

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 55/06; Petition 12.380
Session: Hundred Twenty-Fifth Special Session (17 – 21 July 2006)
Title/Style of Cause: Members of Jose Alvear Restrepo Lawyers' Collective v. Colombia
Doc. Type: Decision
Decided by: President: Evelio Fernandez Arevalos;
Second Vice-President: Florentin Melendez;
Commissioners: Freddy Gutierrez, Paolo Carozza, Victor Abramovich.
Dated: 20 July 2006
Citation: Jose Alvear Restrepo Lawyers' Collective v. Colombia, Petition 12.380, Inter-Am. C.H.R., Report No. 55/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by: APPLICANT: the Center for Justice and International Law
Terms of Use: Your use of this document constitutes your consent to the Terms and Conditions found at www.worldcourts.com/index/eng/terms.htm

I. SUMMARY

1. On April 19, 2001, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition lodged by “José Alvéar Restrepo” Lawyers’ Collective (“José Alvéar Restrepo” Lawyers’ Collective) (hereinafter “the Lawyers’ Collective”) and the Center for Justice and International Law (CEJIL) (hereinafter “the petitioners”), which alleged the international responsibility of the Republic of Colombia (hereinafter “the State”) for the alleged attacks, acts of intimidation and harassment, and threats to which the members of “José Alvéar Restrepo” Lawyers’ Collective (hereinafter “the alleged victims”) have been subjected in reprisal for their work in defense of human rights in Colombia. The petitioners argued that the acts alleged in the petition violate Articles 4, 5, 8.1, 11, 13, 16, 22, and 25 of the American Convention on Human Rights (hereinafter “the American Convention”) in connection with the obligations under Article 1.1 of that instrument.

2. As to the admissibility of the complaint, the petitioners argued that the instant case should be granted exemption from the requirement of prior exhaustion of remedies under the domestic jurisdiction because of the impossibility of exhausting the remedies available and the ineffectiveness of those remedies. According to the petitioners, it has been 15 years since the acts of harassment, attacks, and threats against the members of the Lawyers’ Collective started and, despite having reported every incident, the State has not taken effective steps to prevent these acts from remaining unpunished; nor has it adopted the measures necessary to ensure the security of the members of the organization or of the judiciary employees involved in denouncing the acts and their investigation. The foregoing, in their opinion, makes the exceptions to the rule of exhaustion of domestic remedies applicable to this case.

3. The State, for its part, argued with respect to the remedies in the domestic jurisdiction that not only have they not been exhausted, but they “have played a particularly active role in producing categorical results in the ordinary criminal justice system.” The State argued that its authorities have taken multiple steps to move forward with the investigation of the facts, which denotes the seriousness of its efforts, in which it has “not always had the timely cooperation -as necessary and valuable as it is- of the petitioners for collecting information. Therefore, the State held that the rule of prior exhaustion of domestic remedies set down in Article 46 of the American Convention had not been met.

4. Having examined the positions of the parties, the Commission concludes that it is competent to render a decision on the complaint presented by the petitioners and that the case is admissible pursuant to Article 46 of the American Convention. Consequently, the Commission has decided to notify the parties of its decision, continue its analysis of merits of the alleged violations of the American Convention, publish this report on admissibility, and include it in its Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

A. Petition

5. On April 19, 2001, the Commission received a petition presented by “José Alvéar Restrepo” Lawyers’ Collective (CCAJR) and the Center for Justice and International Law (CEJIL), which was registered as number 12.380. On April 23, 2001, the IACHR transmitted the petition to the Government of Colombia, granting it 90 days to submit its observations, in accordance with the Regulations in force until April 30, 2001. On July 26, 2001, the State requested the IACHR for an extension of the period to present its observations. On July 27, 2001, the Commission granted the State an extension of one month to submit its reply. On August 28, 2001, the State conveyed its observations on the admissibility of the petition. On August 30, 2001, the IACHR forwarded the reply of the State to the petitioners and asked them to submit their observations within 30 days. On October 1, 2001, the petitioners requested an additional period of 40 days to submit observations. On October 23, 2001, the IACHR granted the petitioners an extension of 20 days to present their response. On November 12, 2001, the IACHR held a hearing at its headquarters to address matters concerning the admissibility of the case in the framework of its 113th Regular Session. On June 24, 2005, the Commission received a communication from the petitioners in which they reiterated their position on the admissibility of the case and submitted additional information on new acts committed against the alleged victims. On June 29, 2005, the Commission forwarded the new information to the State and requested it to submit any observations it deemed appropriate within one month. Thus far the Commission has received no reply.

B. Precautionary Measures

6. On May 11, 2000, the IACHR requested the Government of Colombia to adopt measures to protect the life and personal integrity of the human rights defender Alirio Uribe Muñoz. Those measures were later broadened to include all the other members of the Lawyers’ Collective[FN1]. At the date of adoption of this report those measures remain in force. Since

their entry into force, the parties have presented in writing their position on implementation of the measures on several occasions. The IACHR has also convened several hearings at its headquarters to address implementation of the security measures and the procedural status of the investigations underway.[FN2] Furthermore, the Commission has held working meetings for the same purpose, both at its headquarters and in Colombia.[FN3]

[FN1] On March 19, 2002, the IACHR requested the State to “adopt the measures necessary to extend the protection to all members of the JAR Lawyers’ Collective.”

[FN2] The IACHR has held hearings in this connection on October 16, 2002 (116th Regular Session) and March 1, 2005 (122nd Regular Session).

[FN3] The Commission held working meetings on implementation of the precautionary measures during its visits of May 8 and 9, 2002, and May 23, 2001.

III. POSITIONS OF THE PARTIES

A. The petitioners

7. The petitioners alleged that the situation alleged in their petition is framed by a context of generalized vulnerability of human rights defenders in Colombia, a fact attested by the Inter-American Commission in its annual reports, as well as by international agencies attached to the United Nations. According to the petitioners, in Colombia there are patterns of threats, homicides, and acts of harassment that hinder the efforts of human rights defenders throughout the country.

8. The petition mentions that “José Alvéar Restrepo” Lawyers’ Collective (hereinafter “the Lawyers’ Collective”) is a nongovernmental human rights organization that was founded in 1980 and is composed of persons who work to protect human rights and seek the truth, justice and redress for victims of human rights violations by providing legal advisory and representation services for victims of serious violations of human rights before domestic and international tribunals. According to the petitioners, for more than 25 years members of the Lawyers’ Collective have represented large numbers of human rights victims both in the domestic courts and in proceedings before international supervisory organs. The petitioners mentioned, for example, that the Lawyers’ Collective has been a petitioner in contentious cases decided by the Inter-American Court, such as the Case of the Mapiripán Massacre and the Case of Gutiérrez-Soler v. Colombia; it has also requested provisional measures, as in the Case of Kankuamo Indigenous Community v. Colombia. They also mention that the Lawyers’ Collective represents victims in a significant number of individual petitions and requests for provisional measures before the Commission.

9. According to the petition, since early 1990 the members of the Lawyers’ Collective have been victims of continual threats, attacks, surveillance, harassment, public defamation of their work, and public statements that heighten the level of risk in their activities. According to the petitioners, this systematic pattern of intimidation is the work of agents of the public security

forces, members of state security agencies, and private individuals who have acted with the support, acquiescence, tolerance, and protection of public officials.

10. The petitioners argued that, in accordance with the jurisprudence of the Inter-American Court, States have the obligation to take reasonable steps to prevent any attack on the lives of human rights defenders under their jurisdiction. However, in the opinion of the petitioners, the Colombian State has failed to fulfill that obligation by its refusal to adopt effective measures to prevent acts of harassment of members of the Lawyers' Collective, despite the precautionary measures granted by the Commission; and because the State has neglected to conduct a thorough, effective, and impartial investigation of the facts. By virtue of that alleged non-fulfillment, the petitioners argue that the State violated the rights contained in Articles 4 and 5 of the American Convention to the detriment of the alleged victims.

11. The petitioners alleged in this connection that members of the Lawyers' Collective, both individually and collectively, have been the target of multiple death threats in reprisal for their work in defense of human rights. Thus, toward the end of August 1999, copies of a pamphlet signed by the "Colombian Rebel Army" were distributed in a number of public places in the city of Bogotá. The pamphlet threatened with death public personalities, intellectuals, and social leaders, including Alirio Uribe, a member of the Executive Board of the Lawyers' Collective. Since that date, according to the petitioners, Alirio Uribe has noticed that he has been followed on different occasions, in particular by strange men on motorcycles without number plates; received visits to his office by suspicious persons; suspicious calls to his residence; calls to his former place of work; and visits to his home by unknown persons on the pretext that they wanted to "give him a present".

12. The petition also alleged that on another occasion, on May 13, 2005, upon arriving at her home, the then-president of the Lawyers' Collective, Soraya Gutiérrez Argüello, received an unusual package left at her residence by a private mail delivery company, which was opened by members of the National Police for fear that it might contain an explosive device. Inside the package there was a beheaded and dismembered toy doll daubed all over with red nail polish -as if to resemble blood- with a cross drawn on the trunk. Along with the doll was a handwritten note that said, "You have a very beautiful family take care of them don't sacrifice them."

13. That same day, without being ordered by the Lawyers' Collective, an advertisement was published in one of the national newspapers that read: "LAWYERS, psychologists, sociologists, other professionals and university undergraduates studying the same courses. No experience necessary. Start immediately. Ask for José Alvéar Restrepo. Telephones 2846120, 2846040, 2849614, 2812285, 2814430". According to the petitioners, in the context of Colombia this advertisement is a threat to everyone who works for the Lawyers' Collective, since it implies an imminent risk of attack on its members, which could create vacancies within the organization.

14. The petition also alleged the international responsibility of the State for the continuous acts of intimidation and surveillance to which the members of the Lawyers' Collective were subjected by unidentified persons as they went about their work, especially in the course of visits to the interior of the country. The petition alleges that on May 13, 2004, the lawyer Pedro Mahecha Ávila traveled to the city of Cartagena to attend to business connected with the

institutional activities of the Lawyers' Collective. While there, Mr. Mahecha Ávila noticed that he was being followed by two persons on a motorcycle, a fact that he brought to the attention of the guards at the prison he was visiting. The guards asked the individuals for identification and discovered that they were members of the Administrative Department of Security. According to the petitioners these officials failed to explain why they were conducting that surveillance. Later, the lawyer went to the public transport terminal to keep an appointment with some family members in another of his cases and realized that other men were following him. When that meeting concluded and he prepared to leave for the city of Barranquilla, the lawyer noticed a taxi with tinted windows following him. The petition alleges that this situation forced him to call off the rest of his trip and return immediately to Bogota.

15. According to the petitioners, these threats have progressed to attacks on the lives of the members of the Lawyers' Collective. The petitioners say that on February 14, 2003, the lawyer Soraya Gutiérrez was making her way home in the city of Bogota in an armor-plated vehicle assigned by the Human Rights Defenders Protection Program of the Ministry of the Interior in the framework of the precautionary measures granted by the IACHR. Shortly before she reached her residence the lawyer noticed that a vehicle was following her, which prompted her to accelerate her vehicle. However, the other vehicle drew level with hers and its four occupants signaled to the lawyer to stop. When she refused, the men blocked her progress and forced her to halt. Three men got out of the vehicle carrying submachine guns and attempted to open the doors of the vehicle. According to the petitioners, the lawyer managed to accelerate her vehicle and escape by driving along the pedestrian zone of the road. The petitioners say that as she escaped the men discharged their weapons at the vehicle. According to a police inspection of the vehicle two of the shots struck the car windows.

16. The petitioners argued that this climate of intimidation has resulted in the violation of other rights of the alleged victims, who have been unable without fear to exercise their rights to freedom of expression and association, as well as their right to freedom of movement and residence. As regards this last right, the petitioners specifically argued that several of the members of the Lawyers' collective have been forced to go into exile for months or years in other countries due to threats and attacks. Thus, the petition alleged that in 1991, Eduardo Umaña Luna had to leave the country because of threats made against him. Towards the end of 1994, Rafael Barrios Mendivil, a founding member of the Lawyers' Collective, was the target of repeated threats because of his work on the cases of the massacres of "Caloto" and "Los Uvos", which forced him to leave the country for six months. Subsequently, in August 1999, Rafael Barrios Mendivil was forced to leave the country after receiving threats because he had brought an action for unconstitutionality against armed forces regulations.

17. The petitioners also alleged other acts designed to inhibit their efforts and increase the level of risk in their activities through the collection of personal information by state authorities in intelligence reports, all of which is in contravention of their right to have their honor and privacy respected. In that connection, the petitioners alleged that in Colombia, officials attached to state security agencies collect private information on human rights defenders in order to create intelligence reports that are then used to intimidate the defenders. With respect to the Lawyers' Collective, the petitioners indicated that in criminal proceeding 9668 brought by the Bogotá Regional Prosecutor's Office, the National Army of Colombia put forward as evidence a military

intelligence report entitled “Miscellaneous” signed by the XIII Army Brigade which is headquartered in Bogotá. The report identified more than 200 civic and grassroots leaders, municipal council members, mayors, and human rights defenders, among others, as guerrilla sympathizers or activists. Among them, Alirio Uribe was named as being part of an alleged “ELN support network” who “heads a campaign to secure political-prisoner status for bandits”. The petitioners alleged that several persons mentioned in the aforesaid intelligence report have been victims of extrajudicial executions, forced disappearance, arbitrary detention, and constant threats that have forced them to move elsewhere or go into exile.

18. The petitioners also claimed that the members of the Lawyers’ Collective “at different times have had to put up with tendentious and defamatory statements [...] by agents of the state,” in violation of the right to have their honor and privacy respected. The petitioners indicated that since 2003, the President of the Republic has publicly stated both in and outside the country that the Lawyers’ Collective uses defense of human rights as a shield to protect terrorists and guerrillas[FN4], a position echoed by paramilitary groups to threaten its members, thereby increasing the risk in which they were already living.

[FN4] The petitioners alleged that on February 10, 2004, at a meeting between President Álvaro Uribe Vélez and the European Union Foreign Affairs Committee, he said, in reference to the Lawyers’ Collective, that, “Human rights cannot be used as an excuse to protect terrorists.” He also said that, “If the Lawyers’ Collective wants to defend terrorists, let them do so in accordance to law, but they should not hide behind human rights organizations.” The petitioners also charged that the official website of the National Narcotics Office (<http://www.dnecolombia.gov.co/contenido.php?sid=21>) contains the following reference:

“RELEVANT LEGAL MATTERS

On January 22, 2001, Claudia Sanpedro Torres and Héctor Alfredo Suárez Mejía, with the assistance, inter alia, of the Honorable Representative Gustavo Petro and Alvear Restrepo Lawyers’ Collective (traditional defenders of the FARC) led by its president, Alirio Uribe, brought a public interest action with Cundinamarca Administrative Tribunal against the Ministry of the Environment, the ICA, and the National Narcotics Office.”

19. Thus, the petitioners alleged that on September 29, 2003, the Autodefensas Unidas de Colombia (AUC paramilitaries) issued a public communiqué in which they welcomed with satisfaction the statements of the president of the Republic of Colombia, and said that “certain human rights organizations that seem to have taken sides in the conflict, and for which the only persons who commit human rights violations are those who combat or are sworn enemies of the communist guerrillas.” The communiqué expressly mentions “José Alvéar Restrepo” Lawyers’ collective. The petitioners say that following these declarations, in April 2005, the lawyer Reinaldo Villalba Vargas was followed on several occasions and received suspicious calls at his residence. They also stated that the harassment was extended to his wife, who was followed and photographed.

20. With respect to the right to privacy of the home and telephone communications, also recognized in Article 11 of the American Convention, the petitioners claimed that on several

occasion attorneys of the Lawyers' collective have detected the sounds of radio frequencies on their telephones. Indeed, Alirio Uribe was once answered by the police. On another occasion, according to the petitioners, Alirio Uribe sent a fax to the university where he lectures and was immediately called from an office in the Ministry of Defense asking who the intended recipient of the fax was.

21. Finally, the petitioners alleged that this panorama of harassment, attacks, and threats against the members of the Lawyers' collective as individuals and against the institution itself have not been seriously investigated by the Colombian authorities, which has enabled those acts to remain unpunished and has encouraged their repetition and escalation over the years. Through this failure to investigate in a timely manner, the petitioners argued that the State violated their rights to a fair trial and effective judicial protection recognized in Articles 8 and 25 of the Convention.

22. The petitioners indicated they had reported the incidents and instituted proceedings which are underway or have been carried out in that connection. However, to date, none of the multiple investigations opened into the incidents has made any progress.[FN5] They also stated that in this case, the state agents who have been in charge of investigations had not proceeded in a meaningful, objective, and responsible manner. The lack of a diligent investigation is demonstrated by the neglect to collect essential evidence, failure to follow up lines of investigation, and lack of control over paramilitary forces. As a consequence, the petitioners claimed that none of the investigations have passed the preliminary enquiry stage and there has not been any person judicially implicated.

[FN5] According to the petitioners, the National Unit for Human Rights and International Humanitarian Law of the Attorney General's Office is pursuing or has pursued several preliminary investigations into threats, attacks, and other acts of harassment against members of the Lawyers' Collective. Thus, the petitioners allege that the National Unit for Human Rights and International Humanitarian Law of the Attorney General's Office opened an enquiry registered as Case UDH 500 on September 13, 1999. The Unit later initiated an investigation (Case UDH 912) based on complaints made by Soraya Gutiérrez Arguello, Rafael Barrios Mendivil, Reinaldo Villalba Vargas, and Luis Guillermo Pérez Casas, all members of the Lawyers' Collective. Investigations have been carried out or are under way by other Assigned Prosecutors: i) 11th Prosecutor's Office assigned to the Criminal Courts of the Terrorism Subunit Circuit (Case 42632) initiated in response to an urgent action brought by the Lawyers' Collective with regard to the security of Alirio Uribe Muñoz; ii) Bogotá Regional Prosecutor's Office (Case 7141) which was suspended and provisionally archived; iii) the Anti-Kidnapping Unit of the Prosecutors Assigned to the Criminal Courts of the Bogota Circuit (Cases 420211 and 421312) is investigating threats; iv) the Regional Prosecutor's Office (Case 22342) is carrying out a preliminary enquiry into threats reported by Rafael Barrios Mendivil; v) the Unit for Crimes against personal liberty and other guarantees (Case 421312) initiated a criminal investigation, in respect of which it was prevented from opening a formal investigation because the statute of limitations on criminal action had run; vi) the Preliminary Investigation Unit of the Regional Prosecutor's Office (Case 28126) launched an investigation into the complaints reported by the Lawyers' Collective for threats made against Margarita Arregoces and Reinaldo Villalba Vargas;

vii) the Prosecutor's Unit for Crimes against Personal Liberty (Case 420211) opened a preliminary enquiry but later abstained from initiating an investigation into the crime of Personal and Family Threats.

23. As regards admissibility, the petitioners hold that their petition should be granted exemption from the requirement of prior exhaustion of remedies under the domestic jurisdiction because of the impossibility of exhausting the remedies available and the ineffectiveness of those remedies. According to the petitioners, "15 years have passed since the acts of harassment, attacks and threats against the members of the Lawyers' Collective started, and yet the State has still not taken effective steps to prevent these acts of harassment from remaining in total impunity; nor has it adopted the measures necessary to ensure the security of the members of the organization or of judiciary employees involved in denouncing the acts and their investigation. The foregoing, in their opinion, makes the exceptions to the rule of exhaustion of domestic remedies applicable to this case."

B. Position of the State

24. The State requested that the case be declared inadmissible. The State began its reply to the petition clarifying that, "Given that the case is also the object of precautionary measures granted by the Honorable Commission, the government's opinion on the processing of the case before the Inter-American Commission will address the requests made in the petition, on the understanding that the Commission and the petitioners have been duly informed as to the implementation of the protection on behalf of the beneficiaries of the Commission's order, the respective criminal investigations, and the steps taken by the Office of the Vice President of the Republic with regard to the intelligence reports."

25. The State mentioned that the allegations contained in the petition regarding the acts of harassment and the "pattern of threats" against the members of "José Alvéar Restrepo" Lawyers' Collective, have been dealt with by the State in the terms that it has already described to the Commission in its communications on the processing of the provisional measures granted by the IACHR to the alleged victims.[FN6]

[FN6] With respect to the investigation of the facts that led to the adoption and broadening of the precautionary measures, the State informed the Commission that the National Unit for Human Rights and International Humanitarian Law is conducting two investigations into the acts of harassment and threats against the members of the Collective. The State also informed that Investigations "had been or were being carried out" before the Unit for Crimes against Personal Freedom, Other Guarantees, and Other Offences by Prosecutor's Offices 242, 246, 239, 240, 242, 328, 247, 246, and 245.

26. As to the admissibility of the complaint, the State mentioned that it disagreed with the position of the petitioners that the fact that the investigation of the threats against the alleged victims remained at the preliminary enquiry stage, was grounds to invoke one of the exceptions

provided in Article 46.2.b of the American Convention. In the opinion of the State, the authorities have adopted multiple measures to move forward with the investigation of the facts, which demonstrates the seriousness of its efforts, in which “it has not always had the timely cooperation -as necessary and valuable as it is- of the petitioners for collecting information.”

27. In this connection, the State indicated, citing the Inter-American Court, that in determining the reasonableness of the time in which a proceeding takes place it is necessary to take into account the procedural activity of the interested party and the conduct of the judicial authorities. In the instant case, the State remarked that the investigation of the facts could not be carried out without the active participation of the interested party. The State clarified that with this affirmation, “in no way is it disregarding its obligation to investigate any potentially criminal conduct thoroughly and *ex officio*. On the contrary, its efforts to date show its irrevocable will, despite the difficulties, to move forward with its investigations of the facts in the instant case. However, nor does the state failed to recognize the importance of counting on the collaboration of the petitioners, who have firsthand, accurate information on the facts that they allege.

28. Based on these arguments, the State concluded that not only have the remedies in the domestic jurisdiction not been exhausted, but they “have played a particularly active role in producing categorical results in the ordinary criminal justice system.” Accordingly, the State argued that the rule of prior exhaustion of the remedies under domestic jurisdiction had not been met.

29. The State also alleged that it had adopted a series of “political measures” to recognize the legitimacy of the work of human rights defenders. Thus, the State mentioned that it had adopted Presidential Directive 07 of 1999, which “orders the elimination of prejudicial preconceptions of human rights defenders and calls for joint and coordinated work with nongovernmental organizations.”

30. The State also provided information about the creation of the Interior Ministry’s Program for Protection of Witnesses and Persons under Threat, designed to coordinate adoption of urgent measures to protect human rights defenders; community, civic, and trade union leaders; ethnic groups; and witnesses of human rights violations. According to the State, this program “is an unequivocal reflection of the will of the National Government to provide social protection to those who have adopted the defense of human rights as a way of life, without regard for the risks of this work in the context of the armed conflict taking place in our country.”

IV. ANALYSIS

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

31. The petitioners have standing under Article 44 of the American Convention to lodge petitions with the IACHR. The petition names as alleged victims Eduardo Carreño Wilches, Rafael Barrios Mendivil, Alirio Uribe Muñoz, Reinaldo Villalba Vargas, Soraya Gutiérrez Arguello, Pedro Julio Mahecha Ávila, Jomary Ortégón Osorio and the other members and employees of the José Alvéar Restrepo Lawyers’ Collective, all individuals in respect of whom

Colombia undertook to observe and ensure the rights enshrined in the American Convention. As regards the State, the Commission notes that Colombia has been a state party to the American Convention since July 31, 1973, when it deposited the respective instrument of ratification. Therefore, the Commission has *ratione personae* competence to examine the petition.

32. The Commission has *ratione materiae* competence because the petitioners allege infringements of rights protected by the American Convention which, if proven, could constitute violations of Articles 1.1, 4, 5, 8.1, 11, 13, 16, 22, and 25 of said Convention.

33. The Commission is competent *ratione loci*, since the alleged violations are said to have occurred within the territory of a state party to the American Convention. The Commission is competent *ratione temporis* because the obligation to respect and ensure the rights protected in the American Convention was already binding upon the State at the time the events alleged in the petition started to occur.

B. Other admissibility requirements

1. Exhaustion of domestic remedies

34. Article 46.1.a of the American Convention provides that the admissibility of a petition submitted to the Inter-American Commission pursuant to Article 44 is subject to the requirement that remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to enable national authorities to have the opportunity to address the alleged violation of a protected right, and where appropriate resolve it, prior to any submission before an international mechanism.

35. The requirement of prior exhaustion applies when domestic remedies are available in practice within the national system, and would be adequate and effective in providing a remedy for the alleged violation. In this sense, Article 46.2 specifies that the requirement is not applicable when the domestic legislation does not afford due process for the protection of the right in question; or if the alleged victim did not have access to domestic remedies; or if there was unwarranted delay in reaching a final judgment in response to the invocation of those remedies. As indicated by Article 31 of the Commission's Rules of Procedure, when a petitioner alleges one of these exceptions, it then falls to the State to demonstrate that domestic remedies have not been exhausted, unless that is clearly evident from the record.

36. According to the principles of international law as reflected in the precedents established by the Inter-American Commission and Court, it may first be noted that the State in question may expressly or tacitly waive the invocation of this rule.[FN7] Second, in order to be considered timely, the objection that domestic remedies have not been exhausted must be raised during the first stages of the proceeding; otherwise, it will be presumed that the interested State has tacitly waived its use.[FN8] Finally, the State that alleges non-exhaustion of domestic remedies must indicate which remedies should have been exhausted, as well as provide evidence of their effectiveness.[FN9] Consequently, if the State in question does not provide timely arguments with respect to this requirement, it will be understood to have waived its right to argue

the non-exhaustion of domestic remedies and thereby discharge the burden of proof that would correspond to it.

[FN7] See, e.g., IACHR, Report N° 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, 13 October 2005, para. 42; I/A Court H.R., Ximenes Lopes Case. Preliminary Objections. Judgment of 30 November 2005. Ser. C No. 139, para. 5; I/ A Court H.R., Case of Moiwana Village. Judgment of June 15, 2005. Ser. C No. 124, para. 49; I/ A Court H.R., Case of the Serrano-Cruz sisters. Preliminary Objections. Judgment of November 23, 2004. Ser. C No. 118, para. 135.

[FN8] See, e.g., I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections. Judgment of February 1, 2000. Series C No. 66, para. 53, I/A Court H.R., Castillo Petruzzi Case. Preliminary Objections. Judgment of September 4, 1998. Series C No. 41, para. 56; and I/A Court H.R., Loayza Tamayo Case. Preliminary Objections. Judgment of January 31, 1996. Series C No. 25, para. 40. The Commission and Court have established that “the first stages of the process” must be understood as the admissibility stage of the proceedings before the Commission, that is, “before any consideration of the merits.” See, for example, IACHR, Report N° 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, 13 October 2005, which cites, I/A Court H. R., Case of Herrera Ulloa. Judgment of July 2, 2004. Series C No. 107, para. 81.

[FN9] See, e.g., IACHR, Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and other persons affected by HIV/AIDS, Guatemala, 7 March 2005, paras. 33-35; I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections, supra, para. 53; I/A Court H.R., Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999. Series C No. 50, para. 33; and I/A Court H.R., Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

37. In the present case, the petitioners have argued that an exception to the rule of exhaustion of domestic remedies applies because lack of diligence on the part of the investigating authorities has meant that, to date, after more than 15 years of incidents against members of the Lawyers’ Collective and over five years since the petition was lodged with the IACHR, no one has been judicially implicated in the investigations and none of the multiple proceedings opened as a result of the different incidents has progressed beyond the preliminary enquiry stage. The State mentioned that its authorities have taken multiple steps to move the investigations of the incidents forward, which denotes the seriousness of its efforts, but that it has not received sufficient support from the alleged victims.

38. The Commission finds that the acts denounced by the petitioners had been brought to the attention of the State authorities, which, under the obligations arising from American Convention, have a duty to investigate the acts and, as appropriate, prosecute those responsible, compensate the victims, and prevent impunity. Despite its procedural obligation to do so, the State has not justified why no one has yet been implicated in the various investigations opened, or which concrete measures it has adopted to elucidate the facts. Nor is there anything in the domestic proceedings to suggest that the petitioners have sought to obstruct the investigations. On the contrary, in the framework of the domestic proceedings instituted to that end, the alleged

victims have denounced the acts and the State has the obligation to carry out a meaningful, impartial, and effective investigation once the act has been brought to its attention,[FN10] something that the State has not demonstrated in the instant case. Based on these considerations and in light of the procedural status of all the investigations opened, the Commission concludes that the exception provided for unwarranted delay in rendering a final judgment under the aforementioned remedies applies.

[FN10] I/A Court H. R., Case of the Massacre of Pueblo Bello. Judgment of January 31, 2006. Series C No. 140, para. 142.

2. Timeliness of the petition

39. In accordance with Article 46.1.b of the Convention, a petition must be presented in a timely manner to be admitted, namely, within six months from the date on which the complaining party was notified of the final judgment at the domestic level. The six-month rule ensures legal certainty and stability once a decision has been taken.

40. In those cases in which an exception to the requirement of prior exhaustion applies, Article 32 of the Commission's Rules of Procedure provides that petitions must be presented within a reasonable period of time, as determined by the Commission. In accordance with this Article, in its analysis the Commission "shall consider the date on which the alleged violation of rights has occurred and the circumstances of each case."

41. As regards the petition sub lite, the Commission has determined that the exception provided in Article 46.2.c of the American Convention with respect to unwarranted delay in rendering a final judgment under domestic remedies applies. Therefore, the Commission must evaluate if the petition was lodged within a reasonable time in accordance with the specific circumstances in the situation submitted for its consideration. The Commission noted that the petition was presented on April 19, 2001, 11 months after the IACHR adopted precautionary measures for the protection of the members of the Lawyers' Collective, and that various acts alleged in the petition have been committed while the international proceeding has been underway. Based on these facts, the Commission concludes that the petition under review was presented within a reasonable time.

3. Duplication of proceedings and res judicata

42. It does not appear from the record that the subject matter of the petition is pending in another international proceeding for settlement, nor that it reproduces a petition already examined by this or any other international organization. Therefore, the requirements established at Articles 46.1.c and 47.d of the Convention have been satisfied.

4. Characterization 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. The standards 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.

44. Based on the allegations in the petition, the Commission finds that the petitioner has formulated allegations that are not “manifestly groundless” or “obviously out of order” and which, if found to be true, could constitute violations of Articles 5, 8.1, 11, 13, 16, 22, and 25 of the American Convention. Accordingly, without prejudging the merits of the case, the Commission considers that the requirements of Articles 47.b and c of the American Convention have been met.

45. Furthermore, the petitioners argued that the context of threats, attacks, and other acts of harassment committed against the members of the Lawyers’ Collective has reduced the alleged victims to a situation of defenselessness as a result of the state of permanent risk that they face, which, in their opinion, violates the right to life recognized in Article 4 of the American Convention. In that connection, the Commission considers the present claim to be admissible, on the understanding that the present procedural stage, according to the recent jurisprudence of the Inter-American Court,[FN11] could be considered, prima facie, a possible breach of the legal obligation of the State take positive steps to prevent violation of the aforesaid right.[FN12] The Commission will conduct a detailed examination of the legal consequences of those obligations in its respective report on merits. Accordingly, the Commission declares the instant petition admissible with respect to the alleged violation of Article 4 of the American Convention.

[FN11] I/A Court H. R., Case of the Indigenous Community Yakye Axa. Judgment of June 17, 2005. Series C No. 125, para. 161; I/A Court H.R., The “Street Children” Case (Villagrán Morales et al.). Judgment of November 19, 1999. Series C No. 63, para. 144; I/A Court H. R., Case of the “Juvenile Reeducation Institute”. Judgment of September 2, 2004. Series C No. 112, para. 156.

[FN12] The Inter-American Court has held that “States must adopt the measures necessary to create an appropriate legal framework that dissuades any threat to the right to life; establish an effective system of justice that can investigate, punish, and provide reparation for any deprivation of life by agents of the State or private citizens; and safeguard the rights of persons not to be prevented access to conditions that ensure a decent life, which includes adoption of positive measures to prevent violation of this right.” I/A Court H. R., Case of the Indigenous Community Sawhoymaxá. Judgment of March 29, 2006. Series C No. 146, para. 153.

V. CONCLUSION

46. The Commission concludes that the case is admissible and that it is competent to examine the claim submitted by the petitioners over the alleged violation of Articles 4, 5, 8.1, 11, 13, 16, 22, and 25 of the American Convention, all in connection with the obligations arising from Article 1.1 of that instrument.

47. Based on the arguments of fact and law set out above, and without prejudging on the merits,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the instant case admissible as regards Articles 4, 5, 8.1, 11, 13, 16, 22, and 25 of the American Convention, in connection with the obligations under Article 1.1 of that treaty.
2. To transmit this report to the petitioners and to the State.
3. To continue with its analysis of merits in the case.
4. To publish this report and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Antigua (Guatemala) on the 20th day of the month of July, 2006.
(Signed): Evelio Fernández Arévalos, Presidente; Florentín Meléndez, Segundo Vicepresidente;
Freddy Gutiérrez, Paolo Carozza y Víctor Abramovich, Commissioners.