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## **REPORT No. 161/18**

### **PETITION 14-08**

#### REPORT ON ADMISSIBILITY

ANA PATRICIA PÉREZ JACOBO DE RABBE  
GUATEMALA

Electronically approved by the Commission on December 9, 2018.

**Cite as:** IACHR, Report No. 161/18, Petition 14-08. Admissibility. Ana Patricia Pérez Jacobo de Rabbe. Guatemala. December 9, 2018.



**I. INFORMATION ABOUT THE PETITION**

<b>Petitioner:</b>	Ana Patricia Pérez Jacobo de Rabbe
<b>Alleged victim:</b>	Ana Patricia Pérez Jacobo de Rabbe
<b>Respondent State:</b>	Guatemala
<b>Rights invoked:</b>	Articles I (Life, liberty and personal security), II (Equality before law), IV (Freedom of investigation, opinion, expression and dissemination), V (Protection of honor, personal reputation, and private and family life) and XXIV (Petition) of the American Declaration of Rights and Duties of Man; <sup>1</sup> Articles 1, 2, 4 and 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of All Forms of Violence against Women <sup>2</sup>

**II. PROCEDURE BEFORE THE IACHR<sup>3</sup>**

<b>Filing of the petition:</b>	January 3, 2008
<b>Additional information received at the stage of initial review:</b>	February 11, 2008, April 25 and November 15, 2013; May 30, 2014
<b>Notification of the petition to the State:</b>	August 30, 2016
<b>State's first response:</b>	April 18, 2017

**III. COMPETENCE**

<b>Competence <i>Ratione personae</i>:</b>	Yes
<b>Competence <i>Ratione loci</i>:</b>	Yes
<b>Competence <i>Ratione temporis</i>:</b>	Yes
<b>Competence <i>Ratione materiae</i>:</b>	Yes, American Convention on Human Rights <sup>4</sup> (deposit of ratification instrument on May 25, 1978) and Convention of Belém do Pará (deposit of ratification instrument on April 4, 1995)

**IV. DUPLICATION OF PROCEDURES AND INTERNATIONAL RES JUDICATA, COLORABLE CLAIM, EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

<b>Duplication of procedures and International <i>res judicata</i>:</b>	No
<b>Rights declared admissible</b>	Articles 5 (humane treatment), 8 (fair trial), 23 (participation in government), 24 (equal protection) and 25 (judicial protection) of the American Convention, in relation to Article 1.1 thereof (obligation to respect rights); and Article 7 of the Convention of Belém do Pará
<b>Exhaustion of domestic remedies or applicability of an exception to the rule:</b>	Yes, under the terms of Section VI
<b>Timeliness of the petition:</b>	Yes, under the terms of Section VI

**V. ALLEGED FACTS**

1. Ana Patricia Jacobo de Rabbe, the petitioner and alleged victim, claims that she was a victim of workplace harassment and that she suffered continuous threats as a result of the duties she undertook as an official of the Institute of Public Criminal Defense of Guatemala since 2007.

<sup>1</sup> Hereinafter "Declaration" or "American Declaration."

<sup>2</sup> Hereinafter "Convention of Belém do Pará."

<sup>3</sup> The observations submitted by each party were duly transmitted to the opposing party.

<sup>4</sup> Hereinafter "Convention" or "American Convention."

2. As background information, she indicates that in the framework of a criminal proceeding against members of illegal armed groups (called “*maras*”), on April 4, 2006 a first trial hearing was held, where she participated as the defense counsel of two defendants. She explains that at the hearing, members of the Mara Salvatrucha and M-18 engaged in a knife fight and, as a result, attendees sustained injuries of varying degrees. She submits that, although she did not get any stab injury, her panic over the events affected her blood pressure and her nervous and cardiovascular systems. The petitioner alleges that due to such events of violence and her duties as a public defense counsel in similar cases, in June 2007 she asked the Director General of the Institute of Public Criminal Defense (“the Director General”) for the payment of an “extraordinary responsibility bonus.” She indicates that said official denied her that benefit. She claims having filed the same request on September 23 and October 7, 2010 and that she received no answer from that institution.

3. She indicates that in August 2007 the Council of the Institute of Public Criminal Defense (“the Council”) issued Agreement No. 4-2007 to limit the participation of permanent defense counsels in the election of members of the Council. She also claims that, by virtue of said agreement, an Electoral Committee was created, which is comprised of familiar employees of the Director General and whose decisions cannot be challenged. She alleges that because such provisions infringed the rights of the staff of the institute, she and some of her colleagues submitted a written document to the Council with their observations on those irregularities and requesting that they were corrected.

4. She argues that, as a result of the two events described above, she has sustained workplace harassment and frequent harassment from the Director General. In this regard, she alleges that at the Institute she was subjected to hostile treatment and that continually she received telephone threats late at night and her domicile was watched from vehicles with covered license plates. She explains that unknown individuals once left a funeral ribbon at the door of her house to intimidate her. In view of such events, on November 14, 2007 the petitioner filed a complaint before the Public Prosecutor’s Office because of the fear caused by these acts of intimidation. She alleges that despite her repeated requests investigations have not progressed so far.

5. She also indicates that she filed complaints before the Human Rights Ombudsman’s Office on December 5, 2007 and on January 10 and 13, 2011 and that to date no decision has been made in that respect. Likewise, she asserts that she resorted to the National Coordinating Office for the Prevention of Domestic Violence and Violence against Women and that this institution claimed it lacked competence because it only examined cases where violence was exerted by men and not by women—the Director General was a woman.

6. Moreover, she claims that five disciplinary proceedings were filed against the alleged victim as a retaliation measure. She explains that because she circulated a petition to submit the written document that commented Agreement No. 4-2007 of the Council, she was accused of undertaking personal activities (collecting signatures) during working hours and of allegedly rigging the documents of that petition. She indicates that three of those proceedings were initiated on the same grounds and that only one of them led to a disciplinary measure. She explains that she was given an eight business days suspension without payment, and that although the decision was not final, deductions were made not only from her salary but also from her extra month’s salary and her annual bonus (“*bono 14*”). To challenge this decision, the petitioner lodged a labor complaint that was declared admissible by the Second Labor and Social Security Court on February 7, 2011; thus the previous judgment was revoked and the disciplinary measure was annulled. She asserts that the Institute of Public Criminal Defense presented an appeal and that the Second Chamber of the Labor and Social Security Court of Appeals dismissed it on April 11, 2011. The Institute then filed an *amparo* proceeding, but the Supreme Court of Justice dismissed it and so did the Constitutional Court on April 25, 2013, which upheld this judgment in favor of the alleged victim. However, the petitioner explains that said judicial resolution has not yet been complied with, as the case is still pending settlement by the Third Labor and Social Security Court.

7. The petitioner claims that later a fourth disciplinary action was filed against her for alleged failure to assist someone deprived of liberty. She explains that said proceeding was held despite the fact that the complainants had withdrawn their claim against her. So, by a resolution of June 10, 2010 signed by the

Director General, a written reprimand was issued as a disciplinary measure. She submits that she was never notified of such resolution. The petitioner argues, however, that said disciplinary measure was wrongful because the Director General, whose mandate had expired on August 5, 2009, was not competent, although she unlawfully continued holding office.

8. In view of this, on July 10, 2010 the alleged victim lodged a complaint against the Director General before the Public Prosecutor's Office for abuse of power, extended tenure of office, deductions from emoluments and encroachment, which was dismissed on March 11, 2011. Subsequently, she filed an appeal for annulment, dismissed on March 17, 2011, and a constitutional appeal, declared inadmissible on September 22, 2011 by the Third Chamber of the Criminal Court of Appeals. The petitioner filed an appeal but the Constitutional Court dismissed it on April 12, 2012 without examining the merits of the case on the grounds that the appeal for annulment should have been presented at the hearing of March 11, 2011.

9. The alleged victim indicates that she learnt about the initiation of a fifth disciplinary action in April but that it was never officially notified to her. It appears that said proceeding was filed due to statements that the alleged victim had made on a radio show against the Director General, which were considered slanderous and harmful to the workplace environment. She emphasizes that, because of the context of workplace harassment and threats described above, she decided to resign her job at the Institute of Public Criminal Defense on April 15, 2011. She indicates that by a resolution of April 18, 2011 the Director General ordered to archive the last disciplinary proceeding. She argues that despite the fact that a notification of the decision to archive the case was purportedly sent to her address on August 3, 2011, she did not receive any official document.

10. The petitioner affirms that on July 12, 2010 she reported the workplace harassment before the National Coordinating Office for the Prevention of Domestic Violence and Violence against Women, under the Guatemalan Ministry of Government. On July 30, 2010 said body dismissed her complaint on the basis that it handled cases of violence happening in power relations between men and women, that is, when a woman's rights were infringed by a man. Additionally, she claims that between 2010 and 2011 she lodged complaints before the Human Rights Ombudsman's Office and the Ombudsman's Office for the Defense of Women, and that she had no answer from them.

11. For its part, the State argues that the instant petition is inadmissible because the alleged facts do not establish violations of the rights recognized in the Convention. It indicates that all the judicial and administrative actions undertaken in the domestic jurisdiction conformed to the guarantees of due process. It affirms that no proceeding for workplace harassment was filed against the alleged victim, which is demonstrated through the reports issued by the authorities of the Institute of Public Criminal Defense.

12. Moreover, it submits that domestic remedies were not exhausted because, when the petitioner filed her complaint, the labor proceeding was still in progress before the Second Labor and Social Security Court. In regard to the complaints filed before the Attorney General's Office for the purported threats and acts of harassment, the State simply indicates that the advances in the investigations would be submitted to the Commission.

## **VI. ANALYSIS OF EXHAUSTION OF DOMESTIC REMEDIES AND TIMELINESS OF THE PETITION**

13. The petitioner indicates that, in relation to the threats and harassment against her, she filed complaints before the Public Prosecutor's Office, which have not showed any progress so far; therefore she alleges a state of impunity regarding those facts. She also claims that the complaint that she filed against the Director General was dismissed and her appeals were eventually turned down by the Constitutional Court on April 12, 2012. As for the disciplinary proceedings filed against the alleged victim, she submits that she lodged a labor complaint then settled by the Constitutional Court through a favorable decision on April 25, 2013. For its part, the State argues that domestic remedies were not exhausted because the labor proceeding was still underway when the instant petition was filed.

14. The Commission has established that in cases where threats and harassment are involved, a complaint before the Public Prosecutor's Office is the appropriate remedy to clarify the facts, attribute responsibilities and impose the applicable criminal punishments. In the instant case, the IACHR observes that, regarding the alleged threats and harassment, the alleged victim presented a complaint on November 14, 2007, which is allegedly pending settlement to date. Therefore, the Commission believes that the exception to the requirement of prior exhaustion of domestic remedies foreseen in Article 46.2.c of the American Convention must be applied in the instant case.

15. The Commission observes that the punishment imposed on the alleged victim in the disciplinary proceeding was challenged through a labor complaint. The Commission takes into account that said proceeding was resolved on April 25, 2013 by a resolution of the Constitutional Court, which, based on the available information, has not yet been duly complied with. At the same time, the information indicates that the alleged victim filed a complaint against the Director General after being punished for a second time, which was dismissed by the Public Prosecutor's Office and the judicial authorities. The petitioner challenged this rejection by presenting an appeal for annulment, a constitutional appeal and a complaint alleging violation of due process, all of which were resolved on March 12, 2012 through a judgment by the Constitutional Court. In view of the foregoing and considering that the petitioner submits the alleged violations as interrelated, the Commission believes that the petitioner exhausted the available domestic remedies and thus her petitioner fulfills the requirement established in Article 46.1.a of the American Convention.

16. Additionally, the petition to the IACHR was filed on January 3, 2008 and the last decision of the Constitutional Court was issued on April 25, 2013. Consequently, domestic remedies were exhausted while the case was under study for admissibility. Therefore, in view of the context and the characteristics of the instant case, the Commission believes that the petition meets the requirement set forth in Article 46.1.b of the Convention.

## **VII. ANALYSIS OF COLORABLE CLAIM**

17. In light of the elements of fact and law presented by the parties and given the nature of the matter brought to its attention, the Commission deems that, if proven, the alleged workplace harassment, the purported threats and harassment against the alleged victim as a result of her duties as a public criminal defender, the alleged gender-based discrimination and the lack of effective judicial protection all could tend to establish possible violations of Articles 5 (Humane Treatment), 8 (Fair Trial), 23 (Participation in Government), 24 (equal protection) and 25 (Judicial Protection) of the American Convention in relation to its Article 1.1, as well as of article 7 of the Convention of Belém do Pará, to the detriment of the alleged victim.

18. As for the alleged violations of the articles of the American Declaration, the Commission observes that once the American Convention is enforced in relation to a State, it is this instrument—not the Declaration—that becomes the primary source of law applicable by the Commission, provided that the petition concerns an alleged violation of substantially identical rights enshrined in both treaties. In regard to the instant petition, the reported events began taking place in 2007, when the Convention was already in place. Likewise, there is a similarity between the contents of the abovementioned articles of the American Declaration and those of the American Convention; thus, it is on the basis of the latter treaty that the IACHR will analyze the colorable claim of the instant petition.

## **VIII. DECISION**

1. To find the instant petition admissible in relation to Articles 5, 8, 23, 24 and 25 of the American Convention in connection with Article 1.1 thereof, and article 7 of the Convention of Belém do Pará; and

2. To notify the parties of this decision; to continue with the analysis on the merits; and to publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Approved by the Inter-American Commission on Human Rights on the 9<sup>th</sup> day of the month of December, 2018. (Signed): Margarette May Macaulay, President; Esmeralda E. Arosemena Bernal de Troitiño, First Vice President; Luis Ernesto Vargas Silva, Second Vice President; Francisco José Eguiguren Praeli, Joel Hernández García, Antonia Urrejola, and Flávia Piovesan, Commissioners.