

**REPORT No. 116/11<sup>1</sup>**  
PETITION 12.333  
ADMISSIBILITY  
MIGUEL ANGEL FLORES  
UNITED STATES  
July 22, 2011

**I. SUMMARY**

1. On October 16, 2000, the Inter-American Commission on Human Rights (hereinafter, “the Commission,” “the Inter-American Commission” or “the IACHR”) received a petition lodged by Attorney A. Richard Ellis (hereinafter, “the petitioner”) against the United States of America (hereinafter, “the United States” or “the State”). The petition was submitted on behalf of Miguel Angel Flores (hereinafter, “the alleged victim” or “Mr. Flores”), a Mexican national, who at the time of the filing of the petition was an inmate on death row in the state of Texas.

2. The petitioner contends that Mr. Flores did not receive an effective and adequate defense, his due process rights were not respected, and that the alleged victim was arrested, tried and sentenced to death without having been informed about his right to contact Mexican consular officers, as provided for in the Vienna Convention on Consular Relations. Mr. Flores was executed in the state of Texas on November 9, 2000; at that time, he was a beneficiary of precautionary measures granted by the IACHR.

3. Without prejudice to the merits of the petition, after reviewing the position of the petitioner and in keeping with the provisions of Article 31 to 34 of its Rules of Procedure, the Commission finds the case admissible for the purpose of examining the alleged violation of the rights enshrined in Article I and XXVI of the American Declaration of the Rights and Duties of Man (hereinafter, “the American Declaration”). Based on the principle of *jura novit curia*, the Commission also finds the petition admissible with regard to the alleged violation of the right enshrined in Article XVIII of the American Declaration. The Commission further decides to notify the parties of this decision, publish it and include it in its Annual Report to the OAS General Assembly.

**II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION**

5. The IACHR received the petition on October 16, 2000 and, nine days later, on October 25, forwarded a copy of the pertinent parts to the State, granting it a period of 90 days to submit a response. As of the date of the approval of this petition, the State has still not submitted its response.

6. Additionally, the Secretariat of Foreign Relations of Mexico and the Permanent Mission of Mexico to the Organization of American States each sent a communication to the IACHR, on November 1 and November 7, 2000, respectively, expressing their support for the petition filed on behalf of Mr. Flores. Said communications were forwarded to the State for reference purposes.

7. On November 9, 2000, the alleged victim was executed in the state of Texas.<sup>2</sup> Four days later, on November 13, the IACHR published a press release condemning said execution. On January 13, 2010, the Executive Secretariat requested updated information from the petitioner. As of the date of the drafting of this report, the Inter-American Commission has not received any further communication from the petitioner.

**Precautionary Measures**

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<sup>1</sup> Commissioner Dinah Shelton, an American national, did not take part in discussions or voting on the instant case, pursuant to Article 17.2 of the Rules of Procedure of the Commission.

<sup>2</sup> The IACHR learned of Mr. Flores’ execution through the print media.

8. On October 25, 2000, the IACHR notified the State that precautionary measures were granted on behalf of the alleged victim and requested a stay of execution until such time as it could rule on the merits of the petition.

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

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

9. According to the petitioner, in June 1989 Mr. Flores was indicted for the capital murder of college student Angela Tyson and was sentenced to death in the state of Texas on September 14, 1990. He states that the following remedies were pursued and were all denied: a direct appeal to the Texas Court of Criminal Appeals; a writ of certiorari; and a state writ of habeas corpus. On April 21, 1996, Mr. Flores filed a petition for a federal writ of habeas corpus, which was also denied, as was the appeal filed against said denial. On September 11, 2000, the alleged victim filed a petition for writ of certiorari with the United States Supreme Court, and this petition was pending at the time of submission of the petition before the IACHR. The petitioner noted that the alleged victim's petition for certiorari before the US Supreme Court did not stand much of a chance for success, inasmuch as the Court had previously denied similar petitions. For this reason, and in light of the urgent nature of the situation, he decided to resort to the Inter-American Commission.

10. With respect to human rights violations against Mr. Flores, the petitioner argues that the alleged victim did not have an adequate defense; his due process rights were not respected; and that the right to consular notification under the Vienna Convention on Consular Relations was violated.

11. Regarding the first point, the petitioner alleges that from the time of the pretrial investigation up to and including the penalty phase, the legal assistance provided by the court appointed attorney<sup>3</sup> was seriously flawed. He further contends that there is a reasonable likelihood that had it not been for these alleged errors, Mr. Flores would not have been sentenced to death. The petitioner also notes that, despite the ample amount of time available for preparation of the defense, the trial counsel failed to interview potential witnesses, failed to obtain expert assistance and failed to request a mental health evaluation of the alleged victim. Furthermore, he allegedly did not inform the jury about the alleged victim having absolutely no criminal and psychiatric priors. He contends that all of those measures would have changed the jury's response with regard to Mr. Flores being a future danger to society. According to the petitioner, the only evidence introduced by the defense during the sentencing stage was a statistical analysis on the inaccuracy of the assessment of future danger to society of the alleged victim.

12. The petitioner claims that Mr. Flores alleged ineffective counsel in both the state and federal courts. In the petition for the federal writ of habeas corpus cited above, the Federal District Court for the Eastern District held a hearing on July 9 and 10, 1998, regarding the allegation of ineffective legal assistance. The petitioner notes that the alleged victim introduced several pieces of evidence at said hearing that were available at the time of the trial and, nonetheless, were not introduced by the defense attorney as mitigating evidence.

13. With regard to the second argument, the petitioner contends that during the sentencing stage, the state introduced the testimony of a psychiatrist who, without having personally examined Mr. Flores, testified on his future dangerousness to society. This evidence is alleged to have been the jury's only basis to apply the death penalty. As to this issue, the petitioner claims that there is a consensus on the unreliability of psychiatric predictions of future dangerousness to society, what has become known to the courts as "junk science." Furthermore, he notes that in the hearing cited above in the previous paragraph, an expert in laser technology testified that the examination of the vehicle used by Mr. Flores was not valid, given that the appropriate procedure was reportedly not followed. The petitioner claims that these supposed violations of due process were put forth as arguments in both the state and federal courts.

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<sup>3</sup> According to information available in the case file, the defense attorney was court appointed (communication from the Secretariat of Foreign Relations of Mexico, received on November 1, 2000, paragraph 3).

14. With regard to the alleged violation of the right to consular notification set forth in Article 36 of the Vienna Convention on Consular Relations, the petitioner claims that Mr. Flores was detained, deprived of his liberty, arrested, tried and sentenced to death without having been informed about his right to contact Mexican consular officers. He notes that the case only came to the attention of the Mexican State one-year after imposition of the death penalty. According to the petitioner, the alleged victim argued the violation of this right in filing petitions for state and federal writs of habeas corpus.

15. Lastly, it must be noted that the petitioner refers to Mr. Flores on two occasions as a mentally impaired person with an IQ of 85. However, he does not provide further detail on this subject nor does he link the circumstances to his arguments.

16. Based on the above arguments, the petitioner contends that the State violated the rights recognized in Article I, XXV and XXVI of the American Declaration, and 4 and 8 of the American Convention to the detriment of the alleged victim. The petitioner recognizes that the State has not ratified the American Convention but alleges that, in having signed it, it is obligated under Article 18(a) of the Vienna Convention on the Law of Treaties, to not defeat the object and purpose of the treaty while ratification is still pending.

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

13. The State has not provided any response to the petitioner's arguments.

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

#### **A. Competence**

14. The petitioner is entitled, in principle, under Article 23 of the Rules of Procedure of the Commission, to file petitions with the Commission. The petition identifies as the alleged victim an individual, for whom the United States committed to respect and ensure the rights enshrined in the American Declaration. As to the State, the Commission notes that the United States is subject to the obligations imposed by the American Declaration pursuant to the OAS Charter, Article 20 of the Statute of the Commission and Article 51 of the Rules of Procedure of the Inter-American Commission. The United States has been a member of the Organization of American States since June 19, 1951, when it deposited the instrument of ratification of the OAS Charter.<sup>4</sup> Consequently, the Commission is competent *ratione personae* to examine the petition.

15. Additionally, the Commission is competent *ratione loci* to hear the petition, inasmuch as violations of rights protected in the American Declaration are alleged to have taken place within the territory of the United States, a State Party to said Declaration. The Commission is competent *ratione temporis* being that the obligation to respect and ensure the rights protected in the American Declaration was already in effect for the State on the date when the facts alleged in the petition presumably occurred. Lastly, the Commission is competent *ratione materiae*, because the petition charges potential violations of human rights protected by the American Declaration. Nonetheless, the IACHR is not materially competent to examine the violations of the American Convention alleged by the petitioner, given that said treaty has not been ratified by the United States and, consequently, said claims are inadmissible.

#### **B. Admissibility Requirements**

##### **1. Exhaustion of domestic remedies**

16. In accordance with Article 31(1) of the Rules of Procedure of the Inter-American Commission, for a petition lodged with the Commission to be admissible, domestic remedies must have

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<sup>4</sup> Also see, IA Court of HR, Interpretation of the American Declaration on the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, OC-10.89, par. 45 (July 14, 1989).

been pursued and exhausted pursuant to generally recognized principles of international law. This requirement is aimed at enabling national authorities to hear the alleged violation of the protected right and, if appropriate, resolve the matter before it is heard by an international body.

17. Based on the available information, after the direct appeal filed against the conviction was denied, Mr. Flores filed petitions for state and federal writs of habeas corpus, as well as a petition for writ of certiorari with the United States Supreme Court. All of these remedies were denied, after which the alleged victim was executed in the state of Texas on November 9, 2000.

18. With regard to the arguments put forth before the IACHR, as noted by the petitioner, alleged ineffectiveness of defense counsel was argued in the petitions for state and federal writs of habeas corpus. In the context of the latter, the Federal District Court held a hearing over two days to examine said claim. As noted in the petition, the alleged due process violations, as well as the alleged violation of the right to consular notification set forth in the Vienna Convention on the Consular Relations, were also brought up in the domestic courts. With regard to the appeal still pending before the United States Supreme Court at the time of the submission of the petition to the IACHR, it should be noted that the Commission is ruling on the prior exhaustion of domestic remedies requirement at the time of the examination of admissibility and not at the time of the lodging of the petition.<sup>5</sup>

19. Therefore, the Commission finds that domestic remedies in the instant case have been pursued and exhausted in accordance with Article 31(1) of the Rules of Procedure.

## **2. Timeliness of the petition**

20. Article 32(1) of the Rules of Procedure of the Inter-American Commission requires petitions to be lodged within a period of six-months following the date on which the alleged victim has been notified of the final decision. The available information shows that the remedy filed with the United States Supreme Court by the alleged victim on September 11, 2000, was denied after October 16, 2000, the date of submission of the petition to the IACHR. Consequently, the Commission finds that the instant petition fulfills the requirement set forth in Article 32(1) of the Rules of Procedure of the Commission.

## **3. Duplication of proceedings and international *res judicata***

21. The case file shows no evidence that the subject matter of the petition is pending before any other international proceeding for settlement; nor is the petition substantially the same as any petition previously examined by the IACHR or any other international body. Therefore, the requirements set forth in Article 33(1) of the Rules of Procedure of the Inter-American Commission have been met.

## **4. Colorable claim**

22. Article 34(a) of the Rules of Procedure requires that petitions lodged with the IACHR must state facts that tend to establish a violation of the rights referred to in Article 27 of these rules, otherwise the petition must be found inadmissible for being "manifestly groundless" or "out of order," as provided in Article 34(b). The standard for evaluating these admissibility requirements is different from the standard required for deciding the merits of a complaint, given that the Inter-American Commission must conduct a *prima facie* evaluation to determine whether or not the complaint establishes grounds for the apparent or potential violation of a right guaranteed by the American Convention. This review is a summary examination that does not involve any prejudgment on the merits of the matter nor does it suggest any opinion on the merits of the dispute.

23. The petitioner contends that the court-appointed defense attorney was ineffective because, among other things, he did not interview potential witnesses, he did not request an expert

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<sup>5</sup> IACHR, Report No. 60/11, Petitions P-11.575 and others, Admissibility, Clarence Alle Lackey et al, March 24, 2011, par. 139; IACHR, Report No. 146/10, Petition 212-05, Admissibility, Manuel Santiz Culebra et al – Massacre of Acteal, Mexico, November 1, 2010, par. 39.

assistance nor a mental health evaluation, he did not introduce evidence that was available at the time of the trial and did not inform the court on the lack of priors of Mr. Flores. Additionally, he alleges that the only evidence upon which the jury based its decision to apply the death penalty was the future dangerousness to society of the alleged victim, as established in the testimony of a psychiatrist who had not ever personally examined Mr. Flores. Lastly, the petitioner notes that the right of consular notification set forth in the Vienna Convention on Consular Relations was violated.

24. Taking into account the heightened level of scrutiny that has been applied in death penalty cases,<sup>6</sup> the Inter-American Commission notes that, should the arguments of the petitioners be proven, the facts could tend to establish violations of Article I and XXVI of the American Declaration and, by application of the principle of *jura novit curia*, Article XVIII of said Declaration. The IACHR reiterates its enhanced obligation to ensure that any deprivation of life, which may occur through the application of the death penalty, complies strictly with the requirements of the applicable inter-American human rights instruments, including the American Declaration.<sup>7</sup>

25. Lastly, the IACHR notes that the instant petition has implications within the framework of the State's obligations to the Inter-American human rights system, in failing to implement the precautionary measures granted by this body. As the Commission has emphasized on numerous occasions, "failure of an OAS member state to preserve a condemned prisoner's life pending review by the Commission of his or her complaint undermines the efficacy of the Commission's process, deprives condemned persons of their right to petition in the inter-American human rights system, and results in serious and irreparable harm to those individuals."<sup>8</sup> While the lack of subsequent up-to-date information may hinder the processing of the case and eventually lead to a decision to archive, the elements presented up to this point in the instant case tend to establish a violation for purposes of a decision on admissibility.

26. In conclusion, the IACHR decides that the petition is not manifestly groundless or out of order and declares that the petition has satisfied, *prima facie*, the requirements set forth in Article 34 of the Rules of Procedure of the Commission.

## V. FINDINGS

27. The Inter-American Commission finds that it is competent to hear this matter and that the petition is admissible, in accordance with Article 31 and 34 of the Rules of Procedure. Based on the arguments of fact and law set forth above, and without prejudging the merits of the matter,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

#### DECIDES:

1. To declare the instant petition admissible with regard to Article I and XXVI of the American Declaration; and, by application of the principle of *jura novit curia*, also declares the instant petition admissible as to Article XVIII of said instrument;

3. To notify the parties of this decision;

4. Proceed to the examination of the merits of the case;

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<sup>6</sup> See IACHR, Report No. 77/09, Petition 1349-07, Admissibility, Orlando Cordia Hall, United States, August 5, 2009, par. 47; Report No.61/03, Petition 4446-02, Admissibility, Roberto Moreno Ramos, United States, par. 66; Report No. 41/00, Case 12.023, Merits, McKenzie et al, Jamaica, par. 169 -171.

<sup>7</sup> IACHR, Report No. 1/05, Case 12.430, Merits, Roberto Moreno Ramos, United States, January 28, 2005, par. 43.

<sup>8</sup> IACHR, Report No. 1/05, Case 12.430, Merits, Roberto Moreno Ramos, United States, January 28, 2005, par. 75.

5. Publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Issued and signed in the city of Washington, D.C. on July 22, 2011. (Signed): Jose de Jesus Orozco Henriquez, First Vice President; Paulo Sergio Pinheiro, Felipe Gonzalez and Maria Silvia Guillen, Members of the Commission.