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**REPORT No. 60/15**  
**PETITION 353-07**  
REPORT ON ADMISSIBILITY

KPP ET AL  
GUYANA

Approved by the Commission at its session No. 2046 held on October 17, 2015  
156 Regular Period of Sessions

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**I. SUMMARY**

1. On March 23, 2007 the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition alleging the responsibility of the Republic of Guyana (hereinafter “the State”) for alleged irregularities committed by different authorities in the custody and adoption proceedings that took place concerning child A between 2003 and 2011; the alleged arbitrary placement of the child A in an adoptive family outside her extended biological family, and the alleged failure to protect the child from abuses and ill treatment from the adoptive family.<sup>1</sup>

2. The petitioner, who has requested that her identity be kept confidential, alleges that the State is responsible for violating human rights recognized in the American Declaration of the Rights and Duties of Man (hereinafter “the American Declaration”), the American Convention on Human Rights (hereinafter “the American Convention”), and the Convention on the Rights of the Child, in relation to child A, the child’s biological parents, KPP and AW, and the child’s cousin, RB, and her husband, OU. The State argues that the conduct of state authorities was oriented to protect the best interests of the child and that the matter should therefore be closed and the child should be allowed to live with her adoptive parents without interference.

3. Without prejudging the merits of the complaint, after examining the position of the petitioners, and pursuant to the requirements set forth in Articles 31 to 34 of its Rules of Procedure (hereinafter “IACHR Rules”), the Commission decides to declare the petition admissible with regards to the claims concerning: i) Articles I (right to personal security), V (right to protection of family life), VI (right to family and protection thereof), VII (right to protection for children), and XVIII (right to a fair trial) of the American Declaration with respect to child A; ii) Articles V (right to protection of family life), VI (right to family and protection thereof), and XVIII (right to a fair trial) of the American Declaration with respect to KPP and AW; and iii) Article XVIII (right to a fair trial) of the American Declaration with respect to RB and OU. The IACHR also decides to declare the petition inadmissible with respect to Articles II (right to equality before the law), IV (right to freedom of investigation, opinion, expression and dissemination), VIII (right to residence and movement) and XIX (right to nationality) of the American Declaration. In addition, the IACHR decides to publish this report and to include it in its annual report to the General Assembly of the Organization of American States.

**II. PROCESSING BEFORE THE COMMISSION**

**Petition**

4. The present petition was received by the Commission on March 23, 2007. Additional information concerning this petition was received by the IACHR on March 28, May 9, and November 23, 2007. On January 8, 2008, in accordance with the IACHR Rules, the Commission transmitted the pertinent parts of the petition and additional information to the State and requested its observations on the matter. This request was reiterated on May 30, 2008 and May 18, 2012. The State responded to the Commission’s request on September 6, 2012, and its observations were transmitted to the petitioner by letter dated February 28,

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<sup>1</sup> In this report, the IACHR has decided to refer to the child up for adoption as “child A” in order to protect the child’s identity and for that same purpose will refer to other family members by their initials.

2013. The petitioner submitted observations to State's response on April 5, 2013. These observations were transmitted to the State of Guyana on May 14, 2013.

### **Precautionary Measures**

5. A request for precautionary measures was also registered in connection with this petition since the petitioner initially mentioned the existence of a "serious situation [that could] cause irreparable harm to [the child]" and requested "urgent attention and assistance" from the IACHR on this matter. On February 12, 2008, the IACHR granted precautionary measures on behalf of child A. Since then, both parties have provided the IACHR with updated information on this matter on several occasions.<sup>2</sup> The IACHR notes that, in its analysis of this petition, it will take into consideration information provided by both parties during the precautionary measures procedure.

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

### **A. Position of the petitioners**

6. The petitioner submits that RB and OU, who reside in Canada, tried to adopt child A, at the time a seven-year-old girl who is RB's cousin and was living in an orphanage in Guyana, but were impeded from doing so by the Guyanese State in a process that would have violated their rights, as well as the rights of child A and other relatives.

7. The petitioner explains that, at an early age, child A was placed in the care of her great-grandmother because her biological mother, KPP, following a separation from the father, was unable to support the girl on her own. The petitioner claims that the child's mother made efforts to maintain contact with the girl even while the child was in the care of her great-grandmother. However, once the great-grandmother became ill and unable to take care of the child, the former brought the child to St. Ann's Orphanage in Georgetown, Guyana, sometime in 2002, without informing the mother. Once KPP became aware of this situation she attempted to take her daughter out of the orphanage but was not allowed to do so by the Adoption Board and St. Ann's Orphanage.

8. The petitioner indicates that, in July of 2003, through an authorized agency in Canada, an adoption procedure was initiated by RB and OU after they had been informed of the child's situation by the child's paternal aunt and after they had obtained the parents' consent to adopt their daughter. Prior to filing this application, they had also contacted the Adoption Board and St. Ann's Orphanage to express their interest in adopting child A and to inquire about her availability for adoption; having been informed that she was indeed available for adoption.

9. The petitioner submits that, in September of 2003, RB was informed by the Adoption Board that it had received another application to adopt child A, and that it had arranged a meeting to discuss this matter with the Chief Probation of Family and Social Welfare Officer, the Adoption Board, the biological parents, and the two applicants. The petitioner explains that RB and OU flew to Guyana for this meeting and that, at the meeting, the second applicant, MS, who was not related to the child, was told that the biological parents would only consent to RB and OU adopting their daughter, and was thus ordered to stop efforts to establish a relationship with the child. The petitioner claims that, by mid-October of 2003, the Adoption Board had approved the application filed by RB and OU and had given them permission to approach the High Court of Guyana to legalize the adoption.

10. The petitioner explains that, while RB and OU were in Guyana throughout the month of October 2003, Sister Beatrice Fernandes (hereinafter "Sister Fernandes"), the person in charge of the

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<sup>2</sup> The petitioner presented information concerning the precautionary measure on March 14, 2008 and on April 23, 2009, while the State presented information on February 21, 2008, and on June 25, 2008. See also IACHR, 2008 Annual Report, Chapter III, Section C - Individual petitions and cases before the Inter-American Commission on Human Rights, para. 24.

orphanage, frequently, although somewhat reluctantly, allowed them to take the child out of the orphanage to spend time with them and they quickly bonded with the girl, who was very excited about the adoption. However, after RB and OU returned to Canada, Sister Fernandes would not allow them to have any contact with the child over the phone and refused to read to or give the girl letters that were sent by RB. Similarly, the petitioner alleges that Sister Fernandes also prevented other members of the family from contacting child A and from bringing her toys, clothes and other essential items, even on special occasions. However, at the same time, Sister Fernandes allegedly encouraged and allowed the second adoptive applicant, MS, to visit the child and to take her out of the orphanage for short periods of time because Sister Fernandes favored MS and wanted her to adopt the girl.

11. The petitioner reports that, on November 13, 2003, RB and OU filed their application to the High Court to legalize the adoption. The petitioner asserts that, in early December of 2003, Chief Justice Carl Singh (hereinafter "Justice Singh") granted an order in favor of RB and OU to adopt child A and appointed the Adoption Board guardian *ad litem* of the child while the procedure was being completed. The petitioner claims that child A's family complained to the Adoption Board about the difficulties they were facing in being able to visit child A and that officials did not take any action on the matter. The petitioner submits that these difficulties persisted, and around March 24, 2004, OU travelled to Guyana to see child A but Sister Fernandes prevented him from doing so and refused to speak to him. In light of this, RB and OU requested their attorneys to file an injunction before the High Court in order to prevent Sister Fernandes and anyone else from the orphanage from granting permission to MS to take child A out of the orphanage. However, the petitioner claims that, in April of 2004, while the injunction had not yet been decided, RB tried to call child A at the orphanage and was informed that the girl was not there nor was she going to return because she had gone to live permanently with MS. The petitioner claims that RB and OU again reached out to the Adoption Board since it had been named guardian *ad litem* of the child in order to denounce this situation. However, they were informed that MS had also been granted a court order to adopt the child and that the Adoption Board could therefore do nothing to help them. The petitioner alleges that RB and OU, as well as their attorneys, until that moment, had not been informed by anyone that there was a simultaneous adoption application filed by MS before the High Court.

12. The petitioner presents documents that indicate that, on May 28, 2004, a summons was issued by Justice Singh requesting RB, OU, MS, Sister Fernandes and the Adoption Board to appear at a hearing to be held on June 4, 2004, to address: i) the request for a declaration that RB and OU were the only persons authorized to adopt child A; ii) the request for an injunction restraining MS from having any contact with child A; iii) an injunction restraining Sister Fernandes and any employee of the orphanage from allowing MS to have access to child A; iv) the request for an order that only those authorized by RB and OU be allowed to take the child out of the orphanage on weekends; and v) a request that the Adoption Board keep a proper check on this matter since it had been appointed guardian *ad litem* of the child. The petitioner claims RB travelled to Guyana in June of 2004 for this hearing and that while there she and the child's mother visited the girl, who told them that she did not want to be adopted by MS because MS and MS's husband were abusive and mistreated her. The petitioner alleges that a complaint was filed with the police but no action was taken to investigate the allegation of child abuse. Similar attempts to denounce the abuse to the Adoption Board also yielded no investigation. The petitioner claims that this issue was also brought to the attention of the High Court.

13. The petitioner alleges that the hearing to which RB and OU were summoned was held on June 9, 2004. The petitioner claims that at this hearing, Justice Singh demonstrated bias and prejudice towards RB by telling her that he did not trust people from Canada and the United States. At the hearing, Justice Singh would have officially, and for the first time, informed RB that another judge, six months earlier, had granted MS permission to intervene in their adoption application. The petitioner further alleges that Justice Singh indicated that he wanted to speak to child A in order to base his decision on what she had to say, and that around August 10, 2004, this meeting occurred in closed Chambers with the child and Sister Fernandes present. The petitioner submits that shortly thereafter, on August 16, 2004, Justice Singh issued a decision dismissing the application filed by RB and OU and allowed MS to adopt the child. According to the petitioner, following this decision, RB and SN went to visit the child at the orphanage while she was waiting to be picked up by MS and she informed them that she did not want to be adopted by MS. When asked why she

had not said this to Justice Singh, child A told them that she was frightened by Sister Fernandes who had told her to tell Justice Singh that she wanted to go with MS because RB would take her to Canada and kill her.

14. Following the decision of August 16, 2004, RB and OU consulted their attorneys about the possibility of appealing the decision and were told, by one of them, that an appeal could be filed but that it would be a waste of time and money because judges didn't overturn decisions regarding children, and by the other, that an appeal was possible but that it was best for the biological parents to file the appeal since they had not consented to the adoption of their daughter. In light of this, the parents of child A filed a notice of appeal to the court on August 26, 2004. The petitioner alleges, however, that child A's relatives, as well as their attorneys, have never been provided with Justice Singh's written decision and were thus unable to develop their appeal. In light of this, the petitioner submits that one of their attorneys sent a letter to the clerk of Justice Singh's Chambers on August 31, 2006, requesting the written reasons for the decision that had been issued by Justice Singh on August 16, 2004. Moreover, the petitioner also alleges that RB and OU were not able to obtain information regarding the date of the appeal hearing despite having inquired about this to several authorities. They reportedly only found out about the appeal hearing held on February 25, 2011, in which the appeal was dismissed following the absence of KPP, AW and their attorneys, through the State's response to the petition filed in September of 2012. The petitioner claims that, in light of the foregoing, there was unwarranted delay in providing the written decision and in setting a date for an appeal hearing.

15. The petitioner submits that, in November of 2004, the same representative of the Adoption Board had been present at the court hearings prepared a report for the High Court that contained various false statements. The petitioner alleges that this report was not consistent with the reality of the case, given that the whereabouts of the biological family were well known to the Adoption Board, that the girl was not abandoned and the family was trying to regain the guardianship of the child after being arbitrarily deprived of it. Moreover, the petitioner questions how Justice Singh could have concluded the adoption process in early 2005 when he was aware that an appeal was pending.

16. The petitioner alleges that the biological family has not been able to contact child A since the decision of August 16, 2004, and that the adoptive family has prohibited her from speaking to or seeing relatives who reside in Guyana. The petitioner mentions that child A has even been instructed by MS to stop interacting with her cousin who attends the same school. The petitioner also submits that attempts to contact the girl by phone have been unsuccessful because the maid always tells them that the girl no longer lives there or that the caller has called the wrong number and, even when child A is the one who answers the phone, she seems afraid to speak and has to hang up or has the phone taken from her.

17. In light of the foregoing, the petitioner concludes that the actions of state authorities during the adoption procedure violated Guyanese law and the internationally recognized human rights of child A and her relatives, namely, Articles I, II, IV, V, VI, VII, XVIII, and XIX of the American Declaration, as well as the rights established in Articles 1, 2, 3, 19, 20, 21, and 39 of the Convention on the Rights of the Child.

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

18. The State alleges that the adoption procedure was conducted in the best interests of the child and did not violate the human rights of the alleged victims. In this regard, the State notes that child A was initially placed in St. Ann's Orphanage by her great-grandmother in light of the dysfunctional situation of the child's parents at the time due to an alleged drug abuse problem, as indicated in documents prepared by the Adoption Board in January of 2005 and presented by the State in response to the petition. The State has submitted a social inquiry report on child A prepared by a social worker in March of 2008 following a visit to the child's home, which concludes that child A was placed in a children's home for her best interests and welfare and had to overcome many challenges because of the apparent abandonment of her parents and that St. Ann's Orphanage would have been a refuge for child A.

19. With regard to the simultaneous adoption applications, the State submits that the initial acceptance of both applications by the Adoption Board was a result of there being no system in place to verify previous applications, but that once this issue was noticed, officials acted to rectify the situation and arranged

a meeting between all parties involved in order to discuss the possible withdrawal of one of the applications. However, since an agreement could not be reached, officials instructed the parties to seek redress in the High Court of Guyana.

20. With respect to the judicial proceedings before the High Court, the State submits that two sets of applications were presented and heard by two separate judges; RB and OU's application was heard by Justice Singh and MS's application was heard by Justice Claudette La Bennett. The State presents court records, entered on November 24, 2004, which indicate that on August 16, 2004, the High Court, having heard the matter, dismissed an injunction that had been filed by RB and OU in Case No. 79 A/S and named a person or entity, which the IACHR had been unable to identify, as guardian *ad litem* of the child; a decision appealed by the child's biological parents on August 26, 2004.<sup>3</sup> The State also presents a report prepared by a representative of the Adoption Board dated January 24, 2005, which indicates that, following the dismissal of the injunction, MS's case was presented to the Adoption Board in November of 2004, which then prepared a report to the High Court recommending that MS be allowed to adopt child A. The January 24, 2005 report also indicates that, at the time of the report, the case was awaiting a final order by the High Court to allow the adoption procedure to be concluded. The State asserts that since no order to suspend the adoption had been passed following the court order of August 16, 2004, the adoption was concluded on February 7, 2005.

21. The State submits that the appeal filed by the parents on August 26, 2004, was ultimately dismissed by the Court of Appeal on February 25, 2011, for non-appearance of the appellants, on three occasions, and for want of prosecution. The State presents several documents in support of this claim, namely: i) a summons dated February 3, 2011, addressed to the biological father of child A, to his attorneys and to MS, indicating that an appeal hearing before the full court had been set for consideration and/or dismissal of the appeal on February 18, 2011; and ii) court records from Justice Singh's Chambers showing that a notice of appeal had been filed on August 26, 2004; that summons for an appeal hearing had been sent on February 3, 2011; that an appeal hearing was held on February 18, 2011, with attorneys for the appellants and respondent present, and adjourned until February 25, 2011; and that on February 25, 2011, another appeal hearing was held in which the appeal was dismissed for non-appearance of appellants and want of prosecution.

22. In several communications, the State has maintained that, following the conclusion of the adoption procedure, the child was placed in a good home, that she attended and did well in school and that she was well taken care of. In support, the State has submitted a social inquiry report prepared by a social worker in March of 2008, which indicates that the child is in a comfortable home environment and has developed a very affectionate relationship with her adoptive parents. The report further indicates that child A's attendance at school and grades improved every year in the period from her adoption until the drafting of the report. Moreover, according to this report, MS does not prevent child A from having contact with her biological relatives and has taken her to visit them on several occasions.

23. The State submits that the non-appearance of the appellants or their attorneys for the appeals hearings would indicate that they have accepted Justice Singh's decision of August 16, 2004. Moreover, the State submits that it considers that the matter should be closed and child A should be allowed to live with her adoptive parents without interference.

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

##### **A. Competence**

24. The petitioner is entitled to file petitions before the Inter-American Commission under Article 23 of the IACHR Rules. The petition identifies the alleged victims as individuals with respect to whom Guyana is obligated to respect and ensure the rights set out in the American Declaration. With regard to the

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<sup>3</sup>The document provided by the State is incomplete as it cuts off the identify of the person or entity to which *ad litem* guardianship was granted.

State, the Commission notes that Guyana is subject to the obligations set forth through the American Declaration, the OAS Charter, Article 20 of the Statute of the IACHR and Article 51 of the IACHR Rules. Guyana has been a member of the Organization of American States since January 8, 1991, when it deposited the instrument of ratification of the OAS Charter.<sup>4</sup> Consequently, the IACHR is competent *ratione personae* to examine the petition.

25. The Inter-American Commission is also competent *ratione materiae* with regard to possible violations of human rights protected by the American Declaration. However, the IACHR is not competent *ratione materiae* to assess possible violations of the American Convention as Guyana is not a party to that treaty. Additionally, the IACHR reminds the parties that, although it is not competent to declare violations of the Convention on the Rights of the Child, that convention is part of the international *corpus juris* regarding the rights of children and adolescents that may be considered for purposes of interpreting the American Declaration.<sup>5</sup>

26. The IACHR is competent *ratione loci* to hear the petition, inasmuch as violations of rights protected in the American Declaration are alleged to have taken place within Guyanese territory. Furthermore, the IACHR is competent *ratione temporis* given that the obligation to respect and ensure the rights protected in the American Declaration was already in effect for the State on the date when the facts alleged in the petition presumably occurred.

## **B. Admissibility requirements**

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

27. In accordance with Article 31(1) of the IACHR Rules, for a petition to be admissible, domestic remedies must have been pursued and exhausted pursuant to generally recognized principles of international law. However, Article 31(2) of the IACHR Rules specifies that this requirement does not apply when: a) the domestic legislation of the State concerned does not afford due process of law for protection of the right that has allegedly been violated; b) the party alleging a violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or c) there has been unwarranted delay in rendering a final judgment under these domestic remedies. The IACHR recalls that a decision on the application of exceptions to the rule on the exhaustion of domestic remedies shall be adopted previously and independently of an analysis on the merits of the case, because it is based on information that is different in nature from that employed to determine whether or not there has been a violation of Articles XVIII and XXVI of the American Declaration.<sup>6</sup>

28. The Inter-American Commission notes that the date on which the High Court of Guyana issued a final order on the adoption of child A by MS is a point of contention between both parties. On one hand, the petitioner submits that this decision would have occurred on August 16, 2004. In support of this assertion, the petitioner has submitted a copy of the notice of appeal of that decision, filed on August 26, 2004, in which two grounds of appeal specifically refer to alleged errors of the judge in permitting child A to be adopted by MS without the parents' consent and alleged errors in granting a final order of adoption in favor of MS. The petitioner does not submit a copy of the decision of August 16, 2004, and argues that the family members were never notified of the written decision. On the other hand, the State submits that a final order granting the adoption of child A by MS was issued on February 7, 2005. The State has also not presented a copy of this decision but has presented other documents to support its assertion. In this

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<sup>4</sup> See also I/A Court H.R., Interpretation of the American Declaration on the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights, OC-10.89, par. 45 (July 14, 1989).

<sup>5</sup> IACHR, *Report on Juvenile Justice and Human Rights in the Americas*, OEA/Ser.L/V/II, Doc. 78, July 13, 2011, paras. 18, 19 and I/A Court H.R., *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*. Advisory Opinion OC-16/99 of October 1, 1999. Series A, No. 16, para. 115.

<sup>6</sup> IACHR, Report No. 42/10, Petition 120-07, Admissibility, *N.I. Sequoyah*, United States, March 17, 2010, para. 38.

regard, the State has submitted a copy of a report prepared by the Adoption Board dated January 24, 2005, which indicates: i) that following the court order of August 16, 2004, MS's case was presented to the Adoption Board in November of 2004, which prepared a report for the High Court recommending that MS be allowed to adopt child A; and ii) that on January 24, 2005, the case was awaiting a final order by the High Court to allow the adoption procedure to be concluded.

29. Additional submissions and documents presented by both parties are also conflicting and do not clearly establish the date on which the final adoption order was issued by the High Court in favor of MS. For instance, the State has submitted a copy of the written reasons of the court order of August 16, 2004, which indicates that this order pertains to the injunction filed by RB and OU sometime before May 2004 in order to prevent MS from having contact with child A and to request the court to declare them the only persons capable of adopting the girl; however, the copy provided is incomplete and it is not possible to identify the person or entity which was named guardian *ad litem* of the girl on August 16, 2004. An affidavit of Sister Fernandes, also provided by the State, indicates that in April of 2004 the child moved out of the orphanage and went to live with MS.

30. The IACHR notes that Article 31(3) of the IACHR Rules establishes that, when a petitioner claims to have exhausted domestic remedies or that an exception to the exhaustion of domestic remedies is applicable, the State must demonstrate that domestic remedies were not exhausted, unless this is apparent from the case file.<sup>7</sup> In the present case, the IACHR considers that the date on which the final order of adoption was issued is not apparent from the case file and that the State has not sufficiently rebutted the petitioner's claim that on August 26, 2004, the alleged victims filed an appeal to the High Court's final order allowing MS to adopt child A. Accordingly, the IACHR accepts the petitioner's claim that an appeal to the High Court's final order allowing MS to adopt child A was filed.

31. The IACHR also notes that the petitioner claims that the alleged abuse of child A was brought to the attention of the Adoption Board and the police and that no action was taken. In addition, it notes that the injunction filed by RB and OU raised this matter and the appeal filed by the child's relatives on August 26, 2004, alleged that Justice Singh had erred in his consideration of the alleged abuse. In light of the foregoing, the IACHR considers that domestic remedies were pursued with regard to this allegation.

32. Furthermore, the IACHR notes that the injunction filed by the child A's relatives requested the High Court to prevent Sister Fernandes from allowing MS to continue to have contact with child A and to order the Adoption Board, at the time the guardian *ad litem* of the child, to monitor this. This request was made on the basis of the allegations that Sister Fernandes was favoring MS on the basis of their friendship and allowing MS to take the child out of the orphanage while restricting the biological family from seeing the child. The request to the court was also made on the basis of the alleged inaction of the Adoption Board to prevent this from happening. Later, following the Court's order granting the adoption in favor of MS, this issue became moot and the child's relatives filed an appeal arguing that Justice Singh had erred in granting the final adoption order to MS. In light of this, the IACHR is satisfied that domestic remedies were pursued in order to challenge the actions of Sister Fernandes and the Adoption Board.

33. On the other hand, the IACHR notes that the notice of appeal did not raise the issue of Justice Singh's alleged bias against RB and OU, and that they did not file an appeal of their own alleging such violations. Accordingly, the IACHR considers that alleged victims failed to present or exhaust domestic remedies in this regard.

34. In the present case, the IACHR notes that the appeal was filed on August 26, 2004, and that a hearing in the matter was not held until February 18, 2011, and that by that time, the girl had already been living with the adoptive family for nearly seven years and was almost 14 years old. Moreover, the IACHR notes that the State does not challenge the petitioner's assertion that the relatives of child A, including the biological parents who filed the appeal, as well as their attorneys, were never notified of the written reasons

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<sup>7</sup> IACHR, Report No. 48/15, Petition 79-06. Yaqui People. Mexico. July 28, 2015, para. 51.



for the court order issued on August 16, 2004, nor does the State challenge the petitioner's assertions that there was undue delay in providing the written reasons of the decision.

35. In light of the foregoing, without prejudging a possible violation of Article XVIII of the American Declaration, the Inter-American Commission considers that the alleged victims were excused from exhausting domestic remedies under the terms of Article 31(2)(c) of the IACHR Rules.

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

36. Article 32(1) of the IACHR Rules requires that petitions be lodged within a period of six-months following the date on which the final decision was notified. However, in the present case, the IACHR has found that an exception to the exhaustion of domestic remedies under the terms of Article 31(2)(c) of the IACHR Rules is applicable. In this regard, Article 32(2) of the IACHR Rules establishes that in those cases in which the exceptions to the requirement of the prior exhaustion of domestic remedies are applicable, the petition must be presented within a reasonable time, as determined by the Inter-American Commission. For this purpose, the Inter-American Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.<sup>8</sup>

37. The IACHR notes that the alleged victims appealed the High Court's adoption decision on August 26, 2004, and subsequently, in August of 2006, attempted to obtain, to no avail, the written reasons for that decision. The appeal pertained to the court's decision to allow MS to adopt child A. The present petition was received on March 23, 2007, in which it was argued that the written reasons for the decision had yet to be notified to the alleged victims, and the child continued to be in the custody of MS. The IACHR considers that the petition was presented within a reasonable time and it is therefore satisfied as to the admissibility of the petition with respect to its timeliness.

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

38. Nothing in the present file indicates that the subject of this petition is pending in any other international proceeding for settlement, or that it is substantially the same as another petition previously studied by the Inter-American Commission or by any other international organization. Hence, the requirements set forth in Article 33 of the IACHR Rules of Procedure have been met.

## **4. Characterization of the alleged facts**

39. Under Article 34 of its Rules, the Inter-American Commission must declare any petition or case inadmissible when it does not state facts that tend to establish a violation of the rights referred to in Article 27 thereof; or when the petition is deemed to be "manifestly groundless" or "out of order." The criterion for analyzing a petition's admissibility differs from the one used to analyze its merits, since in the admissibility phase the Inter-American Commission does only a *prima facie* analysis to determine whether a petition establishes the apparent or possible violation of a right guaranteed by the American Declaration. It is a preliminary analysis that does not imply any prejudgment or a preliminary opinion on the merits of the case.

40. The IACHR Rules do not require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the IACHR, based on the inter-American system's jurisprudence, to determine in its admissibility report which provisions of the relevant instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

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<sup>8</sup> IACHR, Report No. 63/10, Petition 1119-03, Admissibility, *Garifuna Punta Piedra Community and its Members*, Honduras, March 24, 2010, para. 146.

41. The petitioner contends that the rights of child A and her family were violated by the actions and omissions of state officials, including: i) the failure to return child A to her biological mother or to seek her out after the great-grandmother left the child in an orphanage without the family's knowledge; ii) the failure to act to ensure that the child would have access to her biological family when barriers in this regard were being put in place by the orphanage; iii) the failure to act to prevent that persons not related to the child could remove her from the orphanage; iv) the Adoption Board's error in processing an application for adoption filed by someone not related to the child and without the consent of the biological parents; v) the failure of the Adoption Board, police and judicial authorities to safeguard child A from the alleged abuse that she was suffering from the adoptive parents; and vi) the failure of judicial authorities to investigate and penalize those responsible for unlawful actions and obstruction of justice.

42. The State claims that state officials acted with due diligence to protect the child who was abandoned by her parents and found an adoptive home to provide her the support needed for her development. In this sense, the actions of St. Ann's Orphanage, the Adoption Board and the High Court of Guyana were oriented towards the best interests of the child. The State has maintained that, following the conclusion of the adoption procedure, the child was placed in a good home, that she attended and did well in school and that she was well taken care of. The State submits that the case was finalized on February 25, 2011, with the dismissal of the appeal, and argues that child A has lived for a long time with her adoptive family and the Commission should close this matter by deeming the case inadmissible.

43. The Commission has recognized the importance of the family, and their role in the care and protection of the child;<sup>9</sup> for this reason, the Commission has emphasized that when the family has limited capacity or ability to fulfill their duties of care and protection of the child, States have the obligation to adopt special measures of protection tailored to support the family and strengthen its capacity to overcome the situation.<sup>10</sup> In this sense, the Commission has recognized, in various decisions concerning the right to protection of the family, the position expressed in the inter-American jurisprudence, that "in principle, the family should provide the best protection of children (...). And the State is under the obligation not only to decide and directly implement measures to protect children, but also to favor, in the broadest manner, development and strengthening of the family nucleus."

44. Also, the Commission has mentioned that in those cases in which the parent who effectively exercises the custody of the child, temporally or definitively renounces the care of the child, the State must make all reasonable efforts to locate the other parent, or the extended family, to verify if there is the intention to maintain family ties before undertaking any other permanent or temporary measure that puts the child under the care of a person outside of his or her biological family.<sup>11</sup>

45. Thus, the Inter-American Commission considers that the petitioner presents facts that, if proven, could characterize a violation of the rights to personal security, to the protection of family life, to family and to the protection thereof, to protection for children, and to a fair trial set forth in Articles I, V, VI, VII, and XVIII of the American Declaration with respect to child A. The IACHR considers that the facts, if proven, could characterize a violation of the rights to protection of family life, to family and to the protection thereof, and to a fair trial set forth in Articles V, VI, and XVIII of the American Declaration, with respect to KPP and AW. Moreover, the IACHR considers that the facts, if proven, could characterize a violation of the rights to a fair trial set forth in Article XVIII of the American Declaration with respect to RB and OU.

46. However, the IACHR observes that the petitioner has not sufficiently substantiated allegations so as to permit the Inter-American Commission to determine, for the purposes of the admissibility of this petition, that the facts tend to establish *prima facie* violations of Articles II, IV, VIII and XIX of the

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<sup>9</sup> IACHR, Report on The Right of the Right of Girls and Boys to a Family, OEA/Ser.L/V/II., Doc. 54/13, October 17, para. 117.

<sup>10</sup> IACHR, Report on The Right of the Right of Girls and Boys to a Family, OEA/Ser.L/V/II., Doc. 54/13, October 17, para. 66.

<sup>11</sup> IACHR, Report on The Right of the Right of Girls and Boys to a Family, OEA/Ser.L/V/II., Doc. 54/13, October 17, para. 133.

American Declaration. Such allegations are therefore inadmissible in conformity with Articles 34(a) and (b) of the IACHR Rules.

47. In conclusion, the IACHR decides that the petition is not manifestly groundless or out of order and declares that the petitioner has, *prima facie*, complied with the requirements established in Article 34 of the IACHR Rules.

## V. CONCLUSIONS

48. The Inter-American Commission concludes that it is competent to take cognizance of the present matter and that the petition is admissible under Articles 31 to 34 of its Rules of Procedure. Based on the arguments of fact and of law set forth herein and without prejudging the merits of the case,

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS; DECIDES:**

1. To declare the present petition admissible with respect to Articles I, V, VI, VII, and XVIII of the American Declaration in relation to the child A;
2. To declare the present petition admissible with respect to Articles, V, VI, and XVIII of the American Declaration in relation to KPP and AW;
3. To declare the present petition admissible with respect to Article XVIII of the American Declaration in relation to RB and OU;
4. To declare the present petition inadmissible with respect to Articles II, IV, VIII, XIX of the American Declaration;
5. To notify the parties of this decision;
6. To proceed to the analysis of the merits of the case; and
7. To publish this decision and include it in its Annual Report to the General Assembly of the Organization of American States.

Done and signed in the city of Washington, D.C., on the 17<sup>th</sup> day of the month of October, 2015. (Signed): Rose-Marie Belle Antoine, President (dissenting opinion); James L. Cavallaro, First Vice President; José de Jesús Orozco Henríquez, Second Vice President; Felipe González, Rosa María Ortiz and Tracy Robinson, Commissioners.