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REPORT No. 69/15
PETITION 264-05
REPORT ON ADMISSIBILITY

JUAN BAUTISTA GUEVARA PEREZ ET AL.
VENEZUELA

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I. SUMMARY

1. On March 20, 2005, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition from Jackeline Sandoval Escobar, Rafael Arturo Parra Saluzzo, and José Gregorio Mena,¹ alleging the international responsibility of the Bolivarian Republic of Venezuela (hereinafter “the State,” “the Venezuelan State,” or “Venezuela”) for the alleged forced disappearance, unlawful and arbitrary detention, torture, and public defamation of Juan Bautista Guevara Rodríguez, Otoniel José Guevara Pérez, and Rolando Jesús Guevara Pérez (hereinafter “the alleged victims”). The petition also alleged that a number of irregularities and anomalies took place during the course of the judicial proceedings related to the events in question.

2. The State asked the Commission to declare this petition inadmissible on the grounds that the domestic judicial remedies have not been exhausted, in regard to both the criminal case against the alleged victims and the investigation of the acts of torture allegedly committed against them. In addition, the State argued that it is not responsible for the alleged violations of the petitioners’ human rights.

3. Without prejudging the merits of the case, after examining the positions of the parties, and in compliance with the requirements provided in Articles 46 and 47 of the Convention, the Commission decided to find the case admissible for purposes of examining the alleged violations of the rights contained in Articles 3 (right to juridical personality), 5 (humane treatment), 7 (personal liberty), 8 (right to a fair trial), 9 (freedom from ex post facto laws), 11 (right to privacy), and 25 (judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention,” or “the Convention,” in conjunction with Article 1.1 thereof, to the detriment of Rolando Jesús and Otoniel José Guevara Pérez, and Juan Bautista Guevara Rodríguez and his relatives; as well as Articles 1 and 11 of the Inter-American Convention on The Forced Disappearance of Persons; and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. Finally, the Commission decided to give notice to the parties, publish this decision, and include it in its Annual Report to the General Assembly of the Organization of American States.

II. PROCEEDINGS BEFORE THE INTER-AMERICAN COMMISSION

4. The Commission received the petition on March 20, 2005, and assigned it number 264-05. On July 2, 2008, the Commission forwarded the pertinent parts of the petition to the State, giving it two months to present its reply, in accordance with Article 30.3 of the Rules of Procedure in force at the time. The State’s observations were received on March 19, 2009.

5. The IACHR received additional information from the petitioners on the following dates: May 11, 2009, October 5, 2010, January 12, 2011, May 2, 2012, May 16, 2012, May 21, 2012, and June 25, 2012. Communications were received from the State on August 23, 2010 and July 20, 2012. The information submitted by each party was duly forwarded to the other.

¹ The petition was originally filed by Jackeline Sandoval Escobar (Executive Director of the Due Process of Law Foundation–DPLF), Rafael Arturo Parra Saluzzo, and Jose Gregorio Mena. Gerardo E. Toledo and Yuri López Pérez of the non-governmental organization *Liberenlos ya!* were also established as co-petitioners, and Patricia Andrade of the non-governmental organization Venezuela Awareness Foundation. On September 6, 2010, the alleged victims also authorized the organization FUNDAPREFC International Assistance for the World to represent them. Later, on September 27, 2010, the Executive Secretariat of the IACHR received a communication in which the alleged victims revoked the authority of attorneys Patricia Andrade and Rafael Parra Saluzzo to represent them.

III. POSITIONS OF THE PARTIES

A. The petitioners

6. The petitioners name as alleged victims Otoniel José Guevara Pérez, who worked as the Director of the Office of the Secretary at the Department of Intelligence Security and Prevention (hereinafter “DISIP”); his brother Rolando Jesús Guevara Pérez, who at the time of the events was retired from his position as Chief of the Homicide Division of the Technical Unit of the Judicial Police; and Juan Bautista Guevara Rodríguez, a cousin of Otoniel José and Rolando Jesús, who at the time of the events was working as an Inspector with the Criminal, Penal, and Scientific Investigation Bureau. The facts alleged in this petition reportedly took place in the days following the murder of prosecutor Danilo Baltasar Anderson on November 18, 2004 in the city of Caracas, and in the context of the prosecutions that stemmed from that murder. Throughout their petition and in subsequent communications, the petitioners argued that the alleged victims were innocent, that there was no reliable evidence linking them to the murder, and that, consequently, they had been unfairly convicted.

a. *Alleged detention and torture of the alleged victims*

7. The petitioners assert that Juan Bautista Guevara Rodríguez was arrested on November 20, 2004 by police officers and immediately transported—together with his wife, Carmen Medina de Guevara—to a location that they were reportedly unable to identify. At that time they were not informed of the reasons for their arrest. Hours later, his wife was reportedly released and filed a complaint regarding her husband’s arrest with the Office of the Prosecutor General of Venezuela and with the 126th Prosecutor’s Office of the Caracas Metropolitan Area (hereinafter, “126th Prosecutor’s Office”). The petitioners allege that during the nine days that Juan Bautista Guevara Rodríguez was missing, he was subjected to different forms of torture. Subsequently, on November 29, 2004, he was reportedly “found” by DISIP agents in a hotel in the State of Portuguesa.

8. In addition, the petitioners indicate that on November 23, 2004, Otoniel José Guevara Pérez was arrested by police officers when he got home from work, in the city of Caracas. Thereafter, he was reportedly taken to Regional Command Unit No. 2 of the National Guard, where, they allege, he was subjected to various types of torture. That same day, Rolando Jesús Guevara Pérez was reportedly intercepted by police officers on the street and taken to the same Regional Command Unit as his brother, and also subjected to torture. The alleged victims were reportedly interrogated about their supposed participation in the murder of prosecutor Danilo Baltasar Anderson. Rolando Jesús Guevara Pérez’s wife reported her husband’s disappearance on November 24, 2004 to the 19th Prosecutor’s Office of the Caracas Metropolitan Area and to the Anti-Kidnapping and Extortion Division of the Criminal, Penal, and Scientific Investigation Bureau. According to the allegations, both brothers were left to fend for themselves three days later, in the early morning hours of November 26, 2004, in the city of Valencia, Carabobo; they were later “rescued” by soldiers from Regional Command Unit No. 2 of the National Guard, the Anti-Kidnapping and Extortion Group of Valencia. The petitioners complained that they had been “rescued” by the same police officers that had kept them unlawfully detained.

9. The petitioners state that Otoniel José and Rolando Jesús Guevara Pérez were reportedly transported to a DISIP office where they were held incommunicado until November 27, 2004, when they were brought before the 34th Trial Court for the Caracas Metropolitan Area (hereinafter, “the 34th Court”). That same day, a hearing was held at which Otoniel José Guevara Pérez and Rolando Jesús Guevara Pérez appeared as defendants in the murder of Danilo Baltasar Anderson. According to the petitioners, at that hearing the alleged victims stated that they had been unlawfully detained and tortured. Juan Bautista Guevara Pérez, for his part, was reportedly brought before the same court November 29, 2004, the day he was “found” by DISIP agents.

10. The petitioners maintain that, by law, the alleged victims should have been brought before a judicial authority within 24 hours of their arrest, to confirm its legality. However, they allege that the 34th Court simply “validated” the alleged victims’ unlawful arrest and decided to keep them in pretrial detention

as of November 29, 2004. The petitioners reportedly appealed this decision on December 3, 2004; however, the appeal was dismissed by the Fourth Division of the Court of Appeals for the Caracas Metropolitan Area (hereinafter, “4th Division of the Court of Appeals”) on January 20, 2004.

b. *Investigation into the acts of torture (Case File C-175)*

11. Once the alleged victims reported the alleged acts of torture to the 34th Court, the 126th Prosecutor’s Office was assigned to investigate the matter. The petitioners state that on December 3, 2004, they requested that the prosecutor’s office provide specific evidence, such as the expert medical evidence, to the alleged victims. They indicate that on November 26, 2004, the 126th Prosecutor’s Office of the Caracas Metropolitan Area ordered a forensic medical examination of the Guevara Pérez brothers. That examination reportedly stated that Otoniel Guevara Pérez exhibited bruising on his tongue, wrists, and hands, as well as abrasions to his wrists, hands, and nape of the neck. Rolando Jesús Guevara Pérez reportedly had bruising on both wrists and abrasions to his tailbone area; and Juan Bautista Guevara Rodríguez had an edematous contusion on his scalp, abrasions to the back of his right hand, and pronounced dehydration-induced fatigue and lethargy.

12. The petitioners further state that in January 2005 the case was reassigned to the 11th Trial Court for the Caracas Metropolitan Area (hereinafter, “11th Court”), because of several biased public statements released by the 34th Court’s regular judge on January 14, 2005.

13. They indicate that on March 8, 2005, they informed the 11th Court of the alleged acts of torture committed by personnel from the Public Ministry; nevertheless, the respective investigations reportedly made no significant progress until July 19, 2006, when the prosecutor’s investigation was ordered shelved without any of the possible perpetrators having been identified. They allege that the investigation was not conducted with due diligence, in spite of the medical evidence of the alleged torture. In addition, the petitioners complained that they had not been allowed to obtain copies of the case file, and that the defense attorney was only given access to the order to shelve the case for purposes of service of notice—which took place on May 3, 2007, 10 months after the investigation was ordered shelved.

c. *Criminal case for the murder of prosecutor Danilo Baltasar Anderson*

14. The petitioners state that on November 22, 2004 the Venezuelan Supreme Court issued Decision No. 2004-0217, creating the Anti-Terrorism Courts. That decision was reportedly “prepared” days after the death of prosecutor Danilo Baltasar Anderson, while the alleged victims were unlawfully detained. The petitioners indicate that this ruling would give the authority to hear and decide cases in the new anti-terrorism courts to specific judges chosen “nominally” and under non-transparent criteria. In addition, they claim that the investigations against the alleged victims had already begun prior to the Court’s decision, thus violating the principle of non-retroactivity.

15. With regard to the criminal investigation, the petitioners reported that the alleged victims had criminal charges brought against them in the 34th Court for the murder of prosecutor Danilo Baltasar Anderson. In that case, the Public Ministry reportedly indicted the alleged victims on January 13, 2005.

16. The petitioners state that they repeatedly asked the 34th Court for access to the documentation supporting the indictment against the three alleged victims. In view of the court’s failure to reply, they filed a petition for a constitutional remedy [*amparo*] on January 24, 2005 in the 6th Division of the Court of Appeals for the Caracas Metropolitan Area. That court reportedly declined to hear the case because it lacked jurisdiction over “crimes of terrorism,” and the case file was therefore forwarded to the 4th Division of the Court of Appeals. The 4th Division reportedly dismissed the *amparo* petition on April 24, 2005.

17. After the petitioners filed a motion to recuse the judges of the 34th Court, the trial was held in the 20th Trial Court for the Caracas Metropolitan Area (hereinafter, “20th Court”). On December 20, 2005 this trial court convicted the alleged victims. Otoniel José and Rolando Jesús Guevara Pérez were sentenced to 27 years and 9 months in prison, and Juan Bautista Guevara Rodríguez to 29 years and 6 months in prison.

These convictions were appealed, but the appeal was dismissed by the 7th Division of the Court of Appeals for the Caracas Metropolitan Area (hereinafter, “7th Division of the Court of Appeals”) on April 25, 2006. The representatives of the alleged victims filed petitions for cassation on October 25 and 26, 2006. Those petitions were dismissed on August 6, 2007, by the Criminal Cassation Division of the Venezuelan Supreme Court, which found them to be “manifestly groundless.”

18. According to the petitioners, there were a number of irregularities throughout the proceedings in this case, most notably including: (a) the indictment issued by the Public Ministry was not clear, precise, or detailed in terms of the alleged facts, and therefore the defendants did not have the specific knowledge with which to prepare their defense. They indicate that both the indictment and the judgments of conviction failed to demonstrate a clear and precise relationship between the offenses alleged and the evidence supposedly taken into consideration for each one of the alleged perpetrators; (b) the Public Ministry reportedly falsified records of the proceedings and paid to obtain false witnesses; (c) the defense was reportedly prevented from examining a “key witness,” who, the petitioners allege, “openly lied”; (d) they were denied access to several records of the proceedings, which was the basis for the *amparo* petition filed on January 24, 2005; (e) the alleged victims reportedly had serious difficulties communicating with their defense attorneys while they were detained at the Military Intelligence Bureau. They allege that state agents listened to their conversations, either in person or through listening devices; and (f) in general, they allege that the presumption of innocence, the right to a defense, and the principle of equality of arms were violated throughout the course of the proceedings.

19. In addition, they alleged the violation of the right to be tried by a “natural judge” [*juez natural*] in an ordinary, pre-established competent court, because the case was heard by a single-court judge. They assert that they should have been tried by a criminal court with one professional judge and two lay judges, and that in order to have been heard by a single-judge court, the following two conditions should have been met: first, the unsuccessful summoning of the two lay judges; and second, the voluntary consent of the defendants. Accordingly, they reportedly filed an appeal with the 7th Division of the Court of Appeals, which was denied on September 16, 2005, on grounds of supposed “serious procedural errors.”

20. The petitioners assert that the cases brought against the alleged victims were politically motivated, and that the State used tools of mass communication to publicly expose the alleged victims. For example, on November 26, 2004, the President of Venezuela reportedly named the alleged victims as the “direct perpetrators” of prosecutor Danilo Baltasar Anderson’s murder. The same was reportedly done by the Minister of Interior and Justice, as well as the Director of the Criminal, Penal, and Scientific Investigation Bureau, who “[reportedly] assumed without any proof that [the alleged victims] were guilty.” They further allege that they were called “murderers” and accused of being “paid by the CIA and imperialism,” and that those statements caused the alleged victims’ relatives to be threatened by fanatics. With respect to these allegations, the petitioners added that it would be “impossible” for the alleged victims to be able to rectify these statements, which they consider to be a violation of the right enshrined in Article 14 of the American Convention.

21. In addition, the petitioners allege that the Executive Branch exerted pressure on the judges involved in the domestic proceedings, and that the judiciary followed “the line established by the highest office of government.” Similarly, they maintained that the Prosecutor General of Venezuela had manipulated information at press conferences “in order to cover for the real perpetrators.” The petitioners additionally referred to several statements reportedly made by Justice Eladio Ramón Aponte Aponte on the television station “SOi TV,” in which he discussed the “lack of independence of the Venezuelan Judiciary” and “the persecution and set-up” that had taken place in the criminal case against the alleged victims. The petitioners noted that Eladio Ramón Aponte Aponte served as Chief Justice of the Criminal Cassation Division of the Venezuelan Supreme Court and that he had presided over the case against the alleged victims.

22. In addition, they reported that in a televised interview also broadcast on “SOi TV” on May 9, 2012, former Venezuelan Supreme Court Justice Luis Velázquez Alvaray said, among other things, that “the day after prosecutor Danilo Anderson’s death, high-ranking government representatives met and said that

they had the ‘green light’ to ruin the lives of the Guevara brothers.” The same judge reportedly affirmed the statements of Eladio Ramón Aponte Aponte on CNN on May 11, 2012.

23. The petitioners state that on May 7, 2008 they filed a criminal complaint against the former Prosecutor General and the five prosecutors assigned to handle that case. However, the complaint was reportedly dismissed on August 5, 2008 by the 39th Trial Court for the Caracas Metropolitan Area. In a final effort, they filed a complaint against the assigned prosecutors and against the former Prosecutor General of Venezuela alleging the crime of forced disappearance, but this action was also unsuccessful.

d. *Conditions of detention during the case*

24. The petitioners indicate that on December 22, 2004, the alleged victims were being held at the Military Intelligence Bureau, where they were reportedly physically and verbally abused by military personnel. Later, on April 23, 2005, they were reportedly transferred to the detention facilities of the Department of Intelligence Security and Prevention (DISIP) and, three days later, to the San Francisco de Yare Penitentiary (Yare II). They allege that they were transported at night, and that their relatives were not able to locate them until four days later. While the alleged victims were held at that prison, the criminal case against them went to trial. Finally, in March 2006 they were reportedly taken back to DISIP.

25. At DISIP, the alleged victims were reportedly held in individual, windowless cells measuring 2 x 2 meters, and given a small cement bed. They allege that they were allowed one hour or less of sunlight once every two weeks, and that there was no air circulation in the cells, which tended to be suffocatingly hot. They also stated that Rolando Jesús Guevara Pérez was sick for over a month without the DISIP’s specialized physicians being able to diagnose his illness. They claim that after his medical exams—paid for by his wife—he was diagnosed with mononucleosis caused by the viral environment of the detention facility.

26. For all of the above reasons, the petitioners alleged that the Venezuelan State is responsible for the violation of the rights enshrined in Articles 4, 5, 7, 8, 9, 11, 14, 24, and 25 of the American Convention and Article 15 of the Inter-American Convention Against Terrorism.

B. The State

27. The State asked the Commission to declare the petition inadmissible because it does not meet the requirements of Article 46.1.a and 46.1.b of the American Convention, and because it does not fall under any of the exceptions provided for in Article 46.2 thereof. In addition, it asked the Commission to declare that the Venezuelan State is not responsible for the alleged violations.

28. The State alleges that the petitioners expressly acknowledged their failure to exhaust domestic remedies in their submissions to the IACHR. In the State’s opinion, this is a violation of the subsidiary nature of the Inter-American System. The State maintained that the petition had been filed while the domestic proceedings were still pending and, therefore, before the petitioners exhausted the domestic remedies as required by Article 46 of the Convention. According to the State, this was proven by the fact that the trial court handed down its conviction on December 20, 2005, subsequent to the filing of the petition with the Commission.

29. It asserts that the Commission initiated a proceeding that allowed the petitioners to gradually add new information to the case file in an exchange of correspondence that continued for a period of 3 years, during which time the petitioners amended their petition, their claims, and the facts alleged. In this respect, it argued that the Commission’s activity far exceeded the powers conferred upon it under Article 26 of the Rules of Procedure, which allows the Executive Secretariat to request information from the petitioner in the event that a petition does not meet the requirements for admissibility. It maintained that the petition was processed at the international level simultaneously with the domestic trials, without the petitioners demonstrating any reasons to justify an exception to the requirement of prior exhaustion of domestic remedies. In addition, the State indicated that the petitioners were aware of remedies that they still had not exhausted and that they proceeded to do so after filing the petition.

30. In addition, the State made specific arguments with respect to the different procedural options available at the domestic level.

a. *Alleged detention of the alleged victims*

31. The State challenges the petitioners' allegations regarding the circumstances under which the alleged victims were arrested, stating that there were inconsistencies and contradictions between what they said in the domestic forum and what they said in their petition to the IACHR. On this point, the State provided the following clarifications.

32. Juan Bautista Guevara Rodríguez was reportedly apprehended by DISIP agents at the Bella Vista Hotel, in the State of Portuguesa, pursuant to an arrest warrant issued by the 34th Court at the request of the Public Ministry. According to the State, once the arrest warrant was executed, Juan Bautista Guevara Rodríguez was brought before that court, which held the respective hearing, admitted the prosecutor's initial determination, and ordered that he be held in pretrial detention. The alleged victim's representative appealed that decision. The State additionally indicated that Rolando Jesús Guevara Pérez's representatives appealed his November 29, 2004 pretrial detention order. That appeal was subsequently dismissed by the 4th Division of the Court of Appeals, because it was based on arguments related to the lawfulness of the evidence on record. According to the State, that would be inadmissible at that stage of the proceedings. The State made similar arguments with respect to the appeal of the pretrial detention order issued against Otoniel José Guevara Pérez, which was also dismissed by the same court. In view of these considerations, it concluded that "the petitioners had an effective judicial remedy consistent with the rules of due process, and they had the ability to use that remedy with no impediment whatsoever in order to challenge the decision that they considered to have violated their human rights."

b. *Investigation of acts of torture (Case File C-175)*

33. The State asserts that on the same day the complaint of alleged torture was filed with the 126th Prosecutor's Office, the respective investigation was opened. According to the State, the petitioners requested the production of certain evidentiary measures that were "irrelevant" in the prosecutor's opinion; the petitioners did not challenge this, even though they could have filed a motion to recuse the prosecutor pursuant to Article 54 of the Organic Law of the Public Ministry.

34. The State maintains that the Public Ministry took a number of useful and necessary steps to establish the appropriate responsibilities. Subsequently, the prosecutor's office examined the abovementioned case file, concluding that there was no basis on which to prosecute anyone. Consequently, on July 19, 2006, the prosecutor's office declared that the case had been shelved. The alleged victims' representative was served notice of that decision on May 3, 2007, and did not challenge or appeal it.

35. The State alleges that from the entire text of the petition "it is impossible to establish with certainty that the petitioners were subjected to torture or cruel treatment by police personnel, let alone that prosecutors from the Public Ministry took part in the alleged unlawful detention." It added that, in spite of the fact that the petitioners stated that Juan Bautista Guevara lodged a complaint during the March 8, 2005 hearing against a prosecutor from the Public Ministry for his alleged participation in acts of torture, Bautista Guevara's statements do not support any accusation against any prosecutor from the Public Ministry.

36. The State points out that Article 315 of the Organic Code of Criminal Procedure provides that the victim may at any time "request that the investigation be reopened" and specifies the necessary procedures for doing so. In addition, the victim has the power to request that the supervisory judge examine the basis for the measure. In the event that the court finds that the victim's request is well founded, it can order that the case be sent to the prosecutor at the court of appeals so that he or she can order another prosecutor to take the appropriate steps. The State maintains that the petitioners failed to make use of this ability to reopen the investigation into the alleged torture.

37. The State concludes that, on the whole, the failure to request the recusal of the prosecutors, the failure to request the reopening of the investigation, and the failure to challenge the matter before a supervisory judge suggests that the alleged torture did not happen, and “in any case demonstrates the capricious intent to not pursue the exhaustion of domestic remedies.”

c. *Criminal case for the murder of prosecutor Danilo Baltasar Anderson*

38. In relation to the criminal case for the murder of prosecutor Danilo Baltasar Anderson, which resulted in the conviction of the alleged victims, the State alleges that they can still file appeals at the enforcement of judgment phase, but have not done so. It specifically maintains that the petitioners failed to file a motion to vacate the judgment, as established in Article 470 of the Organic Code of Criminal Procedure, which is admissible against a final judgment and seeks to vacate the judgment and acquit the defendant.

39. As for the alleged violations of Article 8 of the American Convention, the State asserted that the alleged victims were heard by a “natural judge,” and by competent, independent, impartial, and pre-established courts, within reasonable periods of time. It further maintained that the presumption of innocence was respected, with the limitations imposed by the deprivation of liberty; that the defendants had been given the necessary time and means for their defense; that they were assisted by a defense attorney of their own choosing, with whom they had free and private communications; that they had the opportunity to examine witnesses; that they were afforded the right against self-incrimination; that they were able to appeal the judgment to a higher court, and that they were even able to obtain oversight of the judges’ actions through cassation.

40. In relation to the fact that the alleged victims were convicted by a single-judge court, the State offered a summary of the evolution of the institution of lay judges in Venezuela, a concept whereby the participation of two lay judges—called “*escabinos*”—was incorporated into the system of criminal procedure. These lay judges are responsible for determining the defendant’s guilt or innocence together with the professional judge at trial. The State noted that Article 164 of the Civil Code provides that the defendant may waive his or her right to be tried by lay judges and have his or her case decided solely by a professional judge only after five announcements have been made without being able to assemble a court that includes lay judges. However, the State indicated that, on December 22, 2003, the Constitutional Division of the Venezuelan Supreme Court amended the legislative criteria through a binding judgment, establishing that it would be permissible for a single-judge court to convene after two announcements were made—rather than five—without any lay judges having appeared, as in this case. The State asserts that it was according to these interpretations that the 20th Court dispensed with the lay judges.

41. Nevertheless, according to the State, the petitioners appealed the decision, and the appeal was adjudicated on September 16, 2005 by the 7th Division of the Court of Appeals. The State maintains that in order for a court to be considered “natural,” “it is only necessary for it to have territorial and subject matter jurisdiction, and for its existence to precede the events at issue in the case.”

42. With respect to the petition for a constitutional remedy [*amparo*] filed on January 24, 2005 in view of the alleged denial of access to the evidence supporting the indictment, the State asserts that the petitioners did not appeal the order of denial issued by the 4th Division of the Court of Appeals, which was acting as the court of first instance in the matter. The State explains that the decision was subject to appeal pursuant to Article 35 of the Organic Law of Amparo and Constitutional Guarantees. The State indicates that the petitioners themselves admitted that they failed to exhaust this remedy, because “the preliminary hearing was about to be held, and [they] had to prepare for it.” The State concludes that this remedy was not exhausted because of defense techniques and ineptitude, which is in no way attributable to the Venezuelan State. The petitioners additionally failed to file an appeal for constitutional review, which they could have done under Article 336 of the Venezuelan Constitution and Article 5.4 of the Organic Law of the Supreme Court.

43. The State also asserts that in spite of the serious accusations the petitioners made before the Commission against the prosecutors who handled the domestic cases, the petitioners did not file any motions

against them while the case was being tried. This procedural inaction, in the State's opinion, renders inadmissible the petitioners' arguments regarding the irregularities they attribute to the prosecutors' actions.

44. With regard to the allegations concerning the domestic courts with jurisdiction over terrorism cases, the State affirms that the Venezuelan Supreme Court issued Decision No. 2004-0217 on November 22, 2004, which was prior to the indictment of the alleged victims. In that decision, the Venezuelan Supreme Court, in the exercise of the powers conferred upon it by Article 267 of the Constitution, granted exclusive jurisdiction to the 34th Court (which reportedly serves as the "coordinator," with the authority to assign relevant cases to the criminal trial courts), the 11th Court, the 6th Court—the three Trial Courts for the Caracas Metropolitan Area— and the 4th and 7th Divisions of the Court of Appeals for the Caracas Metropolitan Area, to hear and decide terrorism-related cases that arise anywhere in the country. According to the State, these courts did not only handle the instant case, and the courts with exclusive jurisdiction over terrorism-related cases reportedly issued 10 orders and 19 judgments on terrorism offenses between 2007 and 2009.

45. As for the petitioners' allegations regarding the pressure exerted on the Judiciary by the Executive Branch, the State denies that any of the decisions issued by the judges were rendered with any bias or lack of independence. The State added that the statements made by the Prosecutor General of Venezuela at public events and on the State television channel do not by themselves constitute "false information" or a violation of the petitioners' right to a fair trial.

46. The State also made several arguments related to the other violations alleged by the petitioners. With regard to the alleged violation of the right to life, enshrined in Article 4 of the Convention, the State indicated that the terms of the Convention are clear in establishing that a violation of the right to life is committed when "there is an arbitrary or punitive deprivation of existence," which did not occur in this case. As for the right of reply or correction, enshrined in Article 14 of the Convention, it indicates that no request was ever made to the government television channels to correct the information provided by government officials involved in the case. With respect to the alleged violation of the right to equal protection, enshrined in Article 24 of the Convention, the State indicates that there is no evidence to show that this case was treated any differently than other similar cases. In terms of the right to privacy contained in Article 11 of the Convention, the State asserts that the alleged victims had the opportunity to pursue civil and criminal actions against those they considered responsible, but failed to do so. With respect to the threats supposedly received by relatives of the alleged victims as a result of the alleged accusations of the government, the State maintains that no complaint was ever filed by the alleged victims' relatives, which casts doubt on the existence of those harmful acts.

47. With regard to the petitioners' allegations concerning Justice Eladio Ramón Aponte, the State indicates that "it does not understand what the petitioners are seeking to accomplish by complaining to the Commission about the case of former Justice Eladio Ramón Aponte Aponte and his statements to a television station based in Miami, Florida." It states that the former Venezuelan Supreme Court justice was removed from the bench by the National Assembly for the serious infraction of providing credentials to an alleged drug trafficker. Accordingly, the State asked the Commission to disregard the information provided by the petitioners about the aforementioned justice.

48. In conclusion, the State asked the IACHR to declare this petition inadmissible for failure to comply with the requirements of Articles 46.1.a and 46.1.b of the Convention, and because it does not fall under any of the exceptions of Article 46.2 thereof. It additionally asked the IACHR to declare that the Venezuelan State is not responsible for the violations alleged in this case.

IV. ANALYSIS ON COMPETENCE AND ADMISSIBILITY

A. Competence

49. Under Article 44 of the American Convention, the petitioners in principle have *locus standi* to file petitions before the Inter-American Commission. The alleged victims named in the petition are

individuals with respect to whom the Venezuelan State agreed to guarantee human rights. With respect to the State, the Commission notes that Venezuela was a State party to the American Convention between August 9, 1977, when it deposited its ratification instrument, and September 10, 2013, when the State's denunciation of the Convention took effect. Acts alleged to have taken place subsequent to that date will be examined under the American Declaration of the Rights and Duties of Man. In addition, the State has been a party to the Inter-American Convention on The Forced Disappearance of Persons since January 19, 1999; and to the Inter-American Convention to Prevent and Punish Torture since August 26, 1991, on which dates the State deposited its respective ratification instruments. Accordingly, the IACHR has jurisdiction *ratione personae* to examine the petition.

50. In addition, the Commission has jurisdiction *ratione loci* to examine the petition because it alleges the violation of rights protected in inter-American instruments reported to have occurred in the State of Venezuela.

51. The Commission has jurisdiction *ratione temporis* because the obligations to respect and guarantee the rights protected in the American Convention, the Inter-American Convention on The Forced Disappearance of Persons, and the Inter-American Convention to Prevent and Punish Torture were in force for the State on the date of the events alleged in the petition.

52. In addition, the Commission also has jurisdiction *ratione materiae* because the petition alleges the violation of human rights protected by the American Convention, the Inter-American Convention on the Forced Disappearance of Persons, and the Inter-American Convention to Prevent and Punish Torture.

53. Finally, the Commission does not have jurisdiction to examine the violation of Article 15 of the Inter-American Convention Against Terrorism alleged by the petitioners.

B. Admissibility Requirements

1. Exhaustion of domestic remedies

54. Article 46.1.a of the American Convention provides that for a petition submitted to the Inter-American Commission to be admissible under Article 44 of the Convention, the petitioner must first have pursued and exhausted domestic remedies, in keeping with generally recognized principles of international law. This requirement is intended to allow national authorities to consider an alleged violation of a protected right and, when applicable, to give them the opportunity to correct it before it is heard and decided by an international body.

55. First, the State notes that the petition was filed "while the domestic proceedings were underway" and, therefore, before the petitioners had exhausted the domestic remedies. For their part, the petitioners maintain that they submitted their petition to the IACHR prior to exhausting the domestic remedies due to the complete uncertainty of the alleged victims' situation, and for purposes of addressing the "absence of a system governed by the rule of law in Venezuela." In that respect, they specified that although they could have accessed certain domestic remedies, those remedies were ineffective because the "judges and prosecutors [handling the case] were hand-picked."

56. As a preliminary matter, the Commission observes that indeed the petition under study was filed before all of the domestic remedies were exhausted. In accordance with its practice, the IACHR has determined that the situation that must be taken into account to establish whether domestic remedies have been exhausted is that which exists at the time of the admissibility determination, given that filing date and the date of the admissibility decision are different.² Therefore, the Commission will use this criterion to examine the exhaustion of domestic remedies and the timeliness of the petition.

² IACHR, Report No. 4/15, Petition 582-01. Admissibility. Raúl Rolando Romero Feris. Argentina. January 29, 2015, para. 43; IACHR, Report No. 94/14, Petition 623-03. Admissibility. Jaime Humberto Uscátegui Ramírez and Family. Colombia. November 6, [continues ...]

57. Next, the Commission observes that this petition includes various allegations that were addressed at the domestic level in different proceedings. Accordingly, the IACHR will examine the extent to which the prior exhaustion of domestic remedies requirement has been met with respect to each one of these proceedings; or whether one of the exceptions provided for in Article 46.2 of the Convention applies.

a. *Investigation of the allegations of torture*

58. According to the information available, the IACHR observes that based on the alleged victims' complaint to the 34th Court of having been subjected to torture, the 126th Prosecutor's Office opened a criminal investigation to establish the facts. The petitioners maintained that the acts alleged went unpunished, and that on July 19, 2006 the prosecutor's office ordered the investigation shelved, without the perpetrators having been identified. In addition, the petitioners alleged that they had been denied access to a copy of the case file and that they were notified of the case being shelved ten months after the fact.

59. The State asserted that, after the prosecutor's office decided to shelve the case, the alleged victims could have asked for the case to be reopened pursuant to Article 315 of the Organic Code of Criminal Procedure, and it specified the steps they would need to take. However, according to the State, the petitioners failed to avail themselves of this option.

60. The jurisprudence of the IACHR has been consistent in establishing that in cases alleging torture the suitable and effective remedy is normally a criminal investigation and prosecution, and that the State has the obligation to initiate and pursue that remedy.³ In cases such as this one, which involves potential offenses that the State must prosecute on its own initiative—especially when State agents may be involved in those offenses—the State, in the exercise of its punitive power, and through the Public Ministry, has the obligation to present charges against the alleged perpetrators and diligently pursue all of the stages of the proceedings to their conclusion.⁴ This burden must be assumed by the State as its own legal duty and it cannot depend on the initiative of the victim or his or her relatives to take legal action.⁵

61. Taking account of the information presented, for purposes of the preliminary admissibility analysis, the IACHR finds that the appeal filed by the representatives of the alleged victims was suitable, and that they met the requirement established in Article 46.1.a of the American Convention with respect to these claims.

b. *Alleged irregularities in the criminal case*

62. In relation to the alleged procedural irregularities in the criminal case that resulted in the conviction of the alleged victims, the IACHR observes that the petitioners filed appeals against the trial court's judgment of conviction on February 6 and 7, 2006, which were dismissed on April 25, 2006 by the Court of

[... continuation]

2014, para. 39; IACHR, Report No. 25/04, Petition 12.361, Admissibility, Ana Victoria Sánchez Villalobos et al., Costa Rica, March 11, 2004, para. 45; IACHR, Report No. 52/00 Cases 11.830 & 12.038. Dismissed Congressional Employees. Peru, June 15, 2000, para. 1.

³ IACHR, Report No. 18/15, Petitions 929-04, 1082-07 & 1187-07. Admissibility. José Antonio Arrona Salazar and Family, Luz Claudia Irozaqui Félix, and Joel Gutiérrez Ezquivel. Mexico. March 24, 2015, para. 33; IACHR, Report No. 7/15, Petition 547-04. Admissibility. José Antonio Bolaños Juárez. Mexico. January 29, 2015, para. 22; IACHR, Report No. 73/14, Petition 272-05. Admissibility. Gustavo Javier Alarcón et al. Argentina. August 15, 2014, para. 30; IACHR, Report No. 49/13, Admissibility. Gerardo Cruz Pacheco. Mexico. July 12, 2013, para. 35; IACHR, Report No. 32/13. Petition 276-04. Admissibility. Siegfried Jesús De Los Reyes Vomend. Mexico. March 21, 2013, para. 28.

⁴ IACHR, Report No. 16/02, Admissibility, Petition 12.331, Marco Antonio, Servellón García, Rony Alexis Betancourt Hernández, Diómedes Obed García, and Orlando Alvarez Ríos ("The Cardinal Points Case"). Honduras. February 27, 2002, para. 27; IACHR, Report No. 65/99. Case 10.228. Víctor Hernández Vásquez. El Salvador. April 13, 1999, para. 82; IACHR, Report No. 25/98, Cases 11.505, 11.532, 11.541, 11.546, 11.549, 11.569, 11.572, 11.573, 11.583, 11.585, 11.595, 11.652, 11.657, 11.675 & 11.705. Chile. April 7, 1998, para. 56.

⁵ IACHR, Report No. 22/09, Admissibility, Igmarr Alexander Landaeta Mejías. Venezuela. March 20, 2009, para. 52; IACHR, Report No. 1/11, Admissibility. Saúl Filormo Cañar Pauta. Ecuador. January 4, 2011, para. 30; IACHR, Report No. 43/13, Petition 171-06. Admissibility. YGSA. Ecuador, July 11, 2013, para. 28.

Appeals of the Criminal Judicial Circuit of the Caracas Metropolitan Area. Later, on October 25 and 26, 2006, they reportedly filed petitions for cassation, which were dismissed on August 6, 2007 by the Cassation Division of the Venezuelan Supreme Court. In addition to the appeals filed in the principal case, the Commission observes that the alleged victims also filed a petition for a constitutional remedy [*amparo*] on January 24, 2005 complaining that they were denied access to evidence held by the Public Ministry, which was dismissed by the 4th Division of the Court of Appeals. They also reportedly filed an appeal related to the establishment of the single-judge court, which was denied on September 16, 2005 by the 7th Division of the Court of Appeals.

63. For its part, the State alleges that the petitioners failed to exhaust domestic remedies because they did not file a motion to vacate the judgment pursuant to Article 470 of the Organic Code of Criminal Procedure. According to the State, this motion is admissible against a final judgment and seeks to vacate the judgment and acquit the defendant. The petitioners explained that they did not file a motion to vacate the judgment because it is optional and because, in order to do so, they would have necessarily had to prove one of the limited circumstances contained in Article 470 of the Organic Code of Criminal Procedure.

64. Specifically in relation to the State's argument concerning the failure to make use of the motion to vacate the judgment at the enforcement stage, the IACHR observes that that motion is considered an extraordinary remedy and the conditions for its use are determined by a limited set of restrictive grounds. Therefore, the IACHR is of the opinion that it is a remedy that need not be exhausted for purposes of meeting the requirement imposed under Article 46.1.a of the American Convention. With regard to the remaining arguments, the IACHR recalls that the exhaustion of domestic remedies requirement does not mean that the alleged victims have the obligation to exhaust all of the remedies available to them.⁶ In this case, and for purposes of examining admissibility, the Commission observes that the alleged victims exhausted the suitable and relevant judicial remedies under Venezuelan criminal law in the terms stipulated in Article 46.1.a of the American Convention.⁷ In this respect, the final decision was rendered on August 6, 2007, when the Criminal Cassation Division of the Venezuelan Supreme Court dismissed the petitions for cassation filed by the petitioners.

c. *Deprivation of liberty*

65. Addressing the reported illegal and/or arbitrary detention of the alleged victims, the IACHR notes that there is no dispute regarding the exhaustion of domestic remedies. Indeed, according to the information available in the case file, the IACHR observes that the petitioners unsuccessfully appealed the November 29, 2004 decision ordering the detention of the alleged victims.

66. Based on the foregoing considerations, the IACHR finds that this petition meets the exhaustion of domestic remedies requirement provided for in Article 46.1.a of the American Convention, in relation to the alleged arbitrary detention of the alleged victims.

d. *Alleged violation of the right of reply or correction*

67. The IACHR notes that the petitioners provided no evidence to demonstrate that they had availed themselves of domestic remedies to assert their right of reply or correction. Accordingly, the IACHR finds that the allegations referring to Article 14 are inadmissible due to the failure to exhaust domestic remedies as required by Article 46.1.a.

⁶ IACHR, Report No. 45/13, Petition 421-05. Admissibility. Eduardo Julián Parrilla Ortiz. Ecuador. July 11, 2013, para. 28; IACHR, Report No. 76/09, Petition 1473-06. Admissibility. Community of La Oroya. Peru. August 5, 2009, para. 64; Report No. 40/08, Petition 270-07. Admissibility, I. V., Bolivia, July 23, 2008, para. 70.

⁷ IACHR, Report No. 59/13, Petition 212-06, Admissibility. Rocío San Miguel Sosa et al. Venezuela. July 16, 2013, para. 72; IACHR, Report No. 70/04, Petition 667-01. Admissibility. Jesús Manuel Naranjo Cárdenas et al. (Pensioners of the Venezuelan Aviation Company VIASA). Venezuela. October 13, 2004, para. 52.

2. Timeliness of the petition

68. The Convention establishes that, in order for the petition to be declared admissible, it must be filed within six months of the date on which the alleged victim was served notice of the final decision rendered by the domestic courts.

69. The domestic remedies were exhausted while the case was under study for purposes of admissibility. In these circumstances, it has been the consistent opinion of the Commission that compliance with the requirement to timely file the petition is intrinsically linked to the exhaustion of domestic remedies, and therefore, it is appropriate to find that it has been met.⁸

70. The events in question reportedly began in November 2004, the petition was received on March 20, 2005, and the domestic remedies were exhausted subsequent to that date. Accordingly, the Commission finds that the petition was timely filed, and the admissibility requirement concerning the timeliness of the petition therefore has been met.

3. Duplication of proceedings and international *res judicata*

71. Article 46.1.c of the Convention states that in order for a petition to be admitted by the IACHR, it is imperative “that the subject of the petition or communication is not pending in another international proceeding for settlement,” and Article 47.1.d of the Convention provides that the Commission shall consider inadmissible any petition or communication submitted if it is “substantially the same as one previously studied by the Commission or by another international organization.”

72. The case file does not contain any information to indicate that the subject of the petition is pending in another international proceeding, or that it duplicates a petition previously decided by the IACHR or another international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

4. Colorable Claim

73. For purposes of admissibility, the Commission must decide whether the alleged facts amount to a violation of rights according to the requirements of Article 47.b of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” as described in Article 47.c. The evaluation criteria of these requirements differ from those used to render a decision on the merits of a petition. The Commission must perform a *prima facie* evaluation, not to establish the alleged violations of the American Convention, but to examine whether the petition alleges acts that could potentially constitute violations of the rights guaranteed in the American Convention. This determination reflects a preliminary analysis, and does not entail the prejudgment of the merits of the case.

74. Neither the American Convention nor the IACHR’s Rules of Procedure require petitioners to identify the specific rights alleged to have been violated by the State in the matter submitted to the Commission, although they may do so if they wish. It falls to the Commission, on the basis of the system’s jurisprudence, to determine in its reports on admissibility which provisions of the pertinent inter-American instruments are applicable, and the violation thereof may be established if the facts alleged are demonstrated with sufficient evidence.

75. In view of the legal and factual elements presented by the parties, the Commission finds that, if proved, the petitioners’ allegations of forced disappearance, subsequent deprivation of liberty, torture, and absence of an effective investigation of those allegations by the competent authorities could constitute a violation of the rights enshrined in Articles 3, 5, 7, 8, and 25 of the Convention, in conjunction with Article 1.1

⁸ See also: IACHR, Report No. 92/14, Petition 1196-03. Admissibility. Daniel Omar Camusso and Son. Argentina. November 4, 2014, para. 80; IACHR, Report No. 8/10. Case 12.374. Admissibility. Jorge Enrique Patiño Palacios et al. Paraguay. March 16, 2010, para. 31; IACHR, Report No. 20/05. Petition 716-00. Admissibility. Rafael Correa Díaz. Peru. February 25, 2005, para. 34.

thereof, to the detriment of the alleged victims. The Commission additionally finds that the potential violations of Articles 8, 25, and 5 of the American Convention to the detriment of the alleged victims' relatives are admissible. Similarly, at the merits phase, the Commission must examine the potential application of Articles 1 and 11 of the Inter-American Convention on The Forced Disappearance of Persons and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

76. With regard to the irregularities that reportedly took place during the criminal case prosecuted against the alleged victims, and the alleged statements of government authorities concerning their guilt, the IACHR finds that, if corroborated, they could be violations of Articles 8, 9, and 25, in conjunction with Articles 1 and 2 of the Convention, to the detriment of the alleged victims. Similarly, the Commission finds that, if proved, the allegations regarding the conditions of detention in which the alleged victims were deprived of their liberty could amount to a violation of Article 5 of the American Convention, in conjunction with Article 1.1 thereof, to the detriment of the alleged victims.

77. Finally, the Commission finds that the petitioners have not presented facts tending to establish violations of the rights enshrined in Articles 4 and 24 of the Convention. The alleged violations of Article 11 of the Convention are included within the Commission's assessment regarding the violation of Article 8 of the Convention.

V. CONCLUSION

78. Based on the foregoing legal and factual considerations, and without prejudging the merits of the case, the Inter-American Commission concludes that this case meets the admissibility requirements contained in Articles 46 and 47 of the American Convention, and therefore,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To find this petition admissible with respect to Articles 3, 5, 7, 8, 9, and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof, Articles 1 and 11 of the Inter-American Convention on The Forced Disappearance of Persons, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, with respect to Rolando Jesús and Otoniel José Guevara Pérez, Juan Bautista Guevara Rodríguez, and their relatives, in the terms discussed in this report.

2. To find this petition inadmissible with respect to Articles 4, 11, 14, and 24 of the American Convention.

3. To provide notice of this decision to the State and to the petitioners.

4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 28th day of the month of October, 2015. (Signed): Rose-Marie Belle Antoine, President; James L. Cavallaro, First Vice President; Felipe González, Rosa María Ortiz, Tracy Robinson and Paulo Vannuchi, Commissioners.