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Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 73/02; Petition 050/02
Session:	Hundred and Sixteenth Regular Session (7 – 25 October 2002)
Title/Style of Cause:	Ronald Ernesto Raxacaco Reyes v. Guatemala
Doc. Type:	Decision
Decided by:	President: Juan Mendez; Second Vice-President: Jose Zalaquett; Commissioners: Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, Susana Villaran. Commissioner Marta Altolaguirre, a Guatemalan national, did not participate in discussing and deciding on this case in accordance with Article 17(2)(a) of the Commission’s new Rules of Procedure, which came into force on May 1, 2001.
Dated:	9 October 2002
Citation:	Raxacaco Reyes v. Guatemala, Petition 050/02, Inter-Am. C.H.R., Report No. 73/02, OEA/Ser.L/V/II.117, doc. 1 rev. 1 (2002)
Represented by:	APPLICANTS: the Center for Justice and International Law, the Guatemalan Institute of Comparative Criminal Science Studies, and the Guatemalan Public Criminal Defense Institute
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## I. SUMMARY

1. On January 28, 2002, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition submitted by the Center for Justice and International Law (CEJIL), the Guatemalan Institute of Comparative Criminal Science Studies (ICCPG), and the Guatemalan Public Criminal Defense Institute (hereinafter “the petitioners”) against the Republic of Guatemala (hereinafter “Guatemala,” “the State,” or “the Guatemalan State”) for having imposed a death sentence on Ronald Ernesto Raxacacó Reyes (hereinafter “the alleged victim”), in violation of Articles 1(1), 2, 4, 5, 8, 10, and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”). On that same occasion, the petitioners asked the IACHR to grant precautionary measures on behalf of the alleged victim; these were extended on January 30, 2002, and remain in force as of the date of this report. The Guatemalan State asked the Commission to refrain from hearing the petitioner’s arguments and to dismiss the complaint on the grounds that no violations of the Convention had been committed and that domestic remedies had not been exhausted. The IACHR decided to admit the case and to continue with its analysis of the merits.

## II. PROCESSING BY THE COMMISSION

2. On January 30, 2002 the Commission opened the case, forwarded the relevant parts of the complaint to the Guatemalan State, and asked it to submit information within the following two months in compliance with the provisions of Article 30(3) of the Commission's Rules of Procedure.

3. The State submitted its comments on May 21, 2002.

4. In the aforesaid communication of January 30, 2002 the IACHR asked the State of Guatemala to adopt precautionary measures on behalf of the alleged victim in order to safeguard his life until such time as the Commission was able to rule on the merits of the case.

5. With regard to the precautionary measures, on May 21, 2002, the State informed the IACHR that this case did not involve an imminent threat or an arbitrary affront to a human right and so, in the State's opinion, the Commission's intervention would be unfortunate in light of the erosion of the domestic legal system that it would cause.

### III. POSITIONS OF THE PARTIES

#### A. The Petitioners

6. The petitioners claim that between August 5 and 6, 1997, the minor child P. A. L. W, aged 9 at the time, was kidnapped by a group of persons including Ronald Ernesto Raxacacó Reyes. The boy was released after a police operation. Criminal charges were filed against the kidnappers, which led to their being sentenced on May 14, 1999, when the Sixth Sentencing Court for Criminal, Drug, and Environmental Offenses sentenced Jorge Mario Murga Rodríguez, Hugo Humberto Ruiz Fuentes, and Ronald Ernesto Raxacacó Reyes to death after finding them to be the direct perpetrators of the crime of kidnapping or abduction committed against P. A. L. W.

7. The petitioners claim that by imposing a capital sentence on Ronald Ernesto Raxacacó Reyes, the Guatemalan State has incurred in a violation of the right to life, to a fair trial, to effective legal protection, to humane treatment, and to indemnification for miscarriages of justice, as set forth in Articles 4, 8, 25, 5, and 10 of the American Convention. The petitioners further claim that the Guatemalan State failed to comply with its obligation of respecting those rights and adopting domestic legislative provisions, as required by Articles 1 and 2 of the Convention.

8. With respect to the right to life, the petitioners hold that the State of Guatemala violated Article 4(2) in that the alleged victim was sentenced to death for a crime—kidnapping or abduction not entailing death—that at the time that Guatemala ratified the American Convention (May 25, 1978) was not punishable by the death sentence, but merely by a prison term of between 8 and 15 years;<sup>[FN2]</sup> and that the death sentence was thus imposed for a crime that, by its very nature, cannot be considered among the most serious offenses. Moreover, the petitioners report that in May 2000, the Guatemalan Congress repealed Decree 159, the provision establishing the mechanism for clemency appeals to the President of the Republic, in contravention of Article 4(6) of the Convention.

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[FN2] Article 201 (Kidnapping or Abduction) of Decree 17/73 of 1973, in force when Guatemala ratified the American Convention, read as follows:

Kidnappings or abductions with the intent of obtaining ransoms, exchanges of third parties, or other similar or comparable illegal purposes shall be punishable by a prison term of between eight and fifteen years. The perpetrators thereof shall be punished by the death sentence when, as a result of or during the kidnapping or abduction, the kidnapped person dies.

In turn, Article 201 (amended) of Decree 81/96, currently in force and under which the alleged victim was sentenced to capital punishment, provides that:

Those who mastermind or perpetrate the crime of kidnapping or abduction against one or more victims, with the intent of securing ransoms, exchanges of persons, the adoption of any decision contrary to the will of the kidnapped person, or any other similar or like purpose, shall receive the death sentence and, when this cannot be imposed, shall be sent to prison for a period of between twenty-five and fifty years. In such cases, no extenuating circumstances shall be admitted. Accomplices and accessories thereto shall be punished by a prison term of between twenty and forty years.

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9. As regards the right to a fair trial and effective legal protection, the petitioners claim that those provisions were violated in that the “obligatory death sentence” is the only punishment applicable to kidnapping under Guatemalan law. Because of this, the petitioners claim that defendants are denied the right to be tried by an independent and impartial judge; to prepare an adequate defense and to present evidence; and to have access to effective remedies before a court of law.

10. With respect to the right to humane treatment, the petitioner claims that the State of Guatemala has inflicted moral suffering on the alleged victim, a form of treatment forbidden under that article, in that Ronald Ernesto Raxacacó Reyes is being kept on death row.

11. As regards the right to compensation, the petitioner claims that the State of Guatemala violated that provision in that the possibility of detecting a miscarriage of justice and of compensating the alleged victim for such an error is illusory, because the obligatory death sentence does not offer any real possibilities for exercising the right enshrined in the aforesaid Article 10.

12. Finally, with respect to the requirement of previously exhausting all available domestic remedies, the petitioners maintain that Mr. Raxacacó Reyes’s defense pursued all the remedies offered by Guatemalan law. Thus, the petitioner notes that on September 13, 1999, the Fourth Chamber of the Appeals Court dismissed a special appeal remedy brought by the defense; that on June 20, 2000, the Criminal Chamber of the Supreme Court ruled that an appeal for annulment filed on behalf of the alleged victim was inadmissible; and that on July 28, 2001, the Constitutional Court dismissed an amparo constitutional relief suit filed against the decision that had ruled the appeal for annulment inadmissible.

13. The petitioner explains that in the case at hand, no attempt was made to secure clemency or commutation of sentence from the President of the Republic because the Guatemalan Congress had only some time before repealed Decree 159, the precept governing such remedies.

B. The State

14. In its written reply of May 23, 2002, the State said that the petition should not be admitted because the remedies offered by domestic jurisdiction have not yet been exhausted. It bases this stance on statements made by Public Defender Ovidio Girón in a meeting with COPREDEH officials on April 9 of this year and on “the comments of the petitioners themselves.” In its submission the State does not identify the remedies that have not been exhausted. In its reply it also informs the Commission that it will not be making any further statements on this case since, in its view, it entails no violations attributable to it.

15. As regards the characterization of violations of the American Convention, the State argues that under Guatemalan law, the death sentence can only be imposed at a trial carried out in strict observance of all guarantees of due process and that in the instant case, Ronald Raxacacó did have access to an independent and impartial tribunal and did pursue all means of defense necessary to challenge the courts’ decisions. The State points out that the proceedings before the court that imposed the death sentence were conducted within the strictest legal framework and that there are consequently no grounds for arguing that his rights were arbitrarily threatened.

16. Finally, the State maintains that Mr. Raxacacó, who was tried and found guilty in each and every proceeding brought against him, made use of the mechanisms for rebuttal provided by Guatemalan criminal procedure in order to defend his rights. The State claims that “this case now stands as *res judicata*.”

IV. ANALYSIS

A. Preliminary Considerations

17. The IACHR notes that in its reply of May 23, 2002, the State informed the Commission that it would not be making any further statement regarding this petition since, in its view, it contains no violations attributable to it. The IACHR wishes to note that the State of Guatemala has contracted a series of international obligations under the American Convention on Human Rights. These obligations include furnishing such information that the IACHR requires in compliance with the powers granted by Article 48(1)(a) of the Convention.[FN3]

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[FN3] Article 48(1)(a) of the Convention provides as follows:

When the Commission receives a petition or communication (...) a) it shall request information from the government of the state indicated as being responsible for the alleged violations (...) This information shall be submitted within a reasonable period (...). b) The Commission may request the states concerned to furnish any pertinent information.  
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18. In connection with this, the IACHR believes it should also point out that it uses the information requested at the different procedural stages described in its Rules of Procedure to ground its decisions regarding the petitions or cases brought before it. The Inter-American Court of Human Rights has ruled that cooperation by states is a basic obligation in international proceedings under the inter-American system, to wit:

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.[FN4]

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[FN4] Inter-Am.Ct.H.R., Velásquez Rodríguez Case, Judgment of July 29, 1988, paragraphs 135 and 136; and IACHR, Report N° 28/96, Case 11.297, Guatemala, October 16, 1996, paragraph 43.

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19. Consequently, the Commission believes it should remind Guatemala of its duty to assist the bodies of the inter-American human rights system in order to ensure that their functions in protecting human rights are properly performed, including its duty of furnishing such information as they may require.

20. The Commission will now analyze the admissibility requirements set forth in the American Convention.

#### B. Competence of the Commission

21. The Commission has competence *ratione materiae* to hear this petition since it alleges violations of rights protected by the American Convention, to which the State of Guatemala is a party by reason of having ratified it on May 25, 1978.

22. The Commission has competence *ratione personae* to hear this petition since the identities of both the petitioners and the alleged victim satisfy the requirements set forth, respectively, in Articles 44 and 1(2) of the Convention.

23. The IACHR has competence *ratione temporis* to hear this petition since the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State on the date on which the incidents described in the petition allegedly occurred.

24. Finally, the Commission has competence *ratione loci* to hear this petition since it alleges violations of rights within the territory of the respondent state party.

C. Admissibility Requirements of the Petition

1. Exhaustion of Domestic Remedies

25. Under Article 46(1)(a) of the Convention, for a petition to be admissible, all the remedies offered by domestic jurisdiction must first have been exhausted, in accordance with the principles of international law.

26. The petitioners claim that the alleged victim's defense pursued all the remedies for challenging the first-instance ruling provided by Guatemala's domestic law. They point out that on September 13, 1999 the Fourth Chamber of the Appeals Court dismissed the special appeal remedy; on June 20, 2000 the Criminal Chamber of the Supreme Court of Justice ruled that the appeal for annulment they filed was inadmissible; and on July 28, 2001 the Constitutional Court dismissed an amparo suit filed on behalf of Ronald Ernesto Raxacacó Reyes. In all these instances, the petitioners say, it was argued that the State of Guatemala violated the provisions of Article 4(2) of the Convention by extending the death penalty to crimes to which it was not applicable when Guatemala ratified the Convention. Consequently, the courts were asked not to apply capital punishment.

27. In contrast, although the State claimed that domestic remedies had not been exhausted, not only did it fail to indicate exactly which remedies were still unexhausted,[FN5] it also expressly stated that this case now stands as *res judicata*. In the Commission's view, the State's claims are contradictory, in that the status of *res judicata*, intended to protect judicial rulings[FN6] and, consequently, to protect the principle of legal security, applies to final judgments with respect to which no ordinary or extraordinary remedies can be brought.[FN7] Hence, the argument that the case is now *res judicata* implies accepting that the conviction condemning Ronald Raxacacó to the death penalty is final and, as such, cannot admit any remedy.

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[FN5] A state claiming that a petitioner has failed to exhaust the remedies provided by domestic law has an obligation to identify the specific, available, effective resources in question. In this regard, see: Inter-Am.Ct.H.R., Loayza Tamayo Case, Preliminary Objections, Judgment of January 31, 1996, paragraph 40.

[FN6] Víctor Fairén Guillen, *Teoría General del Derecho Procesal*, Universidad Autónoma de México, 1992, p. 519.

[FN7] In this regard, the jurist Farién Guillen notes that *res judicata* means finality, no challenges, no appeals, and the preclusion of legal remedies. Víctor Fairén Guillen, *Teoría General del Derecho Procesal*, Universidad Autónoma de México, 1992, p. 520.

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28. From its study of the trial documents submitted by the petitioners, the IACHR has seen that the alleged victim's defense did, in fact, challenge the imposition of the death sentence and that this challenge was ultimately dismissed by Guatemala's Supreme Court of Justice; additionally, it was also rejected by the Constitutional Court, in a different set of proceedings from those pursued before the criminal courts. The IACHR therefore concludes that with the

judgment of June 20, 2000 in which the Supreme Court of Justice ruled on the appeal for annulment, and with the decision of July 12, 2001 declaring the inadmissibility of the amparo suit filed against that previous judgment, all domestic remedies were duly exhausted in compliance with the requirements set by Article 46 of the Convention.

## 2. Timeliness of the Petition

29. Article 46(1)(b) of the American Convention rules that for a petition or communication to be admitted by the Commission, it must be lodged within a period of six months from the date on which the alleged victim of a rights violation was notified of the final judgment. As the Commission has previously stated, this rule exists to allow for juridical certainty while still providing sufficient time for potential petitioners to consider their position.[FN8] In the instant case, the petitioners lodged their complaint with the Commission on January 28, 2002, while the judgment handed down by the Constitutional Court of Guatemala—the final decision given in the domestic proceedings—was dated June 28, 2001 and was notified to the alleged victim on July 4 of that year, as shown by the deed included in the case file. In other words, the complaint was lodged six months and twenty-four days after notification of the aforesaid judgment.

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[FN8] IACHR, Case of María Eugenia Morales de Sierra, Report on Admissibility No. 28/98, May 6, 1998, paragraph 29.

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30. The IACHR maintains that the conventional deadlines, including Article 46(1)(b) of the American Convention, are to be strictly observed and so, in principle, all petitions presented after the six-month cut-off date must be declared inadmissible. However, in accordance with the guidelines set by the jurisprudence of the inter-American system, within certain timely and reasonable limits, and provided that a suitable balance between justice and legal certainty is preserved, some delays may be excused.[FN9] In the case at hand, in light of considerations both substantive and adjective, the Commission believes it correct to apply the rule of reasonableness and to hold that this delay does not upset the balance that the system's bodies must maintain between the protection of human rights and the principle of legal certainty.[FN10]

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[FN9] Inter-Am.Ct.H.R., Cayara Case, Preliminary Objections, Judgment of February 3, 1993, paragraph 42.

[FN10] In this regard, see: Inter-Am.Ct.H.R., "The Last Temptation of Christ" Case, Judgment of February 5, 2001, paragraph 41.

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31. First of all, the Commission notes the nature of this case, in which recourse has been made to the regional system in order to protect the right to life of a person sentenced to death under proceedings that were allegedly in violation of the American Convention. Secondly, the Commission notes that in its reply, the State did not argue that the deadline had expired and that on the contrary, it claimed that the available domestic remedies had not been exhausted. In this connection, it should be noted that in the judgment on preliminary objections in the case of Neira

Alegría et al., the Inter-American Court ruled that since the six-month period depends on the exhaustion of domestic remedies, it is for the Government to demonstrate to the Commission that the period has indeed expired, since it is a rule that may be waived, either expressly or by implication, by the State having the right to invoke it.[FN11]

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[FN11] Inter-Am.Ct.H.R., Neira Alegría et al. Case, Preliminary Objections, Judgment of December 11, 1991, paragraph 30.

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32. Finally, the Commission believes it should point out that in its view, the petitioners acted in good faith in lodging their complaint on January 28, 2002, and by indicating that the date of the final decision was July 28, 2001, since on the certifying deed the State incurred in the same material error.

3. Duplication of Proceedings and Res Judicata

33. The petition dossier contains no information to indicate that this matter is pending in any other international settlement proceeding or has been previously examined by the Inter-American Commission. The IACHR therefore concludes that the requirement contained in Article 46(1)(c) of the American Convention has been met.

D. Characterization of the Alleged Facts

34. The State argues that the death sentence was handed down to the alleged victim within Guatemala's strictest legal framework and that consequently there is no arbitrary threat to his rights.

35. The Commission has stated that this stage in the proceedings is not intended to establish whether or not a violation of the American Convention was committed.[FN12] At the admissibility stage, the IACHR must decide whether the stated facts tend to establish a violation, as stipulated in Article 47(b) of the American Convention, and whether the petition is "manifestly groundless" or "obviously out of order," as stated in section (c) of that same article. The level of conviction regarding those standards is different from that which applies in deciding on the merits of a complaint. The IACHR must conduct a prima facie assessment to examine whether the complaint entails an apparent or potential violation of a right protected by the Convention and not to establish the existence of such a violation. That examination is a summary analysis that does not imply prejudging the merits or offering an advance opinion on them. Thus, the Commission's Rules of Procedure, by setting two clearly separate phases for admissibility and for merits, reflects the distinction between the evaluation that the IACHR must conduct to declare a petition admissible and the assessment necessary to establish a violation.

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[FN12] See, in this regard: IACHR, Report N° 28/01, Case 12.367, Mauricio Herrera Ulloa and Fernán Vargas Rohrmoser of the newspaper La Nación, Costa Rica, December 3, 2001.

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36. The Commission believes that the facts in the complaint tend prima facie to characterize a violation of the rights to life, humane treatment, a fair trial, and judicial protection enshrined in Articles 4, 5, 8, and 25 of the American Convention, in conjunction with State's general obligation of respecting and ensuring those rights set forth in Article 1(1) thereof. Additionally, the Commission believes that the allegations regarding the State of Guatemala's failure to comply with the obligation contained in Article 2 of the American Convention, if proven true, could tend to establish a violation of the American Convention. Consequently, the IACHR concludes that the instant petition meets the requirements set forth in sections (b) and (c) of Article 47.

37. Notwithstanding the above, as regards the alleged violation of the right to compensation enshrined in Article 10 of the American Convention, the Commission notes that the text thereof states that: "Every person has the right to be compensated in accordance with the law in the event he has been sentenced by a final judgment through a miscarriage of justice." The petitioners base their claim that the right to compensation was violated on the fact that enforcement of the death penalty with respect to the alleged victim would prevent him from seeking a review of the proceedings in order to secure the annulment of the final judgment under which he was convicted, should that judgment turn out to be the consequence of a miscarriage of justice. His inability to secure a review of the proceedings logically implies his inability to seek compensation for having been convicted under a miscarriage of justice, should that be the case.

38. The IACHR notes that in their application the petitioners did not claim that the alleged victim's capital sentence was the result of a miscarriage of justice and, further to that, they did not supply any resolution from a Guatemalan court that would have indicated that such an error was committed by the Guatemalan judicial authorities. Consequently, the argument relating to the violation of Article 10 of the Convention is based solely and exclusively on an expectation or hypothetical situation, and not on a real, specific situation in which the right to compensation as recognized by the Convention was violated. The Commission therefore holds that the petitioners' claim regarding this particular point is manifestly groundless and consequently inadmissible under Article 47(c) of the American Convention.

## V. CONCLUSIONS

39. The Commission concludes that it is competent to examine this matter and that under Articles 46 and 47 of the American Convention, the petition is admissible with respect to Articles 1(1), 2, 4, 5, 8, and 25 of that instrument and inadmissible with respect to Article 10 thereof.

40. Based on the foregoing considerations of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare this case admissible with respect to the potential violation of Articles 1(1), 2, 4, 5, 8, and 25 of the American Convention on Human Rights.
2. To declare this case inadmissible with respect to Article 10 of the American Convention on Human Rights.
3. To ratify the precautionary measures granted on January 30, 2002, and to request that the Guatemalan State take the steps necessary to protect the life of Mr. Ronald Ernesto Raxacacó Reyes until such time as the Commission has ruled on the merits of the case.
4. To give notice of this decision to the parties.
5. To continue with its analysis of the merits of the complaint.
6. To publish this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., on the 9 day of October 2002. (Signed): Juan Méndez, President; José Zalaquett, Second Vice-President; Robert K. Goldman, Julio Prado Vallejo, Clare K. Roberts, and Susana Villarán, Commissioners.