<sup>6</sup> *Ibid.*, footnote N° 4.

Mr. Ramírez perpetrated a crime that the courts classified as murder. In addition, the Government points out that the Sentencing Court is not required to state the grounds for all the aggravating circumstances, since even if only one is involved, and in consideration of the nature and circumstances of the crime, it is empowered to impose the penalty. Finally, it notes that the Court did rule the following aggravating circumstances as being present: treachery, notorious premeditation, abuse of superiority, remote location, and contempt toward the victim.

23. As regards the right to judicial protection, the State claims that from the remedies and suits exhausted by the petitioners it can be concluded that Mr. Ramírez was given suitable legal means for taking the case against him to the higher courts and that none of those remedies found any evidence of such a violation.

24. For the reasons given above, the State holds that there were no violations of due process, the right to a fair trial, or the judicial guarantees enshrined in the Convention as a result of which it could be ruled responsible for violating Mr. Ramirez's right to life.

#### **IV. ANALYSIS**

25. The Commission will now analyze the admissibility requirements set forth in the American Convention.

##### **A. Competence of the Commission**

26. The Commission has competence *ratione materiae* to hear this petition since it alleges violations of rights protected by the American Convention, to which the State of Guatemala is a party by reason of having ratified it on May 25, 1978.

27. The Commission has competence *ratione personae* to hear this petition since the identities of both the petitioners and the alleged victim satisfy the requirements set forth, respectively, in Articles 44 and 1(2) of the Convention.

28. The IACHR has competence *ratione temporis* to hear this petition since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the Guatemalan State on the date on which the alleged violations occurred.

29. Finally, the Commission has competence *ratione loci* to hear this petition since it alleges violations of rights within the territory of the respondent state party.

##### **B. Admissibility Requirements of the Petition**

###### **1. Exhaustion of Domestic Remedies**

30. Article 46(1)(a) of the American Convention stipulates that the admissibility of a petition depends directly on the remedies offered by domestic jurisdiction having been "pursued and exhausted in accordance with generally recognized principles of international law."<sup>7</sup> Both the Inter-American Court of Human Rights (hereinafter "the Court") and the Commission have, on repeated occasions, maintained that: "Under the generally recognized principles of international law and international practice, the rule which requires the prior exhaustion of domestic remedies is designed for the benefit of the State, for that rule seeks to excuse the

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<sup>7</sup> See: Inter-Am.Ct.H.R., Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90, August 10, 1990, Ser. A No. 11, paragraph 17.

State from having to respond to charges before an international body for acts imputed to it before it has had the opportunity to remedy them by internal means.”<sup>8</sup>

31. In this regard, in its first communication of August 11, 2000 the State of Guatemala stated that the failure to exhaust domestic remedies disqualified the Commission from studying the merits of the case. However, in its last communication, dated July 10, 2001 the State claimed that the defendant had been given all procedural remedies for attacking the guilty verdict and although they were exhausted, within a framework of due process, none found that the Sentencing Court had failed to observe judicial guarantees.

32. The Commission has received information from both parties regarding the remedies exhausted by the petitioner. First of all, the first-instance judgment was challenged by means of a special appeal remedy, which was dismissed on May 27, 1998; then, an appeal for annulment was lodged, which was also dismissed on August 17 of that year. An *amparosuit* lodged with the Constitutional Court was dismissed on February 18, 1999. Later, a review remedy was filed with the Criminal Chamber of the Supreme Court of Justice, which dismissed it on July 12, 1999. Against that decision a suit for *amparo* relief was lodged with the Constitutional Court. Finally, following the dismissal of that *amparo* suit, the defense lodged an appeal for clemency and motion for nonexecution of sentence under the provision of the Guatemalan Constitution whereby the death sentence cannot be carried out while any remedy is still outstanding: the outstanding remedy in this case, said the petitioners, was the international proceeding being pursued before the Commission.

33. From the information provided by the parties as of the drafting of this report, the Commission sees that the petitioner has invoked all the ordinary and special remedies that Guatemalan law offers for challenging the sentence that imposed the death penalty on him and, as result, that the requirement set by the Convention has been satisfied. In addition, the IACHR notes that when the State claimed that there were still domestic remedies that had not been exhausted, it failed to identify them or to demonstrate their effectiveness;<sup>9</sup> however, that is now irrelevant since, in its last submission, the State claims that the alleged victim did make use of all the remedies offered by Guatemalan law to defend his rights.

## **2. Timeliness of the Petition**

34. Article 46(1)(b) of the American Convention rules that for a petition or communication to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment.

35. With respect to the remedies that must be pursued and exhausted in order to comply with the requirement contained in Article 46(1)(b) of the Convention, the Inter-American Court of Human Rights has said that they must be adequate, meaning that the function of those remedies within the domestic legal system “must be suitable to address an infringement of a legal right.”<sup>10</sup>

36. Thus, the IACHR notes that the petition was received by the Commission on August 14, 1996. According to the information furnished, Mr. Fermín Ramirez’s defense team lodged the

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<sup>8</sup> See: Inter-Am.Ct.H.R., Resolution in the Matter of Viviana Gallardo *et al.*, November 13, 1981, Ser. A No. G 101/81, paragraph 26.

<sup>9</sup> Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Preliminary Objections, Judgment of June 26, 1987, Series C No 1, paragraph 88; Fairén Garbi and Solís Corrales Case, Preliminary Objections, Judgment of June 26, 1987, Series C No 2, paragraph 87; and Godínez Cruz Case, Preliminary Objections, Judgment of June 26, 1987, Series C No 3, paragraph 90.

<sup>10</sup> Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, Series C No 4, paragraph 64; Inter-Am.Ct.H.R., Godínez Cruz Case, Judgment of January 20, 1989, Series C No 5, paragraph 67; Inter-Am.Ct.H.R., Fairén Garbi and Solís Corrales Case, Judgment of March 15, 1989, Series C No 6, paragraph 88; Inter-Am.Ct.H.R., Caballero Delgado and Santana Case, Preliminary Objections, Judgment of January 21, 1994, Series C No 17, paragraph 63; Inter-Am.Ct.H.R., Exceptions to the Exhaustion of Domestic Remedies (Arts. 46(1), 46(2)(a) and 46(2)(b) of the American Convention on Human Rights), Advisory Opinion OC-11/90, August 10, 1990, Series A No 11, paragraph 36.

appeal for clemency with the President of the Republic of Guatemala on July 27, 1999. This appeal was denied on May 31, 2000, in a Government Agreement dated May 31, 2000. Consequently, the IACHR believes that the requirement set forth in Article 46(1)(b) of the American Convention has been satisfied.

### **3. Duplication of Proceedings and *Res Judicata***

37. The petition dossier contains no information to indicate that this matter is pending in any other international settlement proceeding or has been previously examined by the Inter-American Commission on Human Rights. The IACHR therefore concludes that the requirement contained in Article 46(1)(c) of the American Convention has been met.

### **D. Characterization of the Alleged Facts**

38. The State claims that the proceedings that handed down the death penalty to the alleged victim entailed no violations of the right to a fair trial or the judicial guarantees enshrined in the American Convention.

39. The Commission has previously stated that this stage in the proceedings is not intended to establish whether or not a violation of the American Convention was committed.<sup>11</sup> At the admissibility stage, the IACHR must decide whether the stated facts tend to establish a violation, as stipulated in Article 47(b) of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order," as stated in section (c) of that same article. The level of conviction regarding those standards is different from that which applies in deciding on the merits of a complaint. The IACHR must conduct a *prima facie* assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of such a violation. That examination is a summary analysis that does not imply prejudging the merits or offering an advance opinion on them. Thus, the Commission's Rules of Procedure, by setting two clearly separate phases for admissibility and for merits, reflects the distinction between the evaluation that the IACHR must conduct to declare a petition admissible and the assessment necessary to establish a violation.

40. The Commission believes that the petitioners' allegations could, *prima facie*, tend to establish a violation of the right to life, to a fair trial, and to judicial protection contained in Articles 4, 8, and 25 of the American Convention, in conjunction with State's general obligation of respecting and ensuring those rights set forth in Article 1(1) thereof. Consequently, the Commission concludes that the instant petition meets the requirements set forth in sections (b) and (c) of Article 47.

## **V. CONCLUSION**

41. The Commission concludes that it is competent to examine this matter and that under Articles 46 and 47 of the American Convention, the petition is admissible with respect to Articles 1(1), 4, 8, and 25 of that instrument. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

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

1. To declare this case admissible with respect to the potential violation of Articles 1(1), 4, 8, and 25 of the American Convention on Human Rights.

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<sup>11</sup> See, in this regard: IACHR, Report N° 28/01, Case 12.367, Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of the newspaper *La Nación*, Costa Rica, December 3, 2001.

2. To give notice of this decision to the parties.

3. To continue with its analysis of the merits of the complaint.

4. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 9th day of October 2002. (Signed): Juan Méndez, President; José Zalaquett, Second Vice-President; Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, and Susana Villarán, Commissioners.