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Session:	Hundred Twenty-Second Regular Session (23 February – 11 March 2005)
Title/Style of Cause:	Johan Alexis Ortiz Hernandez v. Venezuela
Doc. Type:	Decision
Decided by:	President: Clare K. Roberts; First Vice-President: Susana Villaran; Second Vice-President: Paulo Sergio Pinheiro; Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Florentin Melendez. Commissioner Freddy Gutierrez, of Venezuelan nationality, did not participate in the deliberations and vote on this report, in accordance with Article 17(2) (a) of the Commission's Rules of Procedure.
Dated:	25 February 2005
Citation:	Ortiz Hernandez v. Venezuela, Petition 12.270, Inter-Am. C.H.R., Report No. 22/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
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## I. SUMMARY

1. On March 15, 2000, the Inter-American Commission on Human Rights (hereinafter “the Commission” or the “IACHR”) received a petition lodged by Edgar Humberto Ortiz Ruiz and Zaida Hernández de Arellano (hereinafter “the petitioners”) claiming that the Bolivarian Republic of Venezuela (hereinafter, “the State” or “the Venezuelan State”) is responsible for the death of their son, Johan Alexis Ortiz Hernández, which occurred in the facilities of the National Guard School of Cordero, on February 15, 1998.

2. The petitioners claim that the State is responsible for violations of the rights to life (Article 4), personal integrity (Article 5), a fair trial (Article 8), and judicial protection (Article 25) of the American Convention on Human Rights (hereinafter “the Convention” or the “American Convention”), as well as the generic obligation to respect and ensure the rights protected in Article 1(1) of that instrument.

3. The petitioners claim that the petition fulfilled the admissibility requirements set forth in the American Convention. With regard to the exhaustion of domestic remedies, the petitioners claim grounds for exception to the exhaustion requirement due to unwarranted legal delays in the criminal investigation, which constitute a denial of justice in this case.

4. In response, the Venezuelan State requested that the petition be declared inadmissible. To this end, it argued that the petitioners had admitted in their written documents that domestic

remedies to resolve the legal situations presumably infringed by the Venezuelan State had not been exhausted. It further argued that this case involves concurrency of international legal action. The State therefore requests that this petition be declared inadmissible pursuant to Articles 46(1) (a) and 47 (d) of the American Convention.

5. After analyzing the positions of the parties, the Commission concluded that it was competent to rule on the petition presented by the alleged victims and that the case was admissible according to the provisions of Articles 46 and 47 of the American Convention. Consequently, the Commission decided to notify the parties, publish this admissibility report, and include it in its Annual Report.

## II. PROCESSING BY THE COMMISSION

6. On March 15, 2000, the Inter-American Commission on Human Rights received a petition lodged by Edgar Humberto Ortiz Ruiz and Zaida Hernández de Arellano claiming that the Venezuelan State was responsible for the death of their son, Johan Alexis Ortiz Hernández, which occurred in the facilities of the National Guard School of Cordero on February 15, 1998. The IACHR registered the petition as Case 12.270 and forwarded the pertinent portions to the State on April 26, 2000, for its observations.

7. On June 14, 2000, the petitioners submitted new information in the case, which was forwarded to the State on June 20 of that year. On August 15, 2002, the petitioners again submitted new information, which was forwarded to the State on September 23 of that year. On December 12, 2002, the State presented a report-response to the petition and the petitioners' subsequent communications, in which it requested that the petition be declared inadmissible. The State's observations were forwarded to the petitioners on February 13, 2003. The petitioners submitted their views on the State's report-response on June 30, 2003, and presented new information concerning the case on April 7 and May 6, 2004. On June 16, 2004, the State requested that the IACHR grant it a 30-day extension to respond to the petitioners' correspondence. On June 7, July 27, and September 27, 2004, respectively, correspondence was received from the petitioners containing updated information on the case and requesting adoption of an admissibility report. On October 26, 2004, the State presented new observations in which it reiterated its position concerning the inadmissibility of the petition.

## III. POSITIONS OF THE PARTIES

### A. Position of the petitioners

8. On February 15, 1998, Johan Alexis Ortiz Hernández, a 19 year old student in the final level of the National Guard Training School of Cordero [Escuela de Formación de Guardias Nacionales de Cordero (ESGUARNAC)], was taken, together with his fellow students, from the Cordero School to the Caño Negro Rural Commandos [Comandos Rurales] facilities for practice exercises included in the third and final phase of his training as a National Guardsman. During one of these practice exercises, the student died in an "unfortunate accident," according to the version given by school authorities.

9. According to the official version given to the student's family, at approximately 12:45 p.m., Johan Alexis was crossing a section of the "Special Soldier" field when he was hit by two projectiles from an AFAG M-61 machine gun. In the military exercise, the students crawled underneath barbed wire fencing while an instructor with an automatic weapon fired in their direction, over the fencing. The version presented to the family was that the student stood up for no reason and was hit by two shots on the right side of his body at the level of the clavicle.

10. The parents maintain that their son's death was not accidental. They argue that a series of facts, elements, and circumstances compelled them to analyze the version given by the school authorities and they discovered that they had been the victims of concealment of information and had been given contradictory accounts, leading them to believe that the events had taken place intentionally. Among the circumstances they report are alleged inconsistencies in the information regarding the military authorities who participated in the exercise and compliance with orders related to it. Although the petitioners were informed that the exercise was carried out in compliance with orders and regulations, they subsequently received information indicating that certain instructions for conducting practice exercises had not been followed and that the location of the exercises had been changed.

11. The student's family claimed that at the time of the incident, there were no medical or paramedical personnel on site, much less an ambulance to respond to any kind of emergency. Because of this, Johan was unable to receive timely care and the bullet wounds resulted in his death.[FN2] The inspection carried out by the Military Intelligence Sectorial Department established that the distance between the training field and San Rafael Hospital is 14.3 kilometers. Traveling at 80 Km/H, transportation from one point to the other takes approximately 18 minutes and 45 seconds. It was also established that "the route from the subversive field to local route 4 is a 600 meter long furrowed dirt road in extremely poor state." [FN3] It also indicated that in various consultations, specialists were critical of conducting this type of simulation using real bullets rather than dummy ammunition which is routine in this type of exercise.[FN4]

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[FN2] According to the stipulations of the Order of Operations for "Anti-Subversives Course I ["I Curso Anti Subversivo"], February 1998, based on the hierarchy of responsibilities, the officers responsible for imparting the instruction had orders to: "Take extreme safety precautions in instructional events using special equipment, weapons, and/or explosives. Verify the permanent presence of medical personnel and a first aid team during each exercise, and in the event of their absence, postpone initiation of the exercise and request their presence. Verify the immediate availability in the exercise field, or very close by, of a means of land or air transport for emergency evacuation in case of serious injury, and to the contrary, postpone initiation of the exercise and demand the presence of such transportation." Course of the National Guard Training School GRAL DIV. (GN-F) Víctor Anselmo Fernández Escobar, cited by the Third Military Prosecutor of San Cristóbal, in a February 28, 2002 ruling, p. 3.

[FN3] Military Intelligence Sectorial Department [Dirección Sectorial de Inteligencia Militar], document created on September 16, 1999, signed by Platoon Sergeant [Sargento Segundo] Miguel H. Molina and Squad Leader [Cabo Primero] Ramón Gómez Urbina.

[FN4] Conclusions of the report by the Human Rights Committee of the Legislative Assembly of Táchira State on the investigation into the death of citizen Johan Alexis Ortiz, presented to the President and Deputies of the Delegated Commission of the Legislative Assembly of Táchira State, San Cristóbal, January 16, 1999, p. 7. In these conclusions, the Human Rights Committee of the Legislative Assembly of Táchira State observed:

“Based on the actions, interviews, and documentation collected by the Investigative Committee, a series of irregularities were encountered in the National Guard School of Cordero, as evidenced by procedural errors and ignorance of routine norms and procedures that made the homicide of Johan Alexis Ortiz Hernández possible in the field of the Rural Commandos of Caño Negro. An example of these irregularities is the use of real bullets rather than dummy bullets, and the absence of the most minimum medical or first aid assistance on site, in light of the risk faced by the students.”

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12. The petitioners allege that the death of their son initially was investigated jointly by the Technical Judicial Police of San Cristobal and the Military Court of Guasqualito, in Apure State. The military personnel allegedly involved in the incident refused to testify before the Technical Judicial Police despite repeated summons, asserting that they would only testify before the military justice system. The petitioners claim that in the course of the investigation conducted by the military justice system, certain basic evidentiary procedures were not carried out, including a forensic examination of the uniform that Johan was wearing on the day the events occurred. It was further reported that the investigatory authorities delayed to the point of negligence the exhumation of the corpse, so that the body had entered the liquefaction stage making it impossible to observe and determine readily the projectiles' trajectory.

13. On March 3, 1998, the Commander of the Guasqualito Garrison ordered the Permanent Military Judge of First Instance of Guasqualito to open a preliminary military investigation, which was begun on March 5, 1998, excluding the ordinary courts from hearing the case. On June 16, 1998, the Military Court issued an arrest warrant against Gean Carlos Malpica Calzadilla, for the alleged commission of the common crime of negligent homicide [homicidio culposo]. On July 20 of that year, the court ordered the detainee released on bond.

14. On February 28, 2000, the Third Military Prosecutor of San Cristóbal formally charged National Guardsman Gean Carlos Malpica with the alleged commission of the crime of negligent homicide and charged three other members of the military as military co-authors. The Military Judge of First Instance of Guasqualito partially admitted the charges, in relation to the alleged offense of negligent homicide against National Guardsman Gean Carlos Malpica.

15. On May 29, 2000, the Court Martial, ruled on an appeal filed by the Third Prosecutor's Office and the victim's family, declaring the partial nullity of the indictment and ordering the Court to hold another hearing to deal with the other accused individuals. On December 13, 2000, the Criminal Division [Sala de Casación Penal] of the Supreme Court of Justice ruled on an appeal for revocation filed by the victim's family. The Supreme Court decided not to revoke the judgment, arguing that the revocation remedy did not apply to the decision appealed.

16. On February 23, 2001, a preliminary hearing was held before the Military Court [Juzgado Militar Accidental] of Guasdualito, pursuant to the orders issued by the Court Martial. At the hearing, Gean Carlos Malpica was formally charged with the alleged offense of negligent homicide and four other members of the military were charged as military co-authors in the crime and for the crimes of concealment and pretense. The Court Martial once again declared this decision invalid on August 22, 2001, and ordered that a third preliminary hearing be held in the case.

17. On October 5, 2001, the Military Criminal Court of First Instance presented a new indictment for the prosecution of Colonel Rafael Rijana, Colonel Alexander Florez, Major Edwin Villasmil, Lieutenant Fidel Rodríguez and Lieutenant Rafael Villasana for the commission of the crime of negligent military coauthorship in the crime of negligent homicide; and Major Edwin Villasmil for the offense of aggravated negligent homicide for participating as an intellectual and material author; and for the prosecution of Captain Gerson Jiménez, Gean Carlos Malpica and Antonio Linares for the offenses of concealment and pretense [ocultamiento y simulación] in a criminal act. None of these individuals were subject to pre-trial detention.

18. On November 19, 2001, the Constitutional Division of the Supreme Court of Justice admitted an amparo remedy lodged by the victim's family members in which they requested that the ordinary courts take exclusive control over the legal proceedings. On June 11, 2002, the Constitutional Division ruled on the amparo remedy, ordering that the events be prosecuted in the ordinary jurisdiction since the crime of homicide was typified in that jurisdiction. It further ordered the annulment of all the previous proceedings, with the exception of evidence that could not be replicated, and ordered the file transferred to the Public Ministry.

19. On September 10, 2002, the Superior Prosecutor's Office of Táchira State, in compliance with the ruling issued by the Constitutional Division, remanded the case to the Seventh Prosecutor's Office where an official from the Scientific, Criminal, and Forensic Investigations Corps [Cuerpo de Investigaciones Científicas, Penales y Criminalísticas (CICPC)] was assigned to proceed with the investigation. On March 7, 2003, an order to open the investigation was issued. At that time, the officer in charge began the process of studying the extensive amount of evidence compiled in 21 voluminous exhibits. In a matter of days, this official was separated from the case. The petitioners claim that the investigation has been paralyzed from that day forward. Seven years after the events occurred, the investigation remains in the preliminary stage, with over a year of procedural inactivity. Furthermore, the petitioners claim that the investigation was not reopened until July 14, 2004, and is not being conducted by public official on a full-time bases.

20. In light of the circumstances surrounding the death of Johan Alexis Ortiz, the lack of judicial clarification of the facts, and unwarranted delays in the criminal proceedings, the petitioners request that the case be declared admissible for alleged violations of the rights to life, personal integrity, a fair trial, and judicial protection enshrined in Articles 4, 5, 8, and 25, in relation to the obligations set forth in Article 1.1 of the American Convention.

B. Position of the State

21. The State presented its observations in two reports requesting that the petition be declared inadmissible. To this end, the State argued that the petitioners had admitted in their written documents that legal domestic remedies to resolve legal situations allegedly infringed by the Venezuelan State had not been exhausted. It further argued that concurrency of international legal action was operating in the case. Consequently, the State requested that the petition be declared inadmissible in accordance with the provisions of Articles 46(1) (a) and 47(d) of the American Convention.

22. Concerning the failure to exhaust domestic remedies, the State asserted that by claiming an unwarranted delay in the criminal proceedings, the petitioners had admitted that domestic remedies had not been exhausted. The State affirmed that a criminal proceeding exists, and that the petitioners have had the opportunity to present evidence and to object to decisions with which they are not in agreement. Hence, the State argued that the criminal process has not yet been exhausted, which demonstrates the failure to exhaust domestic remedies. It further demonstrates that the State, at all times, has proceeded with the investigation in a timely and diligent manner.

23. Regarding the claim of concurrency of international legal action, the State argues that the government has received correspondence concerning the existence of an international process relating to the same events before the United Nations. This situation makes the petition inadmissible, since a judgment in the matter is pending before another international organization on the same legal situation, and from the same petitioners, which could produce conflicting judgments emanating from international bodies.

24. The State refers to a note received on October 9, 1999, from the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions. In this note, the Rapporteur states that “according to information received, Edgar Humberto Ortiz and Zaida Hernández de Arellano have received telephone calls threatening them with death,” and that these threats “would be related to the death of their son Johan Alexis Hernández”. The Rapporteur requested detailed information regarding the aforementioned complaints in the following words:

“In particular, I would be grateful for information on the legal investigations carried out by the competent authorities, as well as the measures taken, in accordance with the cited international standards, to ensure the effective protection of the right to life and physical integrity of the aforementioned individual(s).”[FN5]

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[FN5] Ministry of Foreign Relations, State Agent for Human Rights before the Inter-American and International System, Report-Response of December 12, 2002, pp. 12 and 13.

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25. The State concludes that this correspondence is proof that concurrency of international legal action is operating in this case and, therefore, requests that the instant petition be declared “inadmissible.”

#### IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. The Commission's competence *ratione materiae*, *ratione personae*, *ratione temporis*, and *ratione loci*

26. The petitioners are entitled to present petitions before the IACHR pursuant to Article 44 of the American Convention. The petition identifies Johan Alexis Ortiz Hernández as the alleged victim and therefore, the Commission has competence *ratione personae* to examine the petition. For its part, the State ratified the American Convention on August 9, 1977.

27. The Commission has competence *ratione loci* to take up the petition inasmuch as it claims violations of rights protected by the American Convention, which allegedly occurred within the territory of a State party to that treaty. Likewise, the IACHR has competence *ratione temporis* inasmuch as the obligation to respect and ensure the rights protected by the American Convention was in force for the State on the date the events described in the petition allegedly occurred.

28. With regard to its competence *ratione materiae*, the IACHR notes that the petitioners maintained that the State violated the rights to life (Article 4), personal integrity (Article 5), a fair trial (Article 8), and judicial protection (Article 25) protected by the American Convention.

B. Admissibility Requirements

1. Exhaustion of Domestic Remedies

29. The petitioners claim that more than seven years after the events occurred, the investigation remains in its initial stage. To date, none of the individuals accused of responsibility in the events has been brought to trial. Because of the lack of diligence and adherence to due process in the investigation carried out by the military justice system, all the proceedings have been annulled three times during hearings, which has meant "going back to zero three times." Consequently, the petitioners believe that a decision of admissibility applies based on unwarranted delays in the legal process.

30. The State argued that domestic remedies have not been exhausted. The State asserted that the charges stemming from public vengeance [*vindicta pública*] and the petitioners were declared inadmissible by the court of first instance. In light of that ruling, the petitioners appealed to the Court Martial of the Republic, the highest level of military justice, which overturned the first instance decision and ordered that new charges be filed. The petitioners also pursued a revocation remedy [*recurso de casación*] before the Supreme Court of Justice, which was declared inadmissible. This history was repeated a second time in the same way. Finally, the third time public and private charges were filed, the prosecutor admitted them and an oral, public hearing was scheduled to try the individuals allegedly involved in the death of the petitioners' son. Under these circumstances, after much jurisdictional activity, the petitioners appealed to the Supreme Court of Justice claiming violations of due process and the principle of the natural judge [*juez natural*], and the Constitutional Division of the Supreme Court of Justice annulled the entire process that had been underway for four years in the military jurisdiction, assigned competence to the ordinary jurisdiction, and ordered that the proceedings be reinitiated.

31. The State also alleges that it was never inactive throughout the process. Once the case was transferred to ordinary jurisdiction, the Public Ministry, on June 28, 2004, sent a notice to the Chief of the Personnel Command of the National Guard requesting the appearance of six officers. Official correspondence was also sent to the commanders of several National Guard detachments requesting the appearance of other individuals. Moreover, on June 30, 2004, the Seventh Prosecutor's Office of Táchira approved the official letter to the Scientific, Criminal and Forensic Investigations Corps so that the latter would carry out other actions to determine all applicable responsibility; these included the planimetric survey, ballistic trajectory, and an inspection of the scene where the events occurred.

32. Article 46(1)(a) of the American Convention states that admission by the Commission of a petition requires that "...the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law." It further establishes, in section 2, that this requirement shall not be applicable when "there has been an unwarranted delay in rendering a final judgment under the aforementioned remedies." For its part, the Inter-American Court has stated, in its interpretation, that only those remedies that are adequate and effective for addressing the violations allegedly committed by State agents must be exhausted."<sup>[FN6]</sup>

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[FN6] Inter-American Court, Velásquez Rodríguez Case, Judgment of July 29, 1988, Ser. C N° 4, para. 63.

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33. In the case at hand, the Commission considers that the exception for unwarranted delay in rendering a final judgment under the remedy set forth in Article 46.2 (c) of the American Convention is applicable.

34. In effect, at the time this report was written, in other words, more than seven years after the death of Johan Alexis Ortiz, the State has not concluded the criminal proceedings required to resolve this matter internally.<sup>[FN7]</sup> Due to the consequent nullities declared in the case owing to compounded due process violations, the investigation has been reinitiated four times. Hence, the IACHR notes that, more than seven years after the events, the jurisdiction responsible for judicial clarification of the student's death been established only recently. The adequacy of the remedies employed to establish individual responsibility aside, the delay in the judicial investigation suggests that the victims and their families have lacked access to an effective remedy in the terms of Article 46(2) of the American Convention. Therefore the exception to the requirement of prior exhaustion of domestic remedies before resorting to the inter-American system must apply to their claim.<sup>[FN8]</sup>

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[FN7] IACHR. Report 14/04 Admissibility. Peru. Case 11.568, Luis Antonio Galindo Cárdenas, February 27, 2004, paras. 39 and 40. IACHR Report 52/97, Admissibility, Nicaragua. Case 11.218, Arges Sequeira Mangas. February 18, 1998, para. 96.



[FN8] IACHR, Report 25/03 Admissibility. Colombia. Petition 289/2002, Santo Domingo. March 6, 2003, para. 22.

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35. It only remains to be stated that the invocation of exceptions to the rule of exhaustion of domestic remedies set forth in Article 46(2) of the Convention are closely linked to the determination of possible violations of certain rights enshrined therein, such as the right to access to justice. However, Article 46(2), by virtue of its nature and purpose, is a norm with autonomous content vis-à-vis the substantive norms of the Convention. Therefore, the determination of whether exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question should be handled prior to, and separately from, the analysis of the merits of the matter, since it requires a different yardstick from that used to determine the possible violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects that prevented the exhaustion of domestic remedies will be analyzed in the report adopted by the Commission on the merits of the dispute, in order to determine whether they constitute violations of the American Convention.

36. For the aforementioned reasons, the Commission concludes that in the case sub examine the exception enshrined in Article 46, number 2, letter (c) of the Convention is applicable.

## 2. Time period for presenting a petition before the Commission

37. With respect to the requirement set forth in Article 46(1)(b) of the Convention, which states that the petition must be presented within six months from the date of notification of the final judgment resulting in the exhaustion of domestic remedies, the Commission considers that this time period cannot be required since the petition was presented within the reasonable time period stipulated in Article 32(2) of its Rules of Procedure for cases in which a final judgment has not been issued prior to lodging the petition.[FN9] In this sense, the Commission takes into account the evolution of the legal proceedings in this case in the internal venue and concludes that it was presented within a reasonable time period.

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[FN9] IACHR, Report 14/04 Admissibility. Peru. Case 11.568, Luis Antonio Galindo Cárdenas. February 27, 2004, para. 47.

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## 3. Duplication of proceedings and res judicata

38. The State requested that the case be declared inadmissible, arguing the failure to fulfill the requirements set forth in Articles 46(1)(c) and 47(d) of the Convention relating to the duplication of procedures in the international sphere. It claimed to have received a note from the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions in 1999. The petitioners did not make any reference in this regard.

39. The Commission considers that according to Article 33(2)(a) of the Commission's Rules of Procedure, it shall not refrain from considering a petition when the procedure followed before

the other organism is limited to a general examination of the human rights situation in the State in question and there has been no decision on the specific facts that are the subject of the petition before the Commission, or it will not lead to an effective settlement.

40. In the case at hand, both the origin and content of the mandate of the Inter-American Commission on Human Rights, as well as the nature of its proceedings, are different from those of the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions.

41. The mandate of the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions was established by virtue of Resolution 1982/35 of the United Nations Economic and Social Council. The mandate of the Inter-American Commission on Human Rights is convention-based in that it derives from the American Convention on Human Rights. The Commission, in contrast to the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, falls within the category of treaty supervisory bodies.

42. The nature of the two international entities is also different. The United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions is not empowered to adjudicate specific cases and the individual communication process before that office is not oriented toward a solution of an adversarial nature. In effect, the individual communication mechanism before the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions is of a nature that cannot lead to an effective settlement in the terms of Article 33.2(a) of the Commission's Rules of Procedure. Its procedure, which is not adversarial in nature, is limited to requesting clarification from the interested government regarding complaints.

43. The procedure before the Inter-American System for the Protection of Human Rights, on the other hand, is adversarial in nature and the Inter-American Commission does have an adjudicatory role. The procedure before the IACHR may conclude with a series of recommendations that the States must make good faith efforts to fulfill.[FN10]

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[FN10] Inter-American Court, Loayza Tamayo Case, Judgment of September 17, 1997, Ser. C, No. 33, paras. 80 and 81.

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44. The Commission concludes, therefore, that the United Nations Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions does not belong to the category of international bodies whose mandate may result in a duplication such as that referred to in Articles 46(1)(c) and 47(d) of the American Convention.[FN11]

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[FN11] IACHR, Report 30/99, Colombia. Case 11.206, César Chaparro Nivia and Vladimir Hincapié Galeano. March 11, 1999, paras. 25 and 26. In this case the Colombian State claimed the failure to fulfill Article 46.1 (c) of the Convention claiming that the matter alleged by the victims was being studied by the Special Rapporteur on the Question of Torture and the Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions.

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#### 4. Characterization of the Alleged Facts

45. Article 47(b) of the Convention establishes that the Commission shall declare inadmissible any petition or communication presented when “it does not state facts that tend to establish a violation of the rights guaranteed by this Convention.” The Commission’s view is that the petitioners’ allegations described in Section III of this report, could represent prima facie violations of Articles 4, 8, and 25 of the American Convention to the detriment of Johan Alexis Ortiz Hernández, and Articles 8, and 25 to the detriment of Edgar Humberto Ortiz Ruiz and Zaida Hernández de Arellano, in relation to the obligations set forth in Article 1.1 of that statute.

46. Consequently, the IACHR concludes that on this point the case is admissible in accordance with the provisions of Article 47(b).

#### V. CONCLUSIONS

47. The Commission concludes that the case is admissible and that it is competent to examine the petition presented by the petitioners concerning the alleged violation of Articles 4, 8, and 25 of the Convention, in conjunction with Article 1(1) of the Convention, to the detriment of Johan Alexis Ortiz Hernández and his parents, in accordance with the requirements established set forth in Articles 46 and 47 of the American Convention.

48. Based on the foregoing factual and legal arguments, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare this case admissible with respect to Articles 4, 8, and 25 of the American Convention in relation to Article 1 (1) of that treaty.
2. To advise the State and the petitioners of this decision.
3. To initiate its examination of the merits of the matter.
4. To publish this decision and include it in the Annual Report to be presented to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 25th day of the month of February, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Evelio Fernández Arévalos, Jose Zalaquett and Florentín Meléndez, Commissioners.