

REPORT N° 92 / 06
PETITION 95-04
ADMISSIBILITY
MARÍA ISABEL VÉLIZ FRANCO
GUATEMALA
October 21, 2006

I. SUMMARY

1. On January 26, 2004, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," the "Commission," or the "IACHR") received a complaint alleging international responsibility on the part of the State of Guatemala ("the State") for gaps and irregularities in the investigation of the death of María Isabel Véliz Franco, 15 years of age, who disappeared on December 17, 2001 in the City of Guatemala and was found dead the next day. The petition was filed by Rosa Elvira Franco Sandoval de Véliz (hereinafter "the petitioner"), mother of the alleged victim, the Center for Justice and International Law (CEJIL) and the *Red de No Violencia Contra Mujeres en Guatemala* [Network against Violence against Women in Guatemala] (hereinafter, jointly, "the petitioners").

2. The petitioners allege that the facts reported constitute a violation of several rights protected by the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention"): the right to life (Article 4), right to personal integrity (Article 5), right to personal freedom (Article 7), right to a due process (Article 8), protection of honor and dignity (Article 11), rights of the child (Article 19), right to equal protection (Article 24), and judicial protection (Article 25), as well as Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará," all the foregoing in connection with Article 1 (1) of the American Convention. They contend that, in the case of Rosa Elvira Franco Sandoval de Véliz, there is a violation of the right to personal integrity (Article 5) and of her right to protection of her honor and dignity (Article 11). The State of Guatemala, in turn, contends that the investigation of the case is ongoing and manifests its interest in resolving the murders of women that have occurred in recent years in Guatemala resulting from the violence generated against women.

3. Without prejudging the merits of the case, the IACHR concludes in this report that the case is admissible, as it meets the requirements provided for by Articles 46 and 47 of the American Convention. Therefore, the Inter-American Commission decides to notify the parties of this decision and continue reviewing the merits regarding the alleged violation of the rights of María Isabel Véliz Franco protected by Articles 4, 8(1), 11, 19, 24 and 25 of the American Convention, as well as the alleged violation of Article 7 of the American Convention on the Prevention, Punishment and Eradication of Violence against Women "Convention of Belém do Pará," and Articles 5(1), 8(1), 11 and 25, as applied to the case of Rosa Elvira Franco Sandoval de Véliz, all the aforementioned in connection with Article 1(1) of the American Convention. The Commission also decides to publish this report in its *Annual Report* to the General Assembly of the OAS.

II. PROCEEDINGS WITH THE INTER-AMERICAN COMMISSION

4. The petition was filed on January 26, 2004. After the initial study of the proceedings, pursuant to Article 30(2) of its Rules of Procedure, on September 24, 2004 the IACHR forwarded the relevant parts of the petition to the State, and granted it two months to submit its observations. The State requested a 30-day extension to submit its observations on the petition on November 19, 2004. The IACHR granted the requested extension of 30 days on December 14, 2004, the same date in which the State was informed the extension had been granted. A note dated December 16, 2004 was received from the State with its observations regarding the petition, which was forwarded to the petitioner. The petitioner submitted her own observations on January 22, 2005.

5. On February 21, 2005 the petitioner submitted additional information. On February 24, 2005, the IACHR forwarded to the State the relevant parts of the petitioner's observations, as well as the additional information received, granting it one month to present its observations to the IACHR. On April 12, 2005, the State submitted a report to the IACHR with additional observations on the petitioner's communications. The State's report was forwarded to the petitioner on April 21, 2005, granting her one month to submit her observations. The petitioner submitted additional observations on the petition on May 27, 2005. On June 20, 2005, the IACHR transmitted this information to the State, granting it one month to submit observations.

6. The IACHR was informed on September 5, 2005 that from that day forward the petitioner would be represented by CEJIL. On January 25, 2006, CEJIL informed the IACHR that the *Red de No Violencia contra las Mujeres en Guatemala* [Network against Violence against Women in Guatemala] was joining the case as a petitioner, and the petitioners submitted additional observations on the petition, which were forwarded to the State on January 27, 2006, granting it 20 days to submit its own observations. On February 14, 2006, the State requested an extension of 30 days, which the IACHR granted.

7. On March 24, 2006, the State submitted additional observations on the petition, which were forwarded to the petitioners on April 7, 2006. On May 1, 2006, the petitioners responded to the additional observations presented by the State. On May 24, 2006, the State submitted additional observations on this petition, which were forwarded to the petitioners on June 2, 2006. The State submitted additional information to the IACHR on a July 13, 2006 communication, which was forwarded to the petitioners on August 3, 2006.

A. Request for Precautionary Measures

8. On June 27, 2005, the petitioner requested from the IACHR the grant of precautionary measures in favor of her and her family. She alleged that she feared for her life and personal integrity and for the lives and personal integrity of her family, as they were the victims of constant and permanent harassment, persecution and threats by unknown armed persons. On November 16, 2005, the Commission decided to grant precautionary measures for a period of six months to Rosa Elvira Franco Sandoval, Leonel Enrique Véliz Franco, José Roberto Franco Sandoval and Cruz Elvira Sandoval Polanco. In connection with the entry into force of the precautionary measures, the IACHR received an August 4, 2006 communication from the State, concluding that: "so long as the State does not clarify the instant case, the conditions of risk, vulnerability, and extreme urgency continue to exist; consequently a reasonable time period is requested of the IACHR, in order for the State to report on the progress of the investigation and to comply with its constitutional and international obligations regarding the protection of human rights." Said communication was transmitted to the petitioners on August 8, 2006, granting them 30 days to submit their observations.

III. POSITIONS OF THE PARTIES

A. The petitioners

9. The petitioners allege that the State is responsible for gaps and irregularities in the investigation of the facts related to the disappearance and subsequent death of María Isabel Véliz Franco, of 15 years of age. They contend that on December 17, 2001, Ms. Rosa Elvira Franco Sandoval de Véliz reported the disappearance of her daughter María Isabel Véliz Franco to the *Policía Nacional Civil* [National Civil Police] (hereinafter PNC), whose body was found the next day. The petitioners allege that, from the moment of the report, the Guatemalan authorities have incurred, by action or by omission, in serious violations of due process, resulting in an ineffective investigation. Moreover, they assert that, from the beginning of the investigation, the responsible state agents, instead of investigating the facts, have focused their efforts on discrediting the victim and her mother. In addition, in the case of Rosa Elvira

Franco Sandoval de Véliz, the petitioners allege that her integrity has been violated by the painful process related to the loss of her daughter and her frustrating four-year struggle to urge the State to speed up the investigation of her death.

10. It is alleged that on December 18, 2001, the PNC received a call from an anonymous informant stating that, on the night of December 17, a woman stepped out of a car, and dropped a sack in a vacant lot in the Municipality of Mixco, near Guatemala City, and that the car then left towards a house in that same area. The PNC immediately responded, arrived at the lot and found the sack, which contained the body of María Isabel Véliz Franco. The petitioners contend that the authorities did not provide proper follow-up to this call, since, for example, they never looked for the car described by the anonymous informant.

11. On December 19, 2001, a team of specialists recovered evidentiary items from the place where the body of the girl was found, which were sent to the laboratory of the *Departamento Técnico Científico del Ministerio Público* [Scientific and Technical Department of the Office of the Attorney General]. According to the petitioners, the death certificate issued on December 18, 2001 categorized the cause of the death of María Isabel Véliz Franco to be a homicide. However, the petitioners state that no forensic tests that could have assisted in clarifying the facts were practiced on the body of the alleged victim. The petitioners contend that a complete analysis of the evidentiary items was not carried out, and that the following tests were never made: a) comparison of hair found on the body; b) comparison of blood found at the crime scene (according to the hematology report it was type B and AB, and María Isabel Véliz Franco had type A); c) pubic hair; d) mouth, vaginal and anal swabs; e) fingernail scrapings; and f) analysis of two towels found at the crime scene.

12. Rosa Elvira Franco Sandoval de Véliz, mother of the alleged victim, gave her deposition at the Office of the Attorney General on January 14, 2002, regarding persons close to her daughter and requested that the incoming and outgoing calls to her daughter's cell phone be traced. Since the Office of the Attorney General did nothing about her request, Ms. Franco, on her own, obtained information from the cellular telephone company about the outgoing calls from her daughter's cell phone. Although she could not obtain the registry of incoming calls, she forwarded the information she had to the Office of the Attorney General on January 30, 2002. She also requested, in a letter dated February 1, 2002, and several times thereafter, that the Office of the Attorney General speed up their investigation. The petitioners allege that it was not until September 4, 2002 that the list of outgoing calls from the girl's cell phone was forwarded to the *Dirección de Investigaciones Criminalísticas del Ministerio Público* [Office of the Director of Criminal Investigations of the Office of the Attorney General] to investigate the owners of the telephones included in the report.

13. According to the information provided by the petitioners, the Office of the Attorney General issued a report on February 20, 2002 containing the "results of the preliminary proceedings in the investigation of the María Isabel Véliz Franco case," in which pejorative adjectives were used to describe her: for example, it said that the alias of the minor was "the crazy."¹ They contend that the report concludes that the alleged victim was a libertine, involved with gangs, who frequented discotheques, had many boyfriends, used provocative clothing and used drugs; in addition that María Isabel would dress in a provocative way and that the style of her clothes and her belongings were beyond her means.² The report also asserts that the mother of the victim was negligent in her daughter's supervision. The petitioners also state that the authorities have conveyed to Ms. Rosa Elvira Franco Sandoval de Véliz that their daughter was a "whore."³

14. The February 2002 report also identifies Mr. Osbel Airosa Hernández, of Cuban nationality, as the prime suspect, with whom the alleged victim had gone out the day of her disappearance. On April 15, 2002, Mr. Osbel Airosa Hernández's deposition was taken by the

¹ Report of the Office of the Attorney General dated February 20, 2002, Ref. 2727/01.

² Report of the Office of the Attorney General dated February 20, 2002, Ref. 2727/01.

³ This was also reported by Ms. Rosa Franco in a January 22, 2003 letter to the Human Rights Defender, and in an August 28, 2004 letter to the Attorney General.

Office of the Attorney General, but when he was summoned several times afterwards, between October 2003 and March 2004, 7 months after his first deposition, he did not appear. According to the petitioners, the State was extremely negligent in identifying and finding this prime suspect, since in September 2004 the Office of the Attorney General was informed by the *Confederación Deportiva Autónoma de Guatemala* [Autonomous Sporting Confederation of Guatemala] that Mr. Osbel Airoso had never worked there and it was not until February 2005 that the Criminal Investigation Service was ordered to fully identify and find Mr. Osbel Airoso Hernández.

15. The petitioners also allege that the investigation of the case was unreasonably delayed due to a conflict of jurisdiction. On March 11, 2002, they assert, the *Juez Octavo de Primera Instancia Penal del Departamento de Guatemala* [Eighth Criminal Judge of the First Instance of the Province of Guatemala] disqualified himself from hearing the case since the alleged homicide had occurred in the jurisdiction of the Municipality of Mixco, which corresponds to the *Agencia Fiscal No. 5* [Office of the Assistant District Attorney No. 5]. Therefore, on May 24, 2002, the case was transferred from the Office of the Assistant District Attorney No. 32 to Office No. 5. The *Juzgado Primero de Primera Instancia Penal de Mixco* [First Criminal Court of the First Instance of Mixco], in turn, disqualified itself from hearing the case on the presumption that the crime had occurred in the place where the victim disappeared, and sent the case back to Office No. 32, to be heard within the jurisdiction of the Eighth Criminal Judge of the First Instance. The latter court submitted the conflict of jurisdiction on September 25, 2002. The case was decided by the Supreme Court, which declared the First Criminal Court of the First Instance of Mixco to be the court with jurisdiction. Consequently, the case was referred to the jurisdiction of Mixco on December 11, 2002.

16. According to the petitioners, due to delays in the investigation, it was not until December 15, 2002 that a visual inspection of the crime scene was carried out, almost a year after the death of María Isabel Véliz Franco. They state that by the time the inspection was made, the crime scene had changed and the vacant lot had even been burned. It was not until July 8, 2003 that there was a search of the property where the vehicle that, according to the anonymous informant, allegedly had been used to move the body of the alleged victim was supposed to be found. Moreover, the petitioners report that said search was made in the wrong place, since the address given by the anonymous informant was *6ta Calle 5-24 Colonia Monserrat en la zona 7* [6th Street 5-24 Montserrat Development in Zone 7] and the search was carried out at *6 calle 5-24 de la zona 3* [6th Street 5-24 of Zone 3] of Guatemala City. Consequently, the results of the search were negative.

17. According to the information provided by the petitioners, the most recent proceeding carried out to identify possible suspects responsible for the death of María Isabel Véliz Franco was in February 2005, when the Criminal Investigation Service was ordered to fully identify and find Mr. Osbel Airoso. Since then, the case, allegedly, has been laid aside. Thus, they contend, more than four years have passed since the murder of the alleged victim and the case has not gone beyond the investigation phase, with no signs that in the near future it will be possible to identify the perpetrators and/or abettors of the aforementioned murder.

18. According to the petitioners, the negligence of state authorities has been such that on November 2, 2004, the *Procurador de Derechos Humanos* [Human Rights Defender] issued a resolution concluding that the Office of the Attorney General did not act in accordance with the principle of objectivity in the exercise of criminal prosecution, nor did it act within the deadlines established by law, “which proves the inability of the State to guarantee life, liberty, justice, security, peace and the full development of the individual, for the inhabitants of the Republic of Guatemala (...).⁴ In addition, it denounces the participating prosecutors for delaying justice by not resolving the problem of territorial jurisdiction. The Human Rights Defender declared the existence of violations of the human rights to security and due process of Ms. Rosa Elvira Franco Sandoval de Véliz, since there is reasonable cause related to the responsibility of the State of Guatemala for these violations.

⁴ Report of the Human Rights Defender dated November 2, 2004, Ref. Exp. Ord. Gua. 41-2003/DI.

19. The petitioners further add that gender discrimination has constituted an obstacle to the investigation in this case, and that the facts described should be analyzed within the context of the killing of women in Guatemala: there is a systematic pattern of murders of women. In this respect, they contend, the State has not adopted measures to protect the right to life of women; evidence of this, they assert, is provided by the Office of the Human Rights Defender, which states that out of 1,188 cases of women and girls murdered between 2001 and 2004, only 9% of them have been investigated.

20. The petitioners claim that the lack of investigative capacity and interest on the part of the authorities “breeds more violence as well as mistrust in those state institutions responsible for protecting the human rights of the citizens. The impunity generated sends the message that these acts are tolerated, allowing violence against women to become systematic.”⁵

21. In sum, the petitioners contend that the exhaustion of domestic remedies cannot be required in this case, since it has been proven that the process has been characterized by an unwarranted delay, and to date there has been no “final decision” in this case.

B. The State

22. The State of Guatemala contends, first, that through the Office of the Attorney General, the investigating agency in criminal matters, the State has carried out an in-depth investigation of the case to find the party responsible of the “crimes of kidnapping and murder” of María Isabel Véliz Franco.⁶

23. The State also maintains that in the instant case, as in many that have been taking place in the country, although investigations have not provided positive results due to the lack of physical and scientific evidence, there have been coordinated actions between the Office of the Attorney General with the Criminal Investigation Service of the National Civil Police, as well as with the Office of the Director of Criminal Investigations, in order to obtain more evidence leading to the guilty parties.

24. The State declares its “interest in clarifying the murders of women that have occurred in recent years due to the violence generated against women in our country.” Proof of this, it asserts, is the invitation President Oscar Berger made, at the request of civil society representatives, to Susana Villarán, the former Rapporteur on the Rights of Women, for her to visit Guatemala and study this problem.

25. The State affirms that it has carried out seventy-two proceedings between January 14, 2002 and November 22, 2004, including “subpoenas, searches, and authorizations for the release of lists of telephone calls.”⁷

26. Regarding the follow-up of the anonymous telephone call, the State maintains that, based on the available information, which can be found in a January 15, 2002 report, surveillance was begun of a house on 6th Street 5-24 of the Nueva Montserrat Development, Zone 3 of Mixco and not Zone 7, as mistakenly has been stated; no vehicle with the described characteristics was seen. The State further alleges that the characteristics of the car described by the anonymous informant were indeed investigated, but it was decided that on the date of the crime there was no car in the vicinity with the license plate numbers given.

27. The State maintains that on July 8, 2003, it searched the property where allegedly the vehicle used to move the body of María Isabel Véliz Franco was to be found, with negative results.

⁵ Petitioners' communication dated January 25, 2005.

⁶ State's communication dated December 16, 2004.

⁷ State's communication dated April 12, 2005.

28. The State claims to have performed forensic tests on the body. According to a January 4, 2002 report, these tests did not find any semen. It also asserts that the autopsy identified the injuries and established the victim's cause of death.

29. The State maintains that it did perform the visual inspection of the vacant lot in a timely manner and that a National Civil Police helicopter flew over it. It also informs that a visual inspection of the crime scene was also done on June 18, 2003.

30. The State contends that although there was indeed a conflict of jurisdiction, it did not stop the investigation. On May 24, 2002, the Assistant District Attorney, Office No. 32 of the Fiscalía Metropolitana de la ciudad de Guatemala [Guatemala City Metropolitan District Attorney's Office], disqualified himself for the case and forwarded the case file, due to the fact that on March 11, 2002 the Eighth Criminal Court of the First Instance had disqualified itself from hearing the case, arguing that the crime had been committed within the jurisdiction of the Municipality of Mixco. Subsequently, on June 3, 2002, the Office of the Assistant District Attorney No. 5 of the Municipal Attorney's Office of Mixco assigned the case to Edgar Romero Arana Castillo. This office in turn, on June 23, 2002, requested the First Criminal Court of the First Instance to *ex officio* request its lack of competence to hear the case and to forward the proceedings to the Eighth Criminal Court of the First Instance, because it was presumed that the crime was committed at the place where the minor disappeared. The First Criminal Court of the First Instance *ex officio* declared its lack of competence on September 2, 2002, and forwarded the proceedings to the Eighth Criminal Court of the First Instance of Guatemala, which then submitted the conflict of jurisdiction to the Supreme Court on September 25, 2002. On November 21, 2002, the Supreme Court of Justice ruled that the First Criminal Court of the First Instance was competent to hear the case and, on December 11, 2002, Office No. 32 of the Metropolitan District Attorney's Office forwarded the proceedings to the Office of the District Attorney of Mixco.

31. Regarding the possible suspect of the murder, Osbel Airosa, the State requested Mr. Francisco Lee, of the *Confederación Deportiva Autónoma de Guatemala* [Autonomous Sporting Confederation of Guatemala], where the allegedly the suspect was employed, to keep him at his post. The alleged suspect gave his deposition to the Office of the Attorney General on April 15, 2002. Subsequently he was summoned several times, but did not appear to give testimony.

32. Regarding the telephone calls from the minor's cell phone, the State ordered the telecommunications company to provide a list of them in March 2002. The State also contends that there exists a report of incoming and outgoing calls and their duration.

33. The State denies that since 2005 the case has been abandoned and maintains that during that year it requested the Office of the Director of Criminal Investigations of the Office of the Attorney General to analyze the latest telephone calls that the victim received (November 2004) in order to identify the individuals with which she spoke before her death. In addition, the *Confederación Deportiva Autónoma de Guatemala* [Autonomous Sporting Confederation of Guatemala] reported that Mr. Osbel Airosa no longer worked there; consequently the Criminal Investigation Service was ordered to fully identify and find Osbel Airosa Hernández.

34. With respect to the alleged humiliation to which the petitioner was subjected, the State requests that it be informed more specifically about the facts in order to investigate. Given that it has not been able to find a suspect, the State contends that the case is still under investigation in order to obtain sufficient evidence to initiate criminal proceedings and for justice to be served.

35. The State maintains that "if to date it has not been possible to identify the suspect, this is not because of a lack of ability, or of responsible conduct, or of due diligence (...) but because

we do not have an eyewitness of the crime or any other evidence allowing us to prosecute anybody, as has been the case with other murders of women (...)”⁸

IV. ANALYSIS OF ADMISSIBILITY

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

36. The petitioners are authorized by Article 44 of the American Convention to file complaints before the IACHR. The petition identifies María Isabel Véliz Franco as the alleged victim, an individual with respect to whom Guatemala undertook to respect and guarantee the rights provided for by the American Convention. With respect to the State, Guatemala is a party to the American Convention since May 25, 1978, the day on which it deposited its instrument of ratification. Guatemala is likewise a party to the Convention of Belém do Pará since April 4, 1995. Therefore, the Commission is competent *ratione personae* to examine the petition.

37. The IACHR is competent *ratione loci* to hear the petition, because in it violations of rights protected by the American Convention and the Convention of Belém do Pará are alleged to have taken place, within the territory of the State of Guatemala, a party to said treaties.

38. The Commission, in addition, is competent *ratione temporis*, since the obligation to respect and guarantee the rights protected by the American Convention and the Convention of Belém do Pará were already in force for the State at the time in which the events alleged in the petition would have occurred. Finally, the Commission is competent *ratione materiae*, given that the petition complains of the violation of human rights protected by the American Convention and the Convention of Belém do Pará.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

39. The American Convention, in its Article 46(1), provides that for a petition to be admissible, it shall be subject to the following requirement: “that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law.” Article 46(2) of the Convention, in turn, establishes three situations in which the requirement of prior exhaustion of domestic remedies is not applicable: a) when the domestic legislation of the State concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; b) when the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them, or c) when there has been unwarranted delay in rendering a final judgment under the aforementioned remedies. These rules refer not only to the formal existence of said remedies, but also to the fact that they must be appropriate and effective.

40. In the instant case, the State alleges that there is an ongoing investigation of the facts and that, although the proceedings carried out to investigate and clarify the facts have not yet yielded conclusive physical and scientific evidence to find the guilty parties, there is no unwarranted delay in the proceedings to clarify the facts. The petitioners, in turn allege that it is impossible to exhaust domestic remedies, and further claim that there has been an unwarranted delay on the part of the State to investigate and clarify the facts “because of a lack of focus in its actions, or because of a lack of action altogether”; hence, the homicide of María Isabel Véliz Franco is still in the investigation phase. They maintain that the State has had conclusive evidence at its disposal to investigate the case; it is a matter that has less to do with the complexity of a case, and more with the “negligence and lack of interest on the part of the authorities responsible for the investigation.” Moreover, the record clearly shows their active participation in the case from the beginning, having, in addition, taken actions and

⁸ State’s communication dated July 13, 2006.

made inquiries with the purpose of assisting in the clarification of the facts. The petitioners further argue that more than four years have elapsed since the murder of the alleged victim and the case has not progressed beyond its investigation phase, without any signs to date that the perpetrators and/or abettors of the crime can be identified.

41. When a State alleges that domestic remedies have not been exhausted, it is up to the State to identify those that must be exhausted and demonstrate their effectiveness. In this case, the burden of proof that said remedies have indeed been exhausted, or that one of the exceptions provided for by Article 46 (2) of the American Convention applies, is transferred to the petitioners.

42. Without examining the arguments offered by the parties regarding the alleged violation of the right to due process and judicial protection, the Commission notes that more than four years have passed since María Isabel Véliz Franco was found dead and at the time of the writing of this report the representatives of the State have not provided specific information regarding the identification and punishment of those potentially responsible for her death. The Commission likewise notes that the record in the IACHR does not contain information about recent proceedings carried out by the State or on any progress made towards clarifying the facts and sanctioning those responsible, in particular since 2005 onward. The Guatemalan State limits itself to mentioning some of the proceedings carried out in the investigation of the facts, but does not offer specific information that would lead to the conclusion that the investigation is appropriate and effective, as required for the clarification of the facts.

43. According to the information available to the IACHR, the Commission also makes the preliminary observation that there has been an unwarranted delay with respect to jurisdiction.⁹ This conflict of jurisdiction, which lasted nearly seven months, constitutes a contributing factor to the unwarranted delay in the identification and sanction of those allegedly responsible for the crime.

44. The Inter-American Commission also notes that the petitioners allege that the facts of the instant case occurred within the context of numerous homicides and disappearances of women in Guatemala, the majority of which constitute unsolved cases by the state authorities, perpetuating impunity for acts of violence against women.

45. In the light of all the foregoing, and of the evidence in the record, the Inter-American Commission finds – for purposes of admissibility – that there has been an unwarranted delay in the decisions of the Guatemalan courts regarding the facts reported. Consequently, the IACHR finds that the exception to the exhaustion of domestic remedies provided for by Article 46(2)(c) of the American Convention is applicable.

2. Timeliness of the petition

46. Regarding the requirement provided for by Article 46(1)(b) of the Convention, according to which the petition must be filed within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment exhausting domestic remedies, the Commission considers that compliance with this time period is not applicable either, since the petition was lodged within the reasonable time period provided for by Article 32(2) of its Rules of Procedure for those cases in which there has been no final judgment at the time of the filing of the petition.

3. Duplication of proceedings and international *res judicata*

47. The record of the petition does not contain information indicating that the instant case is pending in another international proceeding for settlement, or that it has been previously decided by the Inter-American Commission. Therefore, the IACHR concludes that the

⁹ IACHR, Report No. 54/01, Case 12,051, Maria Da Penha Fernandes, Brazil, April 16, 2001, para. 32

exceptions provided for by Articles 46(1) (c) and 47(d) of the American Convention are not applicable.

4. Characterization of the facts alleged

48. In the instant case, the petitioners contend that the State is responsible for alleged violations of the rights to life, to personal integrity, to personal freedom, to due process, to the protection of honor and dignity, equality under the law and judicial protection, of the rights of the child, and of the right of women to a life free from violence, respectively guaranteed by the American Convention and the Convention of Belém do Pará. The State, in turn, alleges that the judicial process is in the stage of the investigation of the facts.

49. It is the opinion of the Commission that at this stage it is not appropriate to determine if the alleged violations did or did not occur. For purposes of admissibility, the Commission must decide whether the facts alleged tend to establish violations of the Conventions, as provided by Article 47(b) of the American Convention. The criterion used to decide these issues is different from the one required to decide on the merits of the complaint. The Commission must perform a *prima facie* evaluation to decide whether the complaint has grounds establishing an apparent or potential violation of a right guaranteed by the Convention. This determination constitutes a primary examination that does not imply prejudgment on the merits of the case.

50. The allegations of the petitioners refer to facts that, should they be true, would constitute violations of several rights guaranteed by the American Convention and the Convention of Belém do Pará. The IACHR considers that the facts put forward require a more thorough and complete examination of the petition at the merits stage.

51. It is the opinion of the IACHR that, should the facts be proven, they would constitute violations of the rights of María Isabel Véliz Franco, guaranteed by Articles 8(1), 11, 19, 25 of the American Convention, in connection with Article 1(1) of same. It likewise is of the opinion that the facts put forward could constitute possible violations of Article 7 of the Convention of Belém do Pará. In addition, the IACHR considers that the facts submitted could constitute possible violations of Article 4 of the American Convention, with respect to the obligation to guarantee rights provided for by Article 1(1) of said instrument.

52. Furthermore, it considers that the alleged facts would constitute possible violations to Article 24 of the American Convention, in connection with Article 1(1) of said instrument. The IACHR observes that the petitioners allege that the facts described have occurred in a context of impunity toward violent acts by the administration of justice, which affect women disproportionately as a group and promotes the repetition of these acts. Within this context of impunity, attitudes from justice officials based on sociocultural discriminatory concepts that affect mostly women are claimed. This pattern of impunity has been observed by the IACHR Rapporteurship on the Rights of Women.¹⁰

53. With respect to Rosa Elvira Franco Sandoval de Véliz, the Commission considers that, should the facts be proven, they would constitute violations of the rights guaranteed by Articles 5(1) and 11 of the American Convention. Furthermore, although the petitioners have not invoked Articles 8(1) and 25 of the American Convention, by virtue of the *iura novit curia* principle, the Commission shall admit allegations referring to violations of Articles 5(1) and 25 with respect to the mother of the alleged victim. All of these articles will be analyzed in connection with Article 1(1) of the American Convention.

54. With respect to María Isabel Véliz Franco, it is the opinion of the IACHR that the facts submitted in the petition do not provide sufficient grounds to constitute a violation of the right to personal integrity, protected by Article 5 of the American Convention, or of the right to personal freedom, protected by Article 7 of same.

¹⁰ IACHR, Press Release, No. 20/04, *The IACHR Special Rapporteur evaluates the effectiveness of the right of women in Guatemala to live free from violence and discrimination*, September 18, 2004.

55. In the light of the aforementioned, the IACHR concludes that the petitioners have *prima facie* met the requirements of Article 47 (b) of the American Convention.

V. CONCLUSIONS

56. The Commission concludes that it is competent to hear the merits of the instant case and that the petition is admissible pursuant to Articles 46 and 47 of the American Convention. Based on the foregoing arguments in fact and in law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

1. To declare this petition admissible regarding the alleged violations of the rights provided for by Articles 4, 8(1), 11, 19, 24 and 25 of the American Convention, in connection with Article 1(1) of same, and by Article 7 of the Convention of Belém do Pará with respect to María Isabel Véliz Franco, and regarding the alleged violations of the rights provided for by Articles 5(1), 8(1), 11 and 25 in connection with Article 1(1) of the American Convention with respect to Rosa Elvira Franco Sandoval de Véliz.
2. To declare this petition inadmissible regarding the alleged violations of the rights provided for by Articles 5 and 7 of the American Convention with respect to María Isabel Véliz Franco.
3. To notify the parties of this decision.
4. To continue with the examination of the merits of the case, and
5. 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 21st day of the month of October, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Clare K. Roberts, Freddy Gutiérrez, Paolo G. Carozza and Víctor E. Abramovich, Members of the Commission.