

OEA/Ser.L/V/II.153  
Doc. 13  
6 November 2014  
Original: Spanish

**REPORT No. 97/14**  
**PETITION 1727-09**  
REPORT ON ADMISSIBILITY

VRB AND HER DAUGHTER, VMR  
GUATEMALA

Approved by the Commission at its session No. 2013 held on November 6, 2014  
152 Regular Period of Sessions

**Cite as:** IACHR, Report No. 97/14, Petition 1727-09. Admissibility. VRB and her daughter, VMR.  
Guatemala. November 6, 2014.

**REPORT No. 97/14**  
**PETITION P-1727-09**  
ADMISSIBILITY  
VRB AND HER DAUGHTER, VMR<sup>1</sup>  
GUATEMALA  
NOVEMBER 6<sup>TH</sup>, 2014

**I. SUMMARY**

1. On December 3, 2009, the Inter-American Commission on Human Rights (hereinafter, “the Commission,” “Inter-American Commission,” or “IACHR”) received a petition submitted by Mrs. VRB (hereinafter, “the petitioner”), which alleges the responsibility of the Republic of Guatemala (hereinafter the “State,” “Guatemalan State,” or “Guatemala”), for alleged violations of the right to life, humane treatment, a fair trial, protection of the family, protection of the child, equal protection of the law, and judicial protection, to her detriment and that of the child, VMR, as recognized under Articles 4, 5, 8, 17, 19, 24, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”) as regards the duties to respect and ensure [such rights], in keeping with Article 1(1) and 2 of said Convention. Furthermore, the petitioner alleges violations of the right to live free from violence, protection of rights and freedoms, the free exercise of rights, and the duties of the Guatemalan State enshrined in Articles 3, 4, 5, and 7 of the Convention on the Prevention, Punishment, and Eradication of Violence against Women “Convention of Belem do Pará.”

2. The petitioner alleges that the Guatemalan State has committed a series of irregularities during the proceedings instituted to establish an international visitation arrangement for her and her daughter. This meant she was unable to develop family ties with the child for years, hindering her from being involved in her daughter’s life during the most crucial stages of her development, and from having contact with her to date.

3. The State alleges that the petitioner does not have the capacity to represent VMR in international litigation in the Inter-American System given that she waived her parental authority. The State also considers that the petitioner has not exhausted domestic remedies, inasmuch as there are several mechanisms to establish visitation and recover parental authority that the petitioner has not exercised. The State likewise alleges that the remedies were not duly exhausted because the petition was submitted to an authority that had no jurisdiction. It adds that during the proceedings instituted domestically the child was heard and all guarantees to protect the best interests of the child were respected, with which this case could constitute fourth instance proceedings. Additionally, the State asserts that the petition does not establish violations of rights enshrined in the American Convention. For the above-mentioned reasons, the State holds that the petition should be declared inadmissible.

4. Without prejudging the merits of the complaint, after analyzing the positions of the parties and compliance with the requirements provided for in Articles 46 and 47 of the American Convention, the Commission has decided to declare the case admissible for purposes of reviewing the claim of alleged violation of rights enshrined in Articles 5, 8, 17, 19, and 25 in relation to Articles 1(1) and 2 of the American Convention. The Commission has likewise decided to declare the petition inadmissible with respect to the alleged violation of Articles 4 and 24 of the American Convention, and Articles 3, 4, 5, and 7 of the Convention on the Prevention, Punishment, and Eradication of Violence against Women “Convention of Belem do Pará.” The parties are to be notified of this report and its publication in the Commission’s Annual Report to the General Assembly of the OAS is to be ordered.

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<sup>1</sup> The IACHR has not published the identities of the alleged victims and other individuals involved because the child, VMR, is a minor.

## **II. PROCESSING BY THE COMMISSION**

5. On December 3, 2009, the petitioner submitted a petition and a request for precautionary measures to the IACHR. The petition was registered under number P-1727-09, and the request for precautionary measures under number PM-375-09. On October 7, 2010, after receiving information from the parties and analyzing the situation, the Commission notified the parties that it had rejected the request for precautionary measures and continued to process the petition.

6. Through a note dated June 9, 2011, the Commission forwarded the petition to the State and granted it two months to submit its observations. The State requested a 30-day extension to present its report, which the Commission granted to the State through a note dated September 6, 2011.

7. The State presented its observations on the petition in a brief dated September 1, 2011. This brief was made available to the petitioner pursuant to a note dated October 19, 2011 so she could submit her observations. The petitioner submitted her observations on the State's response on November 14, 2011; said information was forwarded to the State via a note dated December 19, 2011. Furthermore, the petitioner presented an additional informational brief on March 5, 2012, which was forwarded to the State on June 13, 2012.

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

### **A. Position of the petitioner**

8. The petitioner alleges that she had a sentimental relationship with CVM for 11 years, during which time they had their daughter VMR, who was born on December 1, 1999. The petitioner indicates that the child was born in Uruguay, but lived with her in Guatemala during the first three years of her life. The petitioner specifies that she did not live with her father, rather he visited her regularly, and sometimes the child would sleep over at her father's house.

9. The petitioner states that in 2002 she married a different man, with whom she later had a son. In March 2003 she decided to move with her daughter to Uruguay for economic and work-related reasons. The petitioner alleges that she had agreed with CMV that the child, who was then three years old, would live with her in Uruguay and that they would come back frequently so that the child could maintain ongoing contact with her father.

10. The petitioner recounts that a few days before the move VMR's father coerced her into signing some document with regard to visitation with the daughter. According to the petitioner, these documents were "literally forced out of her" as VMR's father came to the locality of Zacapa by helicopter, she did not have a lawyer or legal counsel present, nor did she receive copies of the documents with the excuse that there had been a mistake with regard to the age of the parties thereto. The petitioner further recounts that VMR's father requested that she leave the child 15 more days in Guatemala, with the promise of later taking her to Uruguay, given that he was going to marry another woman and wanted the child to attend the ceremony.

11. The petitioner alleges that upon her arrival to Uruguay she tried without success to communicate with CMV to coordinate the child's trip and after several weeks he informed her that she would never be going to Uruguay. The petitioner recounts that she would go every year to Guatemala in May to visit her daughter, but the girl's father only allowed her to see the girl in a hotel, forbidding them from leaving, and under strict security measures imposed unilaterally and arbitrarily. The petitioner alleges that the girl's father placed the same restrictions on members of her family who traveled to Guatemala to visit the girl.

12. The petitioner asserts that she tried to communicate with the child by phone and social networks and that it had been impossible as they would not give the child the phone and deactivated her social network accounts. Due to these hindrances in contacting the child, when the petitioner submitted the petition in December 2009, she had been unable to communicate with her daughter for over a year.

13. The petitioner alleges that she filed an international action requesting visitation pursuant to the Hague Convention on the Civil Aspect of International Child Abduction (hereinafter, “The Hague Convention”), which was ratified by Uruguay and Guatemala on July 28, 2008 before the Ministry of Education and Culture of Uruguay, which was the central authority empowered to receive these requests under the terms of the Hague Convention. The petitioner further alleges that at no point has she requested parental authority of the child, inasmuch as she “accepts with deep sorrow” that with the passage of time VMR has established her social and family relations, her studies, and her life in Guatemala, and she has no desire to take her from this environment.

14. The petitioner adds that the Ministry of Education and Culture of Uruguay had forwarded her petition to the Office of the General Prosecutor of the Nation of Guatemala, which was the appropriate central authority in keeping with Governmental Accord 488-01 to enforce actions under the Hague Convention in Guatemala. The petitioner states that there had been a myriad of irregularities in handling her request in Guatemala and to date she had not obtained regulation of visitation arrangements.

15. The petitioner recounts that she received information from the Office of the Prosecutor for Children and Adolescents (hereinafter, “Office of the Prosecutor”) for the first time on July 24, 2009; in other words, one year after having submitted the request. The petitioner affirmed that the Office of the Prosecutor sent her a communiqué regarding the legal proceedings instituted, in which they informed her that once her petition for visitation had been received, the Office had submitted it to the First Court for Children, but this Court had decided that the child’s father had guardianship and custody, and therefore had granted him “definitive tutelage” [*“abrigo definitivo”*] of VMR.

16. The petitioner recounts that the above-mentioned Court refrained from establishing visitation arrangements due to a lack of jurisdiction, and that the Office of the Prosecutor had appealed the decision; however, it had not been notified about the ruling on the appeal, with meant it could not file an *amparo* action. The Office of the Prosecutor had told the petitioner that the foregoing had been the result of a procedure that was lacking in order to go forward with proceedings under the Hague Convention.

17. Communications sent by the petitioner reveal that to remedy the error, the Office of the Prosecutor had presented an official letter to the Supreme Court of Justice on July 28, 2009. In this letter, the Office indicated that it had made a mistake in the proceedings before the Court for Children, and requested that the Court endorse the proceedings instituted, appoint a family judge, and admit and begin processing the petition to establish visitation arrangements.

18. According to the documents furnished by the parties, the Second Family Court then issued precautionary measures [*medidas de seguridad*] on August 3, 2009, ordering CVM to allow the relationship and VRB’s visitation arrangements with her daughter, VMR. The child’s father, however, filed an *amparo* action in the Constitutional *Amparo* Court, which provisionally upheld the appeal on August 25, 2009 and then definitively invalidated the family judge’s decision on October 2, 2009.

19. The petitioner also alleges that CMV held a high-ranking post in the Guatemalan government and that his position and ties of friendship with the highest authorities of the country, allowed him to influence the matter in order to hinder the establishment of visitation arrangements. In this regard, the petitioner recounts that the official charged with her request at the Office of the Prosecutor had been dismissed in October 2009, after the Head of the Office of the Prosecutor had asked the official to provide a well-founded report on the status of Mr. CMV’s case. The Head of the Office was attentive to the alleged intentions expressed by Mr. CMV to ask for his dismissal. Documents provided by the petitioner reveal that this official made statements asserting that “the Prosecutor General of the Nation is a friend of Mr. CMV” and “he does not want an appeal to be filed against the *amparo* ruling.” The petitioner concludes by stating that neither she nor her family have had contact with her daughter since July 2008.

20. Based on the foregoing the petitioner considers that the State’s conduct through its officials compromised Guatemala’s international responsibility by violating the rights to life, humane treatment, a fair trial, protection of the family, protection of the child, equal protection of the law, and judicial protection—to her detriment and that of the child, VMR—set forth in Articles 4, 5, 8 17, 19, 24, and 25 of the American Convention, in

relation to the duties to respect and guarantee [such rights], in keeping with Articles 1(1) and 2 of said Convention. The petitioner likewise considers that the facts recounted constitute a violation of the right to live free from violence, protection of rights and freedoms, the free exercise of rights, and the duties of the Guatemalan State enshrined in Articles 3, 4, 5, and 7 of the Convention on the Prevention, Punishment, and Eradication of Violence against Women, "Convention of Belem do Pará."

## **B. Position of the State**

21. The State holds that the petition should be declared inadmissible based on a lack of legal status, lack of standing and necessary representation, failure to exhaust domestic remedies, failure to establish violations of rights, and violation of the fourth instance formula.

22. With regard to the lack of legal status, standing, and necessary representation, the State considers that the child's representation is executed and exercised by whomever has parental authority, in keeping with laws of the country of legal residence. The Guatemalan State alleges that the petitioner is not eligible to exercise the rights, or comply with the duties and procedural requirements to the detriment of VMR's legal representation, inasmuch as she voluntarily granted powers, guardianship, custody, and all rights and obligations entailed in the legal institution of parental authority to VMR's father definitively.

23. The State highlights that the petitioner voluntarily abandoned her 3-year old daughter, that Guatemalan authorities granted definitive tutelage of the child to her father and his spouse as a nuclear Guatemalan family. According to the State, despite the mother-child relationship between VRB and VMR, the petitioner has no standing to institute proceedings on behalf of the child, given that the child's father and his wife have definitive custody.

24. The documents furnished by the State reveal that on March 20, 2003, the petitioner and VMR's father went to the First Instance Work, Social Welfare, and Family Court of the Department of Zacapa, and by means of a notarized document she had definitively granted VMR's father parental authority. The documents further reveal that on April 9, 2003, VMR's father had certified before a notary a private document dated February 14 of that year, by means of which VRB had granted him guardianship and custody of the girl and authorized him to obtain a passport for her and travel outside the country [with her].

25. According to documents provided by the State, on November 4, 2008, VMR's father submitted a petition for definitive tutelage to the Court of Appeals for Children and Adolescents, alleging the mother's abandonment. That same day the statement of the child, VMR, was taken and the father and his wife were granted definitive tutelage. For the above-mentioned reasons, the State considers that the petitioner may not represent the child, VMR, in a petition to the IACHR.

26. The State alleges that the petitioner has not exhausted domestic remedies provided to her by the Guatemalan justice system. With regard to the exercise of parental authority, the petitioner could have filed in a timely manner during the proceedings an action to nullify the documents she signed "of sound mind, willfully, and in exercise of her civil rights." The State further alleges that the petitioner could have filed an action to reassert her parental authority under Article 27 of the Civil Code. This Article provides that the judge may reestablish the mother's parental authority, upon request of a party, when the causes for suspension or loss of such authority have ceased to exist or when reestablishment is so requested by children over the age of 14 or by their guardian.

27. In this same regard, the States considers that the petitioner should have exhausted mother-child oral proceedings in a family court with jurisdiction in the area where the girl resides in order to regulate visitation in keeping with Guatemalan legislation. The States adds that the alleged victim has not requested reparations in the domestic legal system, thus denying the Guatemalan State the possibility of redressing such alleged harm.

28. Information furnished by the State reveals that on November 27, 2008, the Office of the Prosecutor presented a petition for establishing visitation and precautionary measures to the Court of Appeals for

Children and Adolescents. On December 15, 2008 the First Court for Children and Adolescents ruled that the girl remain with her father and his wife as a nuclear family, in Guatemala, under the legal concept of “definitive tutelage” [*abrigo definitivo*] that had been provisionally ordered on November 4, 2008. The State alleges that the Office of the Prosecutor had erred in presenting the petition to this Court, with which the First Court of Children and Adolescents declared its lack of jurisdiction to hear the matter as it was of a family nature.

29. The State alleges that the Office of the Prosecutor had also requested that the Second Family Court of First Instance issue precautionary measures, overstepping its authority and seeking to ignore the legal concept of paternal authority vested in the parents of the protected child. The documents furnished by the State reveal that on August 3, 2009, the Second Family Court of First Instance had order that mother-child visitation take place. However, the States recounts that due to administrative and judicial arbitrariness, VMR’s father filed an *amparo* appeal before the Constitutional *Amparo* Court, whose ruling of October 2, 2009 invalidated the decision of the Second Family Court.

30. The State alleges that the petitioner seeks to have the Commission acts as a fourth instance inasmuch as really what she wants is to review the interpretation of domestic law made by the Constitutional *Amparo* Court in the aforementioned judgment from October 2009. According to the State, what is questioned in the petition is the interpretative reasoning thereof. Additionally, the State considers that this critique of the *amparo* judgment does not establish a violation of any human right safeguarded under the American Convention, rather, that it is fruit of an erroneous interpretation of applicable domestic law. The State further alleges that the legal requirements to enforce the Hague Convention have not been met as in this case there was no abduction. The State likewise alleges that the father has never been notified. Due to the foregoing, the State requests that the IACHR declare this petition inadmissible.

#### **IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY**

##### **A. Competence**

31. The petition identifies the alleged victims as individuals with respect to whom the Guatemalan State committed to respecting and ensuring rights enshrined in the American Convention. Furthermore, in keeping with the provisions of Article 44 of the American Convention, “any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party.” The Commission underscores that Guatemala has been a party to the American Convention since May 25, 1978, when it deposited its respective instrument of ratification. As a result, the Commission is competent *ratione personae* to review the complaint submitted. The Commission’s Rules of Procedure indicate that any person may submit a petition, on their own behalf or on behalf of a third party. In this regard, it is not necessary for purposes of preliminary analysis of admissibility to review questions of legal representation related to domestic law.

32. The Commission notes that in the instant case, violations of rights contained in the American Convention are alleged, which means the Commission is competent *ratione materiae* to review it. However, notwithstanding the analysis of whether the Guatemalan State is internationally responsible under the American Convention, the IACHR takes into consideration other instruments that are part of the body of law regarding the rights of the child.

33. The facts that allegedly affected VRB and VMR began in 2003 and the effects thereof continue to the present day. Consequently, the Commission is competent *ratione temporis* in relation to the claims presented by the petitioner.

34. Finally, given that the petition claims violations of rights protected under the American Convention that took place in territory of Guatemala, which is a member state of the OAS, the Commission concludes that it is competent *ratione loci* to hear this matter.

## **B. Requirements for Admissibility**

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

35. Article 46(1)(a) of the American Convention provides that for a petition to be presented to the Inter-American Commission in keeping with Article 44 of the Convention, it is necessary to have pursued and exhausted remedies under domestic law in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to hear the alleged violation of the right protected, and where appropriate, to have the opportunity to remedy it before it is heard by an international body.

36. In this case, the petitioner alleges having instituted all the proceedings available under the Hague Convention and that these were not effective, given that in principal Guatemalan authorities had erred in processing her petition, and that thereafter the courts did not grant her visitation. The State for its part alleges that the petitioner had not exhausted domestic remedies inasmuch as (a) the petition for visitation under the Hague Convention had been submitted to an authority without jurisdiction, and that the proceedings under said Convention were inapplicable under the specific circumstances of this case; (b) the petitioner did not file actions to nullify the document pursuant to which she granted parental authority to VMR's father; (c) the petitioner did not file an action to reestablish her parental authority or to regulate the mother-child relationship; and (d) she had not requested reparations in the domestic justice system, which denied the Guatemalan State the possible of redressing the alleged harm.

37. As regards the State's first argument on the inapplicability of the Hague Convention in relation to visitation, the Commission notes that this instrument is applicable not only in cases of international abduction or unlawful retention of minors, but also for arranging or regulating visitation between parent and children.<sup>2</sup>

38. In this regard, and in relation to the subsequent arguments of the State, the IACHR notes that the petitioner began taking steps to regulate visitation on July 28, 2008, with the Ministry of Education and Culture in Uruguay (central authority in that country), and in accordance with the Hague Convention, this Ministry forwarded her petition to the Office of the General Prosecutor of the Nation of Guatemala (Guatemalan central authority).<sup>3</sup>

39. As no specific procedure had been established for processing actions pursuant to the Hague Convention, the Office of the Prosecutor filed an action to establish visitation and requested precautionary

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<sup>2</sup> The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction. Article 1: The objects of the present Convention are: (...) (b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.

Article 5: For the purposes of this Convention: [...] (b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

Article 7: Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention. In particular, either directly or through any intermediary, they shall take all appropriate measures: [...] (f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access; [...].

Article 21: An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child. The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights. The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject. See the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

<sup>3</sup> The President of the Republic of Guatemala, pursuant to Governmental Accord 488-01 of December 5, 2001, designated the Office of the Prosecutor General of the Nation as the Central Authority for enforcing actions emanating from the Hague Convention.

measures with the First Court for Children and Adolescents. This Court confirmed that the child was still under the custody of her father and his wife, upholding its decision of November 4, 2008, and declared it lacked jurisdiction with regard to visitation because it was a matter for family court. In keeping with the well-founded report of the Office of the Prosecutor, refuted by the State, this decision was appealed by the Office of the Prosecutor. It adds that it was not notified of the decision denying the appeal.

40. According to the information submitted, the Office of the Prosecutor also presented a brief to the Supreme Court of Justice, indicating its error in processing the case and requesting that it proceed before a family court judge. Finally, the petition was ruled on by the Second Family Court, which issued a provisional measure ordering establishment of a visitation arrangement. This decision was invalidated definitively, based on the paternal authority of VMR's father, pursuant to the *amparo* judgment issued by the Constitutional *Amparo* Court on October 2, 2009.

41. The IACHR deems that the petitioner pursued the remedy available to her with Uruguayan authorities, who notified the central authority of Guatemala. On its part, the authority pursued and exhausted remedies, which were exhausted on October 2, 2009. Thus, the matters that are the subject of this petition were submitted and reviewed by the domestic judicial bodies. The IACHR concludes from the foregoing that remedies under domestic law have been pursued and exhausted, in keeping with Article 46(1) of the American Convention on Human Rights.

42. Furthermore, as regards the State's argument that the petitioner did not pursue actions to nullify the documents regarding parental authority and/or reestablish such authority, the Commission notes that the petitioner does not seek to challenge parental authority of the child, rather to establish visitation arrangements in order to have a relationship with her daughter, to which end she took action using the mechanism provided to her by the Hague Convention.

43. With respect to the action to establish the mother-child relationship, the State alleged in its observations that prior to initiating the visitation arrangement that is provided for under the Hague Convention, the petitioner should have exhausted the proceedings for establishing the mother-child relationship. The Commission considers that although in principle these proceedings should have allowed for the establishment of a visitation arrangement, it was not the appropriate remedy as the petitioner was in another country, while the petition that the Hague Convention provides for is specifically aimed at protecting the right of children to have a relationship with their parents when they are in another country.

44. Finally, with respect to the State's argument that domestic civil remedies for reparations have not been exhausted, the Commission considers that such remedies are not suitable for ensuring adequate guarantees in establishing an international visitation arrangement. In any case, the Guatemalan State has also been sufficiently aware of the situation, and therefore has not been denied the opportunity to redress the alleged harm prior to coming before this international body.

45. For the foregoing reasons, the IACHR concludes that all remedies available under the domestic legal system have been duly exhausted in the proceedings instituted by the petitioner for the establishment of an international visitation arrangement, and therefore, the Commission is not barred from considering her claims pursuant to the requirement to exhaust remedies provided for under Article 46(1)(a) of the American Convention.

## **2. Deadline for submitting the petition**

46. In keeping with Article 46(1)(b) of the American Convention, the petition is to be presented within six months of the victim being provided notice of the final decision that exhausted domestic remedies. This requirement has been met in this case as domestic remedies were exhausted on October 2, 2009 with the judgment of the Constitutional *Amparo* Court that confirmed the father's tutelage of the girl and overturned the order for visitation handed down by the Family Court. Even though the case does not reveal the date notice of such decision was provided, the petition was filed with the IACHR on December 3, 2009, before six months had lapsed as of the date of the decision.

### 3. Duplication and res judicata

47. The case record does not reveal that the matter that is the subject of this petition is pending in any other international settlement proceedings, or that it reproduces a petition that has already been reviewed by this or any other international body. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention are deemed to have been met.

### 4. Characterization of the facts alleged

48. The Commission considers that this stage of the proceedings is not the moment to decide whether the alleged violations that harmed the supposed victims took place. For purposes of admissibility, the IACHR is to only decide at this point whether the facts described, if proven to be true, establish violations of the American Convention, as stipulated in Article 47(b) thereof, and whether the petition is “manifestly groundless,” or is “obviously out of order,” in keeping with subparagraph (c) of the same Article. The criteria for determining these concepts are different from those required for ruling on the merits of the claim. The IACHR is to make a prima facie assessment and determine whether the claim apparently or potentially establishes a violation of a right guaranteed by the American Convention, more than establishes the existence of such violation.<sup>4</sup>

49. The State alleges that this case constitutes fourth instance proceedings because the parties involved have been provided access to the domestic legal system, the child VRM’s opinion has been heard, and the child’s situation has been ruled on as part of the domestic proceedings, ending the mother’s parental authority and granting it to the father and his wife as a nuclear family, and what the petitioner is really seeking is review of the *amparo* ruling.<sup>5</sup>

50. The petitioner claims that she was separated from her daughter and the remedies pursued have been ineffective in establishing a visitation arrangement with the girl, which could constitute violations of the guarantees of judicial protection and due process, enshrined in Articles 8 and 25 of the American Convention on Human Rights. Additionally, according to the petitioner, there was at that time no substantive or procedural legislation that regulated this process, which could constitute a violation of Article 2 of that same instrument.

51. Furthermore, the IACHR considers that the alleged acts and omissions that the petitioner attributes to the State, which have hindered her from having contact with her daughter, may be a violation of Articles 17 and 19 of the American Convention. In this regard, the arguments regarding separation of a child from her mother, prolonged by the alleged delay in the proceedings, and lack of contact could be a violation of the child and her mother’s right to humane treatment.<sup>6</sup>

52. The Commission, in light of the factual and legal arguments presented by the parties and the nature of the matter brought before it, finds that the petitioner’s claims, if proven, may establish violations of rights protected under Articles 5, 8, 17, 19, and 25 in relation to Articles 1(1) and 2 of the American

<sup>4</sup> See IACHR, Report No. 128/01, Case 12.367, Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of the daily newspaper “La Nación” (Costa Rica), December 3, 2001, paragraph. 50; Report No. 4/04, Petition 12.324, Rubén Luis Godoy (Argentina),

<sup>5</sup> Regarding the State’s argument related to the concept of the “fourth instance,” in the case of M.P.C. and family v. Peru, the Commission highlights its case law in affirming that it is not competent to review judgments issued by national courts, which act within the scope of their competence and apply due process of the law and the right to a fair trial [...]the Commission is competent to declare a petition admissible and rule on the merits of the case when said petition involves domestic proceedings that may violate the rights safeguarded by the American Convention [...]” IACHR, Report No. 149/10 Admissibility, Petition 1147-05 MPC and family (Peru), November 1, 2010, paragraphs 36 and 37.

<sup>6</sup> Specifically, the Court has understood that as a result of the child’s separation from his parents or family of origin, there can be serious and irreversible harm to the child’s right to humane treatment and integral development, the right to the family and to identity. See IACHR, Report on the Right of Boys and Girl to a Family, OEA/Ser. L/V/II, Doc. 54/13, October 17, paragraph. 199; See also the Inter-American Court of Human Rights’ decision of July 1, 2011, Provisional Measures regarding Paraguay, Matter L.M. Preamble paragraph 16. Inter-American Court of Human Rights. Case of Forneron and daughter v. Argentina. Merits, Reparations, and Costs. Judgment of April 27, 2012. Series C No. 242, paragraph 51.

Convention. The IACHR also considers that the facts described may characterize potential violations of Articles 3, 4, 5, and 7 of the Convention of Belém do Pará. The Commission shall review the facts alleged in keeping with the principle of the best interests of the child and the body of law regarding the rights of the child.

53. Inasmuch as these claims are not manifestly groundless or out of order, the Commission considers that the requirements provided for under Article 47(b) and (c) of the Convention have been met.

## **V. CONCLUSIONS**

54. The Commission concludes that it is competent to review the claims presented by the petitioner regarding alleged violation of Articles 5, 8, 17, 19, and 25 in keeping with Articles 1(1) and 2 of the American Convention, and that these are admissible in accordance with the requirements set forth in Articles 46 and 47 of the American Convention. At the same time, it decides to declare the petition inadmissible with regard to the alleged violation of Articles 4 and 24 of the American Convention and Articles 3, 4, 5, and 7 of the Convention on the Prevention, Punishment, and Eradication of Violence against Women, "Convention of Belém do Pará".

55. Based on the factual and legal arguments provided above,

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

#### **HEREBY DECIDES:**

1. Declare this case regarding VRB and her daughter, VMR, admissible with respect to Articles 5, 8, 17, and 25 of the American Convention in relation to Articles 1(1) and 2.
2. Declare this case admissible under Article 19 of the American Convention in keeping with Article 1(1) thereof, to the detriment of the child VMR.
3. Notify the Guatemalan State and the petitioner of this decision.
4. Continue analyzing the merits of the matter.
5. Publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 6<sup>th</sup> day of November, 2014. (Signed): Tracy Robinson, President; Rose-Marie Belle Antoine, First Vice President; Felipe González, Second Vice President; José de Jesús Orozco Henríquez, Rosa María Ortiz, Paulo Vannuchi and James L. Cavallaro, Commissioners.