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Title/Style of Cause: Maria Eugenia Morales de Sierra v. Guatemala
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Decided by: Chairman: Carlos Ayala Corao;
First Vice Chairman: Robert K. Goldman;
Second Vice Chairman: Jean Joseph Exume.
Dated: 6 March 1998
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I. CLAIMS PRESENTED

1. On February 22, 1995, the Inter-American Commission on Human Rights (hereinafter "Commission") received a petition dated February 8, 1995 alleging that various provisions of the Civil Code of the Republic of Guatemala (hereinafter "Civil Code," and "State," "Guatemala" or "Guatemalan State," respectively) which establish the legal regime defining the role of each spouse within a marriage create distinctions between men and women which are discriminatory and violative of Articles 1.1, 2, 17 and 24 of the American Convention on Human Rights (hereinafter "American Convention").

2. The petitioners indicated that Article 109 of the Civil Code confers the power to represent the marital union upon the husband, while Article 115 sets forth the exceptional instances when this authority may be exercised by the wife. Article 131 empowers the husband to administer marital property, while Article 133 provides for limited exceptions to that rule. Article 110 addresses responsibilities within the marriage, conferring upon the wife the "special right and obligation" to care for minor children and the home. Article 113 provides that a married woman may only exercise a profession or maintain employment where this does not prejudice her role as mother and homemaker. They stated that, according to Article 114, a husband may oppose his wife's activities outside the home, as long as he provides for her and has justified reasons. Article 255 confers primary responsibility on the husband to represent the children of the union and to administer their property. Article 317 provides that, by virtue of her sex, a woman may be excused from exercising certain forms of guardianship.

3. The petitioners reported that the constitutionality of these legal provisions had been challenged before the Guatemalan Court of Constitutionality in Case 84-92, which had ruled that the distinctions were constitutional, as, inter alia, they provided juridical certainty in the allocation of roles within marriage. The petitioners requested that the Commission find the

foregoing provisions of the Civil Code incompatible in abstracto with the guarantees set forth in Articles 1.1, 2, 17 and 24 of the American Convention.

II. PROCESSING BEFORE THE COMMISSION

4. Pursuant to the filing of their petition, on March 14, 1995, the petitioners sent the Commission a copy of the sentence issued by the Court of Constitutionality in response to Case 84-92. Case 11.625 was opened on May 6, 1996, and the pertinent parts of the petition were transmitted to the Government of Guatemala on that date, with a response requested within 90 days.

5. By means of a note dated August 6, 1996, the State indicated that it was compiling a substantial report in response to the petition, and requested an extension of the time accorded for its answer. In a note of August 7, 1996, the Commission indicated that an extension of 30 days had been granted.

6. In a note dated September 10, 1996, the State reported that the Executive was about to send to Congress a project of reforms to modify certain provisions of the Civil Code at issue in the present case. The Government explained that the reforms were aimed at modifying provisions of the Code which in some way contravened Article 46 of the Constitution, and provisions of the Convention on the Elimination of all Forms of Discrimination against Women and the American Convention. The Government indicated that, once submitted to the Congress, a copy of the draft reforms would be forwarded to the Commission. This information was transmitted to the petitioners in a note of September 17, 1996, with the submission of any observations in response requested within 45 days.

7. Pursuant to a request from the petitioners, the Commission granted a hearing to address the admissibility of Case 11.625 during its 93rd regular period of sessions. During that hearing, held on October 10, 1996, the Government of Guatemala recognized that the provisions of the Civil Code characterized by the petitioners as discriminating against women were out of date. For that reason, and having regard to Article 2 of the American Convention, the Executive reported that Deputies Nineth Montenegro and Olga Camey de Noack had elaborated a set of proposed reforms to the Civil Code, designated initiative number 1539, which referred to the majority of the provisions challenged by the petitioners. These reforms had been presented to the Commission on Legislative and Constitutional Points of the National Congress for its study and opinion. Further, the Presidential Coordinating Commission of Executive Policy in Human Rights Matters (COPREDEH) had prepared a set of complementary reforms to address certain provisions not dealt with in the pending draft which had been transmitted to the General Secretariat of the Presidency. The Government indicated its concern with respect to the discrepancies between the challenged provisions and the obligation of nondiscrimination, and that it hoped these projected reforms would lead to the adoption of corresponding measures in the near term. The petitioners indicated their interest in studying the proposed reforms and providing observations with respect to how the proposed changes adhered to the international standards in effect which have special bearing on the rights of women. The Government in turn indicated that these draft reforms would be provided to the Commission and the petitioners. The parties agreed that the Commission should review the matter during its next period of sessions in

order to assess developments and evaluate the feasibility of resolving the case through the procedure of friendly settlement.

8. On October 10, 1996, the petitioners provided the Commission with a set of 12 signed statements (nine of which were notarized), from married women, single women, and professionals in the fields of family law and psychology, concerning the effects and implications of the challenged provisions of the Civil Code. Copies of these statements were formally transmitted to the Guatemalan State by means of a note dated October 15, 1996. Any observations in response, or further information deemed pertinent were requested within 60 days.

9. On December 13, 1996, the State transmitted a report to the Commission updating the efforts it had taken with respect to reforms to the Civil Code, reiterating information provided during the October 10, 1996 hearing, and indicating that it was hoped that the project of reforms would be taken up by the Congress when it initiated its next session. The Government also provided the Commission with the text of the "Law to Prevent, Sanction and Punish Intrafamilial Violence," approved by the Congress by means of Decree Number 97-96 and scheduled to enter into force on December 28, 1996. This submission was transmitted to the petitioners by means of a note dated January 9, 1997, with any observations in response requested within 45 days.

10. Pursuant to the January 24, 1997 request of the petitioners, the Commission held a hearing on the case on March 5, 1997, during its 95th regular period of sessions. The petitioners reported that the only project presented to the Congress to date with respect to the Civil Code had dealt solely with Article 114 (concerning the legal capacity of women to work and pursue activities outside of the home). The Commission on the Woman, the Minor and the Family had reviewed the project, and transmitted it to the plenary of the Congress on May 15, 1996. On May 20, 1996, the plenary had transmitted the project to the Commission of Legislative and Constitutional Points, which had issued an unfavorable report. The petitioners submitted a copy of a letter dated February 19, 1997 from the President of the Commission on the Woman, the Minor and the Family recounting these events, and a copy of the draft reforms to Article 114 of the Civil Code.

11. During the hearing, the Government indicated that, notwithstanding that the efforts referred to during the prior hearing had not prospered, it continued to pursue initiatives aimed at the reform of the legislation in question. The State also reported that the Attorney General had challenged Civil Code Articles 113 and 114 before the Court of Constitutionality in an action filed on November 16, 1996, the determination of which remained pending. The Commission questioned the petitioners as to whether they were requesting a determination in abstracto or pursuing an individual claim. The petitioners indicated that, in the concrete case, María Eugenia Morales Aceña de Sierra had been directly affected by the challenged legislation, and also represented other women victims in Guatemala. The Commission requested that they formalize the status of María Eugenia Morales de Sierra as the victim in writing, in order to comply with the dispositions of its Regulations and proceed to process the petition within its case system.

12. The petitioners formalized the status of María Eugenia Morales de Sierra as victim in a communication of April 23, 1997, the date as of which the Commission considers this status to have been established in the file. According to the petitioners, María Eugenia Morales de Sierra

is a victim who, as a married woman with children who resides in Guatemala, is subject to a legal regime which limits her capacity to exercise her rights. The petitioners characterized the norms in question as being of immediate application, affecting the rights of the victim by virtue of her sex and civil status simply by being in effect. The petitioners supported their position with reference to the jurisprudence of the European and universal systems for the protection of human rights concerning the requirements of standing and admissibility. In a note of June 9, 1997, the pertinent parts of this communication were transmitted to the State of Guatemala, with any observations requested within 30 days.

13. On July 10, 1997, the Government submitted a brief communication indicating that the constitutional challenge interposed by the Attorney General against Articles 113 and 114 remained pending before the Court of Constitutionality, and that on May 29, 1997, the National Office of the Woman and a group of nongovernmental organizations had delivered a set of draft reforms to the Civil Code to Deputy Nineth Montenegro. The draft reforms had been transmitted to the Commission of Legislative and Constitutional Points for its study and opinion. The Government indicated that, given its continuing efforts and those of nongovernmental groups to modify Civil Code provisions which might discriminate against women, the petitioners had not exhausted domestic remedies. This submission was transmitted to the petitioners in a note of July 14, 1997, with any observations requested within 30 days.

14. On July 28, 1997, the petitioners provided the Commission with documentation complementing their April 23, 1997 submission, and consisting of a sworn declaration signed by María Eugenia Morales de Sierra, her birth certificate, marriage certificate, and birth certificates for her children. The declaration sets forth the effect of the legislative provisions at issue on the declarant's life, including, *inter alia*, the fact that the law prohibits her from representing the family or her minor child unless her husband is unable to do so; that she is unable to administer property obtained during the marriage or that of her children; and that the law would allow her husband to oppose her exercise of her profession at any moment. The declarant maintains that these restrictions have both legal and cultural consequences. The documentation was transmitted to the Government of Guatemala by means of a note dated August 14, 1997, with any response deemed pertinent requested within 30 days.

15. Pursuant to the request of the petitioners, the Commission held an additional hearing on the admissibility of the present case on October 10, 1997, during its 97th period of sessions. In a note dated September 18, 1997, the Government had indicated that it would respond to the additional information submitted by the petitioners during that scheduled hearing.

16. During the hearing, the petitioners produced three experts who testified as *amici curiae* to support the standing of María Eugenia Morales de Sierra as a direct victim in the instant case: Dinah Shelton, Center for Civil and Human Rights, Notre Dame Law School; Sian Lewis-Anthony, Interights; and Rhonda Copelon, International Women's Human Rights Law Clinic and the Concertación de Mujeres Activistas Para los Derechos Humanos. These experts recalled that members of a class targeted by legislation which is discriminatory on its face are deemed victims for the purpose of bringing petitions, citing, for example, the case of *Dudgeon v. the United Kingdom* (1982) 4 E.H.R.R. 149, para. 41. They further indicated that a putative victim need not demonstrate specified harm, nor even that specific measures of implementation have been taken,

citing, for example, *Marckx v. Belgium* (1979), 2 E.H.R.R. 330, para 25, 27. In some cases, they noted, it may be sufficient to show the risk of a direct effect based on status, citing *Klass v. Germany* (1980), 2 E.H.R.R. 214, at para. 33. The petitioners asserted that, for the purposes of admissibility, where legislation creates a facial distinction with respect to a protected class, harm should be presumed. The prohibition against discrimination, they noted, is a nonderogable primary obligation. The petitioners sustained that the challenged provisions of the Civil Code play a central role in perpetuating and sustaining the inequality of women and men. Accordingly, while the provisions most immediately affect married women, in a larger sense they impact all women and Guatemalan society as a whole. Given their position that María Eugenia Morales de Sierra is in fact a victim with standing, the amici curiae indicated that resolving the questions raised did not require a decision in abstracto by the Commission.

17. The State, for its part, indicated that María Eugenia Morales de Sierra had acknowledged in her statement of August 28, 1997 that her husband had never actually restricted her professional activities under the terms of Article 114. The representative of the Government reported that the Congress continued to study diverse proposals to reform the Civil Code in order to correct or modify provisions which impede the ability of women to fully exercise their rights. In particular, in August of 1997, the National Office of the Woman had presented a comprehensive set of reforms to the Civil Code. Additionally, the Commission of the Woman, the Minor and the Family of the Congress was currently studying projects concerning the integral promotion of women and the family; the elaboration of a law concerning sexual harassment; and the creation of a National Institute of the Woman (initiative number 1793). Given the pendency of these projects, the State asked that the Commission postpone its decision on admissibility in the present case.

18. During the hearing, the Commission reaffirmed that the petitioners had amended their initial petition for a decision on the compatibility of the provisions at issue in abstracto to instead request a decision on the individual claims of the named victim. The Commission also requested the views of the petitioner with respect to whether the former should proceed to an immediate decision on the admissibility and merits of the case. They indicated that, in their view, the processing of the case had been sufficient and that it was ripe for decision. Pursuant to inquiry by the Commission, the State indicated that it remained disposed to consider the option of the friendly settlement procedure. The petitioners indicated their belief that this option had been explored sufficiently, and had failed to provide any fruitful results.

III. THE POSITIONS OF THE PARTIES

The Position of the Petitioners

19. The petitioners maintain that the cited provisions of the Civil Code discriminate against women, in a form which is immediate, direct and continuing, in violation of the rights of María Eugenia Morales de Sierra established in Articles 1.1, 2, 17 and 24 of the American Convention. The petitioners cite international human rights jurisprudence, including that of the Inter-American Court, for the proposition that, while a difference in treatment is not necessarily discriminatory, such a distinction must be objectively justified in the pursuit of a legitimate end, and the means employed must be proportionate to that end. They contend that the provisions in

question set forth distinctions between women and men, most immediately married women and men, which are illegitimate and unjustified. They note that the Court of Constitutionality found the challenged provisions justified as a form of protection for women, and as a means of establishing juridical certainty in the allocation of rights and responsibilities within marriage. The petitioners maintain that, even should these be deemed legitimate and sufficient justifications, the means employed are disproportionate. They assert that these provisions are contrary to the principle of equality between the spouses, and nullify the juridical capacity of the woman within the domestic legal order, thereby controverting the protections set forth in Articles 17 and 24 of the American Convention, as well as the obligations set forth in Articles 1.1 and 2.

20. The petitioners initially positioned their claims as a request for a decision in abstracto on the compatibility of the cited provisions of the Civil Code with the provisions of Articles 1.1, 2, 17 and 24 of the American Convention. Citing Advisory Opinions OC/13 and OC/14 of the Inter-American Court, they argued that the Commission could exercise jurisdiction over the matter through its general functions under Article 41 of the American Convention to: promote and oversee member state compliance with their human rights obligations; make recommendations to the states for measures in favor of the protection of human rights; and to act on individual petitions.

21. As recorded, the petitioners amended their position during the processing of the petition in 1997 to designate co-petitioner María Eugenia Morales de Sierra as an individual victim. Pursuant to that modification, the petitioners provided information which they assert demonstrates how the distinctions created by the challenged legislation restrict the ability of the victim to fully exercise the guarantees set forth in Articles 1.1, 2, 17 and 24 of the American Convention.

22. The petitioners maintain that the case satisfies all the requirements of admissibility, domestic remedies having been invoked and exhausted, and the victim having pleaded the direct effect of the impugned provisions on her ability to exercise her rights.

The Position of the State

23. The Government has not expressly controverted the substance of the claims raised by the petitioners. Rather, it indicates that steps are being taken by each branch of Government to respond to provisions of the Civil Code which contravene the Constitutional guarantee of equality, as well as provisions of the American Convention and other applicable international obligations. The executive branch has presented various draft reforms to the Congress for study. The Congress has reviewed and rejected some of these projects, and continues to receive and review others. The Attorney General has challenged the constitutionality of Articles 113 and 114 of the Civil Code in a claim filed before the Court of Constitutionality on November 16, 1996. In hearings before the Commission, the Government indicated that the executive had pursued certain initiatives within its mandate, and, in view of the system of separation of powers extant in the national system, could not interfere with those being dealt with under the jurisdiction of other branches of Government. The State maintains that the measures undertaken demonstrate its commitment to upholding the guarantees set forth in the Constitution, and in the American Convention on Human Rights and other applicable international law.

24. It is on the basis of these pending measures that the State controverts the admissibility of the case, contending that these demonstrate that domestic mechanisms continue to offer available and effective relief for the problem denounced. Accordingly, the State contends that the petitioners have not satisfied the requirement of exhausting the applicable internal remedies. Additionally, the State appears to contend that the Commission may lack jurisdiction *ratione personae*. During the October 10, 1997 hearing before the Commission, the Government indicated that, although the victim complains that Article 114 of the Civil Code constitutes an infringement of her right to work, in fact, she freely exercises her profession, and acknowledged in her written statement of August 28, 1997 that her husband had never impeded those activities. The presumed implication is that, if the victim has not been directly prejudiced as a result of the legislation, the Commission lacks jurisdiction *ratione personae*.

IV. CONSIDERATIONS WITH RESPECT TO ADMISSIBILITY

25. The Commission is competent to examine the subject matter of this complaint, as it concerns alleged violations of Articles 1.1, 2, 17 and 24 of the American Convention. The Republic of Guatemala deposited its ratification of the American Convention on May 25, 1978, and the Convention entered into force for all parties on July 18, 1978.

26. The petitioners' submissions include the information required by Article 32 of the Commission's Regulations, and meet the conditions set forth in Article 46.1.c of the American Convention and Article 39 of the Commission's Regulations, as the claims are neither pending settlement in another international inter-governmental proceeding, nor essentially duplicative of a petition pending or previously considered by the Commission.

27. Article 46 of the American Convention specifies that, in order for a case to be admitted, "remedies under domestic law [shall] have been pursued and exhausted in accordance with generally recognized principles of international law." This requirement ensures the state concerned the opportunity to resolve disputes within its own legal framework. The remedies generally required to be exhausted in accordance with the principles of international law are those which are available for and effective in addressing the allegations at issue. In 1992, María Eugenia Morales de Sierra, the Assistant Procurator for Human Rights and the victim in the present case, brought an action challenging the constitutionality of 12 articles of the Civil Code, in part or in full, including the nine articles at issue in the present case. The action was based on the contention that the provisions in question contravened, *inter alia*, the equality provisions of the Constitution, namely Articles 4 and 47. The claim was rejected by the Court of Constitutionality in a decision of July 24, 1993. The petitioners contend that they have invoked and exhausted the applicable domestic remedy.

28. Where a State claims that a petitioner has failed to discharge the requirement of exhaustion, the former bears the burden of indicating the specific remedies which remain available and effective. See, Article 37.3, Regulations of the Inter-American Commission, see e.g., I.Ct.H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of Jan. 31, 1996, para. 40 (citing established Court jurisprudence). The State has not disputed that the constitutional mechanism invoked by the co-petitioner was the adequate jurisdictional remedy under the

circumstances. Nor has it disputed that all of the claims now at issue before the Commission were raised in substance before the Court of Constitutionality. Rather, it contends that executive and legislative action aimed at reforming the provisions in question provide one avenue for redress, and that the constitutional action filed by the Attorney General in 1996 impugning Articles 113 and 114 of the Civil Code provides another. With respect to the executive and legislative action referred to, the Commission observes that the remedies generally required to be exhausted are those the judicial system offers to address the infringement of a legal right. With respect to the constitutional challenge brought by the Attorney General, the Commission observes that the co-petitioner and victim already challenged those provisions before the Court of Constitutionality. Given that the claims at issue before the Commission were placed before the Court of Constitutionality, thereby enabling the highest tribunal with jurisdiction to monitor and interpret the constitutionality of laws to render a determination of the rights at issue under domestic law, the Commission considers the requirement that domestic remedies be exhausted to have been satisfied. In effect, among its functions pursuant to the Guatemalan Constitution, the Court of Constitutionality acts as a court of original jurisdiction with respect to certain challenges to laws on constitutional grounds.

29. Article 46.1.b of the Convention establishes that a case must be filed in a timely manner, within six months of the date the interested party received notification of the final judgment within the domestic system. As the Commission has previously stated, this rule exists to allow for juridical certainty while still providing sufficient time for a potential petitioner to consider her position. The State, for its part, has not alleged failure to comply with the six-months rule. (Such a position would, in any case, be inconsistent with its argument that domestic remedies remain to be exhausted. See generally, I.Ct.H.R., *Neira Alegria Case*, Preliminary Objections, Judgment of Dec. 11, 1991, Ser. C No. 13, paras. 28-29.) While an issue of timeliness would have arisen had the petitioners specifically challenged the decision of the Court of Constitutionality or had they complained about specific past occurrences, they are in fact complaining about what they allege to be a continuing violation. See generally, I.Ct.H.R., *Blake Case*, Preliminary Exceptions, Judgment of July 2, 1996, paras. 29-40. They maintain that the legislation in question gives rise to restrictions on the rights of women on a daily, direct and continuing basis, and have provided victim testimony to that effect. Given the nature of the claims raised, which concern the ongoing effects of legislation which remains in force, the six-months rule creates no bar to the admissibility of this case under the circumstances analyzed above.

30. With respect to the question of jurisdiction *ratione personae*, the Commission has previously explained that, in general, its competence under the individual case process pertains to facts involving the rights of a specific individual or individuals. See generally, I.A.C.H.R., *Case of Emérita Montoya González*, Report 48/96, Case 11.553 (Costa Rica), in Annual Report of the IACHR 1996, OEA/Ser.L/V/II.95, Doc. 7 rev., March 14, 1997, paras. 28, 31. The Commission entertains a broader competence under Article 41.b of the Convention to address recommendations to member states for the adoption of progressive measures in favor of the protection of human rights.

31. Pursuant to their original petition for a decision *in abstracto*, which appeared to rely on the Commission's competence under Article 41.b of the American Convention rather than that

under Article 41.f, the petitioners modified their petition and named María Eugenia Morales de Sierra as an individual victim, as previously noted, in their communication of April 23, 1997. With the identification of an individual victim, the Commission may advance with its decision on admissibility in the present case. As the Honorable Court has explained, in order to initiate the procedures established in Articles 48 and 50 of the American Convention, the Commission requires a petition denouncing a concrete violation with respect to a specific individual. I.Ct.H.R., Advisory Opinion OC-14/94, "International Responsibility for the Promulgation and Enforcement of Laws in Violation of the Convention (Arts. 1 and 2 of the American Convention)," of Dec. 9, 1994, para. 45, see also, paras. 46-47. With respect to the other contentious mechanisms of the system, Article 61.2 of the Convention establishes, further, that "[i]n order for the Court to hear a case, it is necessary that the procedures set forth in ... [those Articles] shall have been completed." "The contentious jurisdiction of the Court is intended to protect the rights and freedoms of specific individuals, not to resolve abstract questions." *Id.* para 49.

32. The petitioners argue that the victim has experienced and continues to experience violations of her rights to equality, and to equal protection of and before the law, under Articles 2, 17 and 24 of the American Convention, by reason of her gender. They allege that the challenged legislation has a direct impact on the ability of María Eugenia Morales de Sierra to exercise her rights. The victim alleges that, although her family life is based on the principle of reciprocal respect, the law prevents her from representing the marital union or her minor child unless her husband is unable to do so, and that the fact that the law vests this power in her husband creates a disequilibrium in the weight of the authority exercised by each spouse within their marriage, an imbalance which may be perceived within the family, community and society. The victim complains that the law provides that her husband has the exclusive competence to administer family property, and the goods of their minor child, and that, notwithstanding that the law requires women to bear primary responsibility for child care and the home, it excuses them from exercising certain forms of guardianship by virtue of their sex. The victim asserts that, although her right and duty as a mother is to protect the best interests of her children, the law strips her of the legal authority necessary to do that. The victim indicates that, although her husband has not opposed her professional activities, the law gives him the authority to do so at any moment. Accordingly, the victim maintains that the legislation in question constitutes an attack on her human dignity, and contravenes her right to a life free of discrimination based on gender. See Notarized Statement of May 5, 1997, signed by the victim.

33. With respect to the allegations concerning Article 114 of the Civil Code, the Government appears to argue that, as the victim's husband has never opposed her exercise of her profession, her rights have therefore never been infringed by the application of that provision. This argument, however, misses the substance of the complaint raised, and is rejected for that reason. In the first place, in virtue of the public order of human rights, even the eventual consent of a victim to a violation does not validate the violative act of a State, nor does it affect the competence of the international organ to whom the States have entrusted their protection. The victim asserts that the American Convention protects her right as a married woman to work and develop other activities outside of the home under equal conditions with men. Accordingly, she contends that the restrictions which Article 114 imposes on married women, but not upon

married men, deny her the right to pursue professional and other opportunities on equal terms with men simply by virtue of being in force.

34. With respect to the claims as a whole, the Commission observes that a legal provision may affect an individual in different ways. A non-self-executing law will require measures of implementation by state authorities before it can be applied in a concrete case. OC-14/94, *supra*, para. 41. A self-executing law, on the other hand, may violate a protected right by virtue of its entry into force, if all other requirements (e.g. competence *ratione personae*) are complied with. Therefore, and taking into account the foregoing, "a norm that deprives a portion of the population of some of its rights -- for example, because of race -- automatically injures all the members of that race." *Emphasis added. Id.*, para. 43.

35. In the instant case, María Eugenia Morales de Sierra alleges that the challenged provisions of the Civil Code create distinctions based on gender which infringe her rights to equality and to equal protection of and before the law simply by virtue of being in force. In this regard, international jurisprudence has established that a law may violate the right of an individual, even in the absence of any specific measure of subsequent implementation by the authorities, where the individual is directly affected, or is at imminent risk of being directly affected by a legislative provision. See generally, E.Ct.H.R., *Case of Klass and Others*, Judgment of 6 Sept. 1978, Ser. A Vol. 28, paras. 33-38; E.Ct.H.R., *Marckx Case*, Judgment of 13 June 1979, para. 27; see also, U.N.H.R. Committee, *Ballantyne, Davidson and McIntyre v. Canada*, 1993 Report, Vol. II, p. 102. María Eugenia Morales de Sierra is "challenging a legal position" -- that of married women under the cited Articles of the Civil Code -- "which affects her personally." See, *Marckx Case*, *supra*, para 27. The Commission considers that the direct effect of the challenged legislative provisions on the rights and daily life of the victim has been adequately alleged and demonstrated for the purposes of admissibility in the present case, and will analyze its relevance and impact in the decision on the merits. In this phase, the Commission will not discuss matters related to human rights violations committed via self-executing laws.

36. Finally, as required by Article 47 of the American Convention, the petitioners have stated facts tending to establish a violation of the rights guaranteed by this Convention. Articles 109, 110, 113, 114, 115, 131, 133, 255, and 317 of the Civil Code establish differences in the treatment the law provides with respect to married women and married men, and in some cases, married and unmarried women. Under international human rights law, such differences must be analyzed to determine whether they pursue a legitimate aim, and whether the means employed are proportional to the end sought. I.Ct.H.R., *Advisory Opinion OC-4/84*, "Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica," Ser. A No. 4, para. 56, citing E.Ct.H.R., *Belgian Linguistic Case*, Judgment of July 23, 1968, Ser. A No. 6, at 34. In other words, the law is expected to be even-handed between women and men unless just, legitimate and reasonable compelling bases have been adduced to justify a difference in treatment. See *Van Raalte v. Netherlands*, 24 E.H.R.R. 503, para. 42. The Commission will take up this question in its analysis of the merits of the case.

Additional Considerations

37. As to Article 48.1.f of the American Convention, which authorizes the Commission to place itself at the disposal of the parties for the purpose of facilitating a possible friendly settlement, the record reflects that the parties were notified of the Commission's disposition to assist them in this regard during the various hearings. The parties discussed various options with a view to pursuing this process, but never reached any agreement to enter into formal negotiations for this purpose. During the October 10, 1997, the petitioners indicated that, in view of the lack of progress on reforms within the domestic system, they were no longer interested in the possibility of friendly settlement.

38. Taking into account the foregoing analysis and conclusions,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

- A. To declare the present case admissible.
- B. To transmit this report to the State of Guatemala and the petitioners.
- C. To place itself at the disposal of the parties for the purpose of reaching a settlement based on respect for the human rights protected in the American Convention; and invite the parties to indicate their disposition to initiate the procedure of friendly settlement within a period of 30 days, counted as of the date of transmission of the present report.
- D. To continue with the analysis of the merits of the case.
- E. To make this report public, and publish it in its Annual Report to the General Assembly of the OAS.