

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 7/04; Petition 487/03
Session: Hundred and Nineteenth Regular Session (23 February – 12 March 2004)
Title/Style of Cause: Gabriela Perozo, Aloys Marin, Efrain Henriquez, Oscar Davila Perez, Yesenia Thais Balza Bolivar, Carlos Quintero, Felipe Antonio Lugo Duran, Alfredo Jose Pena Isaya, Beatriz Adrian, Jorge Manuel Paz Paz, Mayela Leon Rodriguez, Richard Alexis Lopez Valle, Felix Jose Padilla Geromes, John Power, Miguel Angel Calzadilla, Jose Domingo Blanco, Jhonny Donato Ficarella Martin, Norberto Mazza, Gladys Rodriguez, Maria Arenas, Jose Vicente Antonetti Moreno, Orlando Urdaneta, Edgar Hernandez, Claudia Rojas Zea, Jose Natera, Aymara Anahi Lorenzo Ferrigni, Carlos Arroyo, Ana Karina Villalba, Wilmer Escalona Arnal, Carla Maria Angola Rodriguez, Jose Iniciarte, Guillermo Zuloaga Nunez and Alberto Federico Ravell v. Venezuela

Doc. Type: Decision
Decided by: President: Jose Zalaquett;
First Vice-President: Clare K. Roberts;
Second Vice-President: Susana Villaran;
Commissioners: Evelio Fernandez Arevalo, Florentin Melendez.
Commissioner Freddy Gutierrez Trejo, of Venezuelan nationality, did not take part in the discussion and voting on the present report, pursuant to Article 17(2)(a) of the Rules of Procedure of the Commission.

Dated: 27 February 2004
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I. SUMMARY

1. On June 22, 2003, Gabriela Perozo, Aloys Marín, Efraín Hernéiquez, Oscar Dávila Pérez, Yesenia Thais Balza Bolívar, Carlos Quintero, Felipe Antonio Lugo Durán, Alfredo José Peña Isaya, Beatriz Adrián, Jorge Manuel Paz Paz, Mayela León Rodríguez, Richard Alexis López Valle, Felix José Padilla Geromes, John Power, Miguel Angel Calzadilla, José Domingo Blanco, Jhonny Donato Ficarella Martín, Norberto Mazza, Gladys Rodríguez, María Arenas, José Vicente Antonetti Moreno, Orlando Urdaneta, Edgar Hernández, Claudia Rojas Zea, José Natera, Aymara Anahi Lorenzo Ferrigni, Carlos Arroyo, Ana Karina Villalba, Wilmer Escalona Arnal, Carla María Angola Rodríguez, and José Iniciarte, all employees of the Venezuelan television station Globovisión, as well as Guillermo Zuloaga Núñez and Alberto Federico Ravell, shareholders and members of the board of directors of Globovisión, (hereinafter "the Petitioners") filed a petition before the Inter-American Commission on Human Rights, alleging that the Bolivarian Republic of Venezuela (hereinafter "the State") had violated their rights to freedom of expression, personal integrity, a fair trial, and judicial protection under Articles 13, 5,

8, and 25 of the American Convention on Human Rights, respectively. The Petitioners further allege that the State has violated its general obligations to respect and guarantee these rights under Articles 1(1) and 2 of the American Convention.

2. The Petitioners allege that, since 2001, the journalists and staff of Globovisión, particularly those journalists who cover events outside of the station and the support staff that accompany them, as well as the shareholders and directors identified in the petition as Petitioners, have been subjected to an ongoing and escalating campaign of harassment and aggression. The Petitioners further allege that the property of Globovisión has also been subjected to damage by these same aggressors. The Petitioners claim that many of these aggressors are members of "Bolivarian Circles," groups of citizens that act at the behest of the government and that are funded and protected by the government. They further claim that the State has failed to undertake a serious investigation of these incidents in order to identify and sanction the perpetrators.

3. As of the date of this report, the State had not submitted observations regarding this petition.

4. After reviewing the positions of the parties in light of the admissibility requirements set out in the American Convention, the Commission decided to declare the case admissible as it relates to the alleged violations of Articles 1(1), 2, 5, 8, 13, and 25 of the Convention, to notify the parties to make public this decision and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

A. Petition

5. The Commission received the present petition on June 27, 2003 and acknowledged receipt in a letter to the Petitioners dated July 3, 2003.

6. On August 19, 2003, the Commission forwarded the pertinent parts of the petition to the State, establishing a period of two months for the State to respond. As of the date of this report, the Commission had received no response from the State regarding this communication.

B. Precautionary Measures

7. On January 29, 2002, Globovisión requested precautionary measures from the Commission to protect the rights to personal integrity and freedom of expression of María Fernanda Flores, vice president of Globovisión; Mayela León, journalist; and Jorge Manuel Paz, cameraman, along with workers from the channel Radio Caracas Televisión (RCTV). On January 20, 2002, the named journalists had been assaulted by a group of roughly 50 persons while they were covering a transmission of the program *Aló Presidente*. On January 30, 2002, the Commission requested the State to adopt measures to protect the lives and personal integrity of the named individuals as well as the necessary measures to protect the security of all of the employees and property of Globovisión and RCTV. The Commission also requested the State to refrain from any action that could have an intimidating effect on the professional activities of the

workers of the two media. Finally, the Commission requested that the State carry out a thorough investigation of the events of January 20. The State was given a period of 15 days to inform the Commission regarding the concrete measures adopted to comply with its request.

8. On March 11, 2002, the State responded that the Attorney General's Office had commissioned two prosecutors of the Circunscripción Judicial del Area Metro de Caracas to initiate the corresponding investigation, to clarify the facts, and to establish responsibility. Additionally, the State informed that the Director General of Police Coordination had met with the three named journalists from Globovisión and that the journalists had rejected personal protection, asking only for police contact numbers to use if necessary. On March 20, the State's response was delivered to the Petitioners.

9. On May 30, 2002, the State sent another letter stating that the case of Globovisión was in the investigation phase and that the corresponding protection measures had been carried out. This letter was transmitted to the Petitioners on June 19, 2002.

10. On July 17, 2002, the Petitioners requested the Commission to extend the duration of the precautionary measures and expand them to include all of the workers and installations of Globovisión. On July 29, 2002, the Commission extended the measures for six additional months and expanded them to apply fully to all employees of Globovisión and RCTV. Additionally, the State was requested to carry out a thorough investigation of all acts of intimidation and attacks against the employees and property of Globovisión and RCTV. Again, the State was given a period of 15 days to inform the Commission of the steps taken to comply with request.

11. On January 28, 2003, the Petitioners requested another extension of the measures, which was granted by the Commission on February 5, 2003.

12. On October 20, 2003, the Petitioners requested a further extension of the precautionary measures, alleging that the attacks against them were continuing and that the government had not complied with the previously granted precautionary measures. On October 22, 2003, the Commission extended the precautionary measures for another six months and established a period of 15 days for the government to submit its observations on the implementation of these measures.

13. On November 20, 2003, the Petitioners submitted additional information regarding their situation. This information was transmitted to the State, which was asked to submit its observations within a period of 15 days.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

14. The Petitioners allege that there has been an ongoing pattern of acts of aggression against the journalists, workers, and shareholders/directors of Globovisión. They report the following specific incidents:

- On November 22, 2001, journalist Gabriela Perozo, cameraman Efraín Henríquez, and camera assistant Oscar Dávila were assaulted by supporters of President Hugo Chavez, who threw rocks at their car and tried to knock the camera out of the cameraman's hands while the team was covering a march.
- On December 10, 2001, journalist Yesenia Balza, cameraman Carlos Quintero, and assistant Felipe Lugo were attempting to cover a demonstration by a group of peasants when they were surrounded by more than 20 people who yelled insults at them; took the camera from the cameraman, pushed him on the ground, and kicked him; shoved Balza and Lugo and threw liquid on Balza; and chased them to their car, which they also hit and kicked. The team was unable to cover the event as a result.
- On January 9, 2002, camera assistant Alfredo Peña Isaya, journalist Beatriz Adrián, and cameraman Jorge Paz were assaulted as they were going to cover a story near the Miraflores Palace. About 30 men surrounded their car, yelling threats and hitting and kicking the car. The aggressors opened the door next to Peña Isaya and hit and kicked him.
- On January 11, 2002, cameraman Richard López and his assistant Félix Padilla were verbally assaulted as they went to cover a meeting and were so intimidated by the intensity of the assault that they left without covering the story.
- On January 20, 2002, journalist Mayela León, cameraman Jorge Paz, and assistant Jhan Bernal were attacked as they went to cover the broadcast of the President's weekly radio and television program, *Aló Presidente*. This attack formed the basis of the original precautionary measures issued by the Commission in favor of Globovisión on January 30, 2002. Around 50 people surrounded their car and a car belonging to RCTV, kicking and hitting the vehicles and yelling insults. Many of the aggressors wore insignia of the "Coordinadora Simón Bolívar," a group linked to the defense of President Chavez's "Bolivarian revolution." The Globovisión team was unable to cover the story.
- On February 8, 2002, a van belonging to Globovisión was attacked and its windows were smashed when journalist Jhonny Ficarella, cameraman John Power, and assistant Miguel Ángel Calzadilla went to cover a story.
- On March 1, 2002, Oswaldo Cancino, a lawyer who serves as an advisor to the National Assembly and as a consultant to government officials, made declarations to Venezuelan communications media in which he named Globovisión journalist José Domingo Blanco as a "political objective" of the "groups of Bolivarian defenders" because of his alleged conduct against the revolution, and emphasized that, if necessary, violence would be used against such political objectives and those who accompany them.
- On March 11, 2002, journalist Jhonny Donato Ficarella Martín received telephoned death threats against himself and his mother. Around the same time, threatening calls were received at the offices of Globovisión; journalists José Domingo Blanco, Norberto Masa, Gladys Rodríguez, and María Arenas were particularly singled out.
- On April 3, 2002, journalist José Vicente Antonetti, cameraman Edgar Hernández, and assistant Ericsson Alvis were assaulted by supposed members of Bolivarian Circles and other government supporters, including the Personnel Manager of Social Security, as they were trying to cover a protest at the Venezuelan Social Security Institute.
- On June 13, 2002, a team from Globovisión, including journalist Beatriz Adrián, cameraman Jorge Paz, and assistant Alfredo Peña, was at the Federal Legislative Palace, covering a parliamentary session along with representatives of other media. As the media workers were trying to leave, the Legislative Palace was surrounded by a group of about 40

individuals who prevented them from exiting. The individuals were yelling slogans in favor of the government and President Chavez and insulting the media workers; some also threatened the media workers. The Globovisión workers' vehicle, clearly marked with the media's name, was scratched, hit, and sprayed with paint. The Globovisión workers finally had to be evacuated from the area by the Metropolitan Police.

- On July 9, 2002, a grenade was thrown into the parking area at the Globovisión headquarters; it caused serious material damage to the building and a number of cars belonging to Globovisión employees.
- On July 17, 2002, a teargas bomb was thrown into the station and exploded in the parking area. There were no injuries or material damage.
- On September 11, 2002, journalist Ana Karina Villalba, cameraman Alí Vargas, and assistant Anthony Infantino were covering an event organized by the national government to commemorate the events of April 11, 2002 when they were assaulted by a government supporter armed with a pole. They had to leave the area with a police escort and were unable to cover the event.
- On September 21, 2002, journalist Rossana Rodríguez Gudiño,[FN2] cameraman Felipe Lugo Durán, and his assistant Wilmer Escalona Arnal were traveling in a vehicle belonging to Globovisión to cover a story in the center of Caracas when a group of individuals assaulted their vehicle. The attackers carried bottles and one carried a firearm. They hit the vehicle, breaking its windows, and threatened the Globovisión employees. They forced the media workers to get out of the car and to give them the equipment they were using to carry out their work. Then they took the car, moving it to a nearby location where they continued to damage it. The car was finally returned—damaged—to the media workers, but the attackers kept a video tape and some of their equipment.
- On November 18, 2002, unidentified individuals threw a grenade into the Globovisión headquarters. The explosion caused a fire in the parking area and entrance to the station, which damaged the building and a number of cars.
- On December 3, 2002, journalist Aymara Lorenzo, cameraman Richard López, and assistant Félix Padilla, along with representatives of other private media were gathered to cover a small demonstration by opposition members. The National Guard arrived and proceeded to release large quantities of teargas and fire rubber bullets in order to disperse the demonstrators. According to the Globovisión workers, the level of force used by the National Guard was excessive in relation to the small crowd of demonstrators and the National Guard members continued to use tear gas and rubber bullets after all the demonstrators had left and only journalists remained in the area.
- On December 10, 2002, government sympathizers carried out a coordinated operation to take over the main media installations in Venezuela, including various installations of Globovisión. At the Globovisión headquarters in Caracas, a large group of demonstrators gathered at the main entrance for hours, where they yelled insults at the channel and its workers, hit and scratched the walls and doors, and prevented people from entering or leaving the station. At the Globovisión installation in Maracaibo, the government sympathizers entered the station and plundered it, destroying equipment and property. The Petitioners allege that among those participating in these acts were congressional representatives and other public functionaries from the government party. Additionally, the Minister of Interior and Justice publicly defended these actions as "lawful and peaceful demonstrations" on a mandatory broadcast. Similar incidents occurred throughout the month of December.

- On January 3, 2003, journalist Carla Angola was covering an opposition march when government sympathizers assaulted her, insulting her and Globovisión, making obscene gestures at the camera, blocking the camera, and throwing a container full of urine at her.

[FN2] The journalist Rossana Rodríguez Gudiño died shortly after this incident in a traffic accident and therefore is not included as a petitioner.

15. The Petitioners allege that all of these attacks were committed by supporters of the government of President Hugo Chavez, many of them members of so-called "Bolivarian Circles." The Petitioners allege that the "Bolivarian Circles" are political organizations promoted by the President of the Republic to "organize the people" and "defend the revolution." These groups are constituted according to guidelines issued by the Executive, they register with the Miraflores Palace, and receive government funds. Some of these groups are peaceful and are directed at community service, but others are allegedly armed and violent.

16. The Petitioners further allege that all of the foregoing incidents of attacks against Globovisión occurred as a result of the systematic, aggressive, and violent discourse of President Chavez, which began in 2001. They include a chart showing the dates of various such speeches relative to the above-described attacks on Globovisión to demonstrate that the attacks occurred shortly after one of these speeches. The attacks, the petitioners allege, not only have not been investigated by the State, they have been tolerated, justified, and encouraged by the President and some other high governmental officials.

17. The Petitioners state that they have denounced all of the incidents of attacks against the personnel and property of Globovisión before the Office of the Attorney General of the Republic, but that the Attorney General's Office has not taken any steps to carry out a serious investigation of any of these incidents. The Petitioners state that they requested information from the Attorney General's Office regarding the progress of the investigations in a letter dated March 10, 2003 and that they received no response to this letter. The Petitioners state that they have provided the Attorney General's Office with videos and verbal descriptions of the perpetrators of the various attacks, which would make it possible to identify the perpetrators. Nevertheless, they allege that the State has made no efforts to either identify or apprehend these individuals.

18. The Petitioners also applied for protection measures in various tribunals, measures which were granted but never carried out, according to the Petitioners. As a result of the State's alleged disregard for the Petitioners' requests for protection, Globovisión found it necessary to contract a private security firm and to buy security equipment, such as gas masks and bulletproof vests, for its employees.

19. The Petitioners state that in addition to the physical and psychological attacks against the Globovisión employees, the media has been subjected to numerous legal and administrative actions that carry with them the possibility of fines, suspension, or revocation of the media's broadcasting concessions. The Petitioners state that these actions are arbitrary and have been

undertaken in an attempt to harass and intimidate them by keeping them under a constant threat of sanctions.

20. With regard to Article 13 of the Convention, the Petitioners argue that the systematic acts of aggression committed against the employees of Globovisión have intimidated the media workers and led them to engage in self censorship, out of fear for their lives and personal integrity, and that this violates their right to freedom of expression. They also argue that the State is directly responsible for these violations because the acts of aggression were committed by "Bolivarian Circles," entities supported by the State and acting on its behalf, or by government supporters acting under incitement by the government.

21. They further argue that the series of judicial and administrative actions taken by the State against Globovisión have produced additional pressure on the station not to report certain stories or points of view out of fear of sanctions ranging from fines to the revocation of their broadcasting concession. The Petitioners maintain that these legal actions have been undertaken in a discriminatory and arbitrary manner and that they therefore violate their right to freedom of expression.

22. With regard to Article 5 of the Convention, the Petitioners first allege that the verbal attacks by the President and other high officials constitute violations of the American Convention in and of themselves. They argue that Article 5 of the Convention protects the right to "moral integrity," and that their "moral integrity" is violated by the offensive statements. Furthermore, they allege that the State has violated this right by encouraging its supporters to verbally and physically assault Globovisión employees, threaten them with blunt implements, make death threats against them, and humiliate them. In addition to damaging their physical integrity, the fact that they are unable to exercise their profession freely damages their mental and moral integrity.

23. With regard to Articles 8 and 25 of the Convention, the Petitioners allege that the State has violated their rights to a fair trial and judicial protection by failing to carry out a serious and exhaustive investigation of the above-detailed incidents. Furthermore, the acts of aggression against the employees of Globovisión constitute crimes; the Public Ministry is the sole entity that can bring public penal actions and its failure to do so in the case of the Globovisión employees leaves them in a completely defenseless state.

24. The Petitioners also allege that there is a lack of independence in the judicial branch and the Public Ministry that has prevented the Petitioners from having their rights to a fair trial and to judicial protection protected. This lack of independence further extends to notaries public, who are dependents of the Ministry of Interior and Justice and who have, on numerous occasions, refused to authenticate documents submitted by the Petitioners without any legal basis for doing so.

25. The Petitioners further state that the State has incurred in a violation of its general obligations to respect and guarantee the human rights protected under the American Convention, as required by Articles 1(1) and 2 of the Convention. These general obligations include both the duty of State agents to refrain from actions that violate human rights protected under the

Convention and the responsibility of the State to prevent or investigate and punish human rights violations committed by private individuals. As previously stated, the Petitioners believe that the perpetrators of the acts of aggression should be considered "state agents" because they acted with the support and encouragement of the government. They also allege that the lack of a serious investigation of the incidents and the failure of the State to bring any of the perpetrators to justice indicates a violation by the State of its duty to give legal effect to the rights protected under the Convention, as required by Article 2.

26. Regarding the exhaustion of domestic remedies, the Petitioners allege that on January 31, 2002, they denounced the aggressions to which they had been subjected prior to that date before the Attorney General's Office, in order that the Public Ministry could carry out an investigation to sanction those responsible. At the same time, the Commission issued precautionary measures, which further emphasized the call to the State to investigate these incidents. After the initial complaint to the Attorney General's Office, the Petitioners proceeded to denounce subsequent incidents of aggression against Globovisión either the day the incident occurred or, at the latest, the day after the occurrence. Nevertheless, the Petitioners allege that there has been no investigation, few individuals have been questioned by the Public Ministry, and no one has been charged in connection with any of the incidents. They state that because only the Public Ministry can initiate investigations in "public action" crimes, such as the majority of the ones committed against Globovisión, this petition falls under one of the exceptions to the requirement of the exhaustion of domestic remedies. Article 46(2)(b) of the Convention states that a victim is excused from the requirement of showing exhaustion of domestic remedies if "the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them."

B. Position of the State

27. There was no response from the State regarding the admissibility of the petition.

IV. ANALYSIS OF THE ISSUE OF ADMISSIBILITY

A. Preliminary questions

28. The IACHR notes that the State has not responded to the petitioner's allegations or questioned the petition's admissibility. The IACHR would like to stress that Venezuela undertook various international obligations through the American Convention on Human Rights, including those provided for in Article 48(1)(a) of the Convention, which stipulates that: "[w]hen the Commission receives a petition or communication (...) (a) it shall request information from the government of the state indicated as being responsible for the alleged violations (...) This information shall be submitted within a reasonable period (...). (e) The Commission may request the states concerned to furnish any pertinent information." The Convention, therefore, requires States to provide the information requested by the Commission in the processing of an individual case.[FN3]

[FN3] See, eg., IACHR, Report N° 129/01, Case 12.389, Admissibility, Jean Michel Richardson, Haiti, December 3, 2001, para. 11.

29. The IACHR feels it must also indicate that the information requested by the Commission is information that would enable it to reach a decision in a case submitted to it. The Inter-American Court of Human Rights has indicated that cooperation by the States is an essential obligation in international proceedings in the inter-American system:

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.[FN4]

[FN4] IACtHR, Velásquez Rodríguez Case (Honduras), Series C N° 4, Judgment of July 29, 1988, para. 135-36.

30. The IACHR and the Inter-American Court of Human Rights have also indicated that “the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law.”[FN5] The Commission therefore reminds Venezuela that it has a duty to cooperate with the organs in the inter-American human rights system, for optimal fulfillment of its functions to protect human rights.

[FN5] Id. at para. 138; IACHR, Report N° 28/96, Case 11.297, Guatemala, October 16, 1996, para. 45.

B. Competence of the Commission *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*

31. The petitioners have *locus standi* to submit petitions to the IACHR, in accordance with Article 44 of the Convention. The petition identifies as purported victims individual persons, whose rights under the Convention the Bolivarian Republic of Venezuela is committed to respect and ensure. With respect to the State, Venezuela is a State party to the American Convention. The petitioners denounce acts or omissions directly imputable to the State. The Commission therefore considers that it has competence *ratione personae*. Additionally, the petitioners allege that the actions of the "Bolivarian Circles" are directly imputable to the State. The Commission will make a determination in its report on the merits regarding the possibility that the State could be held directly responsible for the actions of such groups.

32. The Commission has competence *ratione materiae*, since the petition alleges violations of the Petitioners' human rights as protected by the American Convention under Articles 1(1), 2, 5, 8, 13, and 25.

33. The Commission has competence *ratione temporis*, since the events alleged in the petition took place at a time when the duty to respect and ensure the rights enshrined in the Convention was in force for the State, which ratified the Convention on August 9, 1977.

34. The Commission has competence *ratione loci* to take cognizance of this petition since it alleges violations of rights guaranteed by the American Convention that purportedly occurred in the territory of a State party.

C. Exhaustion of domestic remedies

35. Article 46(1)(a) of the American Convention states:

1. Admission by the Commission of a petition or communication lodged in accordance with Articles 44 or 45 shall be subject to the following requirements:

a. that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law[.]

36. The Commission and the Court have repeatedly insisted on their "reinforcing and complementary"[FN6] status within the inter-American system of protection of human rights.[FN7] This status is reflected in Article 46(1)(a) of the Convention, which permits States parties to decide cases within their own legal framework, before there is need for recourse to an international proceeding.

[FN6] American Convention on Human Rights, Preamble, para. 2.

[FN7] See eg, Velásquez Rodríguez Case, *supra* note 4, para. 61; IACHR, Resolution N° 15/89, Case 10.208, Dominican Republic, April 14, 1989, Conclusions, para. 5.

37. The Convention provides for certain exceptions in cases in which the exhaustion of domestic remedies is impracticable. One such situation is provided for under Article 46(2)(b), which provides that it is not necessary to exhaust domestic remedies when the "party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from accessing them[.]"

38. In the instant case, the Petitioners allege that they have been denied access to remedies because the Public Ministry, which has the sole power to initiate investigation and prosecution for so called "public action" crimes, has failed to initiate investigations into the crimes denounced by the Petitioners. The Petitioners first denounced such crimes to the Public Ministry on January 31, 2002, two years before the drafting of this opinion.

39. When a petitioner alleges that he or she is unable to exhaust domestic remedies, Article 31(3) of the Commission's Rules of Procedure provide that the burden then shifts to the government to demonstrate which specific domestic remedies continue to offer effective relief for the harm alleged. However, the State may expressly or tacitly waive its right to raise the issue of exhaustion of domestic remedies. Specifically, if the State does not respond to the petition in a timely manner and express its arguments regarding exhaustion of domestic remedies, this constitutes a tacit waiver of the non-exhaustion argument.[FN8] In this case, the petition was transmitted to the State on August 19, 2003, with a period of two months given to the State to respond. As of the date of this report, the State had not submitted any observations. Therefore, the State has tacitly waived its right to allege non-exhaustion of domestic remedies.

[FN8] See, eg., IACHR, Report N° 31/031, Case 12.195, Admissibility, Mario Alberto Jara Oñate and others, Chile, March 7, 2003, para. 35; IACtHR, The Mayagna (Sumo) Awas Tingi Community Case, Preliminary Objections, Judgment of February 1, 2000, para. 53.

D. Deadline for submission of the petition to the IACHR

40. In the petition under consideration, the IACHR has concluded that the State of Venezuela tacitly renounced its right to assert the objection of failure to exhaust domestic remedies, as a result of which the requirement of Article 46(1)(b) of the American Convention is not applicable. However, the provisions of the Convention requiring the prior exhaustion of domestic remedies and the lodging of the petition within a period of six months from the date of the final judgment of the domestic jurisdiction are independent. The Inter-American Commission must therefore determine whether the petition under review was presented within a reasonable period. In that connection, the IACHR observes that the original petition was received on June 27, 2003. The incidents complained of in the petition occurred over the period from November 2001 to January 2003. The IACHR considers that the petition was lodged within a reasonable period of time.

E. Duplication of proceedings

41. Article 46(1)(c) of the Convention provides that admissibility of a petition by the Commission requires that the subject of the petition or communication is not pending in another international proceeding for settlement. Article 47(d) of the Convention also stipulates that the Commission shall declare inadmissible any petition that is substantially the same as one previously studied by the Commission or by another international organization.

42. From the statements of the Petitioners, it does not appear that the petition is pending in any other international proceeding or forum, or that it is substantially the same as any previously studied by the Commission or by another international organization. The Commission therefore considers that in the instant case the requirements for admissibility in Articles 46(1)(c) and 47(d) of the Convention have been met.

F. Nature of the facts alleged

43. For purposes of admissibility, the IACHR has to determine whether the facts stated in the petition tend to establish a violation of rights set forth in the American Convention, as required under Article 47(b), or whether the petition must be dismissed as "manifestly groundless" or "obviously out of order" under Article 47(c).

44. The standard by which to assess these extremes are different from the one needed to decide the merits of a petition. The IACHR must do a prima facie evaluation, not to establish the existence of a violation but rather to examine whether the petition states facts that tend to establish a potential or apparent violation of a right guaranteed by the Convention. That examination is a summary analysis that does not imply any prejudgment or advance opinion on the merits of the petition. By establishing two clearly separate phases—one for admissibility and the other for the merits—the Commission's own Rules of Procedure reflect the distinction between the evaluation the Commission must make to declare a petition admissible, and the evaluation required to establish a violation.

45. The Petitioners have made allegations, which, if proven to be true, would tend to characterize violations of Articles 1(1), 2, 5, 8, 13, and 25 of the American Convention. The allegations are not "manifestly groundless" or "obviously out of order." Therefore, without prejudice to the merits of the case, the Commission considers that the requirements of Article 47(b) and (c) of the American Convention have been met with respect to Articles 1(1), 2, 5, 8, 13, and 25 of the Convention.

IV. CONCLUSIONS

46. The Commission considers that it has competence to take cognizance of this petition and that it is admissible as regards the requirements for admissibility contained in Articles 46 and 47 of the American Convention on Human Rights, and as regards the alleged violations of Articles 1(1), 2, 5, 8, 13, and 25 of the American Convention.

47. On the basis of the aforementioned arguments as to facts and law, and without prejudice to the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible as regards the presumed violations of rights protected by Articles 1(1), 2, 5, 8, 13, and 25 of the American Convention;
2. To notify the parties of this decision;
3. To continue with the examination of the case; and
4. To make public this decision and to include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., the 27th day of February 2002. (Signed): José Zalaquett, President;

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Clare K. Roberts, First Vice-President, Susana Villarán de la Puente, Second Vice-President, Evelio Fernandez Arévalo, and Florentín Meléndez, Commission members.