

OEA/Ser.L/V/II.163
Doc. XX
XX March 2017
Original: English

REPORT No. XX/17

CASE 11.834

REPORT ON ADMISSIBILITY AND MERITS

MANUEL MARTÍNEZ CORONADO
GUATEMALA

Approved by the Commission at its session No. XX held on July XX, 2017
163rd Special Period of Sessions

Cite as: IACHR, Report No. Xx/17, Case 11,834. Admissibility and Merits. Manuel Martínez Coronado. Guatemala. XX XXX, 2017.



REPORT No. XX/17
CASE 11.834
ADMISSIBILITY AND MERITS
MANUEL MARTÍNEZ CORONADO
GUATEMALA
XX XXX, 2017

INDEX

I.	SUMMARY.....	1
II.	PROCEEDING BEFORE THE COMMISSION.....	1
	A. Processing of the case.....	1
	B. Processing of precautionary measures.....	1
III.	POSITIONS OF THE PARTIES.....	2
	A. Position of the petitioners.....	2
	B. Position of the State.....	2
IV.	ANALYSIS OF ADMISSIBILITY	3
	A. <i>Ratione materiae, ratione personae, ratione temporis and ratione loci</i> competence of the Commission.....	3
	B. Admissibility requirements.....	3
	1. Exhaustion of domestic remedies.....	3
	2. Deadline for submitting the petition	3
	3. Duplication of proceedings and international <i>res judicata</i>	4
	4. Colorable claim.....	4
V.	PROVEN FACTS	4
	A. The death penalty in Guatemala.....	4
	B. The criminal process pursued against Mr. Martínez Coronado	9
VI.	ANALYSIS OF LAW	12
	A. General considerations on standards for analysis in death penalty cases.....	12
	B. Rights to a fair trial and to judicial protection, and the legality principle.....	13
	C. Right to Life	18
VII.	CONCLUSIONS.....	19
VIII.	RECOMMENDATIONS	19

REPORT No. XX/17
CASE 11,834
ADMISSIBILITY AND MERITS
MANUEL MARTÍNEZ CORONADO
GUATEMALA
XX XXX, 2017

I. SUMMARY

1. On October 31, 1997, the Inter-American Commission on Human Rights (hereinafter "the Commission," "the Inter-American Commission," or "the IACHR") received a petition submitted by the Public Criminal Defense Service of Guatemala (hereinafter "the petitioners") on behalf of Manuel Martínez Coronado (hereinafter "the alleged victim") alleging responsibility for the Republic of Guatemala (hereinafter "the State," "the Guatemalan State," or "Guatemala") for imposing the death penalty on the alleged victim in the framework of a criminal proceeding without due guarantees.

2. The petitioners argued that during the criminal processing of the alleged victim for the crime of murder, a series of due process violations were committed. They alleged that despite this, the alleged victim was executed through lethal injection in the arbitrary taking of a life.

3. The State argued that the process carried out against the alleged victim respected all due process guarantees, and that the death penalty was applied for the commission of a serious crime and provided for under legislation in force at the time, which does not violate the American Convention.

4. After analyzing the positions of the parties, the Inter-American Commission concluded that the Guatemalan State is responsible for the violation of the rights established in articles 4(1), 4(2), 8(1), 8(2)(c) and (e), 9, and 25(1) of the American Convention, in conjunction with the obligations established in articles 1(1) and 2 of the same instrument to the detriment of Manuel Martínez Coronado.

II. PROCEEDING BEFORE THE COMMISSION

A. Processing of the case

5. The petition was received by the Commission on October 31, 1997, and processing of it began on November 12 of that year. On June 17, 2002, the Commission informed the parties that pursuant to Article 37(3) of the Rules of Procedure in force at the time, it had decided to defer examination of admissibility until the debate and decision on the merits. It therefore granted the petitioner two months to submit additional comments on the merits. On December 15, 2003, the Commission granted the State two months to submit additional comments on the merits. On March 26, 2004, the State submitted its comments.

6. In this case, the Commission made itself available to the parties for pursuing a friendly settlement. However, both parties did not express interest in beginning that procedure.

B. Processing of precautionary measures

7. On November 18, 1997, the Commission asked the State of Guatemala to apply precautionary measures by suspending the execution of Manuel Martínez Coronado. On November 20, 1997 the government answered that its judicial system did not allow for the application of precautionary measures to suspend an execution. The Commission reiterated its request in a message dated November 24, 1997. On November 26, 1997, the government informed the Commission that another remedy had been sought, and on

February 5, 1998, it informed the Commission that domestic remedies had been exhausted and that the execution had been set for February 10, 1998.¹

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

8. The petitioners stated that the alleged victim was processed criminally for the murder of seven people in the village of El Palmar, Quetzaltepeque, which took place on May 16, 1995. They stated that on October 26, 1995, the Criminal, Drug Trafficking, and Crimes against the Environment Trial Court of the Department of Chiquimula convicted the alleged victim and sentenced him to death for the crime of murder. They said that the alleged victim invoked a series of remedies to appeal the conviction, but they were all declared without merit. On February 10, 1998, he was executed by lethal injection.

9. The petitioners argued that the criminal proceeding was unjust because the alleged victim was convicted based on the testimony of a minor who testified without meeting the requirements established by law. They also indicated that the alleged victim and his codefendant were both defended by the same person, violating the right to defense and due process. Finally, they argued that the death penalty was applied to the alleged victim "subjectively" based on the concept of "dangerousness."

10. The details of the facts and judicial proceedings in each of the cases will be addressed in the Commission's analysis of the facts, which will be based on the information provided by both parties.

11. The petitioners alleged a series of violations of the **rights to a fair trial and judicial protection**, including the violation of the right to defense because the alleged victim and his codefendant had the same public defender, affecting the defense strategy. They added that the conviction was based on the testimony of a child, which was not given in accordance with procedural formalities. They also stated that the death penalty was applied "subjectively" based on the criterion of "dangerousness."

B. Position of the State

12. The State said that the death sentence was the result of a process that respected all the procedural guarantees of the alleged victim. In this regard, it noted that all the principles of legal defense and due process were complied with in the case, as were all the requirements established in Guatemala's criminal law system.

13. Specifically, it indicated that assigning a single public defender to represent both the alleged victim and his codefendant did not violate the right to defense because Article 95 of the Procedural Penal Code allowed shared defense when there was no conflict. In addition, it noted that the child who testified, the only eyewitness to the facts, did it with the help of a guardian in keeping with the provisions of procedural law, adding that this was not the only evidence on which the conviction was based: The court also considered testimony from an expert witness, a forensic doctor, and the accused, which were assessed in accordance with the rules of logic. Finally, it indicated that in order to guarantee the right to life, a draft amendment to the Penal Code would be submitted allowing the death penalty to be commuted to the maximum prison term.

¹ IACHR, Annual Report of the Inter-American Commission on Human Rights of 1997, OEA/Ser.L/V/II.98/Doc.6, February 17, 1998, Chapter III.2.A.

IV. ANALYSIS OF ADMISSIBILITY

A. Ratione materiae, ratione personae, ratione temporis and ratione loci competence of the Commission

14. The petitioners are empowered by Article 44 of the American Convention to submit petitions. Likewise, the alleged victim was a natural person under the jurisdiction of the State of Guatemala as of the date of the facts furnished. As a consequence, the Commission has *ratione personae* competence to hear the complaint. Likewise, the American Commission has *ratione loci* competence to hear the petition insofar as the petition alleges violations of the American Convention that would have taken place within the territory of a State Party to that treaty. The IACHR has *ratione materiae* competence because the petition refers to alleged violations of the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

15. Article 46(1) of the American Convention holds that in order for a complaint submitted before the Inter-American Commission under Article 44 of the Convention to be admissible, it must have sought and exhausted all domestic remedies, in keeping with generally accepted principles of international law. The purpose of this requirement is to allow domestic authorities to hear cases of alleged violations of protected rights and, where appropriate, to have the opportunity to resolve them before they are brought before an international authority.

16. The Commission observes that the petitioners alleged violations of judicial guarantees and judicial protection and of the right to life in the context of a criminal process that culminated in the death penalty, a process which they argued was illegitimate for the above-stated reasons. Following the sentencing, a number of appeals, a cassation remedy, and a petition for clemency were submitted. They were weighed and declared without merit.

17. Also, there is no dispute in the case in question regarding the exhaustion of domestic remedies, and the State recognized that all "ordinary and extraordinary" remedies were exhausted, and that no other remedies were available.

18. Based on this, the Commission concludes that the requirement of exhaustion of internal remedies established in Article 46(1)(a) of the American Convention has been satisfied.

2. Deadline for submitting the petition

19. Article 46(1)(b) of the Convention provides that, for the petition to be declared admissible, it must have been lodged within a period of six months from the date on which the party alleging the rights violation was notified of the final judgment that exhausted remedies under domestic law.

20. In the case in question, the request for clemency was rejected by the President of the Republic on July 16, 1997, and the petition was submitted the Commission on November 11, 1997.

21. The Commission finds that exhaustion of the remedy of petition for clemency is not demandable because it is not, strictly speaking, a judicial remedy but a discretionary power of the President of the Republic of Guatemala. Additionally, the effect of a favorable decision could have been to commute the death sentence but not necessarily to rectify the alleged violations of due process. Nevertheless, the Commission observes that the petition for clemency was effectively submitted by the alleged victim. Because this was the last remedy attempted and provided under domestic law, the period for submitting the petition began at the point in time this remedy was denied.

22. Based on this, the Commission concludes that the petition complied with the six-month deadline for submission, established in Article 46(1)(b) of the American Convention.

3. Duplication of proceedings and international *res judicata*

23. Article 46(1)(c) of the Convention establishes that admission of petitions is subject to the requirement that the subject “is not pending in another international proceeding for settlement,” and Article 47(d) of the Convention holds that the Commission will not admit any petition that is substantially the same as one previously studied by the Commission or by another international organization. In this case, the parties have not alleged either of these two circumstances, nor could such circumstances be deduced from the case file.

4. Colorable claim

24. For the purposes of admissibility, the Commission must decide if the petition describes facts that could characterize a violation, as stipulated in Article 47(b) of the American Convention, or if it is “manifestly groundless” or “obviously out of order,” pursuant to subparagraph (c) of that article. The standard for assessing these circumstances is different from the standard required to rule on the merits of a petition. The Commission must conduct a *prima facie* evaluation to assess whether the petition provides the basis for an apparent or potential violation of the rights guaranteed by the Convention, not for establishing the existence of a violation. This assessment is a summary analysis that does not entail prejudgment or an opinion on the merits.

25. Neither the American Convention nor the Rules of Procedure of the IACHR require the petitioner to identify the specific rights that the State is allegedly violating in the case submitted to the Commission, although the petitioners may do so. It falls to the Commission, on the basis of the system’s case law, to decide in its admissibility reports which provision of the relevant inter-American instruments is applicable and whose violation could be established if the allegations are proven on the basis of sufficient evidence.

26. The Commission finds that should the facts alleged by the petitioners be proven, they could constitute a violation of the rights established in articles 4, 5, 8, 9, and 25 of the American Convention, in conjunction with articles 1(1) and 2 of that treaty.

V. PROVEN FACTS

27. Hereinafter, the IACHR will examine the general context surrounding the facts of this case, then analyze in detail the proceedings carried out with regard to the alleged victim.

A. The death penalty in Guatemala

1. Regulation and application of the death penalty

28. The death penalty is established in Guatemala in both the Constitution and in criminal law. Article 18 of the Political Constitution of Guatemala of 1985, reads as follows:

Death penalty. The death penalty shall not be imposed on the following:

- a. Cases based on speculation;
- b. Subjects older than the age of 60;
- c. Prisoners guilty of committing political crimes and common crimes related to politics;
- d. Prisoners whose extradition has been granted based on that condition.

All pertinent legal remedies can be sought against a sentence imposing the death penalty, including cassation, which must always be admitted for processing. The death penalty will be carried out once all the remedies are exhausted. The Congress of the Republic can abolish the death penalty.²

29. Likewise, the Penal Code establishes in Article 43 that:

The death penalty is extraordinary in nature and can only be applied to cases where it is expressly provided for by law and shall not be carried out until all legal remedies have been exhausted.

The death penalty shall not be imposed:

1. For political crimes
2. When the conviction is based on speculation
3. On women
4. On men over the age of 70
5. On individuals whose extradition has been granted based on that condition.

In these cases, and where the death penalty has been commuted to prison, the maximum prison sentence will be applied.³

30. Article 132 of Guatemala's Penal Code defines the crime of murder as follows:

Those who kill a person in the following ways are guilty of murder:

1. With malice aforethought
2. For a price, reward, or pledge.
3. Through or using a flood, a fire, poison, an explosion, a collapse, a building collapse, or any other device that could cause grave harm.
4. With premeditation.
5. With viciousness.
6. With an impulse of perverse brutality.
7. To prepare for, facilitate, commit, or hide another crime, or to ensure its results, or to guarantee one's impunity or the impunity of one's accomplices, or because the sought-after result of the criminal act was not achieved.

Those convicted of murder shall be imprisoned for 20 to 30 years; however, the death penalty shall be imposed in place of the maximum prison term if the circumstances of the act, its commission, the way in which it was carried out, and its motive reveal in the perpetrator a greater and more particular dangerousness.⁴

31. Although this is established in Guatemalan law, according to a report from Amnesty International, the death penalty was rarely applied in Guatemala before the 1990s. The report states that in 1982, four executions were carried out in application of the death penalty, with another 11 taking place in 1983 by virtue of Emergency Decree 46-82, promulgated during the martial law imposed by Efraín Ríos Montt.⁵

² Political Constitution of Guatemala of 1985.

³ Decree 17-73, Penal Code of Guatemala.

⁴ Decree 17-73, Penal Code of Guatemala.

⁵ Amnesty International. Guatemala, The return of the death penalty. March 1997; also see IACHR, Annual Report of the Inter-American Commission on Human Rights, OEA/Ser.L/V/II.98/Doc.10, September 28, 1984, Guatemala para. 9.

32. In the 1990s, the Guatemalan State began to apply the death penalty again, first using firing squads in accordance with Decree 234 of the Congress of the Republic, and then through lethal injections⁶ after Decree 234 was replaced by Decree 100-96 of November 1996, establishing this new method of execution. The decree regulates lethal injection in its Article 7.⁷

33. The procedure for this method of execution was regulated in Article 7 of the aforementioned decree, which prescribes six steps following the reading of the corresponding resolutions: 1. A specialized individual designated by the Sentence Execution Judge will be the one to carry out the resolution corresponding to the death penalty for the prisoner, and this person will be called the executioner; 2. First, the prisoner is placed on the gurney with the necessary restraints; 3. In an adjoining room, the sentence execution judge and the executioner will be the ones to conduct the procedure, with the former being the one who will give the execution order; 4. Next, the executioner will insert the into the prisoner's circulatory system the needle through which the substances that will kill the prisoner will be injected; 5. After receiving the order from the sentence execution judge, the executioner will proceed to activate the electronic device containing the muscle relaxants, neuromuscular blockers, and poisons to be injected into the prisoner, pushing the buttons one after another, enabling the substances that will cause the prisoner's death to reach the prisoner; and 6. Once this is finished, the forensic doctor will examine the convict the certify the convict's death. Once the steps have been completed and the prisoner has been executed, the body will be ordered buried or turned over to the relatives who may have requested it.

2. Petition for clemency and repeal of Decree 159 of 1892

34. As of the time the facts of this case, the last remedy available under Guatemalan legislation to challenge the imposition of the death penalty was the petition for clemency, provided for by Decree 159 of the National Legislative Assembly of April 19, 1892. The petition for clemency gave the President of the Republic the authority to halt application of the death penalty to a convict. However, an *amparo* ruling by the Constitutional Court dated August 9, 1996, found that Decree 159 was no longer in force. It further stated that the petition for clemency did remain in force, although without any established procedure. In this regard, it determined that Decree 159 was in force from April 21, 1892 to December 22, 1944, and that it was in force again, with amendments, between December 23, 1944, and March 14, 1945, the day prior to the entry into force of the Constitution of 1945. Based on this, the Constitutional Court concluded that "the procedure established in Decree 159 of the National Legislative Assembly is not in force." It added that the request to commute the sentence is admissible against a sentence imposing the death penalty, and that it is up to the President of the Republic to hear the corresponding request, with the President's only obligation being to decide and notify the decision, there being no procedure to which the President must adhere.⁸

35. Later, on June 1, 2000, the Congress of the Republic formally repealed Decree 159 of 1892 on finding that there was no law to "serve as a basis on which the Executive can commute a death sentence as established in Decree No. 159 of the National Legislative Assembly of the Republic, as the previous constitutions had been repealed (...)."⁹

36. Since that date—that is, for more than 17 years—Guatemala has neither imposed nor applied the death penalty.

⁶ In this regard, see Decree Number 100-96 of November 28, 1996, Law Establishing the Procedures for Carrying out the Death Penalty.

⁷ IACHR, Annual Report of the Inter-American Commission on Human Rights of 1997, OEA/Ser.L/V/II.Doc.6, February 17, 1998, para. 26-29.

⁸ Constitutional Court, Case File 1015-96, Case Law Gazette No. 41-Single-instance *Amparos*.

⁹ See Decree number 32-2000 published on June 1, 2000.

3. The cases of Fermín Ramírez and Raxcacó Reyes v. Guatemala, heard by the Inter-American Court of Human Rights

37. In 2005, the Inter-American Court ruled on the death penalty in Guatemala, specifically on the standard of dangerousness for imposing the death penalty for the crime of murder, as well as the lack of regulations for the petition for clemency.

38. The crime of murder is defined in Article 132 of the Penal Code, which in its applicable section states that “those convicted of murder shall be imprisoned for 20 to 30 years; however, the death penalty shall be imposed in place of the maximum prison term if the circumstances of the act, its commission, the way in which it was carried out, or its motives reveal in the perpetrator a greater and more particular dangerousness.”¹⁰ Decree 20-96 modified the prison term for this crime to between a 25 and 50 years.¹¹

39. In the case of Fermín Ramírez v. Guatemala, the Inter-American Court analyzed, among other issues, the aforementioned paragraph on the crime of murder and found that the invocation of dangerousness of the perpetrator “implies the judge’s appreciation with regard to the possibility that the defendant will commit criminal acts in the future, that is, it adds to the accusation for the acts committed, the prediction of future acts that will probably occur.” It found that this was not compatible with the criminal legality principle declaring therefore that it violated Article 9 of the Convention, in conjunction with Article 2 of the Convention.¹² Accordingly, it ordered the State of Guatemala to amend the article to eliminate dangerousness as an aggravating factor for the crime of murder.¹³

40. In this case, the Inter-American Court pointed to Article 4(6) of the American Convention regulating the right of all individuals condemned to death “to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases,” indicating that with the repeal of Decree 159 of 1892 that, as noted, regulated the petition for clemency to the President of the Republic, “an organization with the power to know of and decide upon the measure of grace established in Article 4(6) of the Convention was expressly disregarded. The Court also verified that from Governmental Agreement Number 235-2000, issued on a later date, it can conclude that no State body has the power to know of and decide upon the measure of grace.”¹⁴ It found that because under domestic law, no State body had been vested with the authority to hear and rule on petitions for clemency, the State was in violation of Article 4(6) of the Convention, in conjunction with articles 1(1) and 2 of the Convention.¹⁵

41. The Court ordered that “before the non-existence of a legal procedure that guarantees the right to request pardon, the commutation of the sentence, or amnesty, it must decree the commutation of the punishment imposed upon all those sentenced to murder that are not able to exercise their right to pardon” and ordered the State to “adopt, within a reasonable period of time, the legislative and administrative measures necessary to establish a procedure that guarantees that every person sentenced to death has the right to request pardon or commutation of the sentence, pursuant to a regulation that determines the authority with the power to grant it, the events in which it proceeds and the corresponding procedure; in

¹⁰ See Article 132 of Decree 17-73 of the Congress of the Republic of Guatemala, Criminal Code.

¹¹ See [Article 5 of Decree 20-96](#) of the Congress of the Republic of Guatemala.

¹² Inter-American Court. Case of Fermín Ramírez v. Guatemala. Merits, Reparations, and Costs. Judgment of June 20, 2005. Series C No. 126, para. 94 and following.

¹³ Inter-American Court. Case of Fermín Ramírez v. Guatemala. Merits, Reparations, and Costs. Judgment of June 20, 2005. Series C No. 126, para. 94 and following.

¹⁴ Inter-American Court. Case of Fermín Ramírez v. Guatemala. Merits, Reparations, and Costs. Judgment of June 20, 2005. Series C No. 126, para. 107.

¹⁵ Inter-American Court. Case of Fermín Ramírez v. Guatemala. Merits, Reparations, and Costs. Judgment of June 20, 2005. Series C No. 126, para. 110.

these cases the sentence must not be executed while the decision regarding the pardon or commutation of the sentence requested is pending.”¹⁶

42. In the case of Raxcacó Reyes, the Court reiterated that the repeal of Decree 159 of 1892 via Decree No. 32/2000 entailed suppression of an authority attributable to a State body to hear and rule on the right to clemency stipulated in Article 4(6) of the Convention.¹⁷

4. The death penalty in Guatemala currently

43. As a result of these decisions, the Guatemalan State has neither imposed nor applied the death penalty, nor has it regulated the petition for clemency, for which reason the Criminal Chamber of the Supreme Court of Justice has been commuting the death penalty to the maximum prison term for those requesting it.¹⁸

44. The death penalty in Guatemala continues to be applicable for the following crimes: 1. Abduction or kidnapping; 2. Parricide; 3. Extrajudicial execution; 4. Murder of the President or Vice President of the Republic; 5. Crimes related to drug trafficking resulting in deaths. Some of these criminal offenses refer to the dangerousness of the perpetrator as a decisive element for application of the death penalty.

45. On February 12, 2008, the Guatemalan Congress issued a law that restored to the President the authority to spare the life or confirm capital punishment for convicted prisoners through a pardon.¹⁹ However, that same month, President Alvaro Colom vetoed the law, arguing that it violated Guatemala's commitments as a party to the American Convention.²⁰ In January 2012, President Alvaro Colom again vetoed a restoration of the presidential authority to pardon people sentenced to death.²¹

46. On February 11, 2016, the Constitutional Court declared the wording allowing the death penalty for the crime of murder to be unconstitutional. That wording read, “however, the death penalty shall be imposed in place of the maximum prison term if the circumstances of the act, its commission, the way in which it was carried out, and its motive reveal in the perpetrator a greater and more particular dangerousness. Those who are not sentenced to death for this crime cannot be granted a reduction of their sentence for any reason.” Although the Constitutional Court only ruled with regard to the crime of murder, the same wording that was declared unconstitutional is found in definitions for the crimes of parricide, extrajudicial execution, and assassination of the president or vice president.

¹⁶ Inter-American Court. Case of Fermín Ramírez v. Guatemala. Merits, Reparations, and Costs. Judgment of June 20, 2005. Series C No. 126.

¹⁷ Inter-American Court. Case of Raxcacó Reyes v. Guatemala. Merits, Reparations, and Costs. Judgment of September 15, 2005. Series C No. 133, para. 85.

¹⁸ See article from EFE, Piden en Guatemala restituir figura de indulto, y con ella, la pena de muerte, March 10, 2016, El Periódico, Conmutación de la pena de muerte, February 12, 2016. The IACHR has also documented a series of decisions at the domestic level prior to 2000 in which domestic courts decided not to apply the death penalty because the terms of its application violated Article 4(2) of the American Convention. In this regard, in its 1997 annual report, the IACHR stated: “The Commission referred in its last report to the noteworthy judgment of the Ninth Chamber of the Court of Appeals of January 30, 1997, commuting three death sentences to noncommutable sentences of 50 years on the basis of the requirements of domestic law including the State's obligations pursuant to Article 4 of the American Convention. The Commission has received information that the Court of First Criminal Instance, Narcoactivity and Crimes against the Environment of the Department of Santa Rosa, Cuilapa issued a similar decision on May 8, 1997, in the case of Guillermo López Contreras, having determined that, under the terms of the applicable legal regime, the court could not legally impose the death penalty for a crime for which that punishment was not prescribed at the time of Convention ratification. The Commission recognizes and values such decisions which properly respect and reflect the international human rights obligations which the State has undertaken.” See IACHR, Annual Report of the Inter-American Commission on Human Rights of 1997, Guatemala, OEA/Ser.L/V/II.98, Doc.6, February 17, 1998, para. 27.

¹⁹ See Congress of the Republic of Guatemala, Decree Number 6-2008, Regulatory Law on the Commutation of the Sentence of Those Condemned to Death.

²⁰ Article published at elmundo.es, Colom veta la ley que restituyó la pena de muerte en Guatemala, March 15, 2008; News article published at BBCMundo.com, Colom vetó pena de muerte, March 15, 2008.

²¹ News article published at laprensa.com.ni, Colom veta ley con que reactivarían pena de muerte, November 5, 2010.

47. According to publicly available information, in 2016, initiatives were presented in the Congress of the Republic to both reactivate and abolish the death penalty. Initiative 5100, presented on July 6, 2016, seeks passage of the law to abolish the death penalty. Likewise, initiative 4941, presented on February 4, 2016, seeks to reactivate the death penalty by regulating the procedure for the application of the petition for clemency.²²

B. The criminal process pursued against Mr. Martínez Coronado

1. Guilty verdict

48. On October 26, 1995, the Criminal, Drug Trafficking, and Crimes against the Environment Trial Court of the Department of Chiquimula convicted Manuel Martínez Coronado and his codefendant Daniel Arias, his adoptive father, for the crime of the murder of seven people, sentencing the alleged victim to death and his codefendant to 30 years in prison,²³ in light of his age.²⁴

49. In its judgment, the Court found that based on the evidence, Manuel Martínez Coronado was the perpetrator of the violent deaths of Juan Bautista Arias, Rosa Albina Miguel, and children Arnaldo, Jóvita, and Aníbal, surname Arias Miguel; and a passive participant in the deaths of Emilia Arias and Francisca Arias Miguel.

50. In assessing the testimony of the alleged victim and of Daniel Arias, the Court found that "given the obvious contradictions between the testimony of the two defendants and that all the witnesses identified who have testified place Daniel Arias in the home of Manuel Martínez Coronado in the early hours of the morning, this Court denies that testimony any evidentiary value."²⁵

51. In the section entitled "rationale for the death penalty," the Court pointed to the social dangerousness of the alleged victim. In its words:

(...) in this case, the motive was a dispute over possession of a piece of land, and if based on this alone they chose to take action of such gravity, average citizens and their families could not be safe around them because in the event of another motive that is equally or more important, they would be in danger of becoming the victims of violent retaliation at the hands of the defendants; based on this, this Court finds that the defendants, MANUEL MARTINEZ CORONADO and DANIEL ARIAS (who has a single surname) prove to be of greater and particular dangerousness.

52. It added that "based on the circumstances of fact and opportunity, the number of victims, the way in which the murders were committed, the motives for the murders, and the numerous aggravating factors that are applicable, both defendants meet the standards of this Court, with the conditions necessary to be sentenced to death."²⁶

53. The Commission recalls that the concept of dangerousness was established in Article 132 of the Penal Code and observes that the judgment in the guilty verdict does not indicate that the charges filed

²² [Bills presented before the Congress of the Republic of Guatemala.](#)

²³ The Commission recalls that under Article 18 of the Political Constitution of the Republic of Guatemala, the death penalty cannot be applied to people over the age of 60.

²⁴ Annex 1. Judgement of the Criminal, Drug Trafficking, and Crimes against the Environment Trial Court of the Department of Chiquimula, October 26, 1995.

²⁵ Annex 1. Judgement of the Criminal, Drug Trafficking, and Crimes against the Environment Trial Court of the Department of Chiquimula, October 26, 1995.

²⁶ Annex 1. Judgement of the Criminal, Drug Trafficking, and Crimes against the Environment Trial Court of the Department of Chiquimula, October 26, 1995.

against the alleged victim included the concept of dangerousness, or that its applicability in the specific case was addressed during the criminal proceeding.

54. According to the judgment, the alleged victim and the codefendant shared a defense attorney during the process: Julio Alberto Ramírez Lara, a public defender appointed by the State.²⁷

55. Regarding this, the IACHR observes that Article 95 of the Procedural Penal Code establishes that "the defense of several defendants in the same proceeding by a shared defender is, in principle, prohibited. Depending on the stage of the procedure, the competent court or the Public Ministry may allow shared defense when there is clearly no conflict. When a conflict becomes evident, it can be addressed *ex officio* by providing the necessary replacements, as necessary for appointing a defender."²⁸

56. The judgment on the guilty verdict does not make any reference to this article, nor to the reasons why codefendants sharing a public defender in a case potentially leading to the death penalty would not be clearly prohibited.

2. Special appeal

57. The alleged victims filed an appeal of the guilty verdict before the same court,²⁹ which transferred it to a Court of Appeals.³⁰ In the appeal, he argued that the Trial Court illegally appointed a guardian to assist the child, Jaime Eduardo Arias, in his testimony during the trial, as appointing guardians is a function of family courts, not criminal judges. He therefore argued that the testimony should not be admitted and treated as the only direct evidence of the facts and that the judgment should be overturned and he should be acquitted for lack of evidence.³¹

58. On May 8, 1996, the Sixth Chamber of the Court of Appeals dismissed the remedy, finding that the Court acted in keeping with the law because it did not appoint the Guardian to care for the child and his property nor because he was in a state of interdiction, but rather to support a child during a court proceeding, for which reason the Procedural Penal Code was applicable rather than the Family Court Law.³²

3. Cassation appeal

59. On June 4, 1996, the alleged victim filed a cassation appeal of the judgment of May 8, 1996,³³ submitting its rationale on August 5, 1996.³⁴

60. He argued that the sentence condemning him to death violated his right to defense because he shared a defense attorney with another defendant in spite of the provisions of Article 95 of the Procedural Penal Code (cited above). In this regard, he indicated that neither the trial court nor the appeals court ruled with regard to conflict between the defenses, even though the lower court found that the defendants clearly

²⁷ Annex 1. Judgement of the Criminal, Drug Trafficking, and Crimes against the Environment Trial Court of the Department of Chiquimula, October 26, 1995.

²⁸ Decree Number 51-92 of the Congress of the Republic of Guatemala, Procedural Penal Code.

²⁹ Annex 2. Special appeal filed by Manuel Martínez Coronado and Daniel Arias before the Criminal, Drug Trafficking, and Crimes against the Environment Trial Court of the Department of Chiquimula.

³⁰ Annex 3. Resolution of the Criminal Trial Court, November 16, 1995.

³¹ Annex 2. Special appeal filed by Manuel Martínez Coronado and Daniel Arias before the Criminal, Drug Trafficking, and Crimes against the Environment Trial Court of the Department of Chiquimula.

³² Annex 4. Decision of the Sixth Chamber of the Court of Appeals, based in the City of Zacapa, May 8, 1996, rejecting the special appeal.

³³ Annex 5. Cassation appeal filed by Ruben Antonio de la Rosa Monzón before the Supreme Court of Justice on May 8, 1996.

³⁴ Annex 6. Rationale for cassation appeal filed by Ruben Antonio de la Rosa Monzón before the Supreme Court of Justice on August 5, 1996.

contradicted each other.³⁵ He also repeated his argument that a criminal judge appointing a guardian for the child, Jaime Arias Miguel, was a violation of due process.³⁶

61. On August 27, 1996, the Supreme Court of Justice dismissed the cassation appeal, finding that due process was evident in the appellant's conviction.

62. Regarding the shared defense attorney, the Court found that "although it is true that both defendants shared a defense attorney, it is also clear from the reading of their respective testimony that there was no clear conflict between them that would have meant the defense of one defendant could put the other at risk."³⁷

63. The alleged victim filed a writ of *amparo* against that decision before the Constitutional Court, which it denied on June 12, 1997.³⁸

4. Petition for clemency

64. Subsequently, on July 3, 1997, the alleged victim submitted a petition for clemency to the President of the Republic, reiterating his pleadings as to the due process violation of having shared a defense attorney, as well as the illegal appointment of a guardian for the child who testified during the trial, adding that the witness contradicted himself several times. He asked that his death sentence be commuted to the maximum prison term of 50 years.³⁹

65. On July 16, 1997, the President of the Republic denied the petition for clemency, stating that "the case file does indicate sufficient grounds in the form of the prisoner's conduct observed prior or subsequent to his conviction and imprisonment to recommend the granting of clemency, nor are there any relevant facts in the form of service provided to the country or conditions of justice, equality, or public utility to recommend granting clemency. Therefore, the petition must be denied."⁴⁰

5. Review appeal

66. On August 20, 1997, the petitioner filed for a review of the decision denying the cassation appeal.

67. On October 23, 1997, the Criminal Chamber of the Supreme Court of Justice declared it without merit because the appellant did not indicate new facts that would merit the review but rather reiterated the arguments already examined in the special appeal and cassation appeal.⁴¹

6. Remedies aimed at suspending execution of the death sentence

68. Subsequently, the First Judge of Criminal Sentence Execution set a date for carrying out the death sentence, and the alleged victim sought a series of remedies to suspend sentence execution, which was

³⁵ Annex 6. Rationale for cassation appeal filed by Ruben Antonio de la Rosa Monzón before the Supreme Court of Justice on August 5, 1996.

³⁶ Annex 6. Rationale for cassation appeal filed by Ruben Antonio de la Rosa Monzón before the Supreme Court of Justice on August 5, 1996.

³⁷ Annex 7. Sentence denying the cassation appeal, issued by the Criminal Chamber of the Supreme Court of Justice on August 27, 1996.

³⁸ Annex 8. Judgment of the Constitutional Court of June 12, 1997, denying the writ of *amparo*.

³⁹ Annex 9. Appeal for clemency submitted by the petitioner to the Ministry of Governance.

⁴⁰ Annex 10. Resolution of the Presidency of the Republic of July 16, 1997, denying the petition for clemency.

⁴¹ Annex 11. Sentence of the Criminal Chamber of the Supreme Court of Justice denying the review, October 23, 1997.

initially postponed. However, on February 10, 1998, the alleged victim was executed by lethal injection in the Granja Model Rehabilitation Facility.⁴²

VI. ANALYSIS OF LAW

A. General considerations on standards for analysis in death penalty cases

69. The Inter-American Commission considers it pertinent to revisit its previous statements on the rigorous scrutiny to be used in cases involving application of the death penalty. The right to life is broadly recognized as the supreme human right and the *conditio sine qua non* for the enjoyment of all other rights.⁴³

70. It is therefore particularly important for the IACHR to ensure that any deprivation of life through application of the death penalty does not violate any obligation enshrined in the applicable instruments of the inter-American human rights system.⁴⁴ This rigorous scrutiny is in line with the restrictive approach used by other international human rights bodies when analyzing cases involving the death penalty,⁴⁵ and the Inter-American Commission has expressed and applied this in previous cases on capital punishment that it has heard.⁴⁶

71. As the Inter-American Commission has explained, this standard of review is a necessary consequence of the punishment in question and related due process guarantees.⁴⁷ In the words of the IACHR:

due in part to its irrevocable and irreversible nature, the death penalty is a form of punishment that differs in substance as well as in degree in comparison with other means of punishment, and therefore warrants a particularly stringent need for reliability in determining whether a person is responsible for a crime that carries a penalty of death.⁴⁸

72. The Inter-American Commission will therefore review the allegations of the petitioners in this case with a rigorous degree of scrutiny to guarantee, in particular, that the rights to life, fair trial, and judicial protection—among other rights stipulated in the American Convention—have been respected by the State.

⁴² Annex 12. Decision of the First Court of Criminal Sentence Execution of February 2, 1998, setting the date for carrying out the death sentence. Annex to communication of the petitioner of February 4, 1998.

⁴³ IACHR Report No. 76/16, Case 12,254. Merits. Victor Saldaño. United States. December 10, 2016, para. 169.

⁴⁴ In this regard, see IACHR, *The Death Penalty in the Inter-American Human Rights System: from Restrictions to Abolition*, OEA/Ser.L/V/II.Doc. 68, December 31, 2011.

⁴⁵ For example, see Inter-American Court, *Advisory Opinion OC-16/99 (October 1, 1999) "The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law,"* para. 136 (stating "because execution of the death penalty is irreversible, the strictest and most rigorous enforcement of judicial guarantees is required of the State so that those guarantees are not violated and a human life not arbitrarily taken as a result"); UNHCR, *Baboheram-Adhin et al. v. Suriname*, Communications No. 148-154/1983, approved on April 4, 1985, para. 14(3) (which notes that the law must strictly control and limit the circumstances in which State authorities can take a person's life); Report of the United Nations Special Rapporteur on extrajudicial execution, *Bacre Waly Ndiaye*, submitted pursuant to the resolution of the Inter-American Commission on Human Rights 1994/82, *Question of the Violation of Human Rights and Fundamental Freedoms in any part of the World, with particular reference to Colonial and Other Dependent Countries and Territories*, U.N. Doc.E/CN.4/1995/61 (14 December 1994) (hereinafter the "Ndiaye Report"), para. 378 (which underscores that in cases on capital punishment, the application of the legal standard of impartiality is what must be guaranteed in each and every case and, where indications are that it is not, verified, in keeping with the obligation under international law to conduct exhaustive and impartial investigations into all reports of violations of the right to life.)

⁴⁶ IACHR Report No. 11/15, Case 12,833, Merits (publication) Félix Rocha Díaz, United States, March 23, 2015, paragraph 54; Report No. 44/14, Case 12,873, Merits (publication), Edgar Tamayo Arias, United States, July 17, 2014, para. 127; Report No. 57/96, Andrews, United States, Annual Report of the IACHR, 1997, paras. 170-171.

⁴⁷ IACHR, *The Death Penalty in the Inter-American Human Rights System: from Restrictions to Abolition*, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, para. 41.

⁴⁸ IACHR Report No. 78/07, Case 12,265, Merits (publication) Chad Roger Goodman, United States, October 15, 2007, paragraph 34.

B. Rights to a fair trial⁴⁹ and to judicial protection,⁵⁰ and the legality principle⁵¹

73. In line with the previous section, the IACHR reiterates the fundamental importance of guaranteeing full and strict compliance with due process guarantees when trying individuals for capital offenses. As the Commission has indicated, “those States that still have the death penalty must, without exception, exercise the most rigorous control for observance of judicial guarantees in those cases”⁵² in order to guarantee that all life taken through such punishment is taken in strict compliance with the requirements established in the applicable Inter-American human rights instruments.⁵³

74. Taking into account the pleadings of the parties and the proven facts, the Commission will conduct its analysis in this section in the following order: 1. On the use of the concept of dangerousness to apply the death penalty; and 2. On the provision of a shared defense attorney for both Mr. Martínez Coronado and his co-defendant.

1. On the use of the concept of dangerousness to apply the death penalty

1.1 General considerations

75. Both the Commission and the Inter-American Court have addressed the concept of dangerousness as an element for determining whether to apply a punishment or, in particular, the death penalty.

76. In a case concerning the application of the death penalty in the state of Texas, in the United States, which was analyzed similarly based on the principles of the American Declaration of the Rights and Duties of Man, the Commission stated that:

(...) the element of future dangerousness accords the jury a high degree of discretionary authority to impose the harshest possible penalty and may prove problematic, given the likelihood that a future act will occur, exceeding the scope of the crime actually committed by the person in question. Accordingly, the Commission considers that, given that this is a matter of a criterion that depends on a subjective and speculative decision by the jury, the mere fact that it is required under internal law of the State of Texas constitutes a permanent

⁴⁹Article 8 of the American Convention establishes the following:

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: (...) (c.) adequate time and means for the preparation of his defense; (...) (e.) the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law (...).

⁵⁰Article 25 of the American Convention establishes the following: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

⁵¹Article 9 of the American Convention establishes the following: No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom.

⁵² IACHR, The Death Penalty in the Inter-American Human Rights System: from Restrictions to Abolition, OEA/Ser.L/V/II.Doc.68, December 31, 2011, pg. 91.

⁵³ IACHR Report No. 54/14, Petition 684-14, Admissibility, Russell Bucklew and Charles Warner, United States, July 21, 2014, para. 39.

risk that human rights violations could be committed against the person convicted and in consequence, that the death penalty could be imposed arbitrarily.⁵⁴

77. The Human Rights Committee of the International Covenant on Civil and Political Rights has also addressed the concept of future danger and its use in a criminal proceeding in general terms. Specifically, it has indicated that:

The concept of feared or predicted dangerousness to the community applicable in the case of past offenders is inherently problematic. It is essentially based on opinion as distinct from factual evidence, even if that evidence consists in the opinion of psychiatric experts. But psychiatry is not an exact science. (...) on the one hand, [the Court is required] to have regard to the opinion of psychiatric experts on future dangerousness but, on the other hand, requires the Court to make a finding of fact of dangerousness. While Courts are free to accept or reject expert opinion and are required to consider all other available relevant evidence, the reality is that the Courts must make a finding of fact on the suspected future behaviour of a past offender which may or may not materialise.⁵⁵

78. For its part, the Inter-American Court has addressed the invocation of future dangerousness in light of the legality principle established in Article 9 of the American Convention. The Court indicated that such an invocation is serious and that “it clearly constitutes an expression of the exercise of the state’s *ius puniendi* over the basis of the personal characteristics of the agent and not the act committed, that is, it substitutes the Criminal System based on the crime committed, proper of the criminal system of a democratic society, for a Criminal System based on the situation of the perpetrator, which opens the door to authoritarianism precisely in a subject in which the juridical rights of greatest hierarchy are at stake.”⁵⁶

79. Recently, in the case of Pollo Rivera v. Peru, the Inter-American Court found that:

(...) Article 9 of the American Convention establishes that “No one shall be convicted of any act or omission,” that is, that one can only be convicted of “acts.” “Act”-based criminal law is a fundamental guarantee of all criminal law that respects human rights. It is precisely in response to the terrifying consequences of the failure to observe this basic human rights principle that its development began in 1948. Criminal law that is in accordance with all human rights instruments vigorously rejects so-called “actor-based criminal law,” which views criminal conduct only as an indication or symptom of personality or character and can expansively include noncriminal acts as well, as long as they are considered to play the same role of subjective indicators.⁵⁷

“Actor-based” criminal law has taken a number of routes, one of them that of so-called “dangerousness” (...).⁵⁸

⁵⁴ IACHR Report No. 76/16, Case 12,254. Merits. Victor Saldaño. United States. December 10, 2016. para. 148.

⁵⁵ Human Rights Committee of the ICCPR. Robert John Fardon v. Australia, Communication No. 1629/2007, U.N. Doc. CCPR/C/98/D/1629/2007 (2010). Para. 7.4.

⁵⁶ Inter-American Court. Case of Fermín Ramírez v. Guatemala. Merits, Reparations, and Costs. Judgment of June 20, 2005. Series C No. 126. Para. 94.

⁵⁷ Inter-American Court. Case of Pollo Rivera *et al.* v. Peru. Merits, Reparations, and Costs. Judgment of October 21, 2016. Series C No. 319. para. 248.

⁵⁸ Inter-American Court. Case of Pollo Rivera *et al.* v. Peru. Merits, Reparations, and Costs. Judgment of October 21, 2016. Series C No. 319. para. 249.

80. Specifically on assessments of dangerousness, the Inter-American Court found that it:

“(...) implies the judge’s appreciation with regard to the possibility that the defendant will commit criminal acts in the future, that is, it adds to the accusation for the acts committed, the prediction of future acts that will probably occur.” The State’s criminal function is based on this principle. In the end, the individual will be punished – even with the death penalty – not based on what he has done, but on what he is. It is not even necessary to weigh in the implications, which are evident, of this return to the past, absolutely unacceptable from the point of view of human rights (...).

(...) the introduction in the criminal text of the dangerousness of the agent as a criterion for the criminal classification of the acts and the application of certain sanctions is not compatible with the freedom from ex post facto law and, therefore, contrary to the Convention.⁵⁹

1.2 Analysis of the case

81. As indicated in the section on proven facts, based on the standards cited, the Inter-American Court has found that Article 132 of the Guatemalan Penal Code, which defines the crime of murder and provides for the death penalty based on the dangerousness of the convict, is not compatible with the American Convention. Specifically, the Court found that the article violated the legality principle with regard to the duty to adopt provisions in domestic law.

82. In this case, Mr. Martínez Coronado was found criminally guilty for the murder of seven people. At sentencing, and in application of Article 132 of the Penal Code, which expressly established dangerousness as a criterion for applying the death penalty in cases of murder, Mr. Martínez Coronado was condemned to death.

83. As is clear from the rationale of the judgment in the guilty verdict, the analysis of dangerousness used the facts on which the criminal conviction was based to make predictions and speculate on how Mr. Martínez Coronado would behave in the future and the probability that he would react criminally. Consequently, the rationale for the judgment in the guilty verdict confirmed that the concept of dangerousness effectively constituted an expression of act or based criminal law in this specific case, which is not compatible with the essential principles of a democratic society and specifically with the principle of criminal legality.

84. Based on these considerations, the Commission concludes that the State of Guatemala is responsible for the violation of the legality principle enshrined in Article 9 of the American Convention, in conjunction with the obligations established in articles 1(1) and 2 of the same instrument, to the detriment of Manuel Martínez Coronado.

2. On the provision of a shared defense attorney for both Mr. Martínez Coronado and his codefendant

2.1 General considerations

85. The Commission has indicated that the right to a fair trial includes the right to adequate means of preparing the defense, with the assistance of a suitable attorney. A suitable legal representative is a fundamental component of the right to a fair trial.⁶⁰

⁵⁹ Inter-American Court. Case of Fermín Ramírez v. Guatemala. Merits, Reparations, and Costs. Judgment of June 20, 2005. Series C No. 126. para. 95 and 96.

⁶⁰IACHR, Report No. 78/15, Case 12,831. Merits (Publication), Kevin Cooper, United States. October 28, 2015, para. 129.

86. In the Commission's view, the adequate and effective exercise of due process guarantees depends significantly on the expert defense available to the person subjected to the criminal process. The Inter-American Court has found that the right to defense means the right to a defense that is effective, timely, and carried out by qualified individuals that strengthens the defense of the specific interest of the accused and is not simply a means of formally complying with requirements to make the process legitimate. Therefore, any defense purely for the sake of appearances would violate the American Convention.⁶¹

87. Specifically regarding the right to a public defender when the defendant does not have a private defense attorney, the Inter-American Court has indicated that:

(...) Appointing a public defender with the sole object of complying with the procedural formality would be equivalent to not providing expert defense. It is therefore crucial for the defense attorney to act diligently to protect the procedural guarantees of the accused, thereby preventing the rights of the accused from being violated and breaking the trust relationship. Thus, as the means by which the State guarantees the irrevocable right of everyone accused of a crime to be assisted by a defense attorney, the public defender institution must be provided with sufficient guarantees to enable it to act efficiently and with equality of arms vis-à-vis the public prosecutor. The Court has recognized that in order to comply with this, the State must adopt all adequate measures. These include having suitable and well-trained defense attorneys that can act with functional autonomy.⁶²

88. The American Bar Association's criminal justice standards state:

“Except for preliminary matters such as initial hearings or applications for bail, defense counsel who are associated in practice should not undertake to defend more than one defendant in the same criminal case if the duty to one of the defendants may conflict with the duty to another. The potential for conflict of interest in representing multiple defendants is so grave that ordinarily defense counsel should decline to act for more than one of several codefendants except in unusual situations when, after careful investigation, it is clear either that no conflict is likely to develop at trial, sentencing, or at any other time in the proceeding or that common representation will be advantageous to each of the codefendants represented and, in either case, that: (i) the several defendants give an informed consent to such multiple representation; and (ii) the consent of the defendants is made a matter of judicial record. In determining the presence of consent by the defendants, the trial judge should make appropriate inquiries respecting actual or potential conflicts of interest of counsel and whether the defendants fully comprehend the difficulties that defense counsel sometimes encounters in defending multiple clients (...).⁶³

89. For its part, in the case of *Holloway v. Arkansas*, before the Supreme Court of the United States, the Court address the situation of three defendants accused of armed robbery and rape who shared a public defender. It found that “The trial judge's failure either to appoint separate counsel or to take adequate steps to ascertain whether the risk of a conflict of interests was too remote to warrant separate counsel, in

⁶¹ Inter-American Court. *Ruano Torres v. El Salvador*. para. 158.

⁶² Inter-American Court. *Ruano Torres v. El Salvador*. para. 157.

⁶³ The American Bar Association's criminal justice standards, Standard 4-3.5(c) Conflicts of interest. The standard reads: (c) Except for preliminary matters such as initial hearings or applications for bail, defense counsel who are associated in practice should not undertake to defend more than one defendant in the same criminal case if the duty to one of the defendants may conflict with the duty to another. The potential for conflict of interest in representing multiple defendants is so grave that ordinarily defense counsel should decline to act for more than one of several codefendants except in unusual situations when, after careful investigation, it is clear either that no conflict is likely to develop at trial, sentencing, or at any other time in the proceeding or that common representation will be advantageous to each of the codefendants represented and, in either case, that: (i) the several defendants give an informed consent to such multiple representation; and (ii) the consent of the defendants is made a matter of judicial record. In determining the presence of consent by the defendants, the trial judge should make appropriate inquiries respecting actual or potential conflicts of interest of counsel and whether the defendants fully comprehend the difficulties that defense counsel sometimes encounters in defending multiple clients.

the face of the representations made by counsel before trial and again before the jury was empaneled, deprived petitioners of the guarantee of ‘assistance of counsel’ under the Sixth Amendment.”⁶⁴ The Court found that representing multiple defendants in a single case prevented the attorney from doing important work including (1) negotiating plea-bargains; (2) challenging the admission of evidence prejudicial to one client but favorable to another; (3) arguing at the sentencing hearing the relative involvement and culpability of his clients in order to minimize the culpability of one by emphasizing that of another.⁶⁵

90. For its part, the Inter-American Court found with regard to the evidentiary value that must be granted to testimony from codefendants in criminal proceedings that it has “limited evidentiary weight” and that “it would objectively not be sufficient on its own to overcome the presumption of innocence.”⁶⁶ In its most recent judgment, in the case of *Zegarra Marín v. Peru*, the Inter-American Court went into more depth on this issue on finding that “the testimony of codefendants is circumstantial and therefore part of the indirect and circumstantial evidence, and its contents should be assessed in keeping with the principles of logical and reasonable evaluation—that is, there must be multiple pieces of circumstantial evidence and they must be serious, precise, and consistent.” In that same case, the Court indicated this was the case because codefendants have “no duty to give testimony given they are pursuing substantial actions in their own defense.”⁶⁷

91. The Commission understands this position of the Inter-American Court to be based on the fact that in a criminal proceeding, the defense strategies employed by the codefendants may contradict each other, and the actions or omissions of the defense are directly related to the success of the defense strategy of each codefendant, with it being not only possible but likely, due to the nature of a criminal proceeding, that a codefendant’s defense may be based on attributing responsibility to the other codefendant.

92. Finally, the Commission reiterates that the guarantee of a proper defense in cases that could lead to a death sentence must be examined very strictly. In the words of the IACHR, “Rigorous compliance with (...) [the] right to competent counsel [is] also compelled [when one is] tried for a crime for which, if convicted, [one] would be sentenced to death.”⁶⁸

2.2 Analysis of the case

93. According to the proven facts, during the process, Mr. Martínez Coronado and his codefendant shared a public defender.

94. A joint reading of the standards described in the previous section, both with regard to the specific State obligations derived from Article 8(2)(e) of the Convention on a qualified public defender, and regarding the reduced evidentiary value of the testimony of codefendants precisely because the actions or omissions of an individual being criminally processed are based on a defense strategy, the Commission finds that co-defenders sharing a defense attorney in the same case is problematic and should be analyzed carefully, especially in a process that could lead to a death sentence.

95. This situation was regulated by Article 95 of the Procedural Penal Code, which established that sharing a public defender is, in principle, prohibited, except for when the defenses are “manifestly” not in conflict. That is, under domestic law itself, the rule was to prohibit sharing defense attorneys, and where sharing was acceptable, a high standard was required of a manifest lack of conflict between the defenses of the codefendants.

⁶⁴ U.S Supreme Court, *Holloway v Arkansas*, 435 U.S. 475 (1978)

⁶⁵ U.S Supreme Court, *Holloway v Arkansas*, 435 U.S. 475 (1978)

⁶⁶ Inter-American Court. *Ruano Torres v. El Salvador*. para. 133.

⁶⁷ Inter-American Court. *Zegarra Marín v. Peru*. Para. 130.

⁶⁸ IACHR, *The Death Penalty in the Inter-American Human Rights System: from Restrictions to Abolition*, OEA/Ser.L/V/II.Doc. 68, December 31, 2011, pg. 131.

96. Nevertheless, neither the judgment in the lower court's guilty verdict nor the judgment ruling on the special appeal remedy offered a rationale to justify departure from the rule prohibiting shared defense attorneys, nor the reasoning for why a lack of conflict between the defenses was manifestly clear. This justification was especially relevant considering that the judgment in the guilty verdict established that the codefendants contradicted each other, leading to the assumption that their defenses were in conflict.

97. The Commission finds that in this case, the contradictions between the versions of the facts provided by codefendants defended by the same person precisely demonstrate the risk inherent in this method of legal defense, as it forces the defense attorney to take positions that are not only different but foreseeably in opposition to each other, such that an action or omission to move one defendant strategy forward would necessarily impact the defense strategy for the other defendant. In such circumstances, the Commission finds that the violation of the right to an adequate defense has been established.

98. The violation of the right to defense by failure to adhere to Article 95 of the Procedural Penal Code was pleaded before the Supreme Court of Justice. In its ruling on the cassation appeal, the Court limited its justification to noting that "there was no clear conflict between them that would have meant the defense of one defendant could put the other at risk."

99. The Commission concludes that Mr. Martínez Coronado did not have an effective remedy to the violation of his right to defense. First, the Commission observes that this generic statement was not justified by the Supreme Court for this specific case. Second, the Commission notes that this rationale is inconsistent with the text of Article 95 itself. As noted above, the law assumes that sharing a defense attorney is prohibited, for which reason the court was required to justify departure from the general rule. However, with the Supreme Court did was invert the wording and proceed as if the exception were in fact the rule. Under the Supreme Court's rationale, sharing a public defender was allowed unless a "manifest conflict" could be demonstrated, which not only departs from the aforementioned law but is precisely the opposite of what it establishes.

100. Based on these considerations, the Commission concludes that the State of Guatemala is responsible for the violation of the rights enshrined in articles 8(1) and 8(2)(c) and (e) of the American Convention, in conjunction with the obligations established in articles 1(1) of the same instrument, to the detriment of Manuel Martínez Coronado.

C. Right to Life⁶⁹

101. Both the Court and the Inter-American Commission have indicated that application of the death penalty must adhere to the provisions of Article 4(2) of the American Convention—that is, it can only be applied for the most serious crimes,⁷⁰ and its application cannot in the future be extended to crimes for which it was not allowed at the time the American Convention was ratified.⁷¹ Likewise, the text itself of the

⁶⁹Article 4 of the American Convention establishes the following:

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.
2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply.

⁷⁰ Inter-American Court, Restrictions to the Death Penalty (arts. 4(2) and 4(4) of the American Convention on Human Rights). Advisory Opinion, OC-3/83 of September 8, 1983. Series A No. 3, para. 54.

⁷¹ IACHR, The Death Penalty in the Inter-American Human Rights System: from Restrictions to Abolition, OEA/Ser.L/V/II.Doc.68, December 31, 2011, pg. 88.

Convention and the IACHR's interpretation of it indicate that application of the death penalty in the framework of processes that violate due process violates Article 4(2) of the American Convention.⁷²

102. The Commission has already established in this report that in the process leading to the application of the death penalty for Manuel Martínez Coronado (i) a law was applied that was not compatible with the principle of criminal legality because it used the future dangerousness of the convict as a criterion for applying the death penalty; and (ii) the right to an adequate legal defense was violated.

103. Based on this, the Commission concludes that the application of the death penalty and its execution through lethal injection on February 10, 1998, violated the American Convention, resulting therefore in the arbitrary taking of a life, in violation of articles 4(1) and 4(2) of the Convention, in conjunction with the obligations established in articles 1(1) and 2 of the Convention.

VII. CONCLUSIONS

104. The Commission concludes that the Guatemalan State is responsible for the violation of the rights established in articles 4(1), 4(2), 8(1), 8(2)(c) and (e), 9, and 25(1) of the American Convention, in conjunction with the obligations established in articles 1(1) and 2 of the same instrument to the detriment of Manuel Martínez Coronado.

VIII. RECOMMENDATIONS

105. Based on the above conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF GUATEMALA,

1. Provide full pecuniary and nonpecuniary reparations for the human rights violations declared in this report. The measures of reparation must include just compensation as well as measures of satisfaction and rehabilitation, where pertinent, in consultation with the relatives of Mr. Manuel Martínez Coronado. In the event that is not possible to locate his relatives after making all possible efforts, the IACHR recommends that the pecuniary component of the reparations be contributed to the Legal Assistance Fund.

2. Take the legislative measures necessary to definitively eliminate dangerousness from Guatemalan criminal legislation as a element for determining what punishments to apply once criminal responsibility has been established.

3. Take the measures necessary to strengthen public defenders and make them fully effective, particularly in cases where severe punishments are possible.

4. The Commission takes note of and views positively the fact that the death penalty has not been applied by judicial authorities for more than 17 years, and that for more than a decade, individuals already condemned to death have had their sentences commuted. The Commission also takes note of and views positively the fact that for some years, the Executive Branch has taken measures to prevent the reactivation of the death penalty in Guatemala. In this regard, the Commission observes that as a result of actions taken by the executive and the judicial branches, more than 17 years have passed with the death penalty neither being applied nor carried out in Guatemala. The Commission understands that in practice, the Guatemalan State has made progress toward abolishing the death penalty, which is consistent with the spirit of the American Convention on the subject. Therefore, based on almost two decades of practice, the Commission recommends that the State of Guatemala adopt the measures necessary to make domestic

⁷² See IACHR, *The Death Penalty in the Inter-American Human Rights System: from Restrictions to Abolition*, OEA/Ser.L/V/II.Doc.68, December 31, 2011.

legislation consistent with its practices on the death penalty and thus continue on the path toward abolishing it.