

Institution: Inter-American Commission on Human Rights
File Number(s): Report No. 96/06; Petition 4348-02
Session: Hundred Twenty-Sixth Regular Session (16 – 27 October 2006)
Title/Style of Cause: Jesus Mohamad Capote, Johnny Palencia, Jesus Orlando Arellano, Juan David Querales, Jose Antonio Gamallo, Jean Carlos Serrano, Andres Trujillo, Fernando Joel Sanchez, Orlando Rojas, Victor Emilio Reinoso, Esther Franco La Riva, Mildred del Coromoto Castillo Rodriguez, Jose Guillermo Rodriguez, Tulio Di Giorgio, Rafael Fuenmayor, Jose Antonio Davila Uzcategui, Elias Belmonte Torres and Julio Ibarra Garcia v. Venezuela
Doc. Type: Decision
Decided by: President: Evelio Fernandez Arevalos;
First Vice-President: Paulo Sergio Pinheiro;
Second Vice-President: Florentin Melendez;
Commissioners: Paolo G. Carozza, Victor E. Abramovich.
In keeping with Article 17.2 of the Commission’s Rules of Procedure, Commissioner Freddy Gutierrez, a Venezuelan national, did not participate in either the discussion of or the decision on the present case.
Dated: 21 October 2006
Citation: Mohamad Capote, Petition 4348-02, Inter-Am. C.H.R., Report No. 96/06, OEA/Ser.L/V/II.127, doc. 4 rev. 1 (2006)
Represented by: APPLICANTS: Eduardo Meier Garcia, Alfredo Romero Mendoza, Juan Carlos Sosa Azpurua, Gonzalo Himiob Santome and Antonio Rosich Sacan
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I. SUMMARY

1. On October 12, 2002, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition lodged by Eduardo Meier García, Alfredo Romero Mendoza, Juan Carlos Sosa Azpúrua, Gonzalo Himiob Santomé and Antonio Rosich Sacan (hereinafter “the petitioners”), alleging that the Bolivarian Republic of Venezuela (hereinafter “Venezuela,” “the State” or “the Venezuelan State”) had violated the rights protected under articles 4, 5, 15 and 22 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) to the detriment of Jesús Mohamad Capote, Johnny Palencia, Jesús Orlando Arellano, Juan David Querales, Jose Antonio Gamallo, Jean Carlos Serrano, Andrés Trujillo and Fernando Joel Sánchez. In later submissions, the petitioners added to the list of victims to include Orlando Rojas, Víctor Emilio Reinoso, Esther Franco La Riva, Mildred del Coromoto Castillo Rodríguez, José Guillermo Rodríguez, Tulio Di Giorgio, Rafael Fuenmayor, José Antonio Dávila Uzcátegui, Elías Belmonte Torres and Julio Ibarra García (hereinafter “the alleged victims”).

2. The petitioners allege that seven (7) of the alleged victims[FN2] were killed or died as a result of gunshots they sustained in Caracas on April 11, 2002, in some cases caused by the action of State security agents, in other cases by the latter's omission. All this was alleged to have occurred during the clashes that took place between members of the government opposition and government supporters and that led to a coup d'état. The petitioners allege that the other 11 supposed victims[FN3] were wounded in the same events and in some cases in the clashes that occurred in the days that followed. The petitioners allege that vis-à-vis all the alleged victims the State has failed in its duty to investigate the facts, prosecute and punish those responsible, and make compensation, since more than four years have passed and most of the cases are still in the preliminary stage of investigation and no possible suspects have been identified. As for the requirements concerning admissibility and prior exhaustion of local remedies, the petitioners are requesting that the Commission apply the exceptions allowed under Article 46.2.a and c of the American Convention on the grounds that the investigations are not sufficiently impartial and independent and there have been unwarranted delays in investigating and prosecuting the cases.

[FN2] Jesús Mohamad Capote, Johnny Palencia, Jesús Orlando Arellano, Juan David Querales, Jose Antonio Gamallo, Orlando Rojas and Víctor Emilio Reinoso.

[FN3] Jean Carlos Serrano, Andrés Trujillo, Fernando Joel Sánchez, Esther Franco La Riva, Mildred del Coromoto Castillo Rodríguez, José Guillermo Rodríguez, Tulio Di Giorgio, Rafael Fuenmayor, José Antonio Dávila Uzcátegui, Elías Belmonte Torres and Julio Ibarra García.

3. For its part, the State acknowledges that the seven persons named in the petition died in the circumstances that attended the clashes that broke out in Caracas on April 11, 2002. It also acknowledges that some of the alleged victims did sustain injuries. However, its contention is that the State is not to blame for these deaths and injuries, since it has set in motion the apparatus of the State to take all necessary measures to conduct an effective investigation into the facts and punish those responsible. The State observes that although most of the investigations are in the preliminary phase, this is not due to negligence on the part of the authorities; instead, it is due to the complex circumstances surrounding the events in question. As for the admissibility requirements, the State alleges that the petitioners have not pursued and exhausted the remedies under domestic law, as all the cases are still in progress and are moving forward with the necessary diligence.

4. After examining the positions of the parties in light of the admissibility requirements under articles 46 and 47 of the American Convention, the Commission has decided to declare the case admissible as regards the alleged violation of the rights recognized in articles 4, 5, 15, 8 and 25 of the American Convention, in relation to Article 1.1 thereof. Therefore, the Commission has decided to notify the parties, to make this admissibility report public and to include it in its Annual Report to the OAS General Assembly.

II. PROCESSING WITH THE COMMISSION

5. On August 22, 2002, the Commission received a request seeking precautionary measures for the alleged victims named in the petition and for their next of kin. On August 23, 2002, the

Commission sent a communication to the Venezuelan State wherein it requested that the State adopt all measures necessary to protect the petitioners' life and personal safety. The original petition in the case came later, whereupon the processing described below commenced.

6. The Inter-American Commission received the original petition on October 11, 2002, and registered it as number P-4348 of 2002.

7. On June 30, 2003, the petitioners filed more information, in addition to that reported in their original petition. On July 25, 2003, the petitioners submitted more information, adding more names to the list of alleged victims.

8. On December 3, 2004, another communication was received from the petitioners and was forwarded to the State on July 21, 2005. The State was given one month to submit its observations on that communication.

9. On May 23, 2005, the Commission forwarded the pertinent parts of the petition to the State, in keeping with the rules and regulations. The State was given two months to present its response.

10. On August 2, 2005, the State sent a brief containing its observations on the information submitted by the petitioners. Those observations were then forwarded to the petitioners on August 5, 2005, who were given one month to present whatever observations they deemed pertinent.

11. On September 17, 2005, the petitioners provided new information, which was sent to the Venezuelan State on September 12, 2005. It was given one month in which to present its observations.

12. A communication was received from the State on November 3, 2005, and forwarded to the petitioners on November 15, 2005. They were given one month to present their observations.

13. The petitioners' observations were received on January 4, 2006, and forwarded to the State on January 19, 2006. It was given one month to present whatever observations it deemed pertinent.

14. Another communication was received from the State on February 3, 2006, and forwarded to the petitioners on February 16, 2006. The latter were given one month to submit their observations.

15. The petitioners' observations were received on March 27, 2006, and forwarded to the State on May 17, 2006. It was given one month to present its observations.

16. Since then, the State has sent no further communications.

III. POSITION OF THE PARTIES

A. The petitioners

17. The petitioners alleged that on April 11, 2002, a systematic and widespread series of attacks was launched against peaceful opposition demonstrators. Some of those attacks were captured on tape and broadcast by national and international television channels. The petitioners contend that the assailants, who were armed with firearms and blunt weapons, were government sympathizers and members of the Armed Forces.

18. As background, the petitioners reported that the Venezuelan Confederation of Labor [Confederación de Trabajadores de Venezuela] and the Venezuelan Federation of Chambers and Associations of Commerce and Production [Federación de Cámaras y Asociaciones de Comercio y Producción de Venezuela] (hereinafter “Fedecámaras”) called for a march on April 11, 2002. The march was authorized up to the plaza located in front of the building of the State’s Petróleos de Venezuela S.A (hereinafter the “PDVSA”). The petitioners reported that the march continued and got as far as the Palacio de Miraflores, between 1:30 p.m. and 2:00 p.m., where situations broke out in four sectors because of the action taken by the National Guard, the Metropolitan Police and the human barricades formed by persons sympathetic to the government.

19. The petitioners point out that a graphic that appeared on the web page of the Office of the Attorney General of the Republic, attempted to portray the April 11, 2002 event as a clash between two sectors located geographically in different places. The picture bore the caption “11 a ... Clash between Brothers”(sic).

20. The petitioners also mention a report that appeared at the web page of the Ombudsman’s Office,[FN4] which states that the clashes left 19 people dead: 7 government sympathizers; 7 members of the opposition; and 5 whose political affiliation could not be determined.

[FN4] The following are the web sites where the reports with the lists of dead and wounded confirmed thus far known appear:
<http://www.defensoria.gov.ve/detalle.asp?sec=14060200&id=1006&plantilla=8> and <http://www.defensoria.gov.ve/detalle.asp?sec=14060200&id=1005&plantilla=8>.

21. According to the petitioners, the vicinity of the Palacio Miraflores was the focal point of a demonstration of government sympathizers, whose numbers increased as government officials appeared on State television (Venezolana de Televisión) calling on supporters to “defend the revolution.”

22. The petitioners identify four skirmish areas, and make a number of observations about them.

23. The first skirmish area, the petitioners contend, was at the esquinas of Dr. Díaz, Colón, Camejo, Pajaritos, Mercaderes, La Gorda, and Aserradero; as it reached the Plaza O’Leary, it continued in the direction of the Christopher Columbus Monument. Despite the Metropolitan Police’s attempt to form a blockade, the demonstration moved on in the direction of the Palacio

de Miraflores. The petitioners point out that as the march moved forward, members of the National Guard formed a human barricade at the Nueva Republica viaduct, to stop the marchers from getting through. The petitioners contend that behind these troops were government sympathizers and public officials with the Chávez administration. The petitioners allege that when the march got close to the Palacio Miraflores, the National Guard troops fired pellets and tear gas, dispersing the marchers. However, no injuries or deaths were reported.

24. The petitioners report that the second skirmish area was at the esquinas of Marcos Parra and Solis, at the El Silencio metro station and near Fermin Toro High School. The timing was between 2:30 and 6:00 p.m. Once the march described in the preceding paragraph was turned back, the demonstrators looked for other ways to reach the Palacio de Miraflores. The petitioners admit that the march in this area was not peaceful, as there were people from the opposition hurling rocks at the National Guard and at the marchers sympathetic to the government. They contend that while no snipers were visible, the videos show at least three National Guardsmen in uniform, firing weapons like 9 mm pistols and submachine guns at the opposition demonstrators who were there. The petitioners state that the names of these three guardsmen appear in the record of the judicial police's investigation into the death of Juan David Querales. The petitioners state further that film shot by a cameraman from Venevisión television shows General Eugenio Gutiérrez Ramos leading the action at that location, which is where Juan David Querales, Johnny Palencia and Víctor Emilio Reinoso were killed.

25. The petitioners state that the third skirmish area was on Avenida Baralt, between 2:30 p.m. and 6:00 p.m. The petitioners assert that this was another route that the opposition marchers chose to take to reach Palacio Miraflores. The problems started when government sympathizers started hurling rocks to disperse the marchers. The Metropolitan Police stepped in to form a "protective shield," using armored vehicles to avoid clashes between the two groups. The petitioners point out that what followed was rock throwing between the opposition group and the government sympathizers. During that exchange, Jesús Orlando Arellano fell to the ground, having been hit by a bullet. Captured on tape by Venevisión, the shot was fired from the midst of a group of government sympathizers. At this particular location, the petitioners assert, some in the group of government sympathizers were firing guns, others were throwing rocks, and still others were comporting themselves peacefully on Avenida Baralt. By this time, no shots had yet been fired from Llaguno Bridge.

26. Nevertheless, the petitioners allege that at around 2:00 p.m. a group of some 50 National Guardsmen was mobilized and stood at another esquina until at least 4:30 p.m., allowing government sympathizers to move unimpeded from Llaguno Bridge south down Avenida Baralt to confront the opposition marchers and the Metropolitan Police. It was then, the petitioners allege, that the State adopted a passive posture; their contention was that a "simple National Guard barrier on Avenida Baralt would have been sufficient to stop the advance of the government sympathizers (...) this would have been sufficient to avert many if not all of the deaths and injuries that occurred" at that site.

27. The petitioners also allege that between 3:45 p.m. and 4:15 p.m., a Venevisión camera caught images of various individuals firing guns from Llaguno Bridge south down Avenida Baralt. They further allege that it was then that Andrés Trujillo was shot in the groin. He was

with Jesús Mohamad Capote at the time, alongside one of the Metropolitan Police armored trucks. The petitioners contend that these two men may well have been shot by the snipers caught on the Venevisión video. The petitioners mention that something similar happened to Orlando Rojas and Jose Antonio Gamallo, although the time of the shots fired at them has not been determined.[FN5] The petitioners note that given the weapons used by the “gunmen” on Llaguno Bridge, there is no doubt that any shot fired from there down Avenida Baralt could have struck people at various esquinas.

[FN5] The petitioners report that two videos (one belonging to Venevisión and the other to Globovisión) have been broadcast by the media as images of simultaneous events; however, each one captures pictures of different snipers firing at different times.

28. The petitioners note that the fourth skirmish area was at Esquina Bolero, in front of the Palacio Blanco, and that three people were wounded in that clash, none of whom is named as an alleged victim in the petition or in the subsequent briefs filed.[FN6]

[FN6] The Commission will not narrate the circumstantial aspects and the government’s supposedly conflicting versions of the events in this skirmish area, which the petitioners have described in detail.

29. As for the Venezuelan State’s international responsibility, the petitioners contend that the State, through its armed forces, orchestrated events on April 11, 2002 with the result that persons sympathetic to the Venezuelan government and civil servants at various levels attacked Venezuelans’ human rights. The petitioners contend that fully identified members of the National Guard, acting on the orders of General Eugenio Gutiérrez Ramos, conducted the violent crackdown that left Juan David Querales, Johnny Palencia and Víctor Emilio Reinoso dead. The petitioners argue that the State bears direct responsibility for these events.

30. The petitioners allege that the State’s responsibility also stems from the fact that it created, directed and controlled illegal skirmish groups, called the “brazos armados de los Círculos Bolivarianos” [armed auxiliaries of the Bolivarian Circles], in addition to having fanned the flames of divisiveness. They note also that the President of the Republic has engaged in sectarian, divisive and inflammatory rhetoric that instigates violence among citizens. The rhetoric is especially directed at the Armed Forces which, the petitioners allege, has caused violent and disproportionate crackdowns of peaceful citizen demonstrations.

31. On the question of the prior exhaustion of local remedies, the petitioners initially alleged that because the acts in question were committed by high-ranking officials of the State, on July 25, 2002 they filed an action with the Full Chamber of the Supreme Court of Justice of Venezuela (hereinafter “the Full Chamber of the SC”)[FN7] bringing formal charges against authorities in Venezuela’s Executive Branch and its Public Prosecutor’s Office. They argue that the State’s failure to give any response either confirming or denying the charge was “negligent

conduct” on the part of the respective court, which was not impartial enough, given the nature and importance of the events that transpired on April 11, 2002 and the special liability that a serious investigation into the matter would imply for certain members of the current government.[FN8]

[FN7] The petitioners point out that under articles 266.2 and 266.3 of the Venezuelan Constitution, when charges are made against high-ranking officials of the State, the natural forum is the Full Chamber of the Supreme Criminal.

[FN8] The petitioners point out that the formal accusations brought concerned the following alleged victims: Jesús Mohamed Capote, Johnny Palencia, Jesús Orlando Arellano, Juan David Querales, Jean Carlos Serrano and Andrés Trujillo. The petitioners report that the following names were later added to the case: Esther Franco La Riva, Mildred del Coromoto Castillo Rodríguez, José Guillermo Rodríguez, Tulio Di Giorgio, Rafael Fuenmayor, José Antonio Dávila Uzcátegui, Elías Belmonte Torres and Julio Ibarra García.

32. The petitioners also contend that although government leaders reached an agreement with the opposition,[FN9] Venezuela’s National Assembly has not honored that agreement and has not created a Truth Commission to investigate the facts.

[FN9] According to the petitioners, this agreement materialized on May 23, 2003, and was brokered by the then Secretary General of the Organization of American States, Cesar Gaviria Trujillo.

33. The petitioners make two main arguments with regard to the cases instituted to investigate what happened to each of the alleged victims.

34. The first argument concerns the lines of investigation pursued, which seek to portray the events of April 11, 2002 as common crimes, rather than a manifestation of the “Venezuelan State’s repeated and systematic policy with regard to political dissent.” According to the petitioners, the investigations instituted are skewed by a mistaken bias that does not allow the facts to be prosecuted as State terrorism constituting crimes against humanity.

35. The second argument has to do with the diligence with which the investigations have been conducted, since almost none has moved beyond the preliminaries. They contend that no suspects have been indicted; only those cases in which the evidence against the government is irrefutable have moved beyond the preliminaries.

36. The investigations that the petitioners allege are paralyzed and misdirected, as described in the two preceding paragraphs, were those instituted by a special commission of the Technical Corps of the Judicial Police into the cases of Jesús Mohamad Capote, Johnny Palencia, Jesús Orlando Arellano, Juan David Querales, Orlando Rojas, Jean Carlos Serrano, Andrés Trujillo and José Antonio Gamallo. The petitioners assert that while the commission does occasionally

take investigative measures, it is not moving the process forward effectively. The cases of the other alleged victims have not been investigated at all, not even by the police.

37. Here, the petitioners allege that the Venezuelan State has sufficient evidence to establish clear lines of investigation and pursue them diligently. According to the petitioners, those materials include the following: i) videos in which National Guardsmen are shown participating in the events of that day; ii) videos in which officials with the Movimiento de la Quinta República (the Fifth Republic Movement, hereinafter “el MVR”) are seen firing in the direction of the peaceful demonstration and on the Metropolitan Police charged with keeping law and order;[FN10] iii) statements made to certain media and to the National Assembly concerning the conduct of high-ranking officials allegedly involved in the events; and iv) statements reporting a meeting held on April 7, 2002, where the attacks on opposition demonstrators were purportedly planned.[FN11]

[FN10] Among them, the petitioners name Richard Peñalver, Jorge Farnún, Henry Atencio, Aníbal Espejo and Rafael Cabrices (the last of these an alleged member of the Bolivarian Circles). The petitioners allege that although 60 people were caught on camera and video firing weapons, not one has been investigated or subpoenaed.

[FN11] In particular, the petitioners quote, verbatim, the statement that Efraín Vásquez Velasco made before the National Assembly, in which he said that a so-called Political Committee of the Revolution had been assigned control of the Bolivarian circles, for the purpose of deploying people to stand guard outside the PDVSA facilities and around Miraflores Palace, while a number of regional committees would provide the people with transportation and engage in “psychological warfare.” Three plans were mentioned: the medium-range plan, the military plan and the street plan. The petitioners also cited the statement made by General Manuel Rosendo, who said that an April 7, 2002 meeting with the President of the Republic, a number of cabinet ministers and others, stressed use of the Bolivarian circles to assist in holding back the crowds. He said there was even talk of declaring a state of economic emergency and internal disturbance. He also noted that the Attorney General of the Republic, Isaías Rodríguez, was present but remained silent when these plans were discussed. Cilia Flores, Nicolás Maduro, Iris Varela and Ismael García (members of the Government party) participated in that meeting.

38. Specifically, the petitioners allege that National Guardsmen -identified through news reports- killed Juan David Querales, Johnny Palencia and Víctor Reinoso and wounded Fernando Joel Sánchez at Esquina “Marcos Parra”, yet no investigation has been instituted.

39. The petitioners allege that the investigation into the injuries sustained by Andrés Trujillo is being mishandled; the petitioners further allege that the shots that wounded him came from the same place as the bullets that killed Jesús Mohamad Capote, which discounts any possibility that the Metropolitan Police were to blame.

40. Finally, the petitioners ask the Commission to apply the exceptions provided for in Article 46.2 a) of the Convention, owing to the permanent removal and transfer of the police officials attached to the Scientific, Criminal and Criminological Investigations Corps (hereinafter

“the CICPC”) charged with investigating the facts, and the officials at the Public Prosecutor’s Office, including the assigned prosecutors, the effect of which has been to weaken the reliability of the evidence and to undo the coherence, continuity and objectivity that a serious investigation must have. The petitioners also allege that the investigations have been ineffective because the judicial branch does not have the necessary independence and autonomy; in general, the conditions in Venezuela are not conducive to impartial and objective investigation. The petitioners are also asking that Article 46.2.c of the Convention be applied since most of the cases are still in the preliminary stage of investigation. This, they argue, constitutes unwarranted delay.

B. The State

41. The State provided information on all the criminal cases that have been prosecuted in connection with the events surrounding the coup d’état in Venezuela between April 11 and 14, 2002. Inasmuch as the petition sub judice in the present report is limited to certain persons, the Commission will comment only on the assertions that the State makes with regard to the alleged victims named in paragraph 1.

42. The State reported that Jesús Mohamad Capote[FN12] lost his life on Avenida Baralt between esquinas Pedrera and Muñoz. Prosecution Units 38 and 39 of the Public Prosecutor’s Office with nationwide jurisdiction were assigned the case and have interviewed six people. An on-site inspection has been done of the area where the event occurred, as has an external examination of the body. An autopsy report was prepared, and the fingerprints of the deceased were taken. A list of phone calls was examined. A specialist post-mortem toxicological analysis was done. The body was examined in the morgue and photographs were taken. A study was done tracing the trajectory of the bullet in the body. Topographic and planimetric surveys were done and a survey based on photographic analysis. The State alleges that the prosecutors are doing an in-depth examination and analysis of the case in order to request that procedures that are important to solving the case be repeated.

[FN12] The person, called Jesús Mohamad Capote in the original petition, has since been called by different surnames by both parties. This has happened several times. In some briefs he is called Jesús Mohamad Espinoza Capote and in others Jesús Mohamad Merhi Capote. Based on the information in the case file, particularly the names of his parents, the Commission was able to establish that this is the same person. In this report, his name will be the one that appears in the original petition.

43. In the case of Johnny Palencia, the State reported that he died on April 11, 2002, near the El Silencio metro station on Avenida Baralt, between Solís and Marcos Parra. Prosecution Unit 39 of the Public Prosecutor’s Office with nationwide jurisdiction, is seized of this case and has interviewed 82 people, examined the body, ordered blood tests, technical identification and a ballistics comparison of ten 12-mm bullet casings. Photographs were taken of 10 spent bullets. The trajectory of the bullets in the body was traced. A planimetric survey was also done. The State first reported that this case was in the preparatory phase. Later, the State reported that on

July 22, 2005, the prosecutors covering the case drew up articles of indictment against National Guardsmen Luis Horacio Rodríguez Valera, Luis Alberto Carrero, Elías José Jaimes Navas and Carlos Enrique Díaz Pérez, for the alleged commission of the crime of qualified homicide, each one being held equally complicit and accountable, in combination with the crime of abuse of a firearm. The State asserts that on August 22, 2005, the defense counsels representing the accused filed a brief in which they asserted a conflict of jurisdiction with the military justice system. The State has not updated its information on this point.

44. The State reported that the investigations into the April 11, 2002 death of Jesús Orlando Arellano are assigned to Prosecutorial Units 1 and 35 of the Metropolitan Caracas Judicial District. These prosecutorial units have requested the report on the autopsy conducted on the victim, the corresponding death certificate, and the postmortem physical examination of the body. They also requested a copy of the burial certificate, the report on the forensic identification, photographs, and a study of the trajectory of the bullet in the body. These units also asked a television station to supply the post-production work done by one of its employees. The State reports that on March 22, 2005, Prosecutor 35 ordered the CICPC's Ballistics Department to report the results of the ballistics tests. The State reported that this investigation is in its preliminary phase.

45. The State reported that Juan David Querales died in the Solis to Marcos Parra esquina, in the area of Caracas' "El Silencio" metro stop. Prosecution Unit 39, attached to the Public Prosecutor's Office with nationwide jurisdiction, has interviewed 47 people. An autopsy report has been done, as has a specialist post-mortem toxicological analysis. The scene of the event was investigated. An external examination was done on the corpse. Ballistics tests and a planimetric survey were done. The trajectory of the bullet in the body was traced. Various firearms used by the National Guard were photographed. Video tape was obtained from the Televén television channel and the Weapons Office of the National Guard was asked to provide information on various firearms, specifically the persons to whom they had been assigned and their identification. The State later reported that on August 24, 2005, the prosecutors assigned to this case asked the CICPC for the results of the ballistics comparisons.

46. The State reported that José Antonio Gamallo in theory was injured in Caracas on April 11, 2002, and died on August 2, 2002 in Spain, allegedly as a result of that injury. The State reported that the investigations into this case are being conducted by Prosecution Units 38 and 39 of the Public Prosecutor's Office with nationwide jurisdiction. The Prosecutors have interviewed the victim's next of kin. A forensic physician attached to the CICPC's National Bureau of Forensic Medicine prepared a report on the victim. The death certificate was requested from the chief of the International Police Division, as was the record of burial, the victim's clinical history, the trajectory of the bullet in the victim's body and on-site inspections. The State mentioned that this case was closed by the Prosecutor's Office on January 26, 2005, for "lack of material evidence with which to establish a real and concrete connection as to the facts (...)." The State added that the case could be reopened if new evidence was produced.

47. The State reported that the case looking into Jean Carlos Serrano's injuries is in the investigative phase. Three interviews have been conducted and the scene of the events has been

investigated. Other measures include forensic identification, ballistics tests, an examination of the trajectory of the bullet and a medical report.

48. In the case of Orlando Rojas, the State reported that the investigation into the causes of his death began on May 13, 2002, and is in the hands of Prosecution Units 1 and 35 of the Public Prosecutor's Office for the Metropolitan Caracas Judicial District, and Prosecution Units 38 and 39 of the Public Prosecutor's Office with nationwide jurisdiction. These units have interviewed 10 witnesses and ordered examination of the body, medical legal identification, the autopsy report, the report on the trajectory of the bullet in the body, inspection and imaging. The State observed that the investigation is in its preparatory phase.

49. With regard to Fernando Sánchez, the State reported that investigation of his case began on August 27, 2002 and was assigned to Prosecution Units 1 and 35 of the Public Prosecutor's Office for the Metropolitan Caracas Judicial District. These two units have conducted three interviews, and have sent the witness summonses to make his statement. He has not, however, appeared to be deposed. They have also asked the chief of the CICPC's National Homicide Division for the bullet removed from Sánchez' body. The State observed that the case is still under investigation.

50. The State reported that the case of Mr. Andrés Trujillo[FN13] was assigned to Prosecution Units 38, 39 and 49 with the Public Prosecutor's Office with nationwide jurisdiction. The case has now gone to trial. The defendants are 8 officers with the Metropolitan Police, who are charged with the crime of inflicting minor bodily harm, all being held equally complicit and accountable in its commission, in combination with abuse of firearms. The State reported that the case is with the Fourth Court of First Instance, which is serving as trial court for the Aragua state judicial circuit until the mixed tribunal can be formed to conduct the oral, public proceedings. The State has not updated the information originally reported.

[FN13] Whom the State called Domingo Andrés Trujillo. This information is repeated on October 12, 2005.

51. The State reported that Elías Belmonte and José Uzcátegui Dávila were wounded as a consequence of the events that transpired in the vicinity of Avenida Baralt in Caracas, on April 11, 2002. Their cases have been assigned to Prosecution Units 38, 39 and 49 of the Public Prosecutor's Office with nationwide jurisdiction. These units have arranged specialized photographic imaging, the trajectory of the bullets within their bodies and planimetrics, forensic, hematological, physical and chemical testing of certain articles of clothing, a topographical survey and on-site investigation, communications sent to the appropriate medical clinic to obtain medical reports, interviews with six persons and forensic tests, a request to the CICPC asking for graphic representation of the trajectory of the bullets inside these individuals' bodies. The State reported that the investigations are in the preparatory phase.

52. The State reported that the circumstances that caused the death of Víctor Amparo Reinoso[FN14] are under investigation and the case has been assigned to Prosecution Unit 39 of

the Public Prosecutor's Office with full jurisdiction nationwide. That unit has interviewed 45 people, examined the body, done an on-site inspection with photographic imaging, ordered specialist post-mortem toxicological analysis, forensic examination of the body of the deceased, forensic and hematological testing of an 8.4 mm bullet and specialist analysis of the trajectory of the bullet in the body. Then, on August 24, 2005, the State reported that the prosecutors assigned to this case had ordered the CICPC to compile the findings of the expert ballistics comparisons and indicated that the investigation is in its preparatory phase.

[FN14] The person whom the petitioners refer to as Víctor Emilio Reinoso has been referred to as Víctor Amparo Reinoso by the State. Based on the information in the case file, the Commission was able to establish that this is the same person and in this report he will be referred to by the name that appears in the submission in which the petitioners added more names to the list of alleged victims.

53. After reporting on the above cases, the State asserted there is sufficient factual and legal cause for the Commission to declare the petition inadmissible on the grounds of a failure to exhaust the remedies under domestic law. It also argued that there have been no unwarranted delays, as evidenced by the fact that some cases are at trial.

54. The State further alleged that all necessary steps have been taken to establish the facts of what happened and, where appropriate, to punish those responsible. It noted that based on the case law of the Inter-American Court, the duty to investigate is one of means; failure to arrive at specific findings does not, per se, imply the State's international responsibility, especially in cases in which the investigation is complicated by the circumstances that led to the facts in the case.

55. According to the State, not all the cases are in the investigation stage. In many of these cases, public, oral proceedings are pending. Others were stayed, while still others were ordered closed by the prosecutor assigned to the case. But, the State noted, neither a stay nor prosecutorial closure affects the alleged victims' rights, since a stay can be appealed and a case closed by a prosecutor can be reopened should new evidence appear.

IV. LEGAL ANALYSIS

A. Preliminary issue

56. Some clarification is in order before entering into the examination of the Commission's jurisdiction and the admissibility of the present case. In their arguments, both the petitioners and the State made references to persons said to be in circumstances similar to those of the alleged victims. However, the petitioners originally submitted a finite list of alleged victims, and then proceeded to add more names. They did not, however, provide sufficient factual information about the additional persons. The Commission thus concludes that the references made to those persons in the narration of the facts are for context purposes, and not to have them included as new alleged victims.

57. Therefore, the Commission must clarify, firstly, that the analysis of the admissibility requirements will be done on an individual basis, for each of the persons named in paragraph 1 above; secondly, that it will confine itself solely to the information the parties supplied in connection with those persons.

B. Jurisdiction

1. The Commission's jurisdiction *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae*

58. The petitioners have standing under Article 44 of the American Convention to lodge complaints with the Commission. The petition and the submissions that the petitioners later filed during the processing of the case, name the following natural persons as the alleged victims: Jesús Mohamad Capote, Johnny Palencia, Jesús Orlando Arellano, Juan David Querales, José Antonio Gamallo, Jean Carlos Serrano, Andrés Trujillo, Fernando Joel Sánchez[FN15] Orlando Rojas[FN16], Víctor Emilio Reinoso, Esther Franco La Riva, Mildred del Coromoto Castillo Rodríguez, José Guillermo Rodríguez, Tulio Di Giorgio, Rafael Fuenmayor, José Antonio Dávila Uzcátegui, Elías Belmonte Torres, and Julio Ibarra García[FN17]. The Commission therefore has jurisdiction *ratione personae* to examine the petition. As for the State, it ratified the American Convention on August 9, 1977.

[FN15] All identified as alleged victims in the original petition received on October 12, 2002.

[FN16] Identified as an alleged victim in a brief received on June 30, 2003.

[FN17] All identified as alleged victims in the brief submitted to add more names, sent to the Commission on July 25, 2003.

59. The Commission has jurisdiction *ratione loci* to take up the petition because the latter alleges violations of rights protected under the American Convention, said to have occurred within the territory of a State party to that treaty.

60. The Commission also has jurisdiction *ratione temporis* because the obligation to respect and ensure the rights protected under the American Convention were already in effect for the State on the date on which the facts alleged in the petition were said to have occurred.

61. Finally, the Commission has jurisdiction *ratione materiae*, because the petition alleges violations of human rights protected under the American Convention.

2. Exhaustion of the remedies under domestic law

62. Article 46.1.a of the American Convention provides that for a petition lodged pursuant to Article 44 of the Convention to be admissible, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to give the domestic authorities an opportunity to look into the

alleged violation of a protected right and, if appropriate, solve it before it is taken up by an international forum

63. The rule of prior exhaustion applies when the domestic system actually affords remedies that are adequate and effective in remedying the alleged violation. Article 46(2) provides that this requirement shall not apply when the domestic system of laws does not afford due process for the protection of the right in question; or if the alleged victim did not have access to the remedies under domestic law; or if there has been an unwarranted delay in rendering a final judgment on those remedies. As Article 31 of the Commission's Rules of Procedure stipulates, when the petitioner alleges any of these exceptions, it is up to the State to demonstrate to the Commission that domestic remedies have not been exhausted, unless that is clearly evident from the record

64. The principles of international law, as reflected in the precedents established by the Commission and the Inter-American Court's case law, are that the respondent State can waive, either expressly or tacitly, its right to allege failure to exhaust the remedies under domestic law.^[FN18] Secondly, to be timely, the objection alleging failure to exhaust domestic remedies must be entered at an early stage of the proceedings, lest a tacit waiver of the requirement on the part of the interested State be presumed.^[FN19] Thirdly, on the matter of burden of proof, the State alleging failure to exhaust domestic remedies must prove that domestic remedies remain to be exhausted and that they are effective.^[FN20] Therefore, if the State in question does not make its arguments regarding this requirement in a timely fashion, the presumption is that it has waived its right to allege failure to exhaust local remedies and therefore to fulfill its burden of proof.

[FN18] Cf. IACHR, Report No. 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I/A Court H.R., Ximenes Lopes. Preliminary Objections. Judgment of November 30, 2005. Series C No. 139, para. 5; I/A Court H.R., Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124, para. 49; and I/A Court H.R., Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 135.

[FN19] Cf. 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; Castillo Petruzzi et al. 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 the Court have established that "[a]n early stage of the proceedings" should be understood as "the admissibility stage of the proceedings before the Commission, in other words, before the merits are ever considered [...]" See, for example, IACHR Report No. 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13, 2005, which cites from the I/A Court H.R., Case of Herrera Ulloa. Judgment of July 2, 2004, Series C No. 107, para. 81.

[FN20] Cf. IACHR, Report No. 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral et al. (Persons living with HIV/AIDS), Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., The Mayagna (Sumo) Awas Tingni Community Case. Preliminary Objections, supra note 3, para. 53; Durand and Ugarte Case. Preliminary Objections. Judgment of May 28, 1999.

Series C No. 50, para. 33; and Cantoral Benavides Case. Preliminary Objections. Judgment of September 3, 1998. Series C No. 40, para. 31.

65. In its very first communication to the Commission in connection with this case, the State filed an objection alleging failure to exhausting the remedies under domestic law. The State's contention was that this objection was in order inasmuch as the corresponding criminal investigations had been undertaken and that, despite the complex nature of the facts, the State had made headway with the investigations insofar as it was able, and that some cases were already at trial.

66. The petitioners, for their part, argued this requirement from two perspectives: i) they alleged an unwarranted delay in rendering a final judgment on the legal action that some of the alleged victims' next of kin had brought in the Full Chamber of the Supreme Court against high-ranking State officials, inasmuch as no decision on the admissibility of the action had as yet been delivered, and ii) they alleged that the exceptions allowed under Article 46.2.a and 46.2.c of the Convention applied because the public prosecutors conducting the investigations were neither impartial nor independent, with the result that the inquiries were going nowhere.

67. Regarding the action bringing formal charges against State officials, the Commission's view is that although bringing a criminal complaint against certain persons might be helpful in getting the authorities to investigate those persons, it is not the kind of remedy that petitioners in cases such as this are required to pursue and exhaust in domestic courts. As the Inter-American Court has held time and time again, where violations of the right to life and/or humane treatment are concerned, the adequate remedy is a criminal investigation, which must be undertaken by the State ex officio, immediately upon learning the facts. [FN21] In any event, the Commission has learned that on July 6, 2006, the Full Chamber of the Supreme Court finally delivered the respective decision, in which it refused to admit the case. For that reason, the unwarranted delay alleged by the petitioners has become one of the points that will be examined during the analysis of the merits of the case, in connection with the rights to judicial protection and to judicial guarantees of the alleged victims' next of kin.

[FN21] I/A Court H.R., Ximenes Lopes. Judgment of July 4, 2006. Series C No. 149, para. 148; I/A Court H. R., Case of Baldeón García. Judgment of April 6, 2006. Series C No. 147, paras. 92 and 93; I/A Court H. R., Case of the "Mapiripán Massacre". Judgment of September 15, 2005. Series C No. 134, paras. 219 and 223; I/A Court H.R., Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 65.

68. The criminal investigations instituted by the Public Prosecutor's Office are, in the Commission's view and as stated in the preceding paragraph, an adequate remedy for examining violations of the right to life and to humane treatment and for identifying and, if appropriate, punishing those responsible and compensating the victims and/or their next of kin. However, it is not sufficient that remedies exist on paper, or even that they are suitable; they must also be effective.[FN22] In cases such as this, investigations must be undertaken with the diligence

necessary to be considered effective.[FN23] This implies that the agency conducting the investigation must, within a reasonable period of time, take all measures necessary to attempt to find an answer.[FN24]

[FN22] I/A Court H.R., Case of the Serrano Cruz Sisters. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 134; I/A Court H.R., Tibi Case. Judgment of September 7, 2004. Series C No. 114, para. 50.

[FN23] I/A Court H.R., Case of the Serrano Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 65; I/A Court H.R., Carpio Nicolle et al. Case. Judgment of November 22, 2004. Series C No. 117, para. 129; I/A Court H.R., Plan de Sánchez Massacre Case. Reparations (Art. 63.1 American Convention on Human Rights). Judgment of November 19, 2004. Series C No. 116, para. 258.

[FN24] I/A Court H.R., Case of the Serrano Cruz Sisters. Judgment of March 1, 2005. Series C No. 120, para. 65.

69. The Commission notes that the petitioners made two arguments which, in its judgment, support the claim that the criminal investigations undertaken by the State in the present case were ineffective: the first is the absence of guarantees of impartiality and independence in Venezuela in general; the second concerns the lack of due diligence in pursuing the investigations in this specific case.

70. As to the first argument, the information supplied by the petitioners was not sufficient for the Commission to agree to the exception provided for in Article 46(2)(a) of the Convention, which is that the local remedies rule shall not apply when the domestic legislation does not afford due process of law for the protection of the violated rights. While the Commission has, on numerous occasions, expressed concern over certain factors that could jeopardize the necessary independence and impartiality on the part of certain officials in the Public Prosecutor's Office and in the judicial branch in Venezuela, in a contentious case petitioners must make specific arguments as to the application of due process in the judicial proceeding or criminal investigation into each case. Generic references about context are not sufficient grounds to allow the exception.

71. As for the second argument, the Commission notes that the information supplied by the State shows that thus far criminal cases have been instituted into the deaths of Jesús Mohamad Capote, Johnny Palencia, Jesús Orlando Arellano, Juan David Querales, José Antonio Gamallo, Orlando Rojas y Víctor Emilio Reinoso. Investigations are also underway into the physical injuries sustained by Fernando Joel Sánchez, Andrés Trujillo, Jean Carlos Serrano, Elías Belmonte and José Uzcátegui Dávila. But neither the State nor the petitioners supplied any information regarding investigations instituted into the cases of the other persons alleged to have been injured, namely: Esther Franco La Riva, Mildred del Coromoto Castillo Rodríguez, José Guillermo Rodríguez, Tulio Di Giorgio, Rafael Fuenmayor and Julio Ibarra García.

72. As for unwarranted delays, the Commission has written that it does not have hard-and-fast rules as to what period of time would constitute an "unwarranted delay." Instead, the Commission examines the circumstances of the case and does a case-by-case assessment to

determine whether there has been an unwarranted delay. Generally, the Commission finds that “a criminal investigation should be carried out promptly to protect the interests of the victims and to preserve evidence.”[FN25] To determine whether an investigation has been carried out “promptly,” the Commission takes a number of factors into account, such as the time that has passed since the crime was committed, whether the investigation has moved beyond the preliminary stage, the measures the authorities are adopting, and the complexity of the case.[FN26] The State instituted inquiries into a number of alleged victims’ cases. The Commission finds that while the investigations into the cases of Jesús Mohamad Capote, Jesús Orlando Arellano, Juan David Querales, Orlando Rojas, Víctor Reinoso, Jean Carlos Serrano and Fernando Joel Sánchez would still seem to be in progress,[FN27] none has moved beyond the preliminary phase of investigation. It has been four years since the events in this case occurred, yet no suspects have been identified, even though the petitioners provided material that could have served as leads. Judging from the State’s description of the inquiries, those leads have not been pursued. The Commission deems that for admissibility purposes, this information is sufficient to conclude that there has been an unwarranted delay in the investigations into the cases of this group of alleged victims.

[FN25] IACHR, Report No.16/02, Marco Antonio Servellón García et al., Petition 12.331, Honduras, Admissibility, para. 31 (February 27, 2002).

[FN26] IACHR, Report No. 130/99, Víctor Manuel Oropeza, Petition 11.740, México, paras. 30-32.

[FN27] The last submission from the State was received on February 3, 2006. At the present time, the current status of the cases is unknown, although all the information supplied by the petitioners has been routinely forwarded to the State.

73. The Commission observes that the cases involving the death of Johnny Palencia and the injuries to Andrés Trujillo have gone to trial. The defendants in the Johnny Palencia case are four National Guardsmen, who are accused of first degree murder, each being held equally complicit therein. The defendants in the Andrés Trujillo case are 8 officers with the Metropolitan Police, who are standing trial for the alleged crime of inflicting minor bodily harm, each being held equally complicit therein. The most recent information supplied by the State on these cases is dated October 12, 2005. Consequently, the Commission does not know the current status of these two cases. In deciding the question of admissibility, the Commission relies on the information supplied by the parties. In all their communications, including the most recent ones, the petitioners continue to argue their case for an unwarranted delay and to assert that the cases are not moving forward. This, combined with the lack of up-to-date information from the State, allows the Commission to conclude that the pending proceedings associated with the oral, public trial have not taken place.[FN28] The State did not make a strong enough case in contesting the presence of an unwarranted delay in these proceedings. Therefore, the Commission will allow the exception permitted under Article 46.2.c of the Convention.

[FN28] Article 334 of the Organic Code of Criminal Procedure of Venezuela establishes the following procedure for an oral, public trial: Article 334. Order for trial. The decision whereby

the judge agrees that the defendant is to be prosecuted on the charges shall be delivered in the presence of the parties and shall name the accused, give an exact description of the facts at trial and their classification under criminal law. In that same decision, the judge shall issue the order to commence the oral, public proceedings; shall order the parties to appear, within five working days, before the trial judge; and shall instruct the clerk to send the records of the proceedings and the objects confiscated to the competent judge. This order shall not be subject to appeal.

74. Finally, in connection with the case of José Antonio Gamallo, the State reported that on January 26, 2005, the prosecutor had the case closed based on an absence of material with which to proceed with the investigation. For this alleged victim, this means that the domestic remedies have been exhausted.

75. As for the harm allegedly done to Esther Franco La Riva, Mildred del Coromoto Castillo Rodríguez, José Guillermo Rodríguez, Tulio Di Giorgio, Rafael Fuenmayor and Julio Ibarra García, the Commission does not have sufficient information to determine whether the local remedies have been exhausted or whether any of the exceptions to the local remedies rule applies. Even though it is incumbent upon a State to undertake an investigation *ex officio* into allegations of violations of the right to humane treatment, there is nothing in the case file to show that the State was aware of the injuries caused to these individuals. Had the State been cognizant of those injuries, it would have been reasonable to demand that it undertake and carry through a criminal investigation. The absence of information with which to characterize any possible violations these persons may have suffered will be examined below at 88.

76. In conclusion, the Commission deems that the internal remedies have been exhausted in the case of José Antonio Gamallo, inasmuch as the prosecution ordered the investigation closed. The exception for an unwarranted delay, allowed under Article 46.2.c of the Convention, applies in the case of Jesús Mohamad Capote, Johnny Palencia, Jesús Orlando Arellano, Juan David Querales, Jean Carlos Serrano, Andrés Trujillo, Fernando Joel Sánchez, Orlando Rojas, Víctor Emilio Reinoso, José Antonio Dávila Uzcátegui and Elías Belmonte Torres.

77. The Commission reiterates that invoking the exceptions allowed under Article 46.2 to the rule requiring exhaustion of local remedies is closely connected to the determination of possible violations of certain rights contained in the Convention, such as the guarantees of access to justice. However, Article 46.2 of the Convention, by its nature and purpose, has a content that is independent of the substantive norms of the Convention. Therefore, the determination as to whether the exceptions to the local remedies rule apply to the case in question must be done prior to and separate from the examination of the merits, since it hinges on a standard of evaluation different from the one used to determine the violation of Articles 8 and 25 of the Convention. The factors that prevented exhaustion of local remedies and their effects will be examined in the report the Commission adopts on the merits of the case, in order to determine whether they constitute violations of the American Convention. For the above reasons, and in application of Article 46(2) of the American Convention, the Commission considers that there is sufficient cause to exempt the petitioners from the rule requiring prior exhaustion of local remedies.

3. Timeliness of the petition

78. Article 46.1.b of the Convention provides that for a petition to be admissible, it must be presented within six months of the date on which the party alleging violation of his or her rights was notified of the final judgment by the domestic courts.

79. In the case of José Antonio Gamallo, because the prosecution closed the investigation into his case subsequent to the date on which the petition was filed, the six-month requirement is intrinsically linked to the decision that exhausted local remedies and that came after the petition was filed. Therefore, the requirement should be considered satisfied.[FN29]

[FN29] IACHR, Report No. 20/05, Petition 714/00 (Rafael Correa Díaz), February 25, 2005, Peru, para. 3; IACHR, Report No. 52/00, Cases 11.830 and 12.038. (Dismissed Congressional Employees), June 15, 2000, Peru, para. 23.

80. Because the exception allowed under Article 46.2.c of the Convention applies in the case of Jesús Mohamad Capote, Johnny Palencia, Jesús Orlando Arellano, Juan David Querales, Jean Carlos Serrano, Andrés Trujillo, Fernando Joel Sánchez, Orlando Rojas, Víctor Emilio Reinoso, José Antonio Dávila Uzcátegui and Elías Belmonte Torres, and given the date on which the events in this case occurred, the Commission deems that the petition was lodged within a reasonable period, under the terms of Article 32 of the Commission's Rules of Procedure.

81. As for Esther Franco La Riva, Mildred del Coromoto Castillo Rodríguez, José Guillermo Rodríguez, Tulio Di Giorgio, Rafael Fuenmayor and Julio Ibarra García, the Commission stands by the observations it made at 75 above.

4. Duplication of international proceedings and res judicata

82. Article 46.1.b provides that for a petition to be admissible, "the subject of the petition or communication is not pending in another international proceeding for settlement." Article 47.d of the Convention provides that the Commission will not admit a petition that is "substantially the same as one previously studied by the Commission or by another international organization." Neither party in this case has suggested that any of the two grounds for inadmissibility is present in this case, nor can that be inferred from the record.

5. Characterization of the facts alleged

83. For admissibility purposes the Commission must decide whether a petition states facts that could tend to establish a violation of the rights protected under the American Convention, as Article 47.b stipulates, and whether a petition is "manifestly groundless" or "obviously out of order, as Article 47.c stipulates.

84. The standard for assessing admissibility is different from the one used to decide the merits of a petition. For admissibility purposes, the Commission need only make a prima facie analysis to examine whether the complaint establishes the apparent or potential violation of a

right guaranteed by the Convention, and not to establish the existence of a violation. Such an examination is a summary analysis that does not imply any prejudgment or preliminary opinion on the merits.[FN30]

[FN30] IACHR, Report No. 21/04, Petition 12.190, Admissibility, José Luis Tapia González et al., Chile, February 24, 2004, para. 33.

85. In the case of the deaths of Jesús Mohamad Capote, Johnny Palencia, Jesús Orlando Arellano, Juan David Querales, José Antonio Gamallo, Víctor Emilio Reinoso and Orlando Rojas and the allegedly mishandled investigation of those deaths, the Commission considers that the facts alleged may tend to establish violations of the duty to respect and ensure the right to life, recognized in Article 4 of the American Convention, in relation to Article 1.1 thereof. The standards of blame by which these facts will be assessed will be decided during the merits phase of this case. Although the petitioners did not make any express allegations to that effect, in application of the principle of *jura novit curia* the Commission finds that the facts recounted in connection with the alleged delay and lack of due diligence may tend to establish a violation of the rights to a fair trial and to judicial protection, recognized in articles 8, 25 and 1.1 of the American Convention, to the detriment of the alleged victims and their next of kin.

86. As for the physical injuries that Jean Carlos Serrano, Andrés Trujillo, Fernando Joel Sánchez, José Antonio Dávila Uzcátegui and Elías Belmonte Torres allegedly sustained, the Commission considers that the facts stated may tend to establish violations of the duty to respect and ensure the right to humane treatment, recognized in Article 5 of the American Convention, in relation to Article 1.1 thereof. The standards of blame by which these facts will be assessed will be decided during the merits phase of this case. As stated in the preceding paragraph, although the petitioners did not expressly allege any such violations, the Commission, in application of the principle of *jura novit curia*, finds that the facts recounted in connection with the alleged delay and lack of due diligence in the investigation, may tend to establish a violation of the rights to a fair trial and to judicial protection, recognized in articles 8, 25 and 1.1 of the American Convention, to the detriment of the alleged victims.

87. Given the context and circumstances in which the deaths and injuries occurred, a violation of the right of assembly recognized in Article 15 of the American Convention may be established if, during the proceedings on the merits, the petitioners detail the specifics of the circumstances of each death and injury. As for the alleged violation of the right to freedom of movement and residence, recognized in Article 22 of the American Convention, the Commission does not have sufficient information to find that the facts as alleged may fit within the scope of that provision.

88. Finally, as to the injuries allegedly caused to Esther Franco La Riva, Mildred del Coromoto Castillo Rodríguez, José Guillermo Rodríguez, Tulio Di Giorgio, Rafael Fuenmayor and Julio Ibarra García, the Commission finds that the petitioners simply elaborated upon the petition by including general references to these persons. They simply reported that they had been injured during the events that occurred on April 11, 2002 and in the days that followed.

However, they did not provide any specific information as to the circumstances under which these people's injuries were sustained, or provide any concrete information suggesting the State's international responsibility for those injuries. The Commission notes further that the petitioners did not affix any complaint from which the Commission could reasonably infer that the State was cognizant of their alleged injuries or that it was the State's obligation to investigate those injuries with the necessary diligence and within a reasonable period of time.

89. The Commission therefore considers that the petition is manifestly groundless with regard to the persons named in the preceding paragraph.

V. CONCLUSIONS

90. Based on the considerations of fact and of law set forth herein, and without prejudging the merits of the case, the Commission concludes that the petition does satisfy the admissibility requirements set forth in articles 46 and 47 of the American Convention, save for the facts related to the persons named above at 75, 81, 88 and 89.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare the present petition admissible with regard to articles 1.1, 4, 5, 15, 8 and 25 of the American Convention.
2. To declare the present petition inadmissible with regard to the Article 22 of the American Convention.
3. To declare the present petition inadmissible with regard to Esther Franco La Riva, Mildred del Coromoto Castillo Rodríguez, José Guillermo Rodríguez, Tulio Di Giorgio, Rafael Fuenmayor and Julio Ibarra García.
4. To notify the State and the petitioners of this decision.
5. To proceed with its examination of the merits of the case.
6. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 21st day of the month of October, 2006.
(Signed): Evelio Fernández Arévalos, President; Paulo Sérgio Pinheiro, First Vice-President; Florentín Meléndez, Second Vice-President; Paolo G. Carozza and Víctor E. Abramovich, Commissioners.