

INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF MARTÍNEZ CORONADO V. GUATEMALA
JUDGMENT OF May 10, 2019
(Merits, reparations, and costs)

In the case of *Martínez Coronado*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges*:

Eduardo Ferrer Mac-Gregor Poisot, President;
Eduardo Vio Grossi, Vice President;
Humberto Antonio Sierra Porto, Judge;
Elizabeth Odio Benito, Judge;
L. Patricio Pazmiño Freire, Judge, and
Ricardo Pérez Manrique, Judge.

also present,
Pablo Saavedra Alessandri, Registrar.

Pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also “the American Convention” or “the Convention”) and Articles 31, 32, 65, and 67 of the Rules of Procedure of the Inter-American Court (hereinafter also “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment structured as follows:

* Judge Eugenio Raúl Zaffaroni recused himself from this case, in accordance with Article 21 of the Court's Rules of Procedure, and this was accepted by the full Court.

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I
INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* On November 30, 2017, the Inter-American Commission on Human Rights (hereinafter also the "Inter-American Commission" or "the Commission" or the "IACHR"), in accordance with Articles 51 and 61 of the American Convention and Article 35 of the Rules of Procedure, submitted to the jurisdiction of the Inter-American Court the case of *Martínez Coronado v. Guatemala* (hereinafter also "the State" or "Guatemala"). The Commission indicated that the case concerns a series of due process violations committed in the context of the criminal trial of Manuel Martínez Coronado (hereinafter also "Mr. Martínez Coronado" or "Mr. Martínez") for the murder of seven people in the town of El Palmar on May 16, 1995. A guilty verdict was issued in that trial on October 26, 1995, and Mr. Martínez was sentenced to death by lethal injection. On February 10, 1998, he was executed. The Commission held that the use of the element of dangerousness to support criminal responsibility violated the freedom from ex post facto laws, as the concept includes predictions and speculations and is an expression of offender-based criminal law, which is incompatible with the American Convention. The Commission also concluded that the joint defense of Mr. Martínez and his co-defendant violated the right to adequate means for the preparation of his defense and the right to be assisted by counsel provided by the State. Furthermore, the Commission held that the State had violated the right to life by imposing a death sentence despite the above-mentioned due process violations. The Commission then asked the Court to declare the State's international responsibility for the violation of Articles 4(1), 4(2), 8(1), 8(2)(c), 8(2)(e), 9, and 25(1) of the American Convention, in conjunction with Articles 1(1) and 2 of the Convention, to the detriment of Manuel Martínez Coronado, and requested several measures of reparation.

2. *Proceedings before the Commission.* The proceedings before the Commission were as follows:

a. *Petition.* On October 31, 1997, the Commission received a complaint from Rubén de la Rosa of Guatemala's Criminal Defense Public Service¹ on behalf of Manuel Martínez Coronado.

b. *Precautionary measures.* On October 31, 1997, the Inter-American Commission was presented with a request to grant precautionary measures so that the State would stay the execution of the sentence imposed against Martínez. The Commission notified Guatemala of this request on November 12, 1997, giving it 30 days to present information of relevance to the case. On November 17, 1997, the president of the Supreme Court of Justice responded to the Presidential Human Rights Commission (hereinafter "COPREDEH") regarding the execution process for Mr. Martínez, with respect to the request made by the Commission. On November 18, 1997, the Commission ordered the State to adopt precautionary measures to stay the execution of Manuel Martínez Coronado. The same day, the State sent the Inter-American Commission a document with the order of the First Judge of Criminal Enforcement attached, which had set the original execution date as November 21, 1997. On November 19, 1997, the State informed the Commission that because of the new remedy of *amparo* filed by Mr. Martínez, the execution would be postponed until the remedy had been heard. In the communication received on November 20, 1997, the Supreme Court of Justice declared that it lacked the authority to stay the execution of the judgment, so it denied the requested precautionary measures. After that response, on November 24, 1997, the IACHR

¹ Cf. Complaint before the IACHR on October 31, 1997 (IACHR procedural file, folios 272 to 314).

reiterated its request. On November 26, 1997, the State reported that another motion had been brought. On December 18, 1997, the Inter-American Commission requested from the State all information relevant to the case, and the president of the Supreme Court of Justice responded with report no. 2914. The Commission again reiterated its request for precautionary measures on February 9, 1998, however the execution was carried out the following day (*infra* para. 54).

c. *Admissibility and Merits Report.* On June 17, 2002, the Commission informed the parties that in accordance with Article 37(3) of the Rules of Procedure then in force, it had decided to postpone addressing admissibility until the discussion on the merits; for this reason, it granted the petitioner a period of two months to present additional observations on the merits. On December 15, 2003, the Commission gave the State two months to present additional observations on the merits. On March 26, 2004, the State presented those observations. On July 5, 2017, the Commission released Admissibility and Merits Report No. 78/17 (hereinafter “Admissibility and Merits Report” or “the Report”), in accordance with Article 50 of the American Convention, in which it set out a series of conclusions² as well as various recommendations for the State.³

d. *Notification to the state.* The Commission notified the State of the Report on August 30, 2017, giving it two months to report back on its compliance with the recommendations. The State did not respond during the time period indicated.

3. *Submission to the Court.* On November 30, 2017, the Commission submitted to the Court all the facts and the alleged human rights violations described in the Admissibility and Merits Report.⁴

4. *Requests of the Commission.* Based on the above, the Commission asked the Court to decide and declare the international responsibility of Guatemala for the alleged violation of the rights specified in the Admissibility and Merits Report. Furthermore, the Commission asked the Court to order the State to carry out certain measures of reparation, which will be detailed and analyzed in the pertinent chapter.

² The Commission concluded that the State of Guatemala is responsible for the violation of Articles 4(1), 4(2), 8(1), 8(2)(c), 8(2)(e), 25(1), and 9 of the American Convention, in relation to the general obligations set forth in its Articles 1(1) and 2, to the detriment of Mr. Martínez Coronado.

³ The Commission recommended that the State: “1. Comprehensively remedy the human rights violations declared in the [...R]eport, including both pecuniary and non-pecuniary aspects. The measures of reparation shall include fair compensation as well as measures of satisfaction, if applicable, in consultation with the relatives of Manuel Martínez Coronado. In the event that the relatives are not located despite every effort having been made to find them, the [Commission] recommends that the pecuniary component of the reparation be given to the Legal Assistance Fund. 2. Adopt the legislative measures necessary for conclusively eliminating from Guatemalan criminal legislation the concept of dangerousness as a factor for determining sentencing after criminal responsibility has been established. 3. Adopt measures necessary to enhance the effectiveness of the public defense, especially in cases involving the possible imposition of severe sentences. 4. [...] adopt the measures necessary for domestic legislation to be consistent with this practice, thus continuing on the path toward abolishing the death penalty.” Cf. IACHR, Report No. 78/17 (Admissibility and Merits), Case 11.834 Manuel Martínez Coronado (Guatemala), OEA/Ser.L/V/II.163, Doc. 91, July 5, 2017. Available in Spanish at: <http://www.oas.org/es/cidh/decisiones/corte/2017/11834FondoEs.pdf>

⁴ The Commission appointed as delegates for this case Luis Ernesto Vargas Silva, Commissioner, and Paulo Abrão, Executive Registrar of the Commission, and as advisors Elizabeth Abi-Mershed, Assistant Executive Registrar, and Silvia Serrano Guzmán and Christian González Chacón, attorneys of the Executive Secretariat of the IACHR.

II PROCEEDINGS BEFORE THE COURT

5. *Appointment of inter-American public defenders.* In the brief submitted for the case, the Commission indicated that the Public Criminal Defense Institute of Guatemala (IDPPG for the Spanish) represented the petitioner. However, no power of attorney was included in the documentation submitted by the Commission. In its communications on January 8, 17, and 26 of 2018, the Court asked the Public Criminal Defense Institute of Guatemala to confirm the representation of the alleged victim. As there was no response to those requests, after appropriate communication with the Inter-American Association of Public Defenders (AIDEF),⁵ the General Coordinator of the association informed the Court on February 27, 2018, that Octavio Tito Sufán Farías and Roummel Gevanny Salerno Caballero had been appointed inter-American public defenders to legally represent Mr. Martínez (hereinafter also “the representatives”).

6. *Notification of the case to the State and to the representatives.* The Court notified the State and the representatives of the submission of the case on March 5, 2018, and March 8, 2018, respectively.

7. *Brief with pleadings, motions, and evidence.* On May 7, 2018, the representatives presented their brief with pleadings, motions, and evidence (hereinafter also “pleadings and motions brief” or “ESAP” for the Spanish), pursuant to Articles 25 and 40 of the Court’s Rules of Procedure. The representatives were in substantial agreement with the arguments and conclusions of the Commission. Furthermore, they argued that the State is also responsible for violating the right to life under the terms of Article 4(6) of the American Convention as well as for violating Article 63(2), to the detriment of Mr. Martínez Coronado. Moreover, the inter-American defenders made requests concerning access to the Victims’ Legal Assistance Fund of the Inter-American Court (hereinafter also “the Court’s Assistance Fund” or “the Fund”). Finally, they asked the Court to order the State to adopt various measures of reparation and to provide reimbursement for certain costs and expenses.

8. *Answering brief.* On August 1, 2018, the State presented to the Court its answering brief to the submission of the case by the Commission with its observations on the pleadings and motions brief (hereinafter “answering brief”).⁶ In that brief, the State denied the alleged violations and did not present preliminary objections.

9. *Victims’ Legal Assistance Fund.* On May 30, 2018, the Court announced that the Victims’ Legal Assistance Fund would be used.

10. *Final written proceedings.* After evaluating the main briefs presented by the Commission and the parties, and in light of Articles 15(1), 45, and 50(1) of the Court’s Rules of Procedure, the President, in consultation with the full Court, decided that it was unnecessary to convene a public hearing in this case, given the circumstances of the case and the lack of a dispute as to the facts. The decision was communicated through an Order of the President on February 14, 2019.⁷ That Order also called for statements to be made by affidavit by four declarants offered by the representatives and the joint opinion of two expert witnesses proposed by the Commission and the

⁵ In its February 13, 2018 communication, the Court asked the General Coordinator of AIDEF, bearing in mind Article 2 of the Agreement of Understanding between the Court and that organization and following the instructions of the President of the Court, to appoint within ten days a defender to assume legal representation in the case and to inform the Court of the address to which relevant communications should be sent.

⁶ In its April 11, 2018, communication, the State appointed as agents in this case Jorge Luis Borrayo Reyes, President of COPREDEH, and Felipe Sánchez González, Executive Director of COPREDEH.

⁷ Cf. *Case of Martínez Coronado v. Guatemala*. Order of the President of the Court on February 14, 2019. Available in Spanish at: http://www.corteidh.or.cr/docs/asuntos/martinezcoronado_14_02_19.pdf

representatives.⁸ It also ordered that financial assistance be provided through the Court's Assistance Fund. The requested statements by affidavit were received on March 4, 2019.

11. *Final written arguments and observations.* On March 25, 2019, the representatives and the State submitted their respective final written arguments, and the Commission presented its final written observations.

12. *Assistance Fund disbursements.* On April 22, 2019, the Secretariat of the Inter-American Court (hereinafter "the Secretariat"), following the instructions of the President, informed the State of the disbursements through the Fund for this case and, in accordance with Article 5 of the Rules of the Inter-American Court of Human Rights on the Operation of the Assistance Fund, gave the State a deadline for presenting any observations it deemed relevant. The State presented its observations on April 26, 2019.

13. *Deliberation of the case.* The Court began deliberation of this judgment on May 9, 2019.

III JURISDICTION

14. The Inter-American Court has jurisdiction to hear this case pursuant to Article 62(3)⁹ of the American Convention because Guatemala has been a State Party to the American Convention since May 25, 1978, and accepted the contentious jurisdiction of the Court on March 9, 1987.

IV PRELIMINARY CONSIDERATIONS

A. Determination of alleged victims

A.1. Arguments of the parties and the Commission

15. With respect to the determination of alleged victims, the **Commission** indicated in Admissibility and Merits Report No. 78/17 that the alleged victim in this case is Manuel Martínez Coronado.

16. The **representatives** indicated that even though the Commission only identified Manuel Martínez Coronado as the alleged victim, his close family members should also be recognized as alleged victims because as the United Nations states, "The direct victims of abuse are not the only victims; their entire families, those under their care or custody, and those who have provided assistance in the midst of the abusive situation are also victims." They argued that his wife, Manuela Girón, and his children, Rony Disrael Martínez Girón, Irma Yojana Martínez Girón, and Marleny Girón, endured countless burdensome bureaucratic processes in the effort to prevent the death of their loved one, in a process that was carried out without due diligence or the fundamental

⁸ On March 4, 2019, the President of the Court issued an order granting a request by the Commission regarding the change in modality of the joint expert opinion of Parvais Jabbar and Edward Fitzgerald. That expert testimony was also offered in the cases of *Ruiz Fuentes* and *Girón et al.*, both against Guatemala. Accordingly, the deadline for presenting the opinion by affidavit was extended to March 18, 2019. On the final date, the affidavit was presented. Available in Spanish at: http://www.corteidh.or.cr/docs/asuntos/ruizfuentes_mart%C3%ADnezc coronado_gir%C3%B3nyotro_valenzuela%C3%A1vila_rod%C3%ADguezrevolorioyotros_04_03_19.pdf.

⁹ Article 62(3) of the Convention establishes that: "[t]he jurisdiction of the Court shall comprise all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the States Parties to the case recognize or have recognized such jurisdiction, whether by special declaration pursuant to the preceding paragraphs, or a special agreement."

assumptions of any criminal trial. Furthermore, Mr. Martínez Coronado had three sisters—Luisa Martínez Coronado, Vilma Arias Coronado, and Rosalina Martínez Coronado—who according to the representatives were profoundly affected by the death of their brother.

17. The **State** did not make any specific arguments concerning the determination of alleged victims.

A.2. Considerations of the Court

18. With respect to the identification of the alleged victims, the Court recalls that Article 35(1) of the Court's Rules of Procedure states that cases are to be submitted through the presentation of the Merits Report, which shall include the identification of the alleged victims. It is thus the Commission's responsibility to identify precisely and at the appropriate procedural moment the alleged victims in a case before the Court,¹⁰ except under the exceptional circumstances set forth in Article 35(2) of the Court's Rules of Procedure, pursuant to which, when it has been demonstrably impossible to identify them because the case concerns massive or collective violations, the Court shall decide whether to consider those individuals as victims, depending on the nature of the violation.¹¹

19. None of the objections set forth in Article 35(2) of the Court's Rules of Procedure are presented in this case. Accordingly, based on the rules established in Article 35(1) of the Rules of Procedure and the relevant precedents on which this Court has ruled (*infra* footnote 10), the Court concludes that Manuel Martínez Coronado is the only alleged victim in this case and it is not appropriate to admit the relatives of Mr. Martínez Coronado as alleged victims.

V EVIDENCE

A. Admissibility of documentary evidence

20. As in other cases, the Court acknowledges here the probative value of those documents that were presented by the parties and the Commission at the proper procedural moment, were not contested or opposed, and whose authenticity was not questioned¹² (*supra* paras. 1, 7, and 8).

21. The State asked the Court to reject annexes 18, 20, 32, 35, 37, and 38 presented by the representatives in their pleadings and motions brief,¹³ considering them irrelevant for deciding the merits of the case, as "they are not disputed facts related to the merits of this case, and instead of aiding in the determination of the truth, they obstruct it." This Court notes that because the annexes indicated above were submitted at the appropriate time with the pleadings and motions brief, the documents are part of the body of evidence in this case. The Court will assess their probative

¹⁰ Cf. *Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of Omeara Carrascal et al. v. Colombia. Merits, Reparations, and Costs*. Judgment of November 21, 2018. Series C No. 368, para. 55.

¹¹ Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of September 4, 2012. Series C No. 250, para. 48, and *Case of Vereda La Esperanza v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of August 31, 2017. Series C No. 341, para. 32.

¹² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, Reparations, and Costs*. Judgment of November 28, 2018. Series C No. 370, para. 45.

¹³ These annexes refer to the following: 18) Erroneous interpretation of the dissuasive effect, *El Observador Judicial*; 20) Amnesty International, Notice on the death penalty; 32) Amnesty International, Guatemala: The return of the death penalty; 35) Two letters sent by Manuel Martínez Coronado; 37) Amnesty International, The Death Penalty V. Human Rights: Why Abolish the Death Penalty?; and 38) Amnesty International, The Death Penalty – Your Questions Answered.

relevance in light of the State's arguments. Accordingly, the Court admits annexes 18, 20, 32, 35, 37, and 38.

B. Admissibility of testimonial and expert evidence

22. This Court finds it appropriate to admit the joint expert opinion provided by affidavit,¹⁴ insofar as it is in keeping with the purpose defined by the President in the order requiring it, as well as with the purpose of this case.

23. The State presented separate observations on the statements made by the relatives of Manuel Martínez Coronado.¹⁵ This **Court** notes that in its observations on the statements, the State contests their content, so the Court understands that this does not challenge their admissibility but rather their probative value. Accordingly, this Court admits the statements made by Manuela Girón, Rony Disrael Martínez Girón, Irma Yojana Martínez Girón, and Marleny Girón, which will be considered insofar as they are in keeping with the ordered purpose, bearing in mind the State's observations.

VI FACTS

24. In this chapter, the Court will establish the facts of the case based on the factual framework submitted by the Inter-American Commission, bearing in mind especially the absence of factual disputes between the arguments of the Commission, the representatives, and the State. These facts will be presented in the following order: A) legal context in Guatemala and B) facts related to the personal circumstances of the alleged victim, as well as the criminal trial and the execution of Manuel Martínez Coronado.

A. Legal context in Guatemala

A.1. Laws in force in Guatemala at the time of the facts

25. Article 18 of the Constitution of Guatemala establishes the possibility of imposing a death sentence.¹⁶ Article 43 of the Criminal Code states that the death penalty "is an extraordinary

¹⁴ The Court received the expert opinion provided by affidavit by the expert witnesses Parvais Jabbar and Edward Fitzgerald.

¹⁵ The Court received statements made by affidavit from Manuela Girón, Rony Disrael Martínez Girón, Irma Yojana Martínez Girón, and Marleny Girón. Regarding Manuela Girón, the State noted that her responses "are untruthful and are a bad faith attempt to attribute to the Guatemalan state criminal responsibility for the execution of Mr. Martínez Coronado," and it asked that "questions 7, 8, and 9 not be taken into account as they were not answered in accordance with the questions asked." Likewise, regarding the statements of Rony Disrael Martínez Girón, Irma Yojana Martínez Girón, and Marleny Girón, the State argued that "the State of Guatemala cannot be held internationally responsible for having enforced its domestic legal order or for wrongs suffered by supposed relatives due to the execution of Mr. Martínez Coronado."

¹⁶ Constitution of the Republic of Guatemala decreed by the Constituent Assembly on May 31, 1985, Amended by Popular Consultation Legislative Agreement 18-93

"Article 18. Death penalty. The death penalty may not be imposed in the following cases:

- a. On the basis of presumptions;
- b. On women;
- c. On those older than sixty years of age;
- d. On those convicted of political crimes and common crimes connected with political ones; or

measure that shall only be used in cases expressly designated by law and that shall be carried out only after all legal remedies have been exhausted.”¹⁷

26. Article 132 of the Criminal Code in force in 1995 classified murder in the following terms:

Murder is the killing of another person:

1) With malice aforethought. 2) For pay, recompense, or promise of either. 3) By means of or involving flooding, fire, poison, explosions, collapse of a building, or another tactic that could cause great destruction. 4) With clear premeditation. 5) With cruelty. 6) With an impulse for brutal viciousness. 7) To prepare for, facilitate, perpetrate, or hide another crime; to ensure its results or to evade punishment for oneself or one’s partners in crime; or because of a failure to obtain the intended result of another punishable offense. Murder carries a prison sentence of 20-30 years, but the death penalty shall be imposed instead of the maximum prison sentence if the perpetrator is deemed especially dangerous due to the circumstances of the act or the setting, the manner of carrying it out, or the underlying motives.¹⁸

27. The death penalty was applied only occasionally until the 1990’s. However, the State began to apply it again in 1996,¹⁹ first by firing squad, pursuant to Decree No. 234 of the Congress of the Republic,²⁰ and later by lethal injection, after Decree No. 234 was abrogated by Decree No. 100-96 in November of 1996, establishing this new method of execution.²¹

28. Decree No. 159 of April 19, 1892, of the National Legislative Assembly established the remedy of clemency as a final recourse available in Guatemalan legislation to grant a pardon or commute a sentence, and it set forth the procedures for doing so. On June 1, 2000, Decree No. 159 was abrogated by the Congress of the Republic of Guatemala through Legislative Decree No. 32-2000.

A.2. Legal framework concerning the joint defense of accused individuals

29. Article 95 of the Code of Criminal Procedure states that:

the defense of several accused individuals in the same proceedings by the same counsel is, in principle, inadmissible. The court with jurisdiction according to the stage of the proceedings, or the Public Prosecutor, can allow joint defense when there is clearly no incompatibility. When there is incompatibility, it can be corrected by providing the necessary public defenders, according to the procedures for assigning counsel.²²

e. On those who have been granted extradition on the condition that the death penalty will not be applied.

Against a sentence that imposes the death penalty, all of the pertinent legal remedies, including that of cassation, will be admissible; the cassation remedy will always be admitted for processing. The penalty will be executed after all of the remedies are exhausted.

The Congress of the Republic can abolish the death penalty.”

¹⁷ Criminal Code, Decree No. 17-73 of the Congress of the Republic of Guatemala, enacted on July 27, 1973

“Article 43. The death penalty is an extraordinary measure that shall only be used in cases expressly designated by law and that shall be carried out only after all legal remedies have been exhausted.

The death penalty may not be imposed:

1. For political crimes.
2. When the sentence is based on presumptions.
3. On women.
4. On men over seventy years of age.
5. On those who have been granted extradition on the condition that the death penalty will not be applied.

In these cases, and whenever the death penalty has been commuted to a deprivation of liberty, the maximum prison sentence will be imposed.”

¹⁸ Criminal Code, Decree No. 17-73, Article 132, *supra*.

¹⁹ Cf. Amnesty International, *The Return of the Death Penalty: Guatemala*. March of 1997, p. 3 (ESAP evidence file, annex 32, folios 1978 to 1987).

²⁰ Decree No. 234 of the Congress of the Republic of Guatemala, May 21, 1946.

²¹ Law establishing procedures for execution of the death penalty. Decree No. 100-96 of the Congress of the Republic of Guatemala, November 28, 1996. Article 7 establishes: “After the reading of the orders referred to in the preceding article, the death penalty shall be executed by lethal injection as described below [...]”

²² Code of Criminal Procedure, Decree No. 51-92 of the Congress of the Republic of Guatemala, enacted on December 7, 1992, Article 95. Available in Spanish at:

A.3. Changes to the legal order as regards the death penalty in Guatemala

30. On February 11, 2016, the Constitutional Court of Guatemala declared unconstitutional the second paragraph of Article 132 of the Criminal Code, concerning the dangerousness of the perpetrator as a criterion for applying the death penalty, and it declared that this ruling has “general” effects.²³

31. In the Court’s judgment of June 20, 2005, on Merits, Reparations, and Costs in the case of *Fermín Ramírez v. Guatemala*, this Court held that “the introduction in the criminal text of the dangerousness of the agent as a criterion for the criminal classification of the acts and the application of certain sanctions is not compatible with the freedom from ex post facto law and, therefore, contrary to the Convention.” Accordingly, it concluded that the State violated “Article 9 of the Convention, in relation to Article 2 of the same, for having maintained in force the part of Article 132 of the Criminal Code that refers to the dangerousness of the agent, once the Convention was ratified by Guatemala.”²⁴

32. Subsequently, in the order of the Inter-American Court of February 6, 2019, on monitoring compliance with judgment in the case of *Fermín Ramírez v. Guatemala*, the Court, referring to the judgment of the Constitutional Court of February 11, 2016, indicated that:

It would appear that the said judgment of the Constitutional Court declared the unconstitutionality of the only phrase of article 132 of the Criminal Code that established the possibility of applying the death penalty. It is not clear from the said judgment whether any possibility of applying the death penalty for the crime of murder in Guatemala has been eliminated, or whether it merely eliminated the possibility of applying it based on the dangerousness of the agent. However, based on the representatives’ assertion that a new legislative bill exists that would again apply the death penalty eliminating the phrase concerning the type of crime [...], it would appear that it did eliminate the possibility of applying the death penalty for that crime from the country’s laws. In this regard, in the hypothesis that, according to the laws of Guatemala, it is understood that the death penalty has been annulled for the crime of murder, the Court finds it necessary to recall that Article 4 of the American Convention reflects a “progressive and irreversible

http://ww2.oj.gob.gt/es/QueEsOJ/EstructuraOJ/UnidadesAdministrativas/CentroAnálisisDocumentaciónJudicial/pdfs/Código/CódigoProcesalPenal_CENADOJ.pdf

²³ Cf. Judgment of the Constitutional Court of Guatemala on February 11, 2016, File 1097-2015 (ESAP evidence file, annex 22, folios. 1463 to 1478). The ruling stated the following:

[T]his Court holds that the term dangerousness in the contested phrase, used as a decisive factor for sentencing, infringes the freedom from ex post facto laws, as only acts classified as crimes or failures and punishable by law prior to being committed can be punished. Because dangerousness is an endogenous characteristic whose inherently prospective nature precludes the precise determination of the legally protected interest that could be harmed, the punishment imposed would be linked to hypothetical conduct [...].

Even more serious would be psychobiological circumstances playing a role in the imposition of a punishment of the magnitude of the death penalty, which would constitute a severe reversal of the process of humanizing the repressive system of the past, whose rigid retributive theories considered capital punishment the final solution to the problem of delinquency [...].

The Constitutional Court [...] declares: I. Admissible the action brought for general partial unconstitutionality [...] of the second-to-last paragraph of Article 132 of the Criminal Code. The portion that reads “but the death penalty shall be imposed instead of the maximum prison sentence if the perpetrator is deemed especially dangerous due to the circumstances of the act or the setting, the manner of carrying it out, or the underlying motives. Those who do not receive the death penalty for this crime cannot be granted a reduced sentence for any reason” is declared unconstitutional. II. Accordingly, it will cease to have effect beginning the day after the publication of this judgment in the *Diario de Centro América*.

²⁴ *Case of Fermín Ramírez v. Guatemala. Merits, Reparations, and Costs*. Judgment of June 20, 2005. Series C No. 126, paras. 96 and 98. With respect to the dangerousness of the perpetrator, see also *Case of Raxcacó Reyes v. Guatemala. Merits, Reparations, and Costs*. Judgment of September 15, 2005. Series C No. 133, para. 77, and *Case of Fermín Ramírez v. Guatemala. Monitoring Compliance with Judgment*. Resolution of the Inter-American Court of Human Rights of February 6, 2019, considering paragraph 6.

process” that “absolutely prohibits the re-establishment of capital punishment for any crime, so that the decision of a State Party to the Convention, whensoever it was adopted, to abolish the death penalty becomes, *ipso jure*, a final and irrevocable decision.” The Convention “is clearly of a progressive nature; thus, without going so far as to decide on the abolition of the death penalty, it adopts the necessary provisions to definitively limit its application and its scope, so that its use is gradually reduced until it is finally eliminated.” In this way, if the death penalty was eliminated from the law for the crime of murder, it cannot be reinstated for that crime.²⁵

33. Moreover, in this Court's February 6, 2019, order, it noted that, at the date of the State's most recent report “there were no prisoners sentenced to death [in Guatemala], and capital punishment had not been applied since 2002 [...] [, and it took] note [...] [of the] general suspension of the application of this punishment linked to compliance with the measure of reparation [established in the judgment in this case] related to the obligation to regulate commutations of sentence in [its] jurisdiction.”²⁶

B. Personal circumstances of Manuel Martínez Coronado and facts concerning his criminal trial and execution

B.1. Personal circumstances of Manuel Martínez Coronado

34. Manuel Martínez Coronado, born in the town of Pozas Limón in Guatemala, lived at the time of the events in the town of El Palmar in the municipality of Quezaltepeque in the department of Chiquimula.²⁷ His family comprised his wife Manuela Girón²⁸ and their three children.²⁹

B.2. Facts concerning the criminal trial and execution of Manuel Martínez Coronado

35. Manuel Martínez Coronado and Mr. DA, his adoptive father, were accused of murdering seven people in the town of El Palmar; the events took place on May 16, 1995.³⁰

36. The criminal trial began on May 17, 1995, with an order issued by the justice of the peace of Quezaltepeque in the Department of Chiquimula to gather at the location of the events, where the site was inspected and the inspection was recorded. Afterward, an order to capture Messrs. Martínez Coronado and DA was issued.³¹ On May 18, 1995, initial statement proceedings took place with Mr. Martínez, in which he indicated that he had limited financial resources and desired to be assigned a public defender. As he did not have a defense counsel, he would not make a statement, so the proceedings were halted.³² On May 19, 1995, the initial statement of Mr. Martínez Coronado

²⁵ Cf. *Case of Fermín Ramírez v. Guatemala. Monitoring Compliance with Judgment, supra*, considering paragraph 13.

²⁶ Cf. *Case of Fermín Ramírez v. Guatemala. Monitoring Compliance with Judgment, supra*, considering paragraph 8.

²⁷ Cf. Judgment of the Criminal, Drug Trafficking, and Environmental Crimes Court in Chiquimula on October 26, 1995 (evidence file in Merits Report, annex 1, folios 2 to 26; ESAP annexes, annex 1, folios 963 to 987, and annexes to the answering brief, annex 16, folios 2202 to 2235).

²⁸ Cf. Civil Registry. Certificate of marriage between Manuel Martínez Coronado and Manuela Girón, issued on March 2, 2018 (ESAP evidence file, annex 35, folio 2004), and news article published in the newspaper *Al día* on February 10, 1998, with the title “Death chamber wedding vows” (ESAP evidence file, annex 19, folio 1154).

²⁹ At the time of the events, Manuel Martínez and Manuela Girón had three children: Rony Israel (age six), Irma Yojana (age four), and Marleny (age two). Cf. Statement by Rony Disrael Martínez Girón by affidavit before the Court (evidence file, affidavits and expert opinions, folios 2358 to 2363). However, neither the wife nor the children of Martínez Coronado have been deemed alleged victims in this case pursuant to Article 35(1) of the Rules of Procedure (*supra* para. 19).

³⁰ Cf. Judgment of the Criminal, Drug Trafficking, and Environmental Crimes Court in Chiquimula on October 26, 1995 (evidence file in Merits Report, annex 1, folios 2 to 26).

³¹ Cf. Site inspection record of May 17, 1995, issued by the justice of the peace of the town of El Palmar, Municipality of Quezaltepeque, Department of Chiquimula (evidence file with the answering brief, annex 2, folios 2049 to 2059).

³² Cf. Initial statement of Manuel Martínez Coronado on May 18, 1995, before the justice of the peace of Chiquimula (evidence file with the answering brief, annex 4, folios 2068 to 2070).

was expanded with the naming of a public defender,³³ who also represented Mr. DA. The same day, the order for the pretrial detention of Messrs. Martínez and DA³⁴ was issued as well as the order to prosecute.³⁵

37. On August 3, 1995, the Public Prosecutor presented a request to begin the trial and to formalize the case against Messrs. Martínez and DA for the crime of murder.³⁶

38. On August 21, 1995, the Second Court of the First Instance of Chiquimula ordered the opening of the case.³⁷ Then, on October 25, 1995, the public debate was held, in which witness testimony³⁸ was presented, including that of Messrs. Martínez and DA.

39. On October 26, 1995, the Criminal, Drug Trafficking, and Environmental Crimes Court in the Department of Chiquimula (hereinafter also "PNDA Court" for the Spanish) held both of the accused responsible for seven counts of murder, sentencing Mr. Martínez to death by lethal injection and Mr. Arias to 30 years in prison,³⁹ stating that:

[Manuel Martínez Coronado] and [DA] [...] are considered especially dangerous [...], and [...] due to the circumstances of the crime and the setting in which it was committed, the number of victims, the manner in which they were murdered, the underlying motives, and the numerous aggravating factors, this [c]ourt holds that both meet the criteria for the [death] penalty. [...] [However,] whereas Article 18 of the Constitution of Guatemala stipulates that the death penalty cannot be applied to anyone over sixty years of age, [DA] [...] is confirmed to be sixty-five years old at this time, and the [c]ourt is obligated to abide by constitutional provisions first and foremost, the [c]ourt decides to apply Article 18 of the Constitution in favor of [DA] [...] exclusively, as only his personal circumstances warrant it."⁴⁰

40. In its judgment, the PNDA Court also held that:

given the flagrant contradictions between the statements of the two accused and given the fact that all of the witnesses specified [...] above place [DA] in the home of Manuel Martínez Coronado in the early morning hours, [...the] [c]ourt decides to deny them any probative value. [Therefore,] [b]y virtue of the analysis of the evidence [...] and the fact that all relevant evidence points directly to the two accused [...] as the cause of the violent deaths of [... 7 people], the court considers it sufficiently proven that the same accused are the perpetrators of the [...] crimes [...].⁴¹

41. On November 8, 1995, Mr. JARL filed a special motion for appeal on behalf of Messrs. Martínez Coronado and DA against the October 26, 1995, judgment due to substantive defects in the ruling. It alleged a failure to observe the family law in the appointment of a guardian for the minor, who was the only witness to the crimes of which Mr. Martínez Coronado and his co-defendant were accused. A failure of due process is committed whenever said appointment was made by the PNDA Court when the law requires that a family court do so; thus, as the minor's statement is

³³ Cf. Expanded initial statement of Manuel Martínez Coronado on May 19, 1995, before the justice of the peace of Chiquimula (evidence file with the answering brief, annex 5, folios 2072 to 2077).

³⁴ Cf. Pretrial detention order of May 19, 1995, issued by the Second Court of First Instance of Chiquimula (evidence file with the answering brief, annex 6, folios 2078 to 2080).

³⁵ Cf. Order to prosecute of May 19, 1995, issued by the Second Court of First Instance of Chiquimula (evidence file with the answering brief, annex 7, folios 2081 to 2084).

³⁶ Cf. August 2, 1995, request to begin trial and formalize prosecution presented by the Public Prosecutor (evidence file with the answering brief, annex 12, folios 2132 to 2140). On August 3, 1995, the request was presented.

³⁷ Cf. Order to prosecute of August 21, 1995, issued by the Second Court of First Instance of Chiquimula (evidence file with the answering brief, annex 13, folios 2141 to 2146).

³⁸ Cf. Public debate record of October 25, 1995, issued by the Second Court of First Instance of Chiquimula (evidence file with the answering brief, annex 15, folios 2154 to 2201).

³⁹ Cf. Judgment of the Criminal, Drug Trafficking, and Environmental Crimes Court in the Department of Chiquimula on October 26, 1995, *supra*.

⁴⁰ Judgment of the Criminal, Drug Trafficking, and Environmental Crimes Court of the Department of Chiquimula on October 26, 1995, *supra*.

⁴¹ Judgment of the Criminal, Drug Trafficking, and Environmental Crimes Court of the Department of Chiquimula on October 26, 1995, *supra*.

invalid, it was argued that the decision should be reversed and the accused should be acquitted due to a lack of evidence.⁴² This motion was declared inadmissible on May 8, 1996, by the Sixth Division of the Court of Appeals,⁴³ as the appointment of the guardian for the minor was carried out in accordance with Article 213 of the Code of Criminal Procedure⁴⁴ “exclusively and solely for representation in legal proceedings derived from a criminal trial.”

42. On June 4, 1996, the attorney RARM submitted a cassation remedy without formalities against the May 8, 1996, judgment.⁴⁵ He later presented the grounds for that remedy in his August 5, 1996, brief,⁴⁶ in which he argued that the right to defense of Mr. Martínez Coronado was violated by virtue of the fact that he and his co-accused shared the same defense counsel, arguing that:

the principle of defense was violated through the conflict of interest between the accused [derived from] Article 12 of the Constitution [...] [and] specifically, the provisions of Article 95 of the [C]ode of Criminal Procedure [...] [because] the trial court and the division that heard the appeal never once commented on these issues; despite this, the Criminal, Drug Trafficking, and Environmental Crimes Court in Chiquimula, in its trial order that prompted this motion, established that blatant contradictions existed between the two accused, which contributed to the decision.⁴⁷

43. The Supreme Court of Justice found that remedy to lack merit on August 27, 1996, stating that:

[...] there was [no] violation of a constitutional or legal provision that required that the decision be reversed and duly corrected, given that in the appellant's sentencing the rights and guarantees set forth in the Constitution of the Republic of Guatemala and the treaties ratified by the State were observed, especially in regard to the right to defense and the principle of due process, which were fully respected, and even though it is true that both of the accused had the same counsel, it is also true that a reading of their respective statements shows that there was no obvious incompatibility between them that would have made it impossible to defend one without harming the other.⁴⁸

44. On September 24, 1996, Mr. Martínez Coronado presented a remedy of *amparo* before the Constitutional Court, constituted as an *amparo* court, on the basis of the following:

an erroneous application of the law and improper interpretation of the same, as the accused were appointed a common public defender despite the conflict of interest between them, an incompatibility that was not mentioned by the Judge or the Public Prosecutor.⁴⁹

⁴² Cf. Special Motion for Appeal presented by attorney JARL for Manuel Martínez Coronado and DA (evidence file with the Merits Report, annex 2, folios 27 to 34, and ESAP annexes, annex 2, folios 989 to 991). Note: It does not include the date of submission of the motion, but the parties indicated that it was submitted on November 8, 1995.

⁴³ Cf. Judgment issued by the Sixth Division of the Court of Appeals in the city of Zacapa on May 8, 1996 (evidence file with the Merits Report, annex 4, folios 38 to 47; ESAP annexes, annex 4, folios 998 to 1008, and annexes with the answering brief, annex 17, folios 2236 to 2259).

⁴⁴ Code of Criminal Procedure, *supra*.

“Article 213. (Statements by minors and incapacitated individuals). Minors under age 14 and individuals who did not understand the meaning of the right to abstain due to deficient mental faculties or immaturity shall require a decision by their legal representative or, if applicable, a guardian appointed for this purpose.”

⁴⁵ Cf. Cassation remedy without formalities presented on June 4, 1996, by attorney RARM for Manuel Martínez Coronado (evidence file with the Merits Report, annex 5, folios 48 to 53, and ESAP annexes, annex 5, folios 1009 to 1014).

⁴⁶ Cf. Brief with grounds for cassation remedy filed by RARM before the Supreme Court of Justice on August 5, 1996 (evidence file with the Merits Report, annex 6, folios 54 to 61, and ESAP annexes, annex 6, folios 1016 to 1022). Furthermore, this brief argued that there was a “violation of due process regarding the development and assessment of evidence [...]” due to the improper appointment of the guardian of the minor witness in the trial. It is also worth noting that a new defense counsel has begun work and introduced for the first time the allegation of joint defense (February 18, 1998, brief of RARM, IACHR procedural file, folios 822 to 831).

⁴⁷ Brief on the grounds of the cassation remedy filed by RARM before the Supreme Court of Justice on August 5, 1996, *supra*.

⁴⁸ Cassation remedy judgment issued by the Criminal Division of the Supreme Court of Justice on August 27, 1996 (evidence file with the Merits Report, annex 7, folios 62 to 75).

⁴⁹ The remedy of *amparo* also argued that the appointment of the guardian for the minor who rendered a statement that was “decisive for issuing a judgment” failed to meet the legal requirements. It also argued that “the accused was

45. On June 12, 1997, the Constitutional Court, constituted as an *amparo* court, declared the *amparo* unfounded, stating that “there is no evidence of a violation of constitutional provisions that would diminish or distort the legal defense of the accused in the respective criminal trial.”⁵⁰ That court did not provide specific reasoning on the unique nature of the public defense in this case, nor on the arguments regarding a violation of the right to defense for those reasons.

46. On July 3, 1997, Mr. Martínez Coronado presented a motion for clemency before the Minister of the Interior, asking that his death sentence be commuted to the maximum prison sentence of 50 years because the criminal trial against him had “violated due process [...], as during almost the entire trial [he] had a joint counsel with his co-accused, which is inadmissible [under] Article 95 of the Code of Criminal Procedure.”⁵¹

47. On July 16, 1997, the presidency of the Republic of Guatemala denied the petition for the remedy of clemency, stating that:

[i]n this case, the accused exhausted all judicial levels [...] [and] [t]here are no grounds in the record—neither in the conduct of the accused prior to being charged, nor in his conduct in prison—to grant clemency, nor are there significant facts regarding service to the country or reasons related to justice, equity, or the public good that would justify clemency, so the request should be denied.⁵²

48. Mr. Martínez Coronado, represented by the attorney RARM, presented a motion for review⁵³ of the October 26, 1995, judgment, alleging the “violation of the rights to defense and due process, and a blatant miscarriage of justice.”⁵⁴ The Criminal Division of the Supreme Court of Justice found that motion unfounded on October 23, 1997, stating that:

it refers to new facts and evidence [...] [h]owever, the petitioner neglected to state what those new facts were, merely reiterating the arguments already put forward when the motions were filed [...]. This was confirmed in the public hearing [...] when the attorney [RARM] [who] ma[d]e use of the motion for review [...] failed to produce new evidence: “I do not have more evidence to offer than what has already been processed in the trial. I base this motion on the deficiency of the evidence produced.”⁵⁵

49. On November 10, 1997, the First Court of Criminal Enforcement⁵⁶ set the date of execution for November 21 of the same year. In response, Mr. Martínez Coronado filed a motion for reversal

sentenced to death on the basis of presumptions.” This remedy is not included in the body of evidence. *Cf.* *Amparo* Judgment of the Constitutional Court on June 12, 1997 (ESAP evidence file, annex 8, folios 1037 to 1043).

⁵⁰ *Amparo* Judgment of the Constitutional Court on June 12, 1997, *supra*. The Constitutional Court also stated that: “the authority to judge and to enforce judgments belongs exclusively and independently to the courts of justice, which, as has been noted, does not permit the *amparo* to be brought before a court of review because, as has been held, the contested act is litigated in this way but arguments on the merits cannot be decided, because the task of assessing and approving them falls to the ordinary courts. Agreeing to review the contested order, as the petitioner desires, would thus be equivalent to usurping the legally defined role of the ordinary judge.”

⁵¹ Mr. Martínez also stated that the violation of the right to due process was infringed because “[...] the only witness and the witness whose testimony was decisive for sentencing, is a minor [...] for whom the [j]udge unlawfully appointed as a guardian [...] a [s]ocial [w]orker affiliated with the court itself, becoming judge and party at the same time in violation of the trial procedures established in the Civil Code [...]”. *Cf.* Motion for clemency presented before the Minister of the Interior on July 3, 1997 (evidence file with the Merits Report, annex 9, folios 83 to 88).

⁵² Resolution of the Presidency of the Republic on July 16, 1997 (evidence file with the Merits Report, annex 10, folios 89 to 91).

⁵³ This Court notes that the motion for review was not provided in the evidentiary record.

⁵⁴ Judgment issued by the Criminal Division of the Supreme Court of Justice on October 23, 1997 (evidence file with the Merits Report, annex 11, folios 92 to 98).

⁵⁵ *Cf.* Judgment issued by the Criminal Division of the Supreme Court of Justice on October 23, 1997, *supra*.

⁵⁶ *Cf.* Order of the First Court of Criminal Enforcement on November 17, 1997 (file of annexes to the answering brief, annex 23, folios 2296 to 2299). That order finds the motion for reversal filed by Manuel Martínez Coronado against the November 10, 1997, order inadmissible. This Court notes that the November 10, 1997, order was not provided in the evidentiary record.

on November 14, 1997,⁵⁷ arguing that there was a motion pending due to the complaint filed before the Inter-American Commission. On November 17, 1997, the First Court of Criminal Enforcement denied the petition, arguing that the records submitted by the convict did not constitute a legal motion of any kind and that the documents did not constitute a form of notification.⁵⁸

50. On November 18, 1997, the Commission ordered the State to adopt precautionary measures to stay the execution of Manuel Martínez Coronado (*supra* para. 2b). Because of this, on November 19, 1997, Mr. Martínez Coronado reiterated his request to the First Court of Criminal Enforcement to stay the sentence. On November 20, 1997, that court stated that it had not been duly notified of the requested precautionary measures by the Commission, so it denied the stay of execution.⁵⁹

51. Concurrently, Mr. Martínez filed an extraordinary remedy of *amparo* before the Fourth Division of the Court of Appeals, which granted a provisional *amparo* on its own initiative on November 19, 1997, staying the execution.⁶⁰ However, on November 20, 1997, the Division “revoke[d] the Provisional *Amparo* on its own initiative,” because a motion for appeal should have been filed, not a motion for reversal of the order that set the date of execution.⁶¹ Against the previous order, the Criminal Defense Public Service filed an appeal on behalf of Manuel Martínez Coronado before the Constitutional Court, and on November 21, 1997, it decided to annul the appealed order, which sent the proceedings back to the Fourth Division of the Court of Appeals, to continue processing the extraordinary remedy of *amparo*.⁶² The Third Division of the Court of Appeals, constituted as an *amparo* court, denied the remedy of *amparo* through an order on December 22, 1997.⁶³ On December 29, 1997, Mr. Martínez Coronado filed an appeal before the Constitutional Court against the December 22, 1997, judgment. The Constitutional Court responded by upholding the appealed judgment on January 21, 1998.⁶⁴

52. On February 2, 1998, the convict was notified of the decision of the First Court of Criminal Enforcement, which set the date of execution for February 10, 1998, at six o’clock.⁶⁵

53. On February 9, 1998, several proceedings took place, including a remedy of *amparo* by the Center for Legal Action on Human Rights before the Constitutional Court requesting a stay of execution; this request was denied the same day. Furthermore, on February 9, Mr. Martínez Coronado, through the Criminal Defense Public Service, presented a request for a stay of execution until a final decision by the Inter-American Commission in the hearing scheduled for February 23, 1998; this request was denied by the First Court of Criminal Enforcement based on the argument that it lacked jurisdiction to stay the execution and the matter was *res judicata*. Lastly, the Commission on February 9, 1998, reiterated its request for precautionary measures.⁶⁶

⁵⁷ Cf. Order issued by the Third Division of the Court of Appeals, constituted as an *amparo* court, on December 22, 1997 (evidence file with the answering brief, annex 28, folios 2314 to 2327).

⁵⁸ Cf. Order issued by the First Court of Criminal Enforcement on November 17, 1997 (evidence file with the answering brief, annex 23, folios 2296 to 2299).

⁵⁹ Cf. Order issued by the First Court of Criminal Enforcement on November 20, 1997 (evidence file with the answering brief, annex 24, folios 2300 to 2302).

⁶⁰ Cf. Order issued by the Fourth Division of the Court of Appeals, constituted as an *amparo* court, on November 19, 1997 (evidence file with the answering brief, annex 25, folios 2303 to 2305).

⁶¹ Cf. Order issued by the Fourth Division of the Court of Appeals, constituted as an *amparo* court, on November 20, 1997 (evidence file with the answering brief, annex 27, folios 2308 to 2313).

⁶² Cf. Appeal of November 21, 1997 (IACHR procedural file, folios 109 to 118), and Order of the Constitutional Court of November 21, 1997 (IACHR procedural file, folios 119 to 124).

⁶³ Cf. Order issued by the Third Division of the Court of Appeals, constituted as an *amparo* court, on December 22, 1997, *supra*.

⁶⁴ Cf. Judgment issued by the Constitutional Court on January 21, 1998 (evidence file with the answering brief, annex 29, folios 2330 to 2340).

⁶⁵ Final judgment of the First Court of Criminal Enforcement on February 2, 1998 (evidence file with the Merits Report, folios 99 to 104, and ESAP annexes, annex 12, folios 1060 to 1064).

⁶⁶ Cf. Remedy of *amparo* presented on February 9, 1998 (IACHR procedural file, folios 413 to 424); Order of the Constitutional Court, acting as an extraordinary *amparo* court, on February 9, 1998 (IACHR procedural file, folios 425 to

54. On February 10, 1998, Manuel Martínez Coronado was executed by lethal injection.⁶⁷

VII MERITS

55. This case concerns the alleged international responsibility of the State for imposing the death penalty on the basis of a criminal definition that included dangerousness as a key element and for alleged violations of the right to defense during the criminal trial of Manuel Martínez Coronado. This trial resulted in a conviction and death sentence for Mr. Martínez, who was executed by lethal injection on February 10, 1998.

VII.1 RIGHT TO LIFE AND FREEDOM FROM EX POST FACTO LAWS (Articles 4⁶⁸ and 9⁶⁹ of the American Convention on Human Rights, in conjunction with Articles 1(1) and 2)

56. In this chapter, the Court will examine the arguments concerning the arbitrary deprivation of life and the violation of the freedom from ex post facto laws, derived from Articles 4 and 9 of the American Convention, in conjunction with Articles 1(1) and 2 of the Convention, as a result of the imposition of the death penalty on Mr. Martínez Coronado.

A. Arguments of the Commission and the parties

57. The *Commission* concluded that the imposition of the death penalty resulted in an arbitrary deprivation of life in violation of Articles 4(1) and 4(2) of the Convention and a violation of the freedom from ex post facto laws established in Article 9, all in conjunction with the obligations set forth in Articles 1(1) and 2, by imposing the death penalty in a trial that violated due process and by applying a law that is incompatible with the freedom from ex post facto laws in establishing future dangerousness as a criterion for imposing the sentence.

58. The *representatives* argued that there was a violation of the right to life, derived from Articles 4(1), 4(2), and 4(6) and the guarantee established in Article 63(2), all from the American Convention. They concluded that there is an arbitrary deprivation of life through the violation of due process in the imposition of the criterion of dangerousness to determine Mr. Martínez Coronado's sentence.

431), and a communication from the Commission to the State of Guatemala on February 9, 1998 (IACHR procedural file, folios 435 to 436).

⁶⁷ Cf. Record from February 10, 1998 (evidence file with the answering brief, annex 30, folios 2343 to 2344).

⁶⁸ Article 4. Right to Life. "1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life. 2. In countries that have not abolished the death penalty, it may be imposed only for the most serious crimes and pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime. The application of such punishment shall not be extended to crimes to which it does not presently apply. 3. The death penalty shall not be reestablished in states that have abolished it. 4. In no case shall capital punishment be inflicted for political offenses or related common crimes. 5. Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age; nor shall it be applied to pregnant women. 6. Every person condemned to death shall have the right to apply for amnesty, pardon, or commutation of sentence, which may be granted in all cases. Capital punishment shall not be imposed while such a petition is pending decision by the competent authority."

⁶⁹ Article 9. Freedom from Ex Post Facto Laws. "No one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed. A heavier penalty shall not be imposed than the one that was applicable at the time the criminal offense was committed. If subsequent to the commission of the offense the law provides for the imposition of a lighter punishment, the guilty person shall benefit therefrom."

59. The **State** declared that prior to the imposition of the death sentence, Mr. Martínez Coronado's criminal trial respected all legal rights and presented no obstacles of any kind to the exhaustion of domestic remedies. With respect to the freedom from ex post facto laws, it noted that under its legislation, the term "dangerousness of the agent" was in effect at the time of Mr. Martínez Coronado's conviction; thus, the law in effect at the time was applied.

B. Considerations of the Court

60. To examine the alleged violation of Manuel Martínez Coronado's right to life, it is important to recall that the Court has repeatedly established that the right to life plays a fundamental role in the American Convention, as it is a prior condition for the realization of the other rights. States have the obligation to ensure the creation of such conditions as may be required to avoid violations of this inalienable right and, specifically, to prevent attempts against it by the agents of the State. Observing Article 4, in relation to Article 1(1) of the American Convention, means not only that no one is deprived of their life arbitrarily (a negative obligation), but also that states must adopt all appropriate measures to protect and preserve the right to life (a positive obligation), in accordance with the duty to ensure full and free exercise of the rights of the people within their jurisdiction.⁷⁰ For this reason, this article establishes a clearly restrictive framework regarding the death penalty, as can be inferred from a reading of subparagraphs 2, 3, 4, 5, and 6 (*supra* footnote 68). Thus, this provision is clearly restrictive and exceptional in its treatment of the imposition and application of the death penalty.

61. As this Court noted in its Advisory Opinion OC-3/83:

The subject is governed by a substantive principle laid down in the first paragraph, which proclaims that "every person has the right to have his life respected," and by the procedural principle that "no one shall be arbitrarily deprived of his life." Moreover, in countries which have not abolished the death penalty, it may not be imposed except pursuant to a final judgment rendered by a competent court and in accordance with a law establishing such punishment, enacted prior to the commission of the crime [...]. The fact that these guarantees are envisaged in addition to those stipulated in Articles 8 and 9 clearly indicates that the Convention sought to define narrowly the conditions under which the application of the death penalty would not violate the Convention in those countries that had not abolished it.⁷¹

62. From this perspective, Article 4 of the American Convention indicates that in the exceptional cases in which States are allowed to apply the death penalty, this possibility is subject to a set of strict limitations. It establishes that the death penalty can be imposed only for the most serious crimes (Article 4(2)), and it absolutely prohibits its application for political crimes and for related common crimes (Article 4(4)). The fact that the American Convention narrows the scope of possible application of the death penalty to include only the most serious common crimes, not related crimes, reveals its purpose of considering the death penalty applicable only under exceptional conditions. Lastly, concerning the individual convicted, the Convention prohibits the imposition of the death penalty for those who were under age 18 or over age 70 at the time of the crime, and it prohibits its application for pregnant women (Article 4(5)).

63. Also, however, Article 4 is abolitionist with respect to the death penalty. This is reflected in its second subparagraph, which prohibits its application for "crimes to which it does not presently apply," and according to its third subparagraph, "The death penalty shall not be reestablished in states that have abolished it." The intention here is to move toward a final prohibition of this type

⁷⁰ Cf. *Case of the Pueblo Bello Massacre v. Colombia*. Judgment of January 31, 2006. Series C No. 140, para. 120, and *Case of Omeara Carrascal et al. v. Colombia*, *supra*, para. 175.

⁷¹ Cf. Restrictions to the death penalty (Arts. 4(2) and 4(4) American Convention on Human Rights). Advisory Opinion OC-3/83 of September 8, 1983. Series A No. 3, para. 53.

of criminal punishment through a gradual, irreversible process within States Parties to the American Convention. Thus, the decision of a State Party to the American Convention, at any time, to abolish the death penalty becomes, *ipso jure*, a final and irrevocable order. In this matter, the Convention points toward a gradual abolition, through the adoption of safeguards necessary for irrevocably restricting its application and scope over time until it is completely eliminated.

64. This abolitionist character is recognized in the Protocol to the American Convention on Human Rights to Abolish the Death Penalty⁷² (hereinafter also "Protocol"), which notes in the considering paragraphs:

That Article 4 of the American Convention on Human Rights recognizes the right to life and restricts the application of the death penalty;

That everyone has the inalienable right to respect for his life, a right that cannot be suspended for any reason;

That the tendency among the American States is to be in favor of abolition of the death penalty;

That application of the death penalty has irrevocable consequences, forecloses the correction of judicial error, and precludes any possibility of changing or rehabilitating those convicted;

That the abolition of the death penalty helps to ensure more effective protection of the right to life;

That an international agreement must be arrived at that will entail a progressive development of the American Convention on Human Rights; and

That States Parties to the American Convention on Human Rights have expressed their intention to adopt an international agreement with a view to consolidating the practice of not applying the death penalty in the Americas.

65. Furthermore, Article 1 establishes that "[t]he States Parties to this Protocol shall not apply the death penalty in their territory to any person subject to their jurisdiction," and Article 2 declares that "[n]o reservations may be made to this Protocol. However, at the time of ratification or accession, the States Parties to this instrument may declare that they reserve the right to apply the death penalty in wartime in accordance with international law, for extremely serious crimes of a military nature."

66. The Court notes that 13⁷³ States have signed the Protocol to the American Convention on Human Rights to Abolish the Death Penalty and have accepted its jurisdiction and abolished the death penalty. The Court urges the remaining States to sign the Protocol and prohibit this type of criminal punishment.

67. In this sense, the American Convention is in harmony with the prevailing trend in the global human rights system. For example, United Nations General Assembly Resolution No. 62/149 on a moratorium of the use of the death penalty notes that the use of the death penalty undermines human dignity and that a moratorium on the use of the death penalty contributes to the gradual improvement and development of human rights. Moreover, it is noted that there is no conclusive evidence on the effectiveness of the death penalty as a deterrent and that any legal errors in its

⁷² Cf. Protocol to the American Convention on Human Rights to Abolish the Death Penalty. Signatories and ratifications. Available at: <http://www.oas.org/juridico/english/treaties/a-53.html>

⁷³ The 13 States in the inter-American system that have signed the Protocol to the American Convention on Human Rights to Abolish the Death Penalty are: Argentina, Costa Rica, Ecuador, Honduras, Mexico, Nicaragua, Panama, Paraguay, Dominican Republic, Uruguay, Venezuela; and two have ratified the protocol with a reservation on the wartime application of the death penalty for serious crimes of a military nature: Brazil and Chile. Cf. *Protocol to the American Convention on Human Rights to Abolish the Death Penalty, supra*.

use and any denials of justice in its application are irreversible and irreparable. It recommends that States gradually restrict the use of the death penalty and reduce the number of crimes for which it can be imposed, and it reminds those that have abolished it not to reintroduce it.⁷⁴ This position has since been reiterated in resolutions and reports on capital punishment.

68. The Court stresses, however, that in the sentencing of Mr. Martínez Coronado, Article 132 of the Guatemalan Criminal Code in effect at the time, which defined the crime of murder, was applied (*supra* para. 26). Mr. Martínez Coronado was sentenced to death pursuant to the second paragraph of that article, which established the application of the death penalty “if the perpetrator is deemed especially dangerous due to the circumstances of the act or the setting, the manner of carrying it out, or the underlying motives.”

69. This Court has already had the opportunity to rule specifically on the application of Article 132 of the Criminal Code and the concept of “future dangerousness” in the case of *Fermín Ramírez v. Guatemala*. In that judgment, the Court held that it violated the American Convention, specifically Article 9 of the Convention, and ordered that Article 132 be brought into agreement with international human rights law. In that judgment, the Court stated that:

⁷⁴ Cf. United Nations General Assembly “Moratorium on the use of the death penalty,” A/RES/62/149 (February 26, 2008), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N07/472/71/PDF/N0747271.pdf?OpenElement>. Also cf. United Nations General Assembly “Moratorium on the use of the death penalty,” A/RES/63/168 (February 13, 2009), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/480/87/PDF/N0848087.pdf?OpenElement>; United National General Assembly “Moratorium on the use of the death penalty,” A/RES/65/206 (March 28, 2010), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N10/524/90/PDF/N1052490.pdf?OpenElement>; United National General Assembly “Moratorium on the use of the death penalty,” A/RES/67/176 (March 20, 2013), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/489/16/PDF/N1248916.pdf?OpenElement>; United National General Assembly “Moratorium on the use of the death penalty,” A/RES/69/186 (February 4, 2015), available at: <https://www.undocs.org/A/RES/69/186>; United National General Assembly “Moratorium on the use of the death penalty,” A/RES/71/187 (February 2, 2017), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/454/48/PDF/N1645448.pdf?OpenElement>; United National General Assembly “Moratorium on the use of the death penalty,” A/RES/73/175 (January 23, 2019), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/449/69/PDF/N1844969.pdf?OpenElement>; Annual report of the United Nations High Commissioner for Human Rights, “Question of the death penalty,” A/HRC/18/20 (July 4, 2011), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/143/40/PDF/G1114340.pdf?OpenElement>; Annual report of the United Nations High Commissioner for Human Rights, “Question of the death penalty,” A/HRC/21/29 (July 2, 2012), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/148/77/PDF/G1214877.pdf?OpenElement>; Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, A/69/265, (August 6, 2014), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N14/497/36/PDF/N1449736.pdf?OpenElement>; Report of the United Nations High Commissioner for Human Rights, “High-level panel discussion on the question of the death penalty,” A/HRC/30/21, (July 16, 2015), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/159/05/PDF/G1515905.pdf?OpenElement>; Annual report of the United Nations High Commissioner for Human Rights, A/HRC/37/3 (January 26, 2018), available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/019/41/PDF/G1801941.pdf?OpenElement>; Human Rights Committee, General Comment CCPR-GC-32 “Right to equality before courts and tribunals and to a fair trial,” available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G07/437/71/PDF/G0743771.pdf?OpenElement>; cf. Committee on the Elimination of Discrimination against Women, General Comment CEDAW-GR-30 “Women in conflict prevention, conflict and post-conflict situations,” CEDAW/C/GC/30, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/543/31/PDF/N1354331.pdf?OpenElement>, and Inter-American Commission on Human Rights, OEA/Ser.L/V/II. Doc. 68 “The Death Penalty in the Inter-American Human Rights System: from Restrictions to Abolition” (December 31, 2011), available at: <https://www.refworld.org/docid/51ff79c74.html>.

90. The freedom from ex post facto laws constitutes one of the central elements of the criminal prosecution in a democratic society. By establishing that “no one shall be convicted of any act or omission that did not constitute a criminal offense, under the applicable law, at the time it was committed,” Article 9 of the Convention obliges the States to define those criminal “actions or omissions” in the most clear and precise manner possible.

[...]

93. If the dangerousness of the agent implies a criminal consequence of such serious nature, as occurs in the case of Murder, pursuant to the Guatemalan law, the personal circumstances of the agent must be part of the indictment, they must be proven during the trial, and analyzed in the judgment. [...]

94. In the opinion of this Court, the problem presented by the citing of the dangerousness cannot only be analyzed in light of the guarantees of the due process, within Article 8 of the Convention. This citing has a greater scope and seriousness. In effect, it clearly constitutes an expression of the exercise of the state’s *ius puniendi* over the basis of the personal characteristics of the agent and not the act committed, that is, it substitutes the Criminal System based on the crime committed, proper of the criminal system of a democratic society, for a Criminal System based on the situation of the perpetrator, which opens the door to authoritarianism precisely in a subject in which the juridical rights of greatest hierarchy are at stake.

95. The assessment of the agent’s dangerousness implies the judge’s appreciation with regard to the possibility that the defendant will commit criminal acts in the future, that is, it adds to the accusation for the acts committed, the prediction of future acts that will probably occur. [...]

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

97. [...] [i]f the States, pursuant to Article 2 of the American Convention, have a positive obligation to adopt the legislative measures necessary to guarantee the exercise of the rights recognised in the Convention, it follows, then, that they also must refrain both from promulgating laws that disregard or impede the free exercise of these rights, and from suppressing or modifying the existing laws protecting them. These acts would likewise constitute a violation of Article 2 of the Convention.

98. Based on all the above, the Court considers that the State has violated Article 9 of the Convention, in relation to Article 2 of the same, for having maintained in force the part of Article 132 of the Criminal Code that refers to the dangerousness of the agent, once the Convention was ratified by Guatemala.⁷⁵

70. The use of the criterion of dangerousness of the agent, both in classifying the facts of the criminal act committed by Mr. Martínez Coronado and in determining the appropriate punishment, is incompatible with the freedom from ex post facto laws established in the American Convention. Assessing the dangerousness of the agent entails an evaluation of facts that have not occurred, so the punishment is then based on a judgment of the personality of the perpetrator and not on the alleged criminal acts according to the applicable criminal definition. Therefore, this Court holds that the State is responsible for violating Article 9 of the American Convention, in conjunction with Articles 1(1) and 2 of the Convention, to the detriment of Mr. Martínez Coronado.

71. It is important to note that when this Court issued its judgment in the case of *Fermín Ramírez*, the death penalty had not been applied against the victim, so the Court held that there was no violation of Article 4 of the American Convention in the facts of the case. Mr. Martínez Coronado, however, was executed by lethal injection on February 10, 1998. As the death penalty was imposed here on the basis of a law incompatible with the American Convention, this Court finds the State responsible for violating Articles 4(1) and 4(2) of the Convention, in conjunction with Article 1(1).

72. The Court stresses that the violation of the freedom from ex post facto laws here consists of two elements: a) the indeterminacy of the concept of “future dangerousness” contained in Article

⁷⁵ Case of *Fermín Ramírez v. Guatemala. Merits, Reparations, and Costs*, supra, paras. 90 and 93 to 98.

132 of the Criminal Code and b) the application against Mr. Martínez Coronado of the punishment established in that provision (the death penalty).

73. Moreover, the **representatives** also argued with respect to the motion for clemency that it is a violation of Article 4(6) of the Convention, as “the Guatemalan legal system lacks a regulatory mechanism for it.” However, the July 16, 1997, resolution indicates that Guatemala processed and decided on the motion for clemency (*supra* para. 46), fulfilling its obligation under Article 4(6) in accordance with its international obligations. Accordingly, this Court finds that Article 4(6) of the Convention was not violated in this case.

C. Conclusion

74. Therefore, bearing in mind the application of the death penalty as a consequence of the concept of the “future dangerousness” of the agent, this Court finds the State internationally responsible for violating the rights established in Article 9 of the American Convention, in conjunction with Articles 1(1) and 2, and Articles 4(1) and 4(2) of the Convention, in conjunction with Article 1(1), to the detriment of Manuel Martínez Coronado. This Court also finds that Article 4(6) of the Convention was not violated in this case.

VII.2

RIGHT TO A FAIR TRIAL

(Article 8⁷⁶ of the American Convention on Human Rights, in conjunction with Article 1(1))

A. Arguments of the Commission and the parties

75. The **Commission** concluded that the joint public defense of Mr. Martínez Coronado and his co-accused constitutes a violation of the right to a fair trial with respect to the provisions of Articles 8(1), 8(2)(c), and 8(2)(e) of the American Convention and of Article 25(1), in conjunction with obligations derived from Article 1(1), to the detriment of Mr. Martínez Coronado. It argued that this joint counsel resulted in inadequate preparation for the technical defense in the criminal trial, with respect to the State’s obligation to provide a quality public defense and the low probative value of the statements of the co-accused, given the inconsistencies among them and the incompatibility of their defenses. Furthermore, it argued that Mr. Martínez Coronado did not have an effective remedy for the violation of his right to defense because domestic decisions did not provide a rationale for departing from the general norm of the incompatibility of joint defense counsel. It argued that the ruling lacked consistent reasoning and even inverted the meaning of Article 95 of the Code of Criminal Procedure.

76. Likewise, the **representatives** argued that the State violated the right to a fair trial with respect to the provisions of Articles 8(1), 8(2)(c), and 8(2)(e) of the American Convention, in conjunction with obligations derived from Article 1(1), to the detriment of Mr. Martínez Coronado. They noted that Mr. Martínez Coronado’s right to defense was violated by sharing defense counsel

⁷⁶ Article 8. Fair Trial. “1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees: [...] c. adequate time and means for the preparation of his defense; [...] e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law.”

with his co-accused, resulting in an ineffective defense in which his testimony was discredited by the court because it clearly conflicted with that of his co-accused.

77. The **State** argued that because the legal system provides for the possibility of the court with jurisdiction accepting the joint defense of several accused individuals and domestic courts did not see any conflict in this, their decision should be respected because it was consistent with national proceedings. The State thus contests the alleged violations of Article 8, in conjunction with Articles 1(1) and 2 of the American Convention. Regarding the alleged violation of Article 25 of the Convention, the State noted that Mr. Martínez Coronado enjoyed legal protection to make use of all available domestic remedies, which were heard and decided in accordance with existing laws. It argued that the fact that those were not decided in favor of Mr. Martínez Coronado does not mean the State has failed to meet its international obligation to ensure the right to legal protection.

B. Considerations of the Court

78. It is important to note first that the Court considers that the analysis of the arguments presented by the Commission and the representatives concerning the alleged violation of Articles 8(1) and 25(1) of the American Convention are related to the alleged lack of minimum guarantees for an adequate defense in this case and thus should be analyzed under Article 8(2) of the Convention.

79. This Court notes that in this case, it is an undisputed fact that on May 18, 1995, in his initial formal statement, Mr. Martínez Coronado asked that a public defender be appointed for him due to his financial situation. An attorney, JARL, was therefore appointed for him on May 19, 1995 (*supra* para. 36). It is an undisputed fact that he also acted as counsel for DA, Mr. Martínez Coronado's co-accused. In addition, the attorney initially appointed was later replaced by RARM⁷⁷ as joint counsel for both of the accused (*supra* footnote on page 46).

80. On October 26, 1995, the Criminal, Drug Trafficking, and Environmental Crimes Court of Chiquimula sentenced Mr. Martínez Coronado⁷⁸ to death and Mr. DA to 30 years in prison. That decision (*supra* paras. 39 and 40), stated that:

[i]n his statement, the defendant [Martínez Coronado] denied having committed the acts described to him, indicating that he only heard of the incident because Mr. [DA] came to tell him that he had heard shots fired in his brother's house and he went with him (because he knew first aid) in order to help; that he heard this from [DA] around one o'clock on the seventeenth of May of the current year and later went with Román to his house to ask for help and did not find him; he denied having given the minor Jaime ten quetzals to keep quiet and having said something about being disappointed that the minor had been able to escape; [also,] the defendant [DA] denied having heard shots fired and said he had heard of the incident around six o'clock when he left his house, went toward his brother Juan's land, saw him on the ground, and went to look for help; [thus,] given the [b]latant contradictions the defendants engaged in [...] this Court decides to deny [their statements] any probative value."⁷⁹

81. This alleged contradiction between the statements of Manuel Martínez Coronado and DA constitutes the basis for the argument made by the Commission and the representatives that there was a violation of the right to defense. In the cassation remedy filed without formalities, it was

⁷⁷ The evidence file before this Court does not indicate the exact date on which RARM was appointed defense counsel in the case. The brief presented by the defense counsel to the Commission on February 18, 1998, stated that on June 4, 1996, a cassation remedy had been filed without formalities and that "from that point on, the presented counsel [RARM] worked in that capacity, incorporating the allegation regarding the double defense argued by his predecessor" (brief by RARM on February 18, 1998, IACHR procedural file, folios 823 to 830).

⁷⁸ Both Mr. Martínez Coronado and Mr. DA were found by the court to be "guilty on seven counts of murder." However, they received different sentences because of the court's reasoning detailed above (*supra* para. 39).

⁷⁹ Judgment of the Criminal, Drug Trafficking, and Environmental Crimes Court of Chiquimula on October 26, 1995, *supra*.

argued that there was a possible violation of the right to defense due to the alleged incompatibility of the joint defense (*supra* paras. 29 and 42).

82. Regarding the content and scope of Articles 8(2)(c) and 8(2)(e) of the Convention, this Court has already noted, with respect to public defenders, “the fundamental importance of cost-free legal counsel services for promoting and protecting the right of access to justice for everyone, particularly those who are especially vulnerable.” The institution of the public defender, through the provision of cost-free public legal aid, undoubtedly serves to adequately compensate for the procedural inequality of those facing the punitive power of the State, who are in a particularly vulnerable situation by being deprived of liberty, and to guarantee their effective access to justice on equal terms.⁸⁰

83. Nevertheless, the Court has considered that the appointment of a defense counsel for the sole purpose of complying with a procedural formality would be tantamount to not having technical legal representation; therefore, it is imperative that the defense counsel act diligently in order to protect the procedural guarantees of the accused and thereby prevent his rights from being violated,⁸¹ thereby breaking the bond of trust. Therefore, the institution of the public defender, as a mechanism through which the State guarantees the inalienable right of any individual accused of a crime to be assisted by defense counsel, must provide sufficient guarantees to ensure effective action, on equal terms with the prosecution. The Court has recognized that to accomplish this objective the State must adopt all appropriate measures⁸² to ensure access to qualified and trained defense attorneys who can act with functional autonomy.⁸³

84. The right to defense includes an effective and prompt defense, conducted by qualified professionals, which safeguards the specific interests of the accused and is not merely intended to comply with a formality in order to legitimize the proceeding. Thus, any form of “apparent” defense would violate the American Convention. In this regard, “[t]he bond of trust must be protected in every way possible within the public defense systems and [therefore, there must be] expeditious and prompt mechanisms so that the accused can request that the standard of his defense be evaluated. Moreover, no public defender may subordinate the interests of the person he is defending to other social or institutional interests or to the preservation of ‘justice.’”⁸⁴

85. The legal issue for analysis here is whether the State’s provision of joint defense counsel for the alleged victim and his co-accused is compatible with the Convention, in particular with Mr. Martínez Coronado’s right to defense. The Commission and the representatives argue that the joint public defense had a negative impact on the interests of Mr. Martínez.

86. As a starting point, the Court notes that Article 95 of the Code of Criminal Procedure states that: “[t]he defense of several accused individuals in the same proceedings by the same counsel is, in principle, inadmissible. The court with jurisdiction according to the stage of the proceedings, or the Public Prosecutor, can allow joint defense when there is clearly no incompatibility. When there is incompatibility, it can be corrected by providing the necessary public defenders, according to the procedures for assigning counsel (*supra* para. 29). Thus, according to that text, the joint defense

⁸⁰ Cf. *mutatis mutandi*, *Case of Vélez Loo v. Panama. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 23, 2010. Series C No. 218, para. 132, and *Case of Ruano Torres et al. v. El Salvador. Merits, Reparations, and Costs*. Judgment of October 5, 2015. Series C No. 303, para. 156.

⁸¹ Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 155, and *Case of Ruano Torres et al. v. El Salvador, supra*, para. 157.

⁸² Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 159, and *Case of Ruano Torres et al. v. El Salvador, supra*, para. 157.

⁸³ Cf. *Case of Ruano Torres et al. v. El Salvador, supra*, para. 157.

⁸⁴ Cf. *Case of Ruano Torres et al. v. El Salvador, supra*, para. 158.

of accused individuals, whether by private counsel or by those appointed by the State as public defenders, is in principle prohibited, with the only exception being that it is allowed when there is no apparent incompatibility.

87. This Court believes that it is the State's responsibility, through the appropriate authorities, to determine whether such incompatibilities exist and to adopt measures to guarantee the co-accused individuals' right to defense. This principle is particularly important in cases in which the accused can face a severe sentence, such as the death penalty. In addition, the existence of inconsistencies in the statements made by the co-accused during a criminal trial does not necessarily mean their defenses and interests are incompatible in ways that would preclude joint defense.

88. In this case, however, the contradictions between the statements of the co-accused concern substantive elements of the version of the facts put forward by Mr. Martínez Coronado, such that the contradiction deprived him of a substantive element of his defense. In fact, the judgment in the trial court mentions the fact that Mr. Martínez Coronado states that his co-accused informed him at one in the morning that he had heard shots fired, which is why he went to the location of the crime, while DA denied those facts and stated that he found out about the homicides at six in the morning. The inconsistencies between the statements of the co-accused should have been noted by the joint counsel, who should have made the court aware of them for the purpose of naming another public defender; alternatively, even the legal authorities charged with directing the trial should have taken, on their own initiative, the steps necessary for guaranteeing the right to defense, as this was a public defense provided by the State. Accordingly, the Court concludes that the State failed to fulfill its duty to guarantee the inalienable right to be assisted by a public defender who would ensure the accused would receive an adequate defense, in violation of Articles 8(2)(c) and 8(2)(e) of the American Convention, insofar as the joint defense violated the rights of Mr. Martínez Coronado.

89. This Court holds, therefore, that given the failure of the State to provide the minimum guarantees necessary for an adequate defense, the State is responsible for violating Articles 8(2)(c) and 8(2)(e) of the American Convention, in conjunction with Article 1(1) of the Convention, to the detriment of Manuel Martínez Coronado.

VIII REPARATIONS (Application of Article 63(1) of the American Convention)

90. Pursuant to the provisions of Article 63(1) of the American Convention,⁸⁵ the Court has held that every violation of an international obligation which results in harm creates a duty to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.⁸⁶

91. Remedying the harm produced by the infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in restoring the prior

⁸⁵ Article 63(1) of the American Convention establishes that: "[i]f the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party."

⁸⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Muelle Flores v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of March 6, 2019. Series C No. 375, para. 220.

situation.⁸⁷ When this is not feasible, as in the majority of cases of human rights violations, this Court will determine measures to guarantee the violated rights and to remedy the consequences of those violations.⁸⁸ Therefore, the Court has found it necessary to grant various measures of reparation in order to redress the harm comprehensively; thus, in addition to pecuniary compensation, measures of restitution, rehabilitation, and satisfaction, as well as guarantees of non-repetition, have special relevance for the harm caused.⁸⁹

92. This Court has established that reparations must have a causal nexus with the facts of the case, the violations declared, the harm proven, and the measures requested to redress the respective harm. Accordingly, the Court must analyze all of these factors in order to rule appropriately and in keeping with law.⁹⁰

93. In view of the violations declared in this judgment, the Court will proceed to examine the petitions made by the Commission and the representatives, as well as the arguments of the State, in light of the tenets established in its case law in connection with the nature and scope of the obligation to make reparations and thus adopt the measures required to redress the harm to the victims.⁹¹

94. International case law, in particular that of the Court, has repeatedly established that a judgment constitutes a form of reparation in itself.⁹² However, in light of the circumstances of this case and the violations committed against the victim, the Court considers it appropriate to order other measures.

A. Injured Party

95. Pursuant to Article 63(1) of the Convention, this Court holds that an injured party is anyone who has been declared a victim of the violation of any right recognized in the Convention. The Court thus finds Manuel Martínez Coronado to be the “injured party.”

B. Measures of satisfaction

96. The **representatives** requested as measures of satisfaction that the State be ordered to publish the full text of the judgment in the Official Gazette of Guatemala and in another national newspaper.

97. The **State** did not refer specifically to the publication of the judgment.

98. The **Court** orders, as it has in other cases,⁹³ that the State publish within six months of the notification of this judgment: a) the official summary of this judgment prepared by the Court, once, in the Official Gazette in a legible and appropriate font size; b) the official summary of the judgment prepared by the Court, once, in a newspaper with broad national circulation in a legible and

⁸⁷ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, *supra*, para. 26, and *Case of Muelle Flores v. Peru*, *supra*, para. 221.

⁸⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, *supra*, para. 26, and *Case of Muelle Flores v. Peru*, *supra*, para. 221.

⁸⁹ Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 79 to 81, and *Case of Muelle Flores v. Peru*, *supra*, para. 221.

⁹⁰ Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations, and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Muelle Flores v. Peru*, *supra*, para. 222.

⁹¹ Cf. *Case of Andrade Salmón v. Bolivia. Merits, Reparations, and Costs*. Judgment of December 1, 2016. Series C No. 330, para. 189, and *Case of Colindres Schonenberg v. El Salvador. Merits, Reparations, and Costs*. Judgment of February 4, 2019. Series C No. 373, para. 121.

⁹² Cf. *Case of Neira Alegría et al. v. Peru. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of Muelle Flores v. Peru*, *supra*, para. 267.

⁹³ Cf. *Case of Cantoral Benavides v. Peru*, *supra*, para. 79, and *Case of Muelle Flores v. Peru*, *supra*, para. 239.

appropriate font size; and c) this judgment in its entirety, available for one year on an official website accessible to the public.

99. The State shall immediately notify this Court once it has carried out each of the publications ordered.

C. Other measures requested

100. The **representatives** requested that a public apology be made to the relatives of Manuel Martínez Coronado by the State of Guatemala, specifically by an official representing the judiciary. They asked that this apology acknowledge the errors made in the various local jurisdictions in violation of their fundamental rights and promise that the events in this case will not be repeated. They requested that in this ceremony the State admit to violations in the administration of justice and commit to abolishing the death penalty. In addition, they requested the following as guarantees of non-repetition: i) order the State to bring the Criminal Code of Guatemala into agreement with the judgments of the Constitutional Court—that is, formally repealing the death penalty for criminal offenses; ii) order the State to begin a discussion about the existing procedural system, its implications, and its significance in a democracy under the rule of law, while learning about different experiences through comparative law; iii) promote or bolster, through the relevant bodies, initiatives such as constitutional amendments to eliminate references to the death penalty, the elimination of the criterion of dangerousness from the criminal code, and the elimination of references to the death penalty in that code; iv) adopt the measures necessary to ensure the full efficacy of public defense, especially in cases that involve the possible imposition of severe sentences; v) urge the State to ratify the Protocol to the American Convention on Human Rights to Abolish the Death Penalty; vi) adopt de facto and de jure measures to ensure that no provisions in Guatemalan law violate human rights; vii) adopt measures of non-repetition, modifying its authority in order to promptly and effectively take steps to completely remove the death penalty from the legislation; and viii) take all necessary steps to implement training designed to inform the authorities about the principles and standards of human rights protection, international humanitarian law, and especially the protection and preservation of life.

101. The **State** noted that: i) as a sovereign state, it cannot be ordered to make changes to its own legal system, with its sovereignty thereby disregarded, and ii) it is the responsibility of the State authorities and of the people to make these kinds of decisions regarding the legal system. However, it has also stated that there are currently two positions on the issue of whether to abolish or resume the death penalty, which have been formally presented to the Congress of the Republic. The State requested that the Court not grant this measure of non-repetition, as it violates the sovereignty of the country by interfering in issues that are the responsibility of the legislature. Furthermore, it declared that it is not responsible for any of the alleged violations; thus, it did not agree to the public apology as described by the representatives.

102. Regarding the requested measures of reparation, the **Court** notes that some of them do not have a causal nexus with the violations declared in this judgment; therefore, issuing this judgment and ordering the reparations detailed in this chapter is sufficient and adequate for remedying the violations suffered by the victim, and it is not necessary to order additional measures.

103. Nevertheless, the Court has determined in its compliance monitoring order of February 6, 2019, in the case of *Fermín Ramírez v. Guatemala*, that the Constitutional Court of Guatemala has declared unconstitutional the penultimate part of Article 132 of the criminal code; consequently, the dangerousness of the agent ceased to have effect as a criterion for applying the death penalty as of the day after the publication of the constitutional review judgment. Therefore, the Inter-American Court decided that the State had fully complied with the order to “abstain from applying the part of Article 132 of the Criminal Code of Guatemala that refers to the dangerousness of the agent and

modify it within a reasonable period of time, adjusting it to the American Convention, pursuant to the established in Article 2 of the same, thus guaranteeing the respect for the freedom from ex post facto laws, enshrined in Article 9 of the same international instrument” in the eighth operative paragraph of the judgment.⁹⁴

104. In the February 6, 2019, order, this Court also noted that no one is currently sentenced to death and that the death penalty has not been applied since the year 2002. It has also taken note of the general suspension of the application of the death penalty, linked to compliance with the measure of reparation related to the obligation to regulate the commutation of sentences in Guatemalan law.⁹⁵

105. Therefore, it would not be appropriate to reiterate to Guatemala measures of reparation related to bringing its domestic legal effects into agreement with the American Convention, as the changes to Article 132 of the Criminal Code of Guatemala with respect to the dangerousness of the agent have already been made.

D. Compensation

106. With regard to pecuniary compensation, the **representatives** noted that Mr. Martínez Coronado’s expenses in prison constitute consequential damage. These include, among others: i) food, ii) purchase of cleaning and hygiene supplies, iii) clothing, iv) transportation of relatives to the detention site, v) expenses from actions before governmental institutions, and vi) funeral expenses. They propose a total of USD 10,000 (ten thousand United States dollars) for these expenses. They also requested the amount of USD 1,000 (one thousand United States dollars) as fees for the attorneys who supported the case domestically and USD 1,000 (one thousand United States dollars) as fees for the attorneys who supported the case internationally.

107. With respect to loss of earnings, the representatives requested: i) the payment of social security contributions in accordance with domestic legislation and ii) USD 50,000 (fifty thousand United States dollars) for the immediate relatives of Manuel Martínez Coronado, namely his wife and three children, as well as the payment of their respective social security contributions in accordance with domestic legislation.

108. Regarding non-pecuniary damages, the representatives proposed as compensation and comprehensive reparation a total of USD 200,000 (two hundred thousand United States dollars). This total includes USD 50,000 (fifty thousand United States dollars) each for the wife and three children of Manuel Martínez Coronado.

109. Regarding the pecuniary damages alleged by the representatives, the **State** noted that the Court has on prior occasions declined to order the payment of compensation for pecuniary damages when it lacked evidence—which is the case here, as the representatives did not submit proof of payment to support their request. It stated that there is no documentation showing that expenditures from the trial reached USD 1,000 (one thousand United States dollars). Specifically, regarding the alleged loss of earnings, the State stressed that the Court does not order compensation for this when there is insufficient evidence for the approximate earnings the victim lost or for which work he lost it, as the profession of Mr. Martínez remains unconfirmed.

110. With respect to the request for social security payments, the State argued that this lacks validity because the social security regime is for people who have made contributions to the system throughout their lives, which is not the case here as no one in Manuel Martínez Coronado’s family has made contributions to that public system.

⁹⁴ Cf. *Case of Fermín Ramírez v. Guatemala*. Monitoring Compliance with Judgment, *supra*, considering paragraph 14. Cf. also *Case of Fermín Ramírez v. Guatemala. Merits, Reparations, and Costs*, *supra*, operative paragraph 8.

⁹⁵ Cf. *Case of Fermín Ramírez v. Guatemala. Monitoring Compliance with Judgment*, *supra*, considering paragraph 8.

111. Moreover, it stated that the requested compensation for non-pecuniary damages is not appropriate because the Court's conditions have not been met. Furthermore, Mr. Martínez was allowed to pursue his case without obstruction, and his relatives have never shown a need for any kind of psychological help over the course of many years. It asked, however, that if compensation in equity is ordered, the amounts requested by the representatives not be taken into consideration.

D.1 Non-pecuniary damages

112. Due to the specifics of this case and the causal nexus of the violations declared, the Court will rule on non-pecuniary damages only.

113. This **Court** has established that this concept "may include the suffering and distress caused to victims and close relatives, the impairment of values that are highly significant to them, and non-pecuniary disruptions that affect their living conditions."⁹⁶

114. This Court has not ordered compensation in other cases in which it declared the responsibility of the State for applying the death penalty,⁹⁷ but in those cases, the victim had not been executed. In this case, however, the Court has declared the violation of Articles 4(1), 4(2), 9, 8(2)(c), and 8(2)(e) of the American Convention not just for the application of the criterion of the dangerousness of the agent in sentencing Mr. Martínez Coronado to death, but also for having carried out his execution as a consequence of that sentence. Accordingly, given the specifics of this case, the Court finds it appropriate to order compensation in equity in the amount of USD 10,000 (ten thousand United States dollars) in favor of the victim. In view of the information provided by the representatives regarding the immediate family of Mr. Martínez Coronado (*supra* para. 16), this Court decides that this amount shall be distributed equally among his wife Manuela Girón and their children Rony Disrael Martínez Girón, Irma Yojana Martínez Girón, and Marleny Girón.

E. Reimbursement of expenses to the Victims' Legal Assistance Fund

115. This Fund was granted the financial assistance necessary to cover the costs of the statements by affidavit made by Manuela Girón, Rony Disrael Martínez Girón, Irma Yojana Martínez Girón, and Marleny Girón; as well as the other reasonable and necessary expenses incurred by the representatives to meet in person with the relatives of Manuel Martínez Coronado, including the travel, transfers, lodging, and food needed for inter-American defense counsel.

116. On April 22, 2019, the Secretariat of the Court sent the State a report on disbursements made to the Victims' Legal Assistance Fund, which came to a total of USD 280 (two hundred eighty United States dollars), and pursuant to Article 5 of the Rules of Procedure for the Operation of the Fund, it gave Guatemala a deadline for submitting any relevant observations. The State submitted its observations on April 26, 2019, in which it objected to paying for the formalization of the affidavits of Mr. Martínez Coronado's relatives for the following reasons: a) the cost for formalizing the documents "seems [...] very high," and b) "at no point were the State's questions answered and [...] there were several errors in the statements," as it had noted before.

117. Pursuant to Article 5 of the Rules of Procedure of the Fund, because of the violations declared in this judgment and the fulfillment of the requirements for using the Fund, the Court orders the

⁹⁶ Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Muelle Flores v. Peru, supra*, para. 262.

⁹⁷ *Case of Fermín Ramírez v. Guatemala. Merits, Reparations, and Costs, supra*; *Case of Raxcacó Reyes v. Guatemala, supra*; *Case of Boyce et al v. Barbados. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of November 20, 2007. Series C No. 169; *Case of Dacosta Cadogan v. Barbados. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 24, 2009. Series C No. 204.

State to reimburse the Fund for the amount of USD 280 (two hundred eighty United States dollars) for necessary expenditures. This amount shall be reimbursed within six months of the notification of this judgment.

F. Method of compliance with the payments ordered

118. The State shall pay the non-pecuniary compensation set in this judgment directly to the individuals indicated therein within one year of the notification of this judgment.

119. In the event that the beneficiaries have died or die before their respective compensation is rendered to them, the compensation shall be made directly to their heirs in accordance with applicable domestic law.

120. The State shall comply with its monetary obligations through payment in United States dollars or the equivalent in quetzals, calculated using the prevailing exchange rate at the New York Stock Exchange, United States of America, the day before the payment.

121. If, for reasons attributable to the beneficiaries of the compensation or their heirs, it is not possible to pay the amount determined within the indicated time frame, the state shall deposit the amount in their favor in a deposit account or certificate in a solvent Guatemalan financial institution, in United States dollars, and in the most favorable financial conditions permitted by banking law and practice. If the corresponding compensation is not claimed

within ten years, the amount shall be returned to the State along with the interest accrued.

122. The amount set in this judgment as compensation shall be rendered to the stated individuals in full, in accordance with the provisions of this judgment, with no reductions resulting from eventual tax charges. If the State falls behind, including in the reimbursement of expenses to the Victims' Legal Assistance Fund, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Republic of Guatemala.

IX OPERATIVE PARAGRAPHS

123. Therefore,

THE COURT

DECLARES,

unanimously, that:

1. The State is responsible for violating the freedom from ex post facto laws enshrined in Article 9 of the American Convention on Human Rights, in conjunction with the obligation to ensure rights established in Articles 1(1) and 2, and in violation of Articles 4(1) and 4(2) of the Convention, in conjunction with the obligation to ensure rights established in Article 1(1), to the detriment of Manuel Martínez Coronado, under the terms of paragraphs 60 to 72 and 74 of this judgment.

2. The State is responsible for violating the right to a fair trial enshrined in Articles 8(2)(c) and 8(2)(e) of the American Convention on Human Rights, in conjunction with the obligation to ensure rights established in Article 1(1) of the Convention, to the detriment of Manuel Martínez Coronado, under the terms of paragraphs 78 to 89 of this judgment.

3. The State is not responsible for violating the right to life enshrined in Article 4(6) of the American Convention on Human Rights, to the detriment of Manuel Martínez Coronado, under the terms of paragraphs 73 to 74 of this judgment.

AND ESTABLISHES,

unanimously, that:

4. This judgment constitutes, *per se*, a form of reparation.

5. The State shall make the publications indicated in paragraph 98 of this judgment.

6. The State shall pay the amount set in paragraph 114 of this judgment as compensation for non-pecuniary damages.

7. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the amount disbursed during the proceedings of this case, under the terms of paragraph 117 of this judgment.

8. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures taken to comply with it, without prejudice to the provisions in paragraph 99 of this judgment.

9. The Court will monitor full compliance with this judgment in exercise of its authority and in fulfillment of its duties under the American Convention on Human Rights and will consider this case closed when the State has complied fully with all its provisions.

Done in Spanish in Montevideo, Uruguay, on May 10, 2019.

I/A Court HR. Case of *Martínez Coronado v. Guatemala*. Merits, Reparations, and Costs. Judgment of May 10, 2019.

Eduardo Ferrer Mac-Gregor Poisot
President

Eduardo Vio Grossi

Humberto A. Sierra Porto

Elizabeth Odio Benito

L. Patricio Pazmiño Freire

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Registrar

So ordered,

Eduardo Ferrer Mac-Gregor Poisot
President

Pablo Saavedra Alessandri
Registrar