

REPORT N° 30/93
CASE 10.804
GUATEMALA
October 12, 1993

I. ORIGINAL PETITION OF THE COMPLAINANT

1. On March 4, 1991, the Commission received a petition transmitted to the Government on March 5, 1991, in which the petitioner, José Efraín Ríos Montt, filed a complaint against the Guatemalan Government for alleged violations of the American Convention on Human Rights because of the effects of the various resolutions and acts of the judicial, legislative and executive officials of the Government that declared his candidacy to the Presidency of Guatemala inadmissible.

2. The petition recounts the political background of Mr. Ríos Montt from the year 1974, and states that on March 23, 1982, at the request of military officers, he was called upon to preside over the *de facto* government established by them, a call he accepted by assuming the position of chief of state. It states that during the period when the 1986 Constitution was in force, the penal code stipulated punishment for crimes of changing the constitutional order.

3. It states that the *de facto* government headed by him suspended the 1966 constitution and recounts how government posts and institutions were organized and describes the fight against subversion.

4. It notes that on August 8, 1983, the President of the Republic was deposed by another military coup, and the post was taken over by his Defense Minister, General Oscar Mejía Victores. Mr. Ríos Montt then remained in Guatemala without being molested or accused or tried for the crimes provided for in the penal code on changing the constitutional order and other offenses arising from his exercise of the de facto presidency.

5. It states that the Chief of Government, General Mejía Victores issued a decree of amnesty, a decree considered valid and in force by the 1985 Constituent Assembly. Mr. Ríos Montt took advantage of that amnesty in running in the 1990 elections.

6. It says that the Constitutional Convention prepared and enacted the 1986 Constitution now in force, which contains limitations on access to the presidency of the republic, banning reelection to the presidency and providing in Article 186:

the following may not hold this office:

a) The leader and chiefs of any coup d'etat, armed revolution or similar movement that changes the constitutional order, nor those who become head of the government as a result of such actions.

7. The petition states that in 1990 various parties supported his candidacy for the presidency, and drew up a slate of candidates that included him and 70 other persons for the posts of Vice President, deputies and alternates to the National Congress and the Central American Parliament. It also states that the election officials, that is, the Registrar of Voters List and the Supreme Electoral Tribunal refused to register those candidates, and that he filed a complaint of constitutional rights violation (*recurso de amparo*) with the competent courts. It contends that at that time the National Congress tried to intimidate him by requesting an advisory opinion from the Constitutional Court on whether the Constitution prohibited him from serving as President or Vice President of the Republic. It also states that the Congress tried to file a political suit against the President of the Supreme Court, Dr. Edmundo Vazquez Martinez, to prevent that justice from granting the writ filed with it.

8. It states that the Constitutional Court handed down the decisions requested of it by ruling that such a ban is categorical and permanent (at any time).

9. It contends by way of background information that the Congress, in an effort to obstruct his right to defense, reduced from 30 to 5 days the period for appealing the decisions of the Supreme Electoral Tribunal, thereby depriving him of his right of due process. It acknowledges that his right to file a complaint under the America Convention regarding those actions taken in 1989 is precluded because more than six months have elapsed.

10. Regarding the "facts, grievances, and legal remedies exhausted", it states the following):

a) Refusal by the Office of the Manager of Voter Registration in August 1990 to enroll the complete slate of candidates for the Presidency containing the candidacy of himself and the 70 other candidates.

b) The resolution of the Supreme Electoral Tribunal (T.S.E.) also of August 1990 (file 1309), rejecting the appeal for reversal of the refusal mentioned in a), filed by the parties running candidates in the election and by himself; also the resolution of the same T.S.E. rejecting the motion to reopen the case contesting the previous resolution.

c) Parallel and interrelated appeals for violation of constitutional rights (*recursos de amparo*) filed in September and October 1990 with the Supreme Court of Justice. It states that three appeals were filed: 1) by the political parties and the appellant as third party, ruled upon October 12 and 19, 1990 regarding the substance of the appeals. 2) By the appellant in his personal capacity and as candidate for presidency. On those same dates, the court rejected their claim to the right to challenge as void the

resolutions of the electoral officials. 3) The appeal for a ruling of unconstitutionality before the Constitutional Court, was rejected by the Court on October 17, 1990.

11. Regarding the appeal for violation of constitutional rights (*amparo*) mentioned in no. 1, the petition states that after the proceedings and hearings under the law, the Supreme Court handed down a ruling on October 12, 1990 denying the appeal and terminating the provisional *amparo* appeal suspending the elections, which it had granted one month before. In that ruling, the Court clarified the pre-eminence of the American Convention on Human Rights and declared that the Constitution of Guatemala is in agreement with Article 23 of the American Convention on Human Rights, since the Convention allows limitations. The Court also held that, regarding the application of this grounds that it was not making a retroactive application of the Constitution but instead was making a "deferred application" of it, which in its judgment is in agreement with the nature and scope of the Constitution. The Court concludes that as a candidate he is in the position provided for in Article 186 a, and accordingly is ineligible.

12. The petition contends that the Court's interpretation of the Constitution was mistaken because its interpretation was "restrictive" instead of "extensive" and "it should have analyzed the precept identified within the applicable normative context instead of in isolation..."

13. Regarding remedies of *amparo* filed with the Supreme Court and the Constitutional Court, in his personal capacity and as a candidate. (Mentioned as item 2).

The petition states that the Supreme Court rejected his appeal for not having been accorded the right to due process and self-defense, with the Court contending that the parties running candidates exercised unlimited defense of the presidential candidate, as well as the defense of the other candidates.

The Constitutional Court confirmed the Supreme Court's ruling, holding that candidates do not register their candidacy in their personal capacity but that it is the political parties that nominate them as candidates, so that it is up to the parties to assert the right of legitimacy and challenge the actions of the electoral officials. The petition contends that this ruling creates a new legal definition of legal representation, not provided for in the American Convention on Human Rights or in the Guatemalan Constitution, namely, ipso jure representation by the political parties of the candidates who run for office in the general elections, thereby depriving them, also ipso jure, of their personal right of defense in court.

14. Regarding appeal before the Constitutional Court mentioned as item 3), the petition states that, after rejecting motions of unconstitutionality and of dismissal for lack of jurisdiction, the Court ruled on October 19, 1990 that the motion for *amparo* was denied. In its ruling, the Constitutional Court essentially upheld the Supreme Court's decision

mentioned in paragraph 10.

15. Specific violations of the Convention

a. The petition contends that both in his personal capacity and as a candidate for president of the Republic, the provisions of the various organs of the Guatemalan Government violate in his case the right to a fair trial and guarantees of judicial protection (Article 8, subpar. 1 and 2; and 25 American Convention on Human Rights) and impartiality of the administration of justice (Article 31 of the American Convention on Human Rights).

b. The petition also alleges violation of the guarantee in Article 9 of the Convention because of application of an ex post facto law enacted, that is, Article 186.a of the Constitution, making it retroactive.

c. It also asserts that the Guatemalan law violates Article 23 subpar. 1 and 2 of the American Convention on Human Rights, by establishing for life the restriction on his political right to be elected to public office.

d. The petition also states that Article 186.a involves a dual penalty, because there are legal provisions in the Penal Code on changing the constitutional order that could have been applied before employing amnesty, and they were not applied, and they were released from doing so by the use of amnesty. It states further that application of the grounds of ineligibility of Article 186.a involves another penalty.

Mr. Rios Montt states in this regard:

"The country's law can of course prohibit the candidacy of citizens who have held the post of President of the Republic, Chief of State or Head of Government by virtue of a prior election or a de facto situation, for a specific time, and in that case, such a restriction would be general and nondiscriminatory. However, when this action is taken as a penalty, that violates the general principles of law and of the Convention."

e. The petitioner contends finally that the right of Guatemalan citizens who so desired to elect him as president of the republic was being violated.

16. The petitioner accompanies his demand with documentation of the procedural acts and legislation indicated, and with press material regarding the facts set forth in his petition. This documentary material was completed by the petitioner on March 22 of this year, and that additional information was forwarded to the Government on March 26.

II. RESPONSE OF THE GOVERNMENT

17. On April 22, 1991, the Government replied by confirming the dates of legal proceedings and elections indicated by the petitioner, and the various domestic remedies utilized by him, and pointed out in this regard:

the laws applied to resolve these legal proceedings, and the reasoning, facts and conclusions of the above mentioned courts in their final decisions are clearly expressed in their rulings.

The Government also state that "...the arguments set forth by Guatemalan citizen José Efrain Rio Montt before the Commission are the same as those he made before various Guatemalan officials", and the fact that their rulings have not been favorable does not imply a denial of justice. The Government considers that in all these acts no violations of human rights occurred, neither of those universally recognized nor of those stipulated in the Constitution and the American Convention. It asks that the petition be declared inadmissible because it is unfounded and baseless.

The Government's reply was forwarded to the petitioner on May 21, 1991. The Government sent the Commission press material on the case and copies of some of the judgments.

III. REPLIES OF THE PETITIONER

18. Subsequently, the petitioner and his attorneys reiterated their arguments in hearings held in successive sessions, requesting a prompt settlement of their case.

In those hearings, the petitioner elaborated on the arguments already put and also presented an Amicus Curiae brief that Dr. Francisco Villagran Kramer had filed with the Constitutional Court supporting his position.

IV. CONSIDERATIONS REGARDING THE MERITS OF THE CASE

19. The right to be a candidate in a political election arises from Article 23 of the American Convention on Human Rights, which recognizes the rights of each individual: a) to take part in the conduct of public affairs, directly or through representatives; b) to be elected; and c) to have access, under general conditions of equality, to the public service.

This article also establishes limits on the regulations that the State can impose on these rights and opportunities; it may limit them only on the basis of age, nationality, residence, language, education, civil or mental capacity, or sentencing by a competent court in criminal proceedings.

20. The central issue the Commission must address is the following: Is the permanent ineligibility established in the Guatemalan Constitution in Article 186 regarding

heads of political movements that breach the constitutional order or take over the leadership of the State as a result of such breach consistent with this Article of the Convention and its supplementary articles?

21. The Commission should consider this question on three levels: one, the Convention as a whole and its relationship with the other principle instruments of the inter-American system; Second, in the context of Guatemalan and international constitutional law; and finally, in light of the juridical circumstances that constitute and surround the decision of the Government in not accepting the candidacy of Mr. Rios Montt.

22. As to the first level, the Commission should take into consideration primarily the basis of the Supreme Court ruling in denying the petition of Mr. Rios Montt. The Supreme Court acknowledges the primacy the Guatemalan Constitution itself accords the American Convention on Human Rights in the domestic legal system. Based on this recognition, the Court interprets Article 32 of the Convention as establishing a framework of interpretation applicable to the analysis when it says that:

The rights of each person are limited by the rights of others, by the security of all, and by the just demands of the general welfare, in a democratic society.

23. In this regard, the Commission considers the relevancy for the analysis of the other instruments of the inter-American system, first of all the Charter of the American States and the many pronouncements down through the Organization's one-hundred year history in reaffirming the constitutional democratic system as the bases and objectives of the action of the system and its component States.

24. Based on this premise, the Commission considers that the context of Guatemalan and international constitutional law in which this condition of ineligibility is placed is the appropriate dimension for analysis of the applicability of the Convention in general, and of the applicability of its Arts. 23 and 32 to the instant case, and from which the margin of appreciation allowed by international law can emerge.

25. In this connection, the Commission takes into consideration that the ineligibility of those who lead movements of governments that breach the constitutional order appears in the successive Guatemalan constitutions since the beginning of this century and is maintained by the various reforms.¹

26. The Commission likewise considers that this ineligibility is not idiosyncratic to the Guatemalan constitutional tradition, but appears also -- sometimes with virtually the

¹Among others the Constitutions of 1927, art. 25; 1935, RT.65; 1941, Art.3; 1945, Art/131; 1956 Art. 161, and 1986, Art 186.

same wording -- in other constitutions of various Central American countries (Honduras, Nicaragua).²

27. Furthermore, the Commission takes into account that one of the common roots of this ineligibility is the General Treaty of Peace and Friendship concluded by the Governments of the Republics of Guatemala, El Salvador, Honduras, Nicaragua and Costa Rica in 1923, whereby the contracting parties undertake not to recognize the governments of any of the five republics if they are taken over by a coup d'etat or if any of high elected officials have been "head or one of the heads of a coup d'etat or revolution,..." their blood relatives, or anyone who has held high military command immediately before or during such takeovers. The treaty also establishes the commitment to include the principle of non-reelection in their constitutions.

28. These principles rejecting the breach of the constitutional order, the disqualification of its leaders for high office, and non-reelection were adopted because they were considered as juridical principles of international relations and common defense of the democratic consolidation in the region.

These principles were adopted at the same time as Article XIV of the treaty, which establishes the most sweeping rejection of direct and indirect intervention in internal affairs. In other words, these principles were considered of such importance that they were placed outside and above any consideration of internal intervention.

29. It is accordingly established that this ineligibility set forth in Article 186 of the Guatemalan constitution is a customary constitutional rule with a strong tradition in Central America.

30. The Commission should also consider whether, in this same juridical context, this rule establishes an individual or general discriminatory principle that would be contrary not only to Article 23, Political Rights, of the American Convention on Human Rights, but also to the general principles in that Convention.

31. In this regard, the Commission recalls that this issue should be analyzed in light of the circumstances of the individual case and prevailing concepts in the historic period. Here again, the Commission should reaffirm the restrictive character that this margin of appreciation should utilize, which should always be conceived with a view to strengthening the system and its objectives.

² Nicaragua, 1950, art. 186; Honduras, 1982, art. 239 (referring to any head of the Executive Branch, whether he has been elected or has taken power through unconstitutional means).

32. The Commission finds that analysis of the condition of ineligibility applied to Mr. Rios Montt should be compared with other conditions of ineligibility in other constitutional law, to determine whether there is discrimination or whether conventional limits are exceeded. In this regard, the Commission recalls that various constitutional regimes establish as a condition of ineligibility, in some cases for a specified period, and in others as permanent ineligibility, the fact of having been the head of or exercised the power of the executive branch after being elected thereto.³

33. There would thus be constitutional conditions whereby high government officials elected in democratic elections cannot be reelected either for a certain period or for life. If the Commission considers that Article 86 establishes ineligibility that is inconsistent with the Convention, it would place in a privileged position those who breach the constitutional order compared to those who accede to high office in their countries constitutionally and democratically.

34. Furthermore, the Commission considers that comparative constitutional law stipulates different conditions of ineligibility seeking to avoid nepotism, conflict of interests (government contractors, etc.), membership in religious orders, other branches or services of the government (judges, those on active duty in the military, etc.). In other words, defense of the authenticity of political rights and of the authenticity of elections has led to various kinds of regulation on eligibility for serving as head of the executive branch, which must be considered in context for the Commission's assessment.

35. The same reasoning should be applied to the permanent ineligibility or ineligibility for life. If it is acceptable under constitutional law for a State to establish a constitutional term for democratically elected heads of state (Honduras, Mexico, Colombia, as cited), then it is perfectly conceivable that this same scope can be applied to those who lead a breach of constitution.

36. The Commission also considers the scope of the amnesty accorded to Mr. Rios Montt in 1986 and its ability to nullify the effects of the ineligibility clause in the Constitution. In this regard, the Supreme Court and the Constitutional Court have clearly established that such amnesty refers to possible crimes committed by those accorded amnesty but not to Mr. Rios Montt's becoming chief of state imposed by a military movement. Such Guatemalan jurisprudence falls within the same considerations indicated

³ Cf the 1986 Constitution of Mexico, Art. 83 and the 1982 Constitution of Honduras, Art. 239, and the 1991 Constitution of Colombia, Art. 197 establish an absolute and permanent condition of ineligibility for heads of or appointees to the executive branch, and most of the constitutional provisions in the Americas that establish any restriction on reelection, whether on the number of terms or on consecutive terms.

in the foregoing paragraphs and has antecedents in other countries. Thus, in the United States:

It has been held that a statute which restored civil rights to convicted persons satisfying their sentence did not supersede the effect of a state constitutional provision prohibiting convicted felons from holding public office.⁴

37. The Commission should also consider the admissibility of the petitioner's complaint regarding the inability to appear personally to defend the electoral rights established in the Guatemalan Voter Registration Law, which allows presentations only by parties (cf. paragraph 12).

In this regard, the Commission has kept in mind that provision and the parallel presentations made by the parties and by the petitioner before the various electoral and judicial administrative officials regarding the presidential candidacy of Mr. Rios Montt and his co-candidates. It is the Commission's understanding that while it is actually possible hypothetically that a restriction of this kind may prevent the full personal defense of a member of a slate of candidates and may curtail rights recognized in the Convention, that does not occur in the petitioner's case. This is due to the fact that many administrative and judicial complaints by the parties that nominated him for president, as well as the personal complaints of the candidate, set forth the same arguments and are based on the same facts.

It is therefore the Commission's understanding that in the case under review the candidate's ability to make an effective defense was not restricted nor was there any damage or impairment of his right.

38. The Commission should also consider the petitioner's complaint regarding the alleged violation of the right of Guatemalan citizens to be elected president, by applying of Article 186.a.

The Commission considers in this regard that the grounds for ineligibility emerge from an act of a Constitutional Convention elected by democratic vote in which the Guatemalan people decided through their representatives at that convention that it was necessary to maintain such grounds, which are already founded in Guatemala's constitutional history (cf paragraph 25), and moreover to make them permanent. Therefore as analyzed above, within those conditions any constitutional system of law possesses the right to make its operation more effective, and to defend the integrity of its citizens' rights.

⁴ See 52 State. Law Enforcement Standards Board vs. Lyndon Station (App) 98 is 2d 229, 295 NW2d 472, 305 NW 2d 89.

IV. ACCORDINGLY, THE COMMISSION RESOLVES

1. That it is competent to decide on this case.
2. That the instant petition is inadmissible because the facts sub examine do not constitute a violation of the rights recognized by the Convention.
3. To publish this report in the Annual Report to the General Assembly.