

# Raxcacó Reyes v. Guatemala

## ABSTRACT<sup>1</sup>

*In this case, the Guatemalan government sentenced Ronald Raxcacó Reyes, Jorge Mario Murga Rodriguez, and Hugo Humberto Ruiz Fuentes to death for the kidnapping of a minor. The Court discusses the conditions under which States can impose death penalty, as well as on conditions of detention in prisons.*

## I. FACTS

### A. Chronology of Events

**May 25, 1978:** Guatemala ratifies the American Convention on Human Rights.<sup>2</sup> Article 201 of the Guatemalan Penal Code regulates the punishments available for kidnapping and for deaths that occur during the course of a kidnapping.<sup>3</sup> The death penalty is only imposed under Article 201 when a kidnapping results in a death.<sup>4</sup> The crime of kidnapping, when it does not result in a death, is punishable by a sentence of eight to fifteen years of imprisonment.<sup>5</sup>

**March 9, 1987:** The State accepts the jurisdiction of the Court.<sup>6</sup> Under Article 46 of Guatemala's Constitution, the American Convention is national law, prevailing over conflicting domestic laws.<sup>7</sup>

**April 26, 1994:** Article 201 of the Guatemalan Penal Code is modified by Legislative Decree No. 38/94.<sup>8</sup> The modification's purpose is to increase the severity of the punishment for crimes of kidnapping and

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1. Jenna Eyrich, Author; Grace Kim and Sascha Meisel, Editors; Sarah Frost, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. Raxcacó-Reyes v. Guatemala, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 133, ¶ 3 (Sept. 15, 2005).

3. *Id.* ¶ 37(f).

4. *Id.*

5. *Id.* ¶ 43(1).

6. Raxcacó Reyes et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Considering" ¶ 2 (May 9, 2008).

7. Raxcacó-Reyes v. Guatemala, Merits, Reparations and Costs, ¶ 37(d).

8. *Id.* ¶ 37(f).

abduction.<sup>9</sup> Legislative Decree No. 38/94 imposes the death penalty on convicted kidnappers if the kidnapped victim is under age twelve or over age sixty, or if the kidnapped victim dies or receives serious injuries, including mental or psychological traumas, as a result of the kidnapping.<sup>10</sup>

**March 16, 1995:** Article 201 of the Guatemalan Penal Code is again modified by Legislative Decree No. 14/95.<sup>11</sup> This reform allows imposing the death penalty against anyone convicted of kidnapping.<sup>12</sup>

**October 21, 1996:** The State's Congress issues Decree No. 81/96, which stipulates that the sole punishment available for kidnapping is the death penalty.<sup>13</sup> Article 4(2) (Limitations on Death Penalty) of the American Convention prescribes the death penalty for only "the most serious crimes."<sup>14</sup> Decree No. 81/96 imposes the death penalty regardless of the circumstances of the kidnapping.<sup>15</sup> Some believe the State's modified law directly conflicts with Article 4(2) of the American Convention.<sup>16</sup>

**August 5, 1997:** Three armed men kidnap Pedro Alberto de León Wug, a minor, and demand \$12,6878.79 (one million quetzals) from his father, Oscar de León Gamboa, to obtain his freedom.<sup>17</sup>

**August 6, 1997:** Investigators of the Anti-Kidnapping and Extortion Section of the National Civil Police locate and free the minor unharmed.<sup>18</sup> The Second Magistrate for Criminal Affairs of the Municipality of Mixco, Department of Guatemala, detains Ronald Raxcacó Reyes, Jorge Mario Murga Rodriguez, Carlos Manuel Garcia Morales, Hugo Humberto Ruiz Fuentes, and Olga Isabel Vicente for kidnapping the child.<sup>19</sup> The suspects are later charged by the Public Prosecutor's Office for kidnapping, as defined by Article 201 of the Guatemalan Penal Code.<sup>20</sup>

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9. *Id.*

10. *Id.* ¶ 43(2).

11. *Id.* ¶ 37(f).

12. *Id.* ¶ 43(3).

13. *Id.* ¶ 43(4).

14. *Id.* ¶ 37(f).

15. *Id.*

16. *Id.*

17. *Id.* ¶ 43(7).

18. *Id.* ¶ 43(8).

19. *Id.* ¶ 43(9).

20. *Id.*

**May 14, 1999:** Mr. Raxcacó Reyes, who has remained in the Preventive Detention Center since 1997, is convicted of kidnapping by the Sixth Court for Criminal Sentencing, Drug Trafficking, and Environmental Crimes.<sup>21</sup> Mr. Raxcacó Reyes, Mr. Murga Rodríguez, and Mr. Ruiz Fuentes are sentenced to death as “direct authors” of the crime of kidnapping, in accordance with Guatemalan Penal Code Article 201.<sup>22</sup> Carlos Manuel García Morales is declared an “author” of the same crime and given a forty-year non-commutable sentence.<sup>23</sup> Olga Isabel Vicente is declared an “accomplice” and sentenced to twenty years in prison at the *Center of Female Orientation*.<sup>24</sup>

**July 9, 1999:** Ovidio Girón Vásquez, the defense lawyer for the Appeals Unit of the *Instituto de la Defensa Pública Penal de Guatemala*, appeals the Sixth Court’s judgment on behalf of Mr. Raxcacó Reyes, Mr. Murga Rodríguez, and Mr. Ruiz Fuentes.<sup>25</sup> He argues that the Sixth Court violated Article 4(2) (Limitations on Death Penalty) of the American Convention by extending a death penalty sentence to a kidnapping crime.<sup>26</sup>

**September 13, 1999:** The Fourth Chamber of the Court of Appeal rejects the appeal.<sup>27</sup> According to the Fourth Chamber, “there is no conflict between domestic law and the provisions of the said human rights treaty.”<sup>28</sup> Mr. Vásquez then files an Appeal for Annulment of the Fourth Chamber’s judgment to the Supreme Court of Justice.<sup>29</sup>

**June 1, 2000:** The Guatemalan legislature annuls Decree No. 159 of 1892 (the Pardon Law), which previously gave the Executive Branch the power to grant pardons or commute sentences.<sup>30</sup> This effectively divests the Executive Branch of all power to pardon prisoners or

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21. *Id.* ¶¶ 37(a), 37(b), 43(10).

22. *Id.* ¶ 43(10).

23. *Id.*

24. *Id.* Note that Judge Silvia Morales Alvarado issued a separate opinion, in which she declared that the expansion of Article 201 violated the American Convention, and judgments based on such expansions would be null.

25. *Id.* ¶¶ 37(b), 43(14).

26. *Id.*

27. *Id.*

28. *Id.* ¶ 43(13).

29. *Id.* ¶¶ 37(b), 43(14).

30. *Id.* ¶ 43(17).

commute their sentences.<sup>31</sup> The legislature declares that this action is necessary “in order to create legal certainty and avoid ambiguity in the interpretation of the law.”<sup>32</sup>

**June 2000:** Mr. Raxcacó Reyes is transferred to a maximum-security section of the Preventive Detention Center.<sup>33</sup> At the Center he is denied clothing, visitors, and food from outside the prison.<sup>34</sup>

**July 20, 2000:** The Criminal Chamber of the Supreme Court of Justice declares Mr. Raxcacó Reyes, Mr. Murga Rodríguez, and Mr. Ruiz Fuentes’ appeal for annulment of the Fourth Chamber’s judgment inadmissible.<sup>35</sup>

**August 25, 2000:** Mr. Vásquez files a constitutional application for *amparo* before the Constitutional Court on behalf of Mr. Raxcacó Reyes, Mr. Murga Rodríguez, and Mr. Ruiz Fuentes.<sup>36</sup>

**October 31, 2000:** The Constitutional Court of Guatemala issues a ruling wherein it questions the modifications to Article 201 of Guatemala’s Penal Code and the application of the death penalty to the crime of kidnapping.<sup>37</sup>

**April 2001:** Mr. Raxcacó Reyes is transferred without notice to Escuintla, a maximum-security prison, also known as *El Infiernito*, or “The Little Hell.”<sup>38</sup>

**June 19, 2001:** Mr. Raxcacó Reyes is returned to the maximum-security section of the Preventive Detention Center.<sup>39</sup> Upon re-entry, prison security guards beat him to the point where he cannot walk or speak.<sup>40</sup> They break his jaw, fracture his ribs, and injure his knees.<sup>41</sup> According to Mr. Raxcacó Reyes, there is a period of three months

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31. *Id.*

32. *Id.*

33. *Id.* ¶ 37(b).

34. *Id.*

35. *Id.* ¶ 43(15).

36. *Id.* ¶ 37(b).

37. *Id.* ¶ 43(5).

38. *Id.* ¶ 37(b).

39. *Id.*

40. *Id.*

41. *Id.*

during which he has no clothes besides those he is wearing, and he is given neither a mattress nor a light.<sup>42</sup>

Conditions in the prison are dire.<sup>43</sup> Mr. Raxcacó Reyes shares a small cell and yard with another prisoner.<sup>44</sup> The restroom facilities are inside the cell, yet there is no ventilation.<sup>45</sup> Outside light enters only through a small hole – there is no natural light in the cell.<sup>46</sup> Mr. Raxcacó Reyes sleeps on a narrow slab of concrete.<sup>47</sup> The prison provides rotten food, and as a result, Mr. Raxcacó Reyes depends on his family to provide adequate sustenance.<sup>48</sup> Furthermore, prisoners are not allowed to work and may only leave their cells for short periods of time twice a week to receive visitors or make phone calls.<sup>49</sup> Despite severe pain in different parts of his body, Mr. Raxcacó Reyes is not provided medication, and only the nurse on duty is allowed to visit him.<sup>50</sup>

Emotionally, Mr. Raxcacó Reyes never receives support to help him cope with his imminent execution.<sup>51</sup> He lives in a state of intense psychological distress and constantly fears that at any moment, he will be taken and put to death by lethal injection.<sup>52</sup> He even considers suicide sometimes instead of execution, but thoughts of his daughter and mother allow him to endure his prison sentence.<sup>53</sup> He has not seen his wife, who is serving a twenty-year sentence for aiding her husband in the kidnapping, since 1997.<sup>54</sup>

**June 28, 2001:** The Constitutional Court rejects the application for *amparo* filed on behalf of Mr. Raxcacó Reyes, Mr. Murga Rodríguez, and Mr. Ruiz Fuentes.<sup>55</sup> This judgment cannot be appealed.<sup>56</sup> The Court finds that application of the death penalty for the crime of kidnapping is valid.<sup>57</sup> The State claims there is no incompatibility between the modifications made to Article 201 of the Guatemalan Penal Code and

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42. *Id.*

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* ¶ 37(e).

47. *Id.* ¶ 37(b).

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.* ¶ 37(e).

53. *Id.* ¶ 37(b).

54. *Id.*

55. *Id.* ¶ 43(16).

56. *Id.*

57. *Id.*

the American Convention, since the American Convention does not prohibit such modifications.<sup>58</sup>

*B. Other Relevant Facts*

[None]

II. PROCEDURAL HISTORY

*A. Before the Commission*

**January 2, 2002:** Mr. Raxcacó Reyes, Mr. Murga Rodríguez, and Mr. Ruiz Fuentes submit a petition to the Commission against the State.<sup>59</sup>

**January 28, 2002:** The Center for Justice and International Law, the *Instituto de Estudios Comparados en Ciencias Penales de Guatemala*, and the *Instituto de la Defensa Pública Penal* submit a petition to the Commission requesting precautionary measures to stay Mr. Raxcacó Reyes' execution.<sup>60</sup>

**January 30, 2002:** The Commission supports the request in favor of Mr. Raxcacó Reyes and informs the State of its decision to grant the precautionary measures.<sup>61</sup>

**October 9, 2002:** The Commission declares the case admissible and decides to consider its merits.<sup>62</sup>

**October 8, 2003:** The Commission adopts the Report on the Merits, and recommends that the State adopts measures to ensure that the rights embodied in Article 4(6) (Right to Seek Amnesty, Pardon, or Commutation of Sentence), Article 5(1) (Right to Physical, Mental, and Moral Integrity), and Article 5(2) (Prohibition of Torture, and Cruel, Inhumane, or Degrading Treatment) of the American Convention remain effective in Guatemala.<sup>63</sup>

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58. *Id.*

59. *Id.* ¶ 1.

60. *Id.* ¶ 4.

61. *Id.* ¶ 5.

62. *Id.* ¶ 6.

63. *Id.* ¶ 7.

**May 19, 2004:** Mr. Raxcacó-Reyes submits an appeal to the Ministry of Governance of Guatemala for commutation of his sentence.<sup>64</sup> Due to the Legislative Decree that deprived the Executive Branch of the power to grant pardons or commute sentences, Mr. Raxcacó Reyes' appeal has not been processed by the time the Judgment is handed down.<sup>65</sup>

**August 16, 2004:** The Commission submits a request for a provisional measures order from the Court to suspend the executions of Mr. Raxcacó Reyes, Mr. Murga Rodríguez, and Mr. Ruiz Fuentes until the case is heard before the Court.<sup>66</sup>

**August 30, 2004:** The Court issues an order enjoining the State from executing Mr. Raxcacó Reyes, Mr. Murga Rodríguez, and Mr. Ruiz Fuentes to avoid interrupting their cases before the Court.<sup>67</sup> The Court also orders the State to adopt, without delay, all measures necessary to protect the lives of prisoners unrelated to this case, Bernardino Rodríguez Lara and Pablo Arturo Ruiz Almengor.<sup>68</sup>

**September 16, 2004:** The State submits a brief on provisional measures ordered by the Court a few weeks prior.<sup>69</sup> In the brief, the State declares that it is making its best efforts to avoid executing the prisoners.<sup>70</sup>

#### B. Before the Court

**September 18, 2004:** The Commission submits the case to the Court after the State failed to adopt its recommendations.<sup>71</sup>

**November 26, 2004:** The State appoints Mr. Alejandro Sánchez Garrido as Judge *ad hoc*.<sup>72</sup>

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64. *Id.* ¶ 43(18).

65. *Id.*

66. *Id.* ¶ 30.

67. *Id.* ¶ 31; *see also* Raxcacó -Reyes et al. v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct H.R. (ser. E) "Decides" ¶ 1 (Aug. 30, 2004).

68. *Id.*

69. Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct H.R. (ser. E) "Having Seen" ¶ 2 (July 4, 2006).

70. *Id.*

71. Raxcacó Reyes v. Guatemala, Merits, Reparations and Costs, ¶ 11. The Commission appointed Susana Villarán and Santiago A. Canton as delegates, and Ariel Dulitzky, Víctor Hugo Madrigal, María Claudia Pulido, and Brian Tittlemore as legal advisers.

72. *Id.* ¶ 14.

**March 11, 2005:** The State submits its second report on the implementation of the provisional measures, acknowledging that the provisional measures ordered by the Court are in force meaning that the State's judgments against Mr. Raxcacó Reyes, Mr. Ruiz Fuentes, Mr. Rodríguez Lara, and Mr. Ruiz Almengor will not be enforced while their cases are pending before the Court.<sup>73</sup>

**May 12, 2005:** The State submits its third report, stating that medical examinations are to be performed on Mr. Raxcacó Reyes at the National Civil Police Hospital.<sup>74</sup>

**June 2, 2005:** The State submits its fourth report, arguing that medical examinations performed at the National Civil Police Hospital revealed that Mr. Raxcacó Reyes is in good health.<sup>75</sup>

**Before the end of 2005:** The Legislative and Constitutional Affairs Commission of Guatemala will consider passing a law that adopts Decree No. 17/73, which eliminates the death penalty as the maximum punishment under Guatemalan criminal legislation.<sup>76</sup> Another draft law proposes to adapt Guatemalan laws to the American Convention, which would make sentence commutation possible.<sup>77</sup>

**September 15, 2005:** The Court issues its unanimous Judgment on the Merits, Reparations and Costs.<sup>78</sup>

#### 1. Violations Alleged by Commission<sup>79</sup>

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 8 (Right to a Fair Trial)

Article 25 (Right to a Judicial Protection)

*all in relation to:*

Article 1(1) (Obligation to Respect Rights)

Article 2 (Obligation to Give Domestic Legal Effects to Rights) of the American Convention.

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73. *Id.* ¶ 6.

74. *Id.* ¶ 9.

75. *Id.* ¶ 10.

76. *Id.* ¶ 37(c).

77. *Id.*

78. *Id.*

79. *Id.* ¶ 2.



2. Violations Alleged by Representatives of the Victims<sup>80</sup>  
Same Violations Alleged by Commission.

**June 3, 2005:** Amnesty International submits an *amicus curiae* brief to the Court.<sup>81</sup>

### III. MERITS

#### A. *Composition of the Court*<sup>82</sup>

Sergio García Ramírez, President  
Alirio Abreu Burelli, Vice-President  
Oliver H. Jackman, Judge  
Antônio Augusto Cançado Trindade, Judge  
Manuel E. Ventura Robles, Judge  
Alejandro Sánchez Garrido, Judge *ad hoc*

Pablo Saavedra Alessandri, Secretary  
Emilia Segares Rodríguez, Deputy Secretary

#### B. *Decision on the Merits*

**September 15, 2005:** The Court issues its unanimous Judgment on the Merits, Reparations and Costs.<sup>83</sup>

The Court found unanimously that the State had violated:

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), in relation to Article 1(1) (Obligation to Respect Rights) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Raxcacó-Reyes,<sup>84</sup> because:

*The automatic application of the death penalty for the crime of*

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80. *Id.* ¶ 12. The Center for Justice and International Law, the *Instituto de Estudios Comparados en Ciencias Penales de Guatemala*, and the *Instituto de la Defensa Pública Penal* served as representatives of Messrs. Raxcacó Reyes, Murga Rodríguez, and Ruiz Fuentes.

81. *Id.* ¶ 26.

82. The Merits did not indicate why two judges were missing from the panel.

83. *Id.*

84. *Id.* ¶¶ 44-90.

*kidnapping prevents consideration of the specific circumstances of the crime, such as the criminal record of the accused and the victim, the motive, the extent and severity of the harm caused, and other extenuating circumstances.*<sup>85</sup> *The State argued that it does consider these extenuating circumstances, as in the case of Mr. García Morales, who was found to be merely an “author” of the crime of kidnapping instead of a “direct author” and sentenced to a 40-year non-commutable prison term.*<sup>86</sup> *The Court finds, however, that the mandatory nature of the punishment as written in Article 201 of the Guatemalan Penal Code violates Article 4(1) of the Convention by arbitrarily depriving the accused of his/her right to life.*<sup>87</sup>

Article 4(2) (Limitations on Death Penalty), in relation to Article 1(1) (Obligation to Respect Rights) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Raxcacó Reyes,<sup>88</sup> because:

*The Court has previously stated that Article 4(2) prohibits State Parties from expanding their use of the death penalty.*<sup>89</sup> *Modifications made to Article 201 of the Guatemalan Penal Code in 1996 applied the death penalty to conduct that did not warrant the death penalty at the time the State ratified the Convention.*<sup>90</sup> *The death penalty was originally prescribed only in the event that the kidnapped person was deprived of his/her life.*<sup>91</sup> *Following reforms to Article 201, the death penalty was ordered in the event of any form of kidnapping.*<sup>92</sup> *The Court found this to be an expansion of the application of the death penalty from situations involving deprivation of life into situations involving deprivation of freedom.*<sup>93</sup> *Article 4(2) expressly prohibits this type of expansion of the death penalty.*<sup>94</sup>

Article 4(6) (Right to Seek Amnesty, Pardon, or Commutation of Sentence), in relation to Article 1(1) (Obligation to Respect Rights) and

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85. *Id.* ¶ 79-80.

86. *Id.* ¶¶ 74-75.

87. *Id.* ¶¶ 79, 82.

88. *Id.* ¶¶ 44-90.

89. *Id.* ¶ 57.

90. *Id.* ¶ 58.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Raxcacó Reyes,<sup>95</sup> because:

*The Ministry of Governance did not process Mr. Raxcacó Reyes' application for a pardon.<sup>96</sup> Congress expressly revoked the President's power to hear and decide pardons when it annulled Decree No. 159 of 1892 in June 2000.<sup>97</sup> Despite this, Mr. Raxcacó Reyes applied for a pardon, basing his petition on Article 1(1), Article 2, and Article 4(6) of the Convention.<sup>98</sup> In previous cases, the Court has ruled that eliminating the President's power to grant pardons violated Article 4(6) of the Convention, in relation to Article 1(1) and Article 2.<sup>99</sup> The Court finds the same violation in this case.<sup>100</sup>*

Article 5(1) (Right to Physical, Mental, and Moral Integrity) and Article 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), in relation to Article 1(1) (Obligation to Respect Rights) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Raxcacó Reyes,<sup>101</sup> because:

*The State has not complied with the minimum prison conditions during Mr. Raxcacó Reyes' detention.<sup>102</sup> The State must provide prison conditions that are compatible with a prisoner's personal dignity.<sup>103</sup> The Preventive Detention Center where Mr. Raxcacó Reyes was housed lacked ventilation, natural light, a proper bed, adequate conditions for hygiene, opportunity to exercise, adequate healthcare, and sources of education and other diversions.<sup>104</sup> Additionally, Mr. Raxcacó Reyes suffered intense psychological distress and psychosomatic illnesses as a result of constantly awaiting his execution.<sup>105</sup> These prison conditions violated his right to physical, mental, and moral integrity, and constituted cruel, inhumane, and degrading treatment.<sup>106</sup>*

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95. *Id.* ¶¶ 44-90.

96. *Id.* ¶ 84.

97. *Id.* ¶ 83.

98. *Id.* ¶ 84.

99. *Id.* ¶ 85.

100. *Id.* ¶ 86.

101. *Id.* ¶¶ 91-102.

102. *Id.* ¶ 100.

103. *Id.* ¶ 95.

104. *Id.* ¶ 99.

105. *Id.* ¶ 101.

106. *Id.* ¶ 102.

The Court found unanimously that the State had not violated:

Article 25 (Right to Judicial Protection), in relation to Article 1(1) (Obligation to Respect Rights) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Raxcacó Reyes,<sup>107</sup> because:

*Mr. Raxcacó Reyes was not denied access to an effective remedy to protect his rights.<sup>108</sup> In fact, he brought appeals to the Fourth Chamber of the Court of Appeal and the Supreme Court of Justice.<sup>109</sup> Although neither appeal was decided favorably for Mr. Raxcacó Reyes, that does not mean he did not have access to a remedy to protect his rights.<sup>110</sup>*

The Court did not rule on:

Article 8 (Right to a Fair Trial), in relation to Article 1(1) (Obligation to Respect Rights) and Article 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention, to the detriment of Mr. Raxcacó Reyes,<sup>111</sup> because:

*While the Commissions and the Representatives argued that a mandatory death sentence for a crime deprives the accused of an opportunity to mitigate his/her sentence,<sup>112</sup> the Court decided that it was unnecessary to rule on this matter since the facts pertaining to Article 8 were already examined while analyzing the State's violation of Article 4(1).<sup>113</sup>*

### C. Dissenting and Concurring Opinions

#### 1. Separate Opinion of Judge Sergio García Ramírez

In a separate opinion, Judge García Ramírez discusses the Court's role in restricting the death penalty on an international level.<sup>114</sup> The Court has an ever-permeating influence, especially on countries that

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107. *Id.* ¶¶ 107-113.

108. *Id.* ¶ 112.

109. *Id.* ¶¶ 43(14)-43(15).

110. *Id.* ¶ 112.

111. *Id.* ¶¶ 103-106.

112. *Id.* ¶¶ 103, 104(b).

113. *Id.* ¶ 106.

114. Raxcacó-Reyes v. Guatemala, Merits, Reparations and Costs, Separate Opinion of Judge Sergio Garcia Ramirez, Inter-Am. Ct. H.R. (ser. C) No. 133, ¶ 8 (Sept. 15, 2005).

have accepted its jurisdiction.<sup>115</sup> Judge García Ramírez believes the Court can have an effect on political and judicial treatment of the death penalty across the Americas.<sup>116</sup>

The first State Parties to the Convention were largely “pro-life.”<sup>117</sup> In 1969, an additional protocol to the Convention was conceptualized to abolish the death penalty altogether.<sup>118</sup> Although some of these countries retained the death penalty at the time of signing, all of them vowed to abolish it “and place America once again in the vanguard of the defense of the fundamental rights of man.”<sup>119</sup>

The Court’s intention to work toward abolishing the death penalty is clearly reflected in Article 4 (Right to Life) of the Convention.<sup>120</sup> While the first clause of Article 4 discusses respect to the lives of all people, the remaining six clauses refer specifically to restrictions on the imposition of the death penalty.<sup>121</sup> Although the Court did not have the support to eliminate the death penalty entirely, it intended to restrict its scope immensely.<sup>122</sup>

On June 8, 1990, the Protocol to the American Convention to Abolish the Death Penalty was signed and ratified by Brazil, Costa Rica, Ecuador, Nicaragua, Panama, Uruguay, and Venezuela.<sup>123</sup> At the time of the *Raxcacó Reyes* Judgment in 2005, it had gained even wider acceptance.<sup>124</sup>

Although the Court has made significant advances toward abolishing the death penalty, the punishment still persists in some countries.<sup>125</sup> Article 4(2) (Limitations on Death Penalty) helps the Court interpret death penalty cases in exceedingly restrictive ways.<sup>126</sup> For example, Article 4(2) allows capital punishment only for the “most serious crimes” and only for crimes that were punishable by death at the time the State ratified the Convention.<sup>127</sup> In order to determine if the

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115. *Id.* ¶ 2.

116. *Id.*

117. *Id.* ¶ 3.

118. *Id.* ¶ 4. The Pact of San José, Costa Rica, was signed by Costa Rica, Uruguay, Colombia, Ecuador, El Salvador, Panama, Honduras, the Dominican Republic, Guatemala, Mexico, Venezuela, Nicaragua, Argentina, and Paraguay.

119. *Id.* ¶¶ 5-6.

120. *Id.* ¶ 7.

121. *Id.*

122. *Id.* ¶ 8.

123. *Id.* ¶ 10.

124. *Id.*

125. *Id.* ¶ 22.

126. *Id.* ¶ 23.

127. *Id.*

crime committed was the “most serious crime,” one must look at the judicial right protected and the way it was affected.<sup>128</sup> The most important judicial right protected is the right to human life.<sup>129</sup> The greatest harm to this right is the elimination of life, not merely the attempted elimination of life or the elimination of a lesser important judicial right like physical integrity, freedom, or property.<sup>130</sup> Therefore, any crime that does not involve the elimination of life is not the “most serious crime” and cannot require the death penalty.<sup>131</sup>

The Court used the second point of law contained in Article 4(2) (Limitations on Death Penalty) to determine that the crime punishable by death at the time the Convention was ratified (the death of the kidnapped victim) was not the same crime presently punishable by death under the Guatemalan Penal Code (any crime of kidnapping).<sup>132</sup> This directly violates Article 4(2).<sup>133</sup>

Judge García Ramírez iterates that the Court did not rule on Mr. Raxcacó Reyes’ guilt, nor did it attempt to usurp the State’s police powers.<sup>134</sup> The Court merely determined that the State’s law conflicts with laws of the Convention, and indicates that the State must deliver a new punishment for Mr. Raxcacó Reyes.<sup>135</sup> Second, Judge García Ramírez calls attention to the need for urgent prison reform across the Americas.<sup>136</sup>

Finally, Judge García Ramírez commends the involvement of many Guatemalan State officials in the human rights movement, including Carlos García Bauer who personally helped draft the Convention.<sup>137</sup> Judge García Ramírez compliments the State and its leaders for its actions that contribute to the advancement of the Inter-American system.<sup>138</sup>

#### IV. REPARATIONS

The Court ruled that the State had the following obligations:

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128. *Id.* ¶ 25.

129. *Id.*

130. *Id.* ¶¶ 26, 28.

131. *Id.* ¶ 29.

132. *Id.* ¶ 33.

133. *Id.* ¶ 34.

134. *Id.* ¶ 36.

135. *Id.*

136. *Id.* ¶ 37.

137. *Id.* ¶ 40.

138. *Id.* ¶ 42.

A. *Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)*

1. *Adaptation of Domestic Legislation to the Convention*

As a result of the State's violations of Article 4(1) (Prohibition of Arbitrary Deprivation of Life), Article 4(2) (Limitations on Death Penalty), and Article 4(6) (Right to Seek Amnesty, Pardon, or Commutation of Sentence) in relation to Article 1(1) (Obligation to Respect Rights) and Article 2 (Obligation to Give Domestic Legal Effect to Rights), the State must adopt measures necessary to adapt its domestic legislation to the Convention.<sup>139</sup> Particularly, Congress must modify Article 201 of the Guatemalan Penal Code to differentiate between categories of kidnapping based on the circumstances of the crime.<sup>140</sup> Congress must provide punishments that are proportionate to the crime in each category.<sup>141</sup> The list of crimes punishable by the death penalty may not extend past the list of crimes punishable by the death penalty prior to the State's ratification of the Convention.<sup>142</sup> Specifically, the State may not impose the death penalty on those convicted solely of kidnapping or abduction without the death of a victim.<sup>143</sup>

The State must also adopt a procedure whereby any person condemned to death may apply for a pardon or commutation of sentence.<sup>144</sup> The sentence must be suspended while the pardon or commutation of sentence is being processed.<sup>145</sup>

2. *Revocation of the Death Sentence Against Mr. Raxcacó Reyes*

The State must annul the punishment imposed on Mr. Raxcacó Reyes by the Sixth Court for Criminal Sentencing, Drug Trafficking, and Environmental Crimes.<sup>146</sup> A new punishment must be ordered, which cannot be the death penalty.<sup>147</sup> The new punishment must be proportionate to the nature and gravity of the crime Mr. Raxcacó Reyes committed, and any accompanying circumstances.<sup>148</sup> Mr. Raxcacó

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139. *Id.* ¶ 132.

140. *Id.* ¶ 132(i).

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.* ¶ 132(ii).

145. *Id.*

146. *Id.* ¶ 133.

147. *Id.*

148. *Id.*

Reyes should also have the right to a hearing.<sup>149</sup>

### 3. Adaptation of Prison Conditions to International Standards

The State must improve prison conditions to the corresponding international standards.<sup>150</sup> Specifically to this case, the State must provide Mr. Raxcacó Reyes with adequate medical and psychological treatment.<sup>151</sup> The State must also allow Mr. Raxcacó Reyes visits from his wife, who is serving a prison sentence in the *Center of Female Orientation* for participating in the kidnapping as an accomplice.<sup>152</sup> Lastly, the State must allow Mr. Raxcacó Reyes to partake in educational, work-related, or other activities to assure his successful rehabilitation.<sup>153</sup>

### 4. Dissemination of the Judgment

The State must publish the specified operative paragraphs of the judgment in the official gazette and in another newspaper with widespread national circulation.<sup>154</sup>

#### *B. Compensation*

The Court awarded the following amounts:

#### 1. Pecuniary Damages

The Court did not grant pecuniary damages to Mr. Raxcacó Reyes since there is no causal relationship between his lack of economic activity and the violations that have been declared.<sup>155</sup>

#### 2. Non-Pecuniary Damages

The Court did not grant non-pecuniary damages to Mr. Raxcacó Reyes, since the judgment itself is a form of reparation, and financial compensation would not be pertinent.<sup>156</sup> Further, other forms of reparations through public works will sufficiently remedy Mr. Raxcacó Reyes' injuries.<sup>157</sup>

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149. *Id.*

150. *Id.* ¶ 134.

151. *Id.* ¶ 135.

152. *Id.*

153. *Id.*

154. *Id.* ¶ 136.

155. *Id.* ¶ 130.

156. *Id.* ¶ 131.

157. *Id.*



### 3. Costs and Expenses

The Court ordered the State to pay Mr. Raxcacó Reyes \$5,000 (USD) so that he may reimburse his representatives for their services.<sup>158</sup>

#### 4. Total Compensation (including Costs and Expenses ordered):

\$5,000

### C. Deadlines

The State must effect payment for costs and expenses within one year of notification of the judgment.<sup>159</sup>

## V. INTERPRETATION AND REVISION OF JUDGMENT

The State inquired whether the \$5,000 to be used by Mr. Raxcacó Reyes to reimburse his representatives should be paid to Mr. Raxcacó Reyes as stipulated in the Judgment, or directly to the representatives, as the Court ordered in *Fermín Ramírez v. Guatemala*.<sup>160</sup> The Court found that the State was not seeking an interpretation of the meaning of the Judgment, but was instead contesting the Judgment by urging the Court to redefine the beneficiary of the costs and expenses.<sup>161</sup> The Court dismissed the request for interpretation for violating Article 67 of the Convention and Article 29(3) and Article 59 of the Rules of Procedure.<sup>162</sup>

## VI. COMPLIANCE AND FOLLOW-UP

**October 21, 2005:** Nineteen prisoners, including Mr. Ruiz Fuentes, escaped from the Esquintla high-security prison.<sup>163</sup>

**November 8, 2005:** The State submitted a brief informing the Court of Mr. Ruiz Fuentes' escape, and requested a suspension of the provisional measure guaranteeing the life and integrity of Mr. Ruiz Fuentes.<sup>164</sup>

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158. *Id.* ¶ 138.

159. *Id.* ¶ 139.

160. Raxcacó Reyes v. Guatemala, Interpretation of the Judgment of Merits, Reparations and Costs, Inter-Am. Ct. H.R. (ser. C) No. 143, ¶ 6 (Feb. 6, 2006).

161. *Id.* ¶ 21.

162. *Id.* ¶ 23.

163. Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct. H.R. (ser. E) "Having Seen" ¶ 14 (Apr. 20, 2006).

164. *Id.*

**November 16, 2005:** The Commission reiterated the State's obligation to protect Mr. Ruiz Fuentes' life, so as not to interrupt the proceedings before the Court.<sup>165</sup> The Representatives, however, discovered that Mr. Ruiz Fuentes was found and executed upon arrest.<sup>166</sup> The Representatives requested the Court to order the State to carry out an investigation into Mr. Ruiz Fuentes' execution.<sup>167</sup>

**November 22, 2005:** The State submitted a report on the events surrounding Mr. Ruiz Fuentes' death.<sup>168</sup> According to the State, Mr. Ruiz Fuentes resisted his arrest and pulled a gun from his holster, leading officers from the Criminal Investigation Service to shoot him to death.<sup>169</sup>

**March 30, 2006:** The Representatives argued that the State provided different versions of the events of Mr. Ruiz Fuentes' death, and requested the Court to order the State to provide an official version of the events of Mr. Ruiz Fuentes' death.<sup>170</sup>

**April 7, 2006:** The Representatives submitted a brief pointing out that security forces killed four of the nineteen escaped prisoners when recaptured.<sup>171</sup> The Representatives considered this evidence that the State used excessive force.<sup>172</sup>

**April 20, 2006:** Representatives of Mr. Tirso Román Valenzuela Ávila filed a request to protect his life and personal integrity, as an extension of the provisional measures ordered by the Court in the case of Mr. Raxcacó Reyes.<sup>173</sup> Mr. Tirso Román Valenzuela Ávila was sentenced to death for the murder of attorney Silvia Perez.<sup>174</sup> He later escaped from Esquintla jail, and had not yet been recaptured.<sup>175</sup> His representatives, fearing that he will be tortured and/or executed upon his

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165. *Id.* ¶ 16.

166. *Id.* ¶ 17.

167. *Id.* ¶ 18.

168. *Id.* ¶ 20.

169. *Id.*

170. *Id.* ¶ 23.

171. *Id.* ¶ 24.

172. *Id.*

173. Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the President of the Court, "Having Seen" ¶¶ 2-3.

174. *Id.* ¶ 5.

175. *Id.*

recapture, requested an order to protect his life.<sup>176</sup> Although such orders were issued in the cases of Mr. Raxcacó Reyes, Mr. Ruiz Fuentes, Mr. Rodríguez Lara, and Mr. Ruiz Almengor, the Court found that the nature of Mr. Tirso Román Valenzuela Ávila is fundamentally different from those cases, and found the request for an extension of the provisional measures inadmissible.<sup>177</sup>

**July 4, 2006:** The Court issued provisional measures requiring the State to consider the provisional measures adopted for Mr. Ruiz Fuentes' benefit terminated.<sup>178</sup> The Court still requires the State to undertake all measures to protect the lives of Mr. Rodríguez Lara and Mr. Ruiz Almengor, and also required the State to submit a report on the steps taken to comply with this obligation.<sup>179</sup>

**October 5, 2006:** The State enacted the Prison System Law to improve prison conditions.<sup>180</sup>

**November 13, 2006:** Guatemala's Supreme Court of Justice rejected Mr. Rodríguez Lara's request for review of his death penalty sentence.<sup>181</sup>

**November 24, 2006:** The Representatives appealed the criminal proceedings against Mr. Rodríguez Lara and Mr. Ruiz Almengor to have their death sentences reversed, reiterating the ills of the death penalty, and noting that the practice violates Article 5 (Right to Humane Treatment) of the American Convention.<sup>182</sup> The Representatives also noted that no legislation has yet been introduced to allow Mr. Rodríguez Lara and Mr. Ruiz Almengor to apply for executive pardons.<sup>183</sup> Lastly, the Representatives called attention to the unsatisfactory conditions in the prison where Mr. Rodríguez Lara and Mr. Ruiz Almengor were

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176. Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the President of the Court, "Considering" ¶ 3.

177. *Id.* ¶ 5.

178. Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the Court, "Deciding" ¶ 1.

179. *Id.*

180. Raxcacó Reyes et al. v. Guatemala, Request for Broadening of Provisional Measures, Order of the Court, (ser E.) "Having Seen," ¶ 7 (Feb. 2, 2007).

181. Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct H.R. (ser. E) "Considering" ¶ 9 (Nov. 21, 2007).

182. Raxcacó Reyes et al. v. Guatemala, Request for Broadening of Provisional Measures, Order of the Court, "Considering" ¶ 6.

183. *Id.*

housed, and requested the Court to order the State to undertake measures to ensure prison reform.<sup>184</sup>

**November 28, 2006:** The State enacted the Internal Rules of the Model Farms for Rehabilitation and Service of Sentence Under the Prison System General Office to improve prison conditions.<sup>185</sup>

**February 2, 2007:** Representatives for Mr. Rodríguez Lara and Mr. Ruiz Almengor submitted a request to the Court to expand the provisional measures in force for the prisoners in order to guarantee their right to humane treatment.<sup>186</sup> The Court denied the request, but reiterated the State's obligation to protect the lives of Mr. Rodríguez Lara and Mr. Ruiz Almengor while their cases are pending before the Court.<sup>187</sup>

**May 14, 2007:** The Supreme Court of Justice annulled Mr. Ruiz Almengor's death sentence.<sup>188</sup>

**November 21, 2007:** The Court issued an order to rescind the provisional measures that applied to Mr. Ruiz Almengor, since his death sentence had been lifted.<sup>189</sup> The Court emphasized that provisional measures ordered to protect the life of Mr. Rodríguez Lara remained in place.<sup>190</sup>

**March 28, 2008:** The President of the Court issued Orders Monitoring Compliance with the Judgment.<sup>191</sup> The State submitted no information regarding amendment to Article 201 of the Guatemalan Penal Code.<sup>192</sup> The Representatives stated that no bill had been submitted to Congress to amend Article 201.<sup>193</sup> The President of the Court requested additional

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184. *Id.*

185. *Id.* ¶ 7.

186. *Id.* ¶ 17.

187. *Id.*

Decides" ¶¶ 1-2.

188. Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the Court, "Considering" ¶ 9.

189. *Id.* "Decides" ¶ 1.

190. *Id.* ¶ 2.

191. Raxcacó Reyes et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct H.R. "Considering" ¶ 1 (Mar. 28, 2008).

192. *Id.* ¶ 26.

193. *Id.* ¶ 27.

information from the State.<sup>194</sup>

That State informed the Court that it has taken steps to abstain from applying the death penalty to those convicted of kidnapping.<sup>195</sup> These steps included releasing one prisoner who was sentenced to death, commuting two death sentences to a time in prison, staying the execution of another prisoner, and reviewing appeals for seven additional prisoners.<sup>196</sup> The Representatives pointed out that although the State had not imposed any additional death sentences under Article 201, the State had affirmed six death sentences, denying their appeals.<sup>197</sup> The Court on Constitutional affairs also denied a prisoner's writ of *amparo*, and four more writs of *amparo* are still awaiting review.<sup>198</sup> The President of the Court requested more information from the State on the matter.<sup>199</sup>

The State was in the process of examining the constitutionality of adopting legislative measures that guarantee those sentenced to death the right to request a pardon or commutation of sentence.<sup>200</sup> To date, the State has not executed any person who has applied for a pardon or sentence commutation.<sup>201</sup> The President of the Court requested more information from the State on the matter before he can establish compliance.<sup>202</sup>

On October 17, 2007, the Sixth Court for Criminal Sentencing, Drug Trafficking, and Environmental Crimes commuted Mr. Raxcacó Reyes' death sentence to a forty-year non-commutable sentence.<sup>203</sup> The Representatives maintained that this sentence was still disproportionate to the nature of the crime.<sup>204</sup> The President of the Court found that the State had taken strides toward compliance, but awaited further information from the State before he could establish full compliance.<sup>205</sup>

Regarding prison reform, the State redesigned seven prisons, created projects for the inmate population, and made progress in the health sector in order to adapt prison conditions to international

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194. *Id.* ¶ 29.

195. *Id.* ¶ 30.

196. *Id.*

197. *Id.* ¶ 31.

198. *Id.*

199. *Id.* ¶ 33.

200. *Id.* ¶ 14.

201. *Id.*

202. *Id.* ¶ 16.

203. *Id.* ¶ 35.

204. *Id.* ¶ 36.

205. *Id.* ¶ 38.

standards.<sup>206</sup> The Representatives, however, called attention to the fact that some inmates were still confined to extreme seclusion without access to work, education, or health programs.<sup>207</sup> The President of the Court noted that the State had taken steps toward compliance but requested further information before he could establish full compliance.<sup>208</sup>

Regarding Mr. Raxcacó Reyes' health, the State took several steps to address his medical needs.<sup>209</sup> The Representatives conceded that the State provided him with medical care, but it failed to provide him with the medicines required for his health condition.<sup>210</sup> The President of the Court found it essential that the State provide additional information regarding this matter.<sup>211</sup>

Regarding visits from Mr. Raxcacó Reyes' wife, the State maintained that Ms. Isabel Vicente must request these visits in the same manner as the other inmates.<sup>212</sup> The Representatives maintained that since Ms. Isabel Vicente has not visited Mr. Raxcacó Reyes since the Court handed down its judgment, the State is in contempt.<sup>213</sup> The President found it essential that the State provide additional information regarding this matter.<sup>214</sup>

Regarding the State's duty to ensure Mr. Raxcacó Reyes' social rehabilitation while in prison, the State maintained that he made handicrafts, but was not currently enrolled in any academic activity.<sup>215</sup> According to the Representatives, Mr. Raxcacó Reyes' family provided the handicrafts, and he was not allowed to enroll in any academic activity in the prison.<sup>216</sup> The President of the Court requested further information on the matter.<sup>217</sup>

On September 22, 2006, the State published operative parts of the Judgment in the *Diario de Centro America*.<sup>218</sup> On March 28, 2007, the State published operative parts of the Judgment in the *El Periódico*

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206. *Id.* ¶ 39.

207. *Id.* ¶ 40.

208. *Id.*

209. *Id.* ¶ 43.

210. *Id.*

211. *Id.* ¶ 46.

212. *Id.* ¶ 47.

213. *Id.* ¶ 48.

214. *Id.* ¶ 50.

215. *Id.* ¶ 51.

216. *Id.* ¶ 52.

217. *Id.* ¶ 54.

218. *Id.* ¶ 55.

newspaper.<sup>219</sup> The Representatives did not consider the State's compliance complete since there were no reference numbers to the Judgment included with the published paragraphs.<sup>220</sup> The President of the Court noted that the State took steps toward compliance, but requested more information before establishing full compliance.<sup>221</sup>

The State delivered \$5,000.00 to Mr. Raxcacó Reyes on February 26, 2007 for costs and expenses.<sup>222</sup> The Court noted that the State took steps toward compliance, but requests further information regarding payment of costs and expenses.<sup>223</sup>

**May 9, 2008:** The Court issued Monitoring Compliance Orders with the Judgment.<sup>224</sup> The Court declared that the State fully complied with its duty to replace Mr. Raxcacó Reyes' death penalty sentence with a prison term.<sup>225</sup> Although the Representatives argued that the forty-year sentence was disproportionate to the nature of his crime, the Court held that the sentence was fair, and the State fully complied with this part of the judgment.<sup>226</sup>

The Court noted that the State took some steps to comply with its obligation to provide Mr. Raxcacó Reyes with adequate medical treatment.<sup>227</sup> The Representatives maintained, however, that he still had not received medicine for his condition.<sup>228</sup> The Court demanded more information from the State before it could establish full compliance.<sup>229</sup> The State maintained that Mr. Raxcacó Reyes refused psychological treatment.<sup>230</sup> The Court required the Representatives to confirm this before full compliance could be established.<sup>231</sup>

Regarding the State's duty to adopt measures to allow Ms. Isabel Vicente to visit Mr. Raxcacó Reyes' in prison, the State informed the Court that it was Ms. Isabel Vicente's wish not to see her husband, since he had established a relationship with another inmate at the *Center of*

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219. *Id.*

220. *Id.* ¶ 56.

221. *Id.* ¶ 58.

222. *Id.* ¶ 59.

223. *Id.* ¶ 62.

224. Raxcacó Reyes et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct H.R. "Considering" ¶ 1 (May 9, 2008).

225. *Id.* ¶ 19.

226. *Id.*

227. *Id.* ¶ 22.

228. *Id.* ¶ 20.

229. *Id.* ¶ 22.

230. *Id.* ¶ 20.

231. *Id.* ¶ 22.

*Female Orientation*.<sup>232</sup> Neither the Representatives nor the Commission responded to these allegations, although the other inmate at the *Center of Female Orientation* confirmed that she and Mr. Raxcacó Reyes were a couple.<sup>233</sup> The Court requested a response from the Representatives and the Commission regarding this allegation.<sup>234</sup>

Regarding the State's obligation to ensure Mr. Raxcacó Reyes' social rehabilitation, the State pointed out that he participated in craftsmanship and worked as a gardener for the prison.<sup>235</sup> Mr. Raxcacó-Reyes was also enrolled in an adult education program.<sup>236</sup> Before the Court can establish full compliance, the State must clarify how much Mr. Raxcacó Reyes earns as a gardener, how useful the position is to his rehabilitation, whether the education is in fact provided by the State, and how the State supports Mr. Raxcacó Reyes in his crafts.<sup>237</sup>

The Court found that the State fully complied with its obligation to publish the operative paragraphs of the judgment.<sup>238</sup> The Court also found that the State fully complied with its obligation to deliver \$5,000 to Mr. Raxcacó Reyes for costs and expenses.<sup>239</sup>

Regarding the State's treatment of the death penalty, the Executive Branch is preparing a bill to submit to the legislative branch to amend Article 201 of the Guatemalan Penal Code.<sup>240</sup> The State suspended the enforcement of the death penalty for those convicted of kidnapping or abduction.<sup>241</sup> The Representatives maintained that since no bill had been introduced modifying Article 201, the State had not fully complied with their obligation.<sup>242</sup> Furthermore, the Representatives noted that the Commission on Legislation and Constitutional Issues rejected a bill to repeal the death penalty for kidnapping and murder.<sup>243</sup> The Representatives and the Commission also believed that the Executive Branch was doing little to expedite the legislative process to modify Article 201.<sup>244</sup> The Court urged the State to adopt the measures necessary to modify Article 201, and demanded that the State respond

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232. *Id.* ¶ 23.

233. *Id.* ¶¶ 23-24.

234. *Id.* ¶ 25.

235. *Id.* ¶ 26.

236. *Id.*

237. *Id.* ¶ 29.

238. *Id.* ¶ 33.

239. *Id.* ¶ 34.

240. *Id.* ¶ 39.

241. *Id.*

242. *Id.* ¶ 40.

243. *Id.*

244. *Id.* ¶¶ 40-41.



to the arguments made by the Representatives and the Commission.<sup>245</sup>

Regarding the State's duty to improve its prison system, the Court valued the progress the State made by passing the Prison System Act in 2006, but requested that the State submit additional information on the current condition of the prison system, the major problems with the prison system, the measures adopted to improve conditions, and any forthcoming measures that will be adopted in the future.<sup>246</sup>

**September 4, 2012:** The Court lifted the provisional measures ordered by the Court on August 30, 2004 regarding the protection of life for Mr. Rodríguez Lara.<sup>247</sup> The State also reiterated that the lift of the provisional measures did not mean that the State was relieved from its treaty-based protection obligations.<sup>248</sup>

## VII. LIST OF DOCUMENTS

### A. *Inter-American Court*

#### 1. Preliminary Objections

[None]

#### 2. Decisions on Merits, Reparations, and Costs

[Raxcacó Reyes v. Guatemala, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 133 \(Sept. 15, 2005\).](#)

[Raxcacó Reyes v. Guatemala, Merits, Reparations and Costs, Separate Opinion of Judge Sergio Garcia Ramirez, Inter-Am. Ct. H.R. \(ser. C\) No. 133 \(Sept. 15, 2005\).](#)

#### 3. Provisional Measures

[Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct H.R. \(ser. E\) \(Sept. 4, 2012\).](#)

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245. *Id.* ¶ 46.

246. *Id.* ¶¶ 47, 50.

247. *Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct H.R. (ser. E), "Decides To" ¶ 1 (Sept. 4, 2012).*

248. *Id.*

[Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct H.R. \(ser. E\) \(Nov. 21, 2007\).](#)

[Raxcacó Reyes et al. v. Guatemala, Request for Broadening of Provisional Measures, Order of the Court, Inter-Am. Ct H.R. \(ser. E\) \(Feb. 2, 2007\).](#)

[Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct H.R. \(ser. E\) \(July 4, 2006\).](#)

[Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the President of the Court, Inter-Am. Ct H.R. \(ser. E\) \(Apr. 20, 2006\) \(Available only in Spanish\).](#)

[Raxcacó Reyes et al. v. Guatemala, Provisional Measures, Order of the Court, Inter-Am. Ct H.R. \(ser. E\) \(Aug. 30, 2004\).](#)

#### 4. Compliance Monitoring

[Raxcacó Reyes et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct H.R. \(May 9, 2008\).](#)

[Raxcacó Reyes et al. v. Guatemala, Monitoring Compliance with Judgment, Order of the President of the Court, Inter-Am. Ct H.R. \(Mar. 28, 2008\).](#)

#### 5. Review and Interpretation of Judgment

[Raxcacó Reyes et al. v. Guatemala, Interpretation of the Judgment of Merits, Reparations and Costs, Inter-Am. Ct. H.R. \(ser. C\) No. 143, \(Feb. 6, 2006\).](#)

##### *B. Inter-American Commission*

##### 1. Petition to the Commission

Raxcacó Reyes et al. v. Guatemala, Petition No. 12.402, Inter-Am. Comm'n H.R. (Jan. 2, 2002).

##### 2. Report on Admissibility

[Raxcacó Reyes et al. v. Guatemala, Admissibility Report, Report No. 73/02, Inter-Am. Comm'n H.R., Case No. 12.402, Inter-Am. Comm'n H.R. \(Oct. 9, 2002\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Raxcacó Reyes et al. v. Guatemala, Merits Report, Report No. 49/03, Inter-Am. Comm'n H.R., Case No. 12.402, Inter-Am. Comm'n H.R. (Oct. 8, 2003).

5. Application to the Court

[Raxcacó Reyes et al. v. Guatemala, Application to the Court, Inter-Am. Comm'n H.R., Case No. 12.402, Inter-Am. Comm'n H.R. \(Sept. 18, 2004\) \(Available only in Spanish\).](#)

VIII. BIBLIOGRAPHY

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NIGEL RODLEY & MATT POLLARD, *THE TREATMENT OF PRISONERS UNDER INTERNATIONAL LAW* 300, 305, 315, 398 (3rd ed. 2009).