

REPORT N° 14/08
PETITION 652-04
ADMISSIBILITY
HUGO HUMBERTO RUIZ FUENTES
GUATEMALA
March 5, 2008

I. SUMMARY

1. On October 8, 2003, when the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") adopted its Report on Merits N° 49/03 in Case N° 12.402 (Ronald Ernesto Raxcacó Reyes), it decided to open a petition against the State of Guatemala (hereinafter "the State," "the State of Guatemala," or "Guatemala"), ordering a certified extract of the proceedings concerning Mr. Hugo Humberto Ruiz Fuentes (hereinafter the "alleged victim") in that case file for separate processing. This was due to the fact that the request of the CEJIL and the Institute for Comparative Studies in Penal Sciences of Guatemala (hereinafter "the petitioners") to include Mr. Ruiz Fuentes as a victim in that case was rejected because it was made after the procedural phase for such determinations had ended.¹ [1] The separate petition was opened on July 26, 2004.

2. The original facts that gave rise to the case concerned primarily the criminal procedure that resulted in the imposition of death sentence on the alleged victim. The petitioners requested the inclusion of additional alleged violations of human rights, alleging that Mr. Hugo Humberto Ruiz Fuentes was tortured in detention and this was not properly investigated, and alleging further that he was summarily executed in the course of his capture after escaping from his place of detention. The

1 IACHR, Report on Merits N° 49/03, Case 12.402, Ronald Ernesto Raxcacó Reyes, Guatemala, October 8, 2003, paras. 28-30:

"28. Secondly, with regard to the petitioners' request to include Mr. Hugo Humberto Ruiz Fuentes as a victim in this case, in the light of procedural principles of preclusion and contradiction, the Commission considers it to be unfounded. In the first place, in accordance with the principle of preclusion, the stages of a proceeding develop successively, by definitively closing each one, thereby preventing the return to already extinguished and completed stages or moments in the process. According to the principle of contradiction or opposition, which guides proceedings in the inter-American system, the parties' right of defense must be respected. As a result, the opposing party must be guaranteed the opportunity to respond to arguments of fact and of law, and this applies to evidence presented or offered by it as well.

29. In the present case, the Commission considers that preclusion is operative with respect to the inclusion of a new victim, since the opportunity in the process to examine and decide on that issue was in the admissibility stage, which in this case ended with Admissibility Report No. 51/02 issued on October 9, 2002. According to the petitioners' request, the defense of Mr. Ruiz was served with the judicial decision by which the *amparo* petition was denied on December 12, 2002, or in other words, after the stage in which matters related to compliance with the requirements under Article 46 of the Convention were considered and in which the right of defense of the state in that matter was guaranteed.

30. Consequently, in view of the fact that this is a separate situation, the Commission instructs the Executive Secretariat to authenticate copies of the proceedings in the case records referring to Mr. Hugo Humberto Ruiz Fuentes and, in application of Article 24 of the Rules of Procedure, since the requirements for that purpose have been met, to initiate the process for a separate petition."

petitioners claim that these facts would be violations of Articles 2 (duty to adopt domestic legislative measures), 4 (right to life), 5 (right to humane treatment), 8.1 (right to a fair trial), 24 (right to equal protection), and 25 (right to judicial protection) in connection with Article 1 (obligation to respect rights) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") to the detriment of the alleged victim.

3. The State, for its part, presented no arguments concerning the criminal proceeding or the death sentence pronounced on the alleged victim, nor did it address the alleged torture charged by the petitioners. Concerning the summary execution, the State considers that, as it was told by the appropriate authorities, the death of Mr. Ruiz Fuentes was probably caused by private parties motivated by personal revenge, and that the exception to prior exhaustion of domestic remedies alleged by the petitioners is inapplicable because the internal proceeding is ongoing, currently in the phase of investigation by the Public Prosecutor's Office.

4. Without prejudging the merits of the case, the IACHR concluded that the petition is admissible with regard to the alleged violation of the rights guaranteed in Articles 4 (right to life), 5 (right to humane treatment), 8.1 (right to a fair trial), and 25 (right to judicial protection) of the American Convention, in connection with the general obligation established in Article 1.1 of the same treaty and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Hugo Humberto Ruiz Fuentes. The Commission decided to transmit this decision to the parties, to publish it, and to include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCESSING BY THE COMMISSION

5. Processing began when the Inter-American Commission—in the framework of the Report on Merits N° 49/03—directed the Executive Secretariat to prepare a certified extract of the proceedings concerning Mr. Hugo Humberto Ruiz Fuentes (hereinafter the "alleged victim") in that case file for separate processing, as the petitioners' request of January 2, 2003, to include Mr. Ruiz Fuentes as a victim in that case was deemed untimely.² [2]

6. On July 19, 2004, the IACHR received a communication from a public defender of the Institute for Public Criminal Defense in Guatemala, reporting that "an appeal for executive clemency [for Hugo Humberto Ruiz Fuentes] submitted to President Oscar Berger on December 16, 2003, has not been decided as of this date, so we have exhausted domestic remedies."

7. On July 26, 2004 the Commission sent the State of Guatemala a copy of this extract under petition number 652/04, giving it two months to present any comments.

8. On November 10, 2006, the IACHR received additional information from the petitioners, in which they requested the inclusion of new violations of human rights to the detriment of Mr. Ruiz Fuentes. The petitioners' note was forwarded to the State on December 18, 2006, giving it one month to present any comments.

² IACHR, Report on Merits N° 49/03, Case 12.402 Ronald Ernesto Raxcacó Reyes, Guatemala, October 8, 2003, paras. 28-30.

9. The State replied in a note received on January 23, 2007, requesting an extension of 30 days to expand on the information, as it did not have the documentation extracted from case 12.402, and it requested that this documentation be sent. On February 26, 2007, the petitioners sent additional information which contained several volumes.

10. On March 2, 2007, the State's reply of January 23 was forwarded to the petitioners, giving them one month to present any comments.

11. On March 27, 2007 the petitioners sent their observations on the State's communication of January 23, 2007. On April 27, 2007, the petitioners' communication of February 26, 2007, was transmitted to the State, giving it one month to present any comments.

12. On May 10, 2007, the petitioners' observations of March 27, 2007, were passed on to the State, giving it one month to present any comments. On June 5, 2007, the State sent a communication to the IACHR saying that it would present its observations that were due by May 26 and June 10 together before the latter deadline.

13. On July 12 the petitioners resubmitted several documents that had been illegible as originally sent. On July 24, 2007, the State sent observations, which were forwarded to the petitioners with a note of July 26, 2007, giving them one month to present any comments.

14. On August 30, 2007, the petitioners sent their observations, which were transmitted to the State by note of September 17, 2007, giving it one month to present any comments. The State sent its reply in a note received by the IACHR on November 14, 2007, which was forwarded to the petitioners on December 3, 2007. Their observations, received on January 4, 2008, were sent to the State for its information on January 15, 2008.

III. PROVISIONAL MEASURES

15. On August 30, 2004, the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), considering that the execution of the alleged victims "would produce an irreparable situation and the State would have committed an action incompatible with the Convention's object and purpose,"³ decided to require the State of Guatemala

...to adopt forthwith the necessary measures to protect the lives of Ronald Ernesto Raxcacó Reyes, Hugo Humberto Ruiz Fuentes, Bernardino Rodríguez Lara and Pablo Arturo Ruiz Almengor so as not to hinder the processing of their cases before the inter-American system for the protection of human rights.⁴

16. On November 8, 2005, the State informed the Court that on October 21, 2005, 19 prisoners, including Mr. Hugo Humberto Ruiz Fuentes, escaped from Escuintla high-security prison, also known as "Little Hell." As a result, Guatemala requested the suspension of the provisional measures on behalf of Mr. Ruiz Fuentes, as

³ I-A Court, *Provisional Measures Raxcacó Reyes*. Order of the Court of August 30, 2004. Preamble Nº 9.

⁴ I-A Court, *Provisional Measures Raxcacó Reyes*. Order of the Court of August 30, 2004. Operative para. Nº 1.

it could not fully guarantee the life and integrity of one who was not directly under the State's custody.⁵

17. On November 16, 2005, the representatives reported that out of the 19 people who escaped from prison, "three have been arrested and another three were executed upon arrest, including Mr. Ruiz Fuentes."⁶

18. On July 4, 2006, considering that "the obligations of the State set forth in these provisional measures regarding Mr. Hugo Humberto Ruiz Fuentes ceased due to his death,"⁷ the Court decided to consider the provisional measures adopted to benefit him closed.

IV. POSITIONS OF THE PARTIES

1. Position of the petitioners

19. On January 2, 2003, the petitioners requested that Mr. Ruiz Fuentes be added as an alleged victim in case N° 12.402 (Ronald Ernesto Raxcacó Reyes), because "the circumstances surrounding Mr. Ruiz's death sentence were exactly the same as those of Mr. Raxcacó, and the allegations of fact and law were the same in both cases."⁸

20. On October 8, 2003 (date of adoption of Report No. 49/03 in the Raxcacó Reyes Case), the IACHR directed that a separate petition be opened; this was done on July 26, 2004.

21. On November 10, 2006, the petitioners alleged the following facts: 1) That at the time of his arrest, Mr. Ruiz Fuentes was tortured by members of the security forces, and 2) That in the course of the capture of escaped prisoners, Mr. Ruiz Fuentes was summarily executed by members of the police on November 14, 2005.

22. Concerning the death sentence, the petitioners say it is necessary to take into account the observations of the Inter-American Court in the Raxcacó Reyes case, since Mr. Ruiz Fuentes was sentenced during the same trial and under the same circumstances, "with the death penalty imposed for the same purpose and cause."⁹ On this matter, they consider that there was a violation of Article 4 of the American Convention, because the State sentenced Mr. Ruiz Fuentes to death for the crime of kidnapping or abduction contemplated in Article 201 of the Penal Code, as amended by Decree N° 81/96, which extended capital punishment to all cases of kidnapping or abduction (regardless of the victims, the circumstances surrounding the facts, and the outcome),¹⁰ whereas it had previously only applied to cases that resulted in death. The petitioners also raised several considerations made by the Court in the abovementioned sentence, among them the following:

82. In view of the above, the Court concludes that Article 201 of the Guatemalan Penal Code, on which the sentence of Mr. Raxcacó Reyes was based, violated the

5 I-A Court, *Provisional Measures Raxcacó Reyes*. Order of the Court of July 4, 2006. Para 14.

6 I-A Court, *Provisional Measures Raxcacó Reyes*. Order of the Court of July 4, 2006. Para 17.

7 I-A Court, *Provisional Measures Raxcacó Reyes*. Order of the Court of July 4, 2006. Preamble N° 7.

8 IACHR, Report on Merits N° 49/03, Case 12.402 Ronald Ernesto Raxcacó Reyes, Guatemala, October 8, 2003. Presentation of the petitioners of January 2, 2003.

9 Communication of the petitioners received on November 10, 2007.

10 Communication of the petitioners received on November 10, 2007.

prohibition to arbitrarily deprive a person of their life established in Articles 4.1 and 4.2 of the Convention.¹¹

23. Concerning the death sentence, the petitioners said that the IACHR should “decide on admissibility in favor of Mr. Ruiz Fuentes and in due course issue a finding on merits fully consistent with the case of Ronald Ernesto Raxcacó Reyes, following the doctrine established by the Inter-American Court of Human Rights.”¹² [12]

24. Concerning the allegation of torture, on November 10, 2006, the petitioners said that on August 6, 1997, when he was arrested in the course of an operation to rescue the minor he was accused of kidnapping, Mr. Ruiz Fuentes suffered a beating that required his hospitalization and subsequent surgery for injuries to his intestine. They add that complaints of torture were filed during the public hearing, in which they submitted medical reports of that surgery into evidence.

25. With regard to the alleged summary execution, the petitioners claimed that on October 21, 2005, Mr. Ruiz Fuentes escaped from his place of confinement together with other inmates. They say that in order to recapture them, the State launched an operation called “Plan Gavilán,” in the course of which Mr. Ruiz Fuentes was executed on November 14, 2005.

26. They contend that in the processing of the provisional measures by the Inter-American Court, the State presented various versions of the circumstances surrounding the death of Mr. Ruiz Fuentes, initially telling the Court that he was killed in a confrontation with security forces during his recapture¹³ and subsequently saying that private armed parties executed him as part of a personal vendetta.

27. They add that in the framework of the recapture plan, of the 19 persons who escaped on October 21, 2005, three reportedly remain at large, nine were recaptured, and seven were killed by security forces.¹⁴

28. Concerning the versions about the death of Mr. Ruiz Fuentes, the petitioners say the official version given to the media on the day of the facts was issued by the Vice Minister of Government and the head of the Criminal Investigation Service (SIC), both of whom said Mr. Fuentes violently resisted arrest and was gunned down by the police agents who tried to arrest him. In support of their brief they attached news clippings in which journalists in various media said, for example: “the fugitive Hugo Humberto Ruiz Fuentes was shot dead last night by agents of the Plan Gavilán of the Criminal Investigation Service (SIC) after a chase in Barberena, Santa Rosa, according to Vice Minister Enrique Godoy”¹⁵ and “The head of the SIC, Víctor Hugo Soto, said they had pursued the escapee for four days and found him last night. When they ordered him to halt he pulled a weapon, leading to the aforementioned result.”¹⁶

11 I-A Court., *Raxcacó Reyes Case*. Judgment of September 15, 2005. Series C No. 133. Para. 82.

12 Communication of the petitioners received by the IACHR Executive Secretariat on November 10, 2006.

13 On the record of this version of the facts presented by the State to the Court see: “I-A Court, *Provisional Measures Raxcacó Reyes*. Order of the Court of July 4, 2006. Para 20.”

14 Observations of the petitioners received by the IACHR Executive Secretariat on March 27, 2007.

15 IACHR, Hugo Humberto Ruiz Fuentes – Petition 652/04, annexes: “El Periódico”, article of November 15, 2005, page 6.

16 IACHR, Hugo Humberto Ruiz Fuentes – Petition 652/04, annexes: “La Hora”, article of November 15, 2005, page 9.

29. The petitioners deny that Mr. Ruiz Fuentes “resisted arrest” by security forces, arguing that the crime scene was altered and that the information put in the investigation file (pertaining to his killing as an alleged act of revenge by private armed parties) is inconsistent with the information released by government officials. They say that the forensic autopsy report shows the impact of one bullet fired at close range into the skull while the victim’s eyes were closed, and of other bullets “from a distance that could be greater than one meter,” leading the petitioners to conclude that “there was manifest intent to use excessive force, which led to the loss of Mr. Fuentes’ life.” They add several considerations about alleged irregularities in the investigation of the case, such as tampering with evidence and failure to exercise due diligence.

30. In this connection, they say that Mr. Ruiz Fuentes was apparently the victim of a “social cleansing operation” organized in the framework of the Criminal Investigation Division. Some members of that body under arrest for the commission of crimes were said to have been executed in the detention center by a commando group that presumably wanted to silence them to prevent them from revealing the names of supervisors and other members who may have participated in criminal activities. The petitioners submitted the statement by the United Nations Rapporteur on Summary Executions to the effect that: “complaints that persons who work for the Criminal Investigation Division of the National Civil Police engage in work of social cleansing have great credibility.”

31. The petitioners say the State had a policy of tolerating excessive use of force in the recapture of escapees, given that they had been sentenced to death and were therefore “undesirables.”

32. Concerning arguments on admissibility, the petitioners state “it has been 16 months¹⁷ since Hugo Humberto was executed, presumably by state agents. However, it is clear from the information submitted by the Guatemalan State that there is no interest in investigating the case, establishing the responsibility of the authors of the crime, or making reparation for the damages, so the requirement for prior exhaustion of domestic remedies is inapplicable, as provided in Article 46.2 of the Convention.”

33. In this regard they say that although the State alleges that from the interviews conducted, it appears that this was a personal vendetta, it does not indicate the possible motives for the so-called revenge, nor does it identify the witnesses.

34. They consider that there has been unwarranted delay and ineffective investigation by the State considering that the complexity of the matter, the proceeding, and the conduct of judicial authorities in no way justify said delay in the instant case. On this point, they argue that the family of Mr. Ruiz Fuentes was not a party to the proceeding and therefore cannot be blamed for any delay, and the proceeding was not complicated because “there is ample testimony and forensic evidence that could have led to rapid determination of what happened....”¹⁸ They claim that the main defects of the investigation were its failure to consider the involvement of security forces in the facts under study, the omission in the forensic autopsy report of procedures that the Manual for Effective Prevention and Investigation of Summary Executions describes as necessary, the failure to investigate the 12 criminal

17 In the petitioners’ communication of March 27, 2007.

18 Observations of the petitioners received on August 30, 2007.

investigation agents who were at the crime scene, and the lack of steps to investigate senior commanders said to have organized the Plan Gavilán operation.

35. The petitioners say that due to the lack of investigation it was necessary for the Institute for Comparative Studies in Penal Sciences of Guatemala to become a co-plaintiff. In this regard, and in response to the points raised by the State, the petitioners argue that "the State confuses the legality of one of the petitioners...joining the case as a co-plaintiff with the State's obligation to demonstrate to the Commission the judicial actions that have been taken to ensure a diligent investigation"¹⁹

36. Based on the foregoing, they consider that the State has violated rights established by the Convention in Articles 2, 4, 5, 8.1, and 25, all in connection with Article 1.1 of that treaty, and by Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

B. Position of the State

37. The State made no comment on the petitioners' allegation of torture.

38. Nor did it comment on its alleged responsibility for the death sentence imposed on Mr. Ruiz Fuentes. On this matter, it summarized the provisional measures that were granted on behalf of the alleged victim in an effort to prevent his execution, which the State had asked to be lifted after Mr. Ruiz Fuentes escaped from his place of detention.

39. Concerning allegations of summary execution of the alleged victim, the State argues that "the hypothesis developed, based on the interviews and investigations conducted by the investigator in charge, is that it was a personal vendetta, because some of the people who passed through the place said that Mr. Ruiz Fuentes was walking to the street when several persons carrying firearms said nothing but fired several shots that caused his death, then fled. It is believed that Mr. Ruiz Fuentes tried to fend off the attack with a gun in his right hand."²⁰

40. The State says that because the investigation is confidential, it cannot give further details about this theory.

41. Concerning the witnesses interviewed, it says that seven people have made statements, the text of which is in the corresponding criminal case file, although for the reason noted above, it cannot reveal their identities.

42. The State maintains "the Public Prosecutor's Office is conducting the investigation to determine the truth and to identify those responsible for the death of Mr. Hugo Ruiz Fuentes." It says that the Public Prosecutor's Office has reported that it is impossible to say who caused his death.

43. On the question of progress in the investigation, the State reports that several steps have been taken, such as collecting testimony and reports from the Crime Scene Experts Unit and the Ballistics Section of the Forensic Technical Department, *inter alia*. Regarding the petitioners' comment that Commission was not

¹⁹ Observations of the petitioners received on August 30, 2007.

²⁰ Observations of the petitioners received on January 23, 2007.

given the ballistics report or the results, it argues that this was not possible due to the confidentiality of the investigation.

44. The Public Prosecutor's Office was alleged to have collected reports from the Office of Prisons and the Identification Department of the National Civil Police concerning the personal data of Mr. Ruiz Fuentes. On this point, the State claims that the fingerprint expert of the Criminal Department of the National Civil Police identified the corpse of Mr. Ruiz Fuentes.

45. The State contends that it is waiting for the Criminal Investigation Division of the National Civil Police to provide the names of the persons who took part in the operation in which Mr. Hugo Humberto Ruiz Fuentes was killed.

46. Concerning the petitioners' allegation that there is no evidence to indicate that Mr. Ruiz Fuentes fired the weapon in his right hand, the State submits that according to the investigating agency, "the hypothesis of the victim's possible resistance to the attack...is based on evidence found at the crime scene."

47. The State provided the number of the case dealing with the death of Mr. Ruiz Fuentes and the name of the entity processing it. With regard to the petitioners' assertion that it has failed to submit evidence of any progress in the investigation, it alleges that the confidentiality of the investigation renders this impossible.

48. In one of the State's briefs, it asserted that according to information from the Public Prosecutor's Office, the case opened in connection with the death of Mr. Ruiz Fuentes does not contain information concerning Plan Gavilán, and that with respect to the standard procedures, "the prosecutor in charge of the case did not report whether the manual referenced²¹ was followed or not, and whether as a result key information was lost."

49. In addition, with regard to the petitioners' arguments against the State's refusal to provide more information because the investigation is confidential, the State claims that the fact that one of the petitioners has become a co-plaintiff will enable it "to cooperate with and assist the prosecutor in the investigation of the facts..." and reiterated that under domestic law "...no investigative reports shall be shown to outside parties..." but "the Institute [Institute for Comparative Studies in Penal Sciences of Guatemala], as a co-plaintiff, may have access to the file at any time to obtain the information it deems pertinent."

50. On the matter of admissibility, the State holds that it is not appropriate to apply the exception to prior exhaustion of domestic remedies alleged by the petitioners, because the domestic proceeding is ongoing and the respective investigation is currently being conducted by the Public Prosecutor's Office.

51. The State adds that it is necessary for the investigation underway to find out definitively who was responsible "for killing Mr. Ruiz Fuentes, to determine the circumstances surrounding it, and whether or not Mr. Ruiz Fuentes resisted recapture, circumstances that can only be proved by conducting the respective investigation effectively."

21 Observations by the State received on November 14, 2007. The State is referring to the Manual for Effective Prevention and Investigation of Summary Executions, which the petitioners claim in their submissions was not followed.

V. ANALYSIS OF ADMISSIBILITY AND COMPETENCE

A. The Commission's competence *ratione personae*, *ratione materiae*, *ratione temporis*, and *rationi loci*

52. The petitioners are eligible under Article 44 of the American Convention to submit a petition to the IACHR. The alleged victims are persons for whom the State of Guatemala undertook to respect and ensure the rights guaranteed in the Convention. The IACHR therefore has *ratione personae* competence to examine this petition.

53. The IACHR has *ratione loci* competence to examine the petition because it alleges that violations of rights protected by the American Convention occurred in the territory of Guatemala, a State party to that treaty.

54. The IACHR has *ratione temporis* competence, because the alleged facts occurred when the obligation to respect and ensure the rights guaranteed in Convention was in force for the State, since Guatemala ratified the American Convention on Human Rights on May 25, 1978. Finally, the IACHR has *ratione materiae* competence because the petition alleges violations of human rights protected in the American Convention.

B. Other requirements for admissibility of the petition

1. Exhaustion of domestic remedies

55. Article 46.1.a of the American Convention stipulates that for a petition lodged with the Inter-American Commission pursuant to Article 44 of the Convention to be admissible, remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to be seized of the alleged violation of a protected right and, if appropriate, to resolve it before it is considered at the international level.

56. The requirement for prior exhaustion of domestic remedies applies when the domestic legislation affords adequate and effective resources for remedying the alleged violation. In this regard, Article 46.2 stipulates that the requirement shall not be applicable when domestic legislation does not afford due process of law for the protection of the right in question; or when the alleged victim has been denied access to the remedies under domestic law; or when there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies. As provided in Article 31 of the Commission's Rules of Procedure, when the petitioner alleges one of these exceptions, it shall be up to the State to demonstrate that the remedies under domestic law have not been previously exhausted, unless it is clearly evident from the record.

57. According to the principles of international law, reflected in the jurisprudence of the Commission and the Inter-American Court, the defendant State may expressly or tacitly waive invocation of this rule.²² Additionally, in order to be

22 See IACHR, Report Nº 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I-A Court, *Ximenes Lopes vs. Brazil*. Preliminary Objections. Judgment of November 30, 2005. Series C No. 139, para. 5; I-A Court, *Case of the Moiwana Community*. Judgment of June 15, 2005.

timely, the objection of failure to exhaust domestic remedies must be made in the early stages of the proceeding before the Commission; otherwise, a tacit waiver of the argument on the part of the State may be presumed.²³ Finally, according to the applicable burden of proof in this matter, it is incumbent on a State that argues nonexhaustion of domestic remedies to identify which remedies are to be pursued and why.²⁴ Therefore, if the State in question does not satisfy this requirement in a timely manner, it is considered to have waived its right to argue the lack of exhaustion of domestic remedies and to have failed to meet the burden of proof incumbent upon it.

58. In the instant case it is necessary it is necessary to define three separate matters in which the protection of the Inter-American system is sought: the death sentence imposed on Mr. Ruiz Fuentes on May 14, 1999, during his trial for kidnapping of a minor; the alleged acts of torture to which he was said to have been subjected at the time of his arrest prior to the proceeding; and finally, the alleged summary execution of Mr. Ruiz Fuentes.

59. With regard to the death sentence, the Commission understands that the death of Mr. Ruiz Fuentes during the processing of this case does not prevent the IACHR from analyzing its merits concerning possible State responsibility for the death sentence imposed on the alleged victim.

60. With respect to the exhaustion of domestic remedies concerning the death sentence, information supplied by the petitioners indicates that on May 14, 1999, Mr. Ruiz Fuentes and others charged with kidnapping were tried by the Sixth Tribunal of Criminal Judgments, Drug Activities, and Crimes against the Environment [*Tribunal Sexto de Sentencia Penal, Narcoactividad y Delitos contra el Ambiente*], and sentenced to death based on Article 201 of the Guatemalan Penal Code. This verdict was challenged with a special appeal, which was rejected by the Fourth Chamber of the Appeals Court on September 13, 1999. This ruling was then appealed by a motion to vacate, which was rejected by the Criminal Chamber of the Supreme Court on July 20, 2000. Faced with this decision, Mr. Ruiz Fuentes and another of the accused filed an action for *amparo* [protection], which was rejected as a last resort by the Constitutional Court on July 4, 2001.

61. The Commission holds that the information supplied by the petitioners, not disputed by the State, shows that domestic remedies to challenge the death sentence imposed on Mr. Hugo Humberto Ruiz were exhausted, culminating with the ruling of the Constitutional Court of which counsel of the alleged victim was

Series C No. 124, para. 49; and I-A Court, *Case of the Serrano Cruz Sisters. Preliminary Objections*. Judgment of November 23, 2004. Series C No. 118, para. 135.

23 See I-A Court, *Case of the Mayagna Community (Sumo) Awas Tingni. Preliminary Exceptions*. Judgment of February 1, 2000. Series C No. 66, para. 53; *Case of Castillo Petruzzi et al. Preliminary Exceptions*. Judgment of September 4, 1998. Series C No. 41, para. 56; and I-A Court, *Case of Loayza Tamayo*.

Preliminary Exceptions. Judgment of January 31, 1996. Series C No. 25, para. 40. The Commission and the court have held that "early stages of the procedure" must be understood to mean "the admissibility stage of the procedure before the Commission, in other words, before any consideration of the merits (...)" See, e.g., IACHR, Report N° 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, which cites I-A Court, *Case of Herrera Ulloa*. Judgment of July 2, 2004. Series C No. 107, para. 81.

24 See IACHR, Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et al (persons affected by HIV/AIDS), Guatemala, March 7, 2005, paras. 33-35; I-A Court, *Case of the Mayagna Community (Sumo) Awas Tingni. Preliminary Exceptions*, *supra* note 3, para. 53; *Case of Durand y Ugarte. Preliminary Exceptions*. Judgment of May 28, 1999. Series C No. 50, para. 33; and *Case of Cantoral Benavides. Preliminary Exceptions*. Judgment of September 3, 1998. Series C No. 40, para. 31.

notified on December 12, 2002.²⁵ Based on the provisions of Article 46 of the Convention and Article 31 of the Rules of Procedure, the Commission finds that the requirement for prior exhaustion of domestic remedies has been satisfied with regard to the death sentence.

62. Regarding allegations of torture, the petitioners claim that they were denounced during the trial of Mr. Ruiz Fuentes. The file indicates that Mr. Ruiz Fuentes revealed the alleged commission of acts of torture by the agents that arrested him.²⁶ This allegation was considered by the court, and in the judgment of May 14, 1999, the Sixth Tribunal of Criminal Judgments, Drug Activities, and Crimes against the Environment concluded that it was untrue and that during the trial no evidence had been introduced to substantiate it.²⁷

63. Concerning the exhaustion of remedies on this point, the petitioners argue that there was not a sufficient investigation of the facts because to date, more than ten years after they allegedly occurred, they have not been the subject of any legal proceeding.

64. The Commission holds that the information supplied by the petitioners, not disputed by the State, shows that the alleged victim had revealed to the judicial authority responsible for ruling in the proceeding in which he was charged that state agents had tortured him. The court found that the accused had not proved the alleged acts of torture. Considering that the appropriate authorities are responsible for investigating torture and that they were informed of torture by the alleged victim, the victim cannot be required to exhaust another series of actions or remedies, because it is not the victim's responsibility to start a proceeding of this nature. The IACHR has held on other occasions that whenever the Commission investigates a crime that can be prosecuted by the State on its own initiative, the State has the obligation to move the criminal process forward to its final stages.²⁸ Furthermore, the Inter-American Convention to Prevent and Punish Torture stipulates in Article 8 that *"if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation in the case and to initiate, whenever appropriate, the corresponding criminal process."*

65. On this point, information received by the Commission does not indicate that of this date there has been a separate investigation or criminal process to address the complaint presented by Mr. Ruiz Fuentes during his trial. This constitutes an unwarranted delay under the terms of Article 46.2.c of the Convention and Article 31 of the Rules of Procedure, and it qualifies as an exception to the prior exhaustion of domestic remedies required by the Convention.

66. Finally, concerning the alleged summary execution, the petitioners argue that "there has been no substantive movement in the investigation.... There is no serious investigation of the facts and everything points to the existence of impunity,"

25 IACHR, Report on Merits 49/03, case 12.402 Ronald Ernesto Raxcacó Reyes, Guatemala, October 8, 2003, para. 29.

26 IACHR, Hugo Humberto Ruiz Fuentes – Petition 652/04, annexes: trial transcript.

27 IACHR, Hugo Humberto Ruiz Fuentes – Petition 652/04, annexes: Judgment handed down in the proceeding.

28 Report N° 62/00, Case 11.727, *Annual Report of the IACHR*, para. 24.

and they therefore request application of the exception to exhaustion of domestic remedies provided in Article 46.2 of the Convention.

67. The State argues that the exception to prior exhaustion of domestic remedies presented by the petitioners is unfounded because the corresponding investigation is underway within the domestic jurisdiction in the Public Prosecutor's Office.

68. The Commission notes that more than two years have gone by since the death of Mr. Ruiz Fuentes, during which the State has not supplied any details of the investigation conducted that would make it possible to conclude that the requirement for prior exhaustion of domestic remedies should prevent admission of the instant petition. In this sense, it should be pointed out that there are no specific provisions in the Convention or Rules of Procedure that define the length of time that constitutes "unwarranted delay," meaning that the Commission evaluates each case to determine whether a delay exists. In the present case, the Commission finds that the State has reported only limited actions that do not go beyond the preliminary stages of the investigation, having failed to provide to the Commission in its various communications any details of progress or the existence, for example, of any person accused of or charged with the homicide of Mr. Ruiz Fuentes.

69. In the Commission's opinion, the circumstances of the instant case, the time elapsed from the purported execution of the alleged victim to the date of approval of this report, during which the investigation has not gone beyond the preliminary stage, and the apparent lack of legal diligence constitute unwarranted delay; thus, the facts described are covered by the exception set forth in Article 46.2.c of the American Convention.

70. The Commission reiterates that invocation of exceptions to the requirement for exhaustion of domestic remedies established in Article 46.2 of the Convention is intimately linked to the determination of possible violations of certain rights guaranteed in that treaty, such as the right to a fair trial. However, Article 46.2 of the American Convention, by its nature and purpose, is an independent provision *vis à vis* the Convention's substantive provisions. Therefore, consideration of whether the exceptions to exhaustion of domestic remedies established in that article apply to the case in question must be prior to and apart from the analysis of the merits of the case, because a different standard is applicable than the one used to determine a violation of Articles 8 and 25 of the Convention. It should be noted that the causes and effects that have prevented the exhaustion of domestic remedies in the present case will be analyzed, insofar as applicable, in the Commission's report on the merits of the case, to determine whether they in fact constitute violations of the American Convention.

71. Based on the preceding arguments, the Commission finds sufficient grounds to exempt the petitioners from the requirement for prior exhaustion of domestic remedies in application of Article 46.2 of the American Convention, in connection with the torture and alleged summary execution of Mr. Ruiz Fuentes. Additionally, it finds that domestic remedies were exhausted with regard to the death sentence pronounced on the alleged victim.

2. Deadline for presentation of the petition

72. Article 46.1.b of the Convention stipulates that in order to be admitted, a petition must be lodged within a period of six months from the date on

which the party alleging violation of his rights was notified of the final judgment. The six-month rule guarantees certainty and legal validity once a decision has been adopted.

73. According to Article 32.2 of the IACHR Rules of Procedure, in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. This article provides that to determine this, the Commission "shall consider the date on which the alleged violation of rights occurred and the circumstances in each case."

74. In the instant case, it is necessary to consider the deadline for presentation of the petition in connection with each of the three alleged matters under examination.

75. Insofar as the death sentence is concerned, the IACHR has established that domestic remedies were exhausted with the Constitutional Court's decision of July 4, 2001, of which the alleged victim's counsel was notified on December 12, 2002,²⁹ and the request made to the IACHR in case "12.402 - Ronald Ernesto Raxcacó Reyes" to include Mr. Ruiz Fuentes as a victim in this proceeding was made on January 2, 2003.³⁰ Therefore, the Commission finds the requirement is satisfied with regard to this point.

76. As for the alleged torture of Mr. Ruiz Fuentes, the Commission has found that the exception of Article 46.2.c is applicable; consequently, it must consider whether the petition was submitted within a reasonable period of time considering the circumstances of the case. On this matter, as noted in the discussion on exhaustion of domestic remedies, the alleged victim had an expectation and procedural interest that the alleged violation of his rights would be duly investigated when he denounced them to a judge. As of the date of presentation of the petition to the IACHR, as analyzed *ut supra*, the investigation was *prima facie* inadequate, so that the lack of judicial response by the State to guarantee the alleged violation of Mr. Ruiz Fuentes' rights would have continued to the time when the complaints were presented and thereafter. The Commission finds these elements sufficient to conclude that the petition was presented within a reasonable period of time.

77. Concerning the alleged summary execution, the IACHR found the exception of Article 46.2.c to be applicable, and therefore, in analyzing the reasonableness of the period of time in which the petition was submitted, it must also take into account the specific circumstances of the matter that were presented for its consideration. In this regard, and since the respective facts are still in the investigation stage, with an unwarranted delay in measures and investigations for their resolution, the period of time within which the petition concerning these facts was presented is reasonable.

3. Duplication of proceedings and international *res judicata*

78. Article 46.1.c requires that for a petition to be admitted it is necessary that its subject "is not pending in another international proceeding for

²⁹ IACHR, Report on Merits 49/03, case 12.402 Ronald Ernesto Raxcacó Reyes, Guatemala, October 8, 2003, para. 29.

³⁰ IACHR, Report on Merits 49/03, case 12.402 Ronald Ernesto Raxcacó Reyes, Guatemala, October 8, 2003. Presentation by the petitioners on January 2, 2003.

settlement," and Article 47.d of the Convention provides that the Commission shall consider inadmissible any petition that is "substantially the same as one previously studied by the Commission or by another international organization." In the instant case, the parties have not alleged the existence of either of these circumstances, nor can they be deduced from the proceedings.

4. Nature of the allegations

79. The Commission considers that at this stage of the proceeding it is not in order to determine whether or not there has been a violation of the American Convention. To determine admissibility, the Commission must decide whether the facts stated tend to establish a violation of rights, as required by Article 47.b of the American Convention, or whether the petition is "manifestly groundless" or "obviously out of order," as specified in paragraph (c) of this article.

80. The criteria for evaluation of these requirements differ from those used to decide on the merits of a petition. The IACHR must make a *prima facie* evaluation to determine if the petition states facts that tend to establish a violation of the rights guaranteed by the Convention, rather than establish the existence of a violation of rights. This determination is a preliminary analysis, which does not prejudice the merits of the case.

81. Using a similar criteria to that employed *ut supra*, it is necessary here to analyze the various facts in this proceeding without further attention to the death sentence of the alleged victim, because its characterization as a possible violation of Article 4.2—if the alleged facts are proved—would be similar to that done in the case of Mr. Raxcacó Reyes, since the circumstances surrounding their trial and death sentences were identical.

82. Concerning the alleged torture of Mr. Ruiz Fuentes by State agents, the Commission has already noted that when facts of torture are denounced it is incumbent on the appropriate judicial authorities to undertake all measures of due diligence to determine the truth. On this point, if the lack of diligence argued by the petitioners is proven, it could constitute a violation of Articles 8.1 and 25 of the American Convention. If a proper investigation confirms the truth of the alleged torture, this would be a violation of Article 5 of the American Convention and of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

83. Furthermore, concerning the alleged summary execution of Mr. Ruiz Fuentes, if the petitioners' allegations are confirmed, it could constitute a violation of Article 4 of the Convention, and if the alleged lack of due diligence or obstruction of justice are proven, it would also be a violation of Articles 8.1 and 25 of the American Convention.

84. Based on the foregoing considerations, the Commission finds that the requirements established in Article 47.b and c of the American Convention have been satisfied because the petitioners' arguments are not manifestly groundless with regard to the possible violation of the rights guaranteed in Articles 4, 5, 8.1, and 25 of the American Convention in connection with Article 1.1 of the same treaty, and in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture to the detriment of Mr. Hugo Humberto Ruiz Fuentes.

VI. CONCLUSION

85. The IACHR concludes that it is competent to consider this petition and that it satisfies the requirements of admissibility in accordance with Articles 46 and 47 of the American Convention and with Articles 30 and 37, *inter alia*, of its Rules of Procedure.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible with regard to alleged violations of rights protected in Articles 4, 5, 8.1, and 25 of the American Convention, in connection with the general obligation established in Article 1.1 of that instrument, and in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Mr. Hugo Humberto Ruiz Fuentes.

2. To transmit this decision to the parties.

3. To begin its analysis of the merits of the case.

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

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 5th day of March, 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Vice-Chairwoman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.