

Institution:	Inter-American Commission on Human Rights
File Number(s):	Report No. 51/08; Petition 299-07
Session:	Hundred Thirty-Second Regular Session (17 – 25 July 2008)
Title/Style of Cause:	Robert Ignacio Diaz Loreto, Octavio Ignacio Diaz Alvarez, David Octavio Diaz Loreto, Miguel Angel Diaz Loreto and Jairo Alexis Diaz Loreto v. Venezuela
Doc. Type:	Decision
Decided by:	Chairman: Paolo Carozza; Second Vice-Chairman: Felipe Gonzalez; Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Victor E. Abramovich. Pursuant to Article 17(2) of the Rules of Procedure of the Commission, Commission member Luz Patricia Mejia, a Venezuelan national, participated in neither the deliberations nor the decision in this case.
Dated:	24 July 2008
Citation:	Diaz Loreto v. Venezuela, Petition 299-07, Inter-Am. C.H.R., Report No. 51/08, OEA/Ser.L/V/II.134, doc. 5 rev. 1 (2008)
Represented by:	APPLICANT: Luis Aguilera
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## I. SUMMARY

1. On March 14, 2007 the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition submitted by Mr. Luís Aguilera as Secretary General of the Human Rights, Justice, and Peace Commission of Aragua State, and by Ms. Juana Emilia Díaz Loreto (hereinafter “the petitioners”), which alleges violations by the Bolivarian Republic of Venezuela (hereinafter “Venezuela,” “the State,” or “the Venezuelan State”) of rights established in the following Articles of the American Convention on Human Rights (hereinafter “the American Convention,” or “the Convention”): 4 (right to life) of Octavio Ignacio Díaz Álvarez, Robert Ignacio Díaz Loreto, and David Octavio Díaz Loreto; 5 (humane treatment) of the first three and their family members; 7 (personal liberty) of Octavio Ignacio Díaz Álvarez, Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto, Miguel Angel Díaz Loreto, and Jairo Alexis Díaz Loreto; as well as 8 (fair trial) and 25 (equal protection) of all of the above persons, all pursuant to Article 1(1) of the Convention.

2. The petitioners indicated that on January 6, 2003, brothers Robert Ignacio Díaz Loreto and David Octavio Díaz Loreto, and their father, Octavio Ignacio Díaz Álvarez, were the victims of extrajudicial execution at the hands of police officers of the Aragua State Cuerpo de Seguridad y Orden Público (Security, Law, and Order Force, hereinafter “CSOPA”). They

indicated that after an alleged armed robbery occurred in the vicinity, 12 officers violently entered the residence of the Díaz Loreto family and proceeded to handcuff Robert Ignacio and were attempting to force him into a police vehicle when Robert resisted. The officers then shot him in the left leg and placed him in the vehicle. According to the petitioners, Robert Ignacio was taken to a distant place where there is a discharge canal for wastewater, which they submerged his head into, causing his death. The petitioners also indicated that Robert's brother, David Octavio Díaz Loreto, and his father, Octavio Ignacio Díaz Álvarez, left in search of Robert Ignacio when they were intercepted by a unit of the CSOPA police force, which proceeded to order them to exit their vehicle and then shot them, causing their immediate deaths. The family members of the deceased added that they have continued to be the objects of various threats and acts of harassment, and that both the extrajudicial executions and their aftermath have enjoyed impunity. As for the admissibility requirements, the petitioners alleged that there has been an unwarranted delay in the administration of justice and that, therefore, the exception to the rule requiring exhaustion of domestic remedies, established in Article 46(2)(c) of the Convention, should be applied.

3. For its part, the State stated that domestic remedies had not been exhausted because criminal proceedings against the alleged perpetrators were still under way. In particular, the State pointed out, that the alleged perpetrators had been acquitted by the trial court and that a decision was still pending on the appeal lodged by the Attorney General's Office on July 19, 2007.

4. Upon examining the information available in light of the admissibility requirements established in Articles 46 and 47 of the American Convention, the Commission concluded that it has competence to examine the petition submitted, and that the petition is admissible regarding alleged violations of the rights established in Articles 4, 5, 7, 8, and 25 of the Convention, pursuant to Article 1(1) of same, to the detriment of the individuals indicated in the section on characterization of the facts alleged, *infra* paragraphs 56-59. Furthermore, possible violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture were added by the Commission by virtue of the principle of *jurit novit curia*. Consequently, the Commission has decided to notify the parties of the decision, publish this report on admissibility, and include it in its Annual Report.

## II. PROCESSING BY THE COMMISSION

5. The Commission received the initial petition on March 14, 2007, and it was registered with number 299-07.

6. On May 15, 2007, the Commission transmitted the relevant parts of the petition to the State, and in accordance with its Rules of Procedures, asked the State to submit its reply within a two-month deadline.

7. On August 2, 2007, the State submitted a message indicating that it had requested information from the respective authorities. The petitioners were apprised of that message on September 11, 2007. As of the date of approval of this report, the Venezuelan State has not provided the information indicated in its message. On February 28, 2008 a communication was received from the State, presenting its arguments regarding admissibility. The communication

was forwarded to the petitioners, with the request that they submit their observations within one month.

### III. POSITIONS OF THE PARTIES

#### A. The Petitioners

8. By way of context, the petitioners indicated that the La Segundera housing development in Sucre municipality, Aragua State, has been classified as a highly dangerous area by the police because of the high crime rate; however the police say this to influence public opinion and justify their own illegal procedures. The petitioners specifically mentioned the habitual occurrence of arbitrary arrests, raids of homes without court orders, extrajudicial executions made to look like confrontations with the police, both physical and psychological torture, and death threats. The petitioners added that such acts are generally perpetrated against minors between 15 and 17 years of age, as well as adults between 18 and 35 years of age.

9. In the instant case, the petitioners asserted that on the morning of January 6, 2003 there was a robbery of 600,000 Bolívares in the La Segundera subdivision within Sucre municipality of Aragua State. They indicated that their neighbors saw CSOPA officers surround the Díaz Loreto family home. At 5:30pm that same day, 12 uniformed and armed CSOPA officers violently entered the residence of Robert Ignacio Díaz Loreto, age 21, David Octavio Díaz Loreto, age 23, Miguel Angel Díaz Loreto, age 17, and their parents, Octavio Ignacio Díaz Álvarez and Juana Emilia Loreto Pérez. The officers had neither an arrest warrant nor a search warrant.

10. According to the petitioners' narrative, without giving reasons for the arrest, the police proceeded to aggressively handle Robert Ignacio, forcing handcuffs on him and threatening to kill him because he was one of the robbers. They said that if he turned over the money to them they would "leave peacefully without involving anyone." The petitioners indicated that when the alleged victims refused, Robert Ignacio was removed from his parents' residence. While he was in the passageway of the front yard, the officers attempted to place him in the police vehicle. When Robert Ignacio resisted, one of the officers identified as Freddy José Pimentel shot him in the upper part of his left leg and then carried him away in the vehicle. The petitioners added that while this was going on, Robert Ignacio's father and brother received death threats from other officers inside the house.

11. The petitioners indicated that Robert Ignacio was transferred to several unknown locations without receiving medical care. Later he was taken to a distant place where there is a discharge canal for wastewater belonging to a company that has a tannery for cattle leather. Once there, the officers forced his head into the canal until his lungs were completely full of contaminated water. They added that the officers then transported Robert Ignacio to the Cagua Social Security Hospital where he was admitted without vital signs.

12. The petitioners indicated that on that same day, Robert's father, Octavio Ignacio Díaz Álvarez, and brother, David Octavio Díaz Loreto, managed to leave the house and began to solicit help from their neighbors. One neighbor cooperated and attempted to drive them in his

vehicle to the hospital where the officers had supposedly taken Robert Ignacio to receive medical attention for the wound to his leg. The petitioners indicated that another police officer in the vicinity called the other officers to describe the vehicle in which Robert Ignacio's father and brother were travelling, and the route they were taking.

13. According to the narrative, this vehicle was intercepted by a police contingent whose officers fired on the driver and ordered him to exit the vehicle and lie face down on the pavement, while Octavio Ignacio and David Octavio were ordered to exit the vehicle with their hands on their necks. The narrative indicated that the police then proceeded to shoot the two men, both of whom fell on the pavement and died instantly. The deceased were then transported to the Corposalud Hospital where they were abandoned without vital signs.

14. Mrs. Juana Emilia Diaz Loreto, mother and wife of the deceased, went with her other children to the Corposalud Hospital where she was informed that Octavio Ignacio and David Octavio were. She was also told that Robert Ignacio had been admitted to the Social Security Hospital. All of them were dead.

15. The petitioners indicated that according to the reports issued by the respective physicians on call, Robert Ignacio had a wound between the ribs on his right side, a wound to the left iliac cavity, a wound on the left side of the thorax, and a wound to the left side deltoid area. Octavio Ignacio had wounds between the ribs on the right side, a wound in the esogastric region of the right side, and excoriation on the front face of the left knee. David Octavio had a wound to the right intraclavicular area, a wound to the front face of the right forearm, and two wounds in the right pectoral area.

16. As for domestic proceedings, the petitioners indicated that on the same day, January 6, 2003, the Cuerpo de Investigaciones Científicas, Penales y Criminalísticas (Scientific and Criminal Investigation Force, "CICPC") launched an investigation. The CICPC carried out some formalities, such as conducting police inspections of the scenes, interviewing Bladimir Lenin Díaz Loreto, interviewing the physicians on duty at the aforementioned hospitals the day the events occurred, and reviewing the autopsy protocols which determined that the cause of death of the three alleged victims was injury by firearm.

17. The petitioners indicated that the investigations concluded within six months and were remitted to the Ninth Prosecutor's Office of the Public Ministry in the Aragua State District (hereinafter "Ninth Prosecutor's Office"). However, the following evidence which the petitioners consider to be of forensic interest was not gathered: reconstruction of the facts; hematological examination of the blood found in the wastewater canal; sight inspection of that scene; examination of the water extracted from the lungs of Robert Ignacio; examination of the flannel clothing he was wearing; statement of the sister of the alleged robbery victim; expert testimony on firearms from staff of the police unit in the La Segundera subdivision; inventory of the weapons stock of the police unit; evidentiary analysis of traces from shots fired by officers acting in the police operation; ballistics trajectory; collection and examination of blood shed by Robert Ignacio while he was being transported; collection of blood samples at the scene of the execution and from the vehicle in which David Octavio and Octavio Ignacio were transported; examination of the officers' uniforms; expansion of the autopsy protocol to verify the time of death;

examination of the bullets extracted from the bodies of David Octavio and Octavio Ignacio; conduct record and history of the officers involved in the operation; and the number of motorcycles involved, as well as their license plate numbers.

18. The petitioners alleged that the Ninth Prosecutor's Office, "acting in blatant complicity by objective omission" remained silent about the lack of the aforementioned evidence and proceeded to file charges against seven CSOPA officers for alleged intentional homicide and improper use of a firearm

19. According to the petitioner's narrative, on June 13, 2003 the Tribunal Quinto de Control del Circuito Judicial Penal del Estado Aragua (Fifth Oversight Tribunal of the Aragua State Criminal Judicial Circuit, hereinafter "the Fifth Oversight Tribunal") entered the charges and disqualified the government staff person in charge of that court. In August of 2003 during the preliminary hearing, the Eighth Oversight Tribunal of the Aragua State Criminal Judicial Circuit (hereinafter "the Eighth Oversight Tribunal") completely admitted the charges with the evidence offered, agreed to issue arrest warrants on the seven defendants, and forwarded the file for the holding of an oral and public trial.

20. The petitioners indicated that after several judges were disqualified, on April 11, 2006 the file was finally remitted to the Fifth Trial Court of the Criminal Judicial Circuit (hereinafter "Fifth Trial Court"), where it is still awaiting oral arguments in the public trial which began on January 18, 2007. They added that on January 25, 2007 the second hearing of the trial was held in which experts and witnesses testified. On February 1, 2007 the third hearing was held with testimony from a ballistics expert. The petitioners mentioned that this hearing was suspended because one piece of ballistics evidence had mysteriously disappeared from the file. The judge ordered that this evidence be produced by February 7, 2007, the date on which the oral and public arguments would continue. According to the petitioners, the aforementioned trial has not yet concluded, and therefore, the alleged perpetrators of the extrajudicial executions remain unpunished.

21. The petitioners indicated that they were victimized throughout the investigation when they attempted to exercise their rights, while their requests remained unheeded. On May 16, 2003 Mr. Luís Aguilera, attorney for the victims, filed a brief with the Ninth Prosecutor's Office in which he explained his dissatisfaction with the closing of the investigation. He also listed each piece of evidence which he deemed necessary to clarify the facts. The petitioners further indicated that on August 6, 2003 Ms. Juana Emilia Díaz Pérez, wife and mother of the deceased, filed a complaint with the Fifth Oversight Tribunal requesting that the arrest warrants be executed and requesting discovery of several pieces of evidence. According to the petitioners, no reply has been received on any of these requests.

22. The petitioners indicated that after the deaths of Robert Ignacio, David Octavio, and Octavio Ignacio, some members of the Díaz Loreto family continued to be subjected to threats and harassment, as explained in the following paragraphs.

23. According to the petitioners, at 11 pm on April 10, 2003, four police officers posted themselves around the home of the family of Jairo Alexis Díaz Loreto, brother and son of the

deceased, who was with his wife, Alexandra Gualdrón de Díaz. When Ms. Alexandra Gualdrón—who has been active in reporting the deaths of her husband’s relatives to the authorities and the media—opened the door, the police asked her for someone named Steven. She responded that she knew no such person, which led the police to then accuse her of “concealing criminals.”

24. The petitioners added that on April 26, 2003, Miguel Angel Diaz Loreto, another brother and son of the deceased was travelling by bicycle accompanied by his nephew when the two were intercepted by a police unit. The officers rudely demanded that he dismount his bicycle and show his identity documents. When Ms. Dinorah María Díaz Loreto and Ms. Alexandra Gualdrón de Díaz, Miguel Angel’s sister and aunt, respectively, learned what had happened, they went to the place where a police officer had told them that Miguel Angel was being detained. According to their account, this occurred without any arrest warrant. Thus, when the women tried to enter the squad car, they were pulled out by their arms. The petitioners indicated that as the women began to leave, one of the officers threatened to kill Jairo Alexis Díaz Loreto, who had come to help the women. After receiving this threat, Jairo Alexis screamed that the officers were abusive, which caused one of them to exit the vehicle in a rage “with weapon in hand,” screaming improprieties. The petitioners state that the officer then entered Ms. Dinorah María’s residence, put his gun to Jairo Alexis’ head, and threatened to arrest him. After a heated argument, the police officers finally carried Miguel Angel away in the squad car.

25. The petitioners indicated that once at the police station, the relatives were not told the reasons for the arrest; the police simply indicated that they should wait until the following Monday. Also, once Miguel Angel was released, he told them he had been beaten in the head and in the calves while the police interrogated him about the business his sister Dinorah was conducting with the prosecutor’s office regarding the deaths of their relatives. They threatened to kill him if he reported what had happened to him, since the officers told him that they were keeping “six bullets for each member of the family.”

26. The petitioners indicated that on June 4, 2003 Mr. Jairo Alexis Díaz Loreto, accompanied by his youngest daughter, was intercepted by a police contingent whose officers asked him for his identity document. In light of the aggressive attitude of the police officers, Jairo Alexis showed them the protective order issued by the court on behalf of the entire family, which generated jeering by the officers. He added that he was not able to leave with his daughter until an hour later.

27. On July 4, 2003, the petitioners recounted, Mr. Bladimir Lenin Díaz Loreto was coming home from work when he was intercepted by an Aragua State police patrol. The petitioners indicated that he was arbitrarily arrested and taken to the local police station, where he remained with no food or water until the following day. They added that he was released because Bladimir told the officers that a court had issued a protective order on behalf of the family.

28. As for the domestic remedies pursued, the petitioners indicated that they have informed the authorities of these incidents of harassment on several occasions, yet they have never been investigated. They specifically recount that on May 2, 2003, Ms. Alexandra Gualdrón, acting as a victim, filed a complaint with the Office of the Superior Prosecutor of the Public Ministry,

“over the continuous harassment” to which she was being subjected by the police officers. They also indicated that on that date a complaint was filed with the Ninth Prosecutor’s Office of the Public Ministry of Aragua State over the events that occurred on April 26, 2003, narrated supra in paragraph 24.

29. According to the petitioners, the respective authorities refrained from launching an investigation into these events. For this reason, on August 5, 2003, Octavio Antonio, Dinorah María, Jairo Alexis, Bladimir Lenin, and Miguel Angel Díaz Loreto, together with Luz María Ledesma de Díaz and Alexandra Gualdrón de Díaz, filed a criminal complaint against some Aragua State police officers for the crimes of physical and emotional assault, improper use of a firearm, illegal entry into their homes, and abuse of power, by virtue of the Public Ministry’s refusal to investigate these acts. The petitioners alleged that this criminal complaint has still not been processed.

30. As regards the admissibility of the petition, the petitioners alleged that the exception to the rule on exhaustion of domestic remedies, established in Article 46(2)(c) of the Convention, applies in this case because of the unwarranted delay in rendering a judgment. They also indicated that the requirement for lodging the petition within six months, as established in Article 46(1)(b), does not apply.

31. Finally, the petitioners alleged that the events narrated herein constitute violations of rights established in the following Articles of the American Convention: 4 (right to life) of Octavio Ignacio Díaz Álvarez, Robert Ignacio Díaz Loreto, and David Octavio Díaz Loreto; 5 (humane treatment) of Octavio Ignacio Díaz Álvarez, Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto, Miguel Angel Díaz Loreto, Dinorah María Díaz Loreto, Jairo Alexis Díaz Loreto, Bladimir Lenin Díaz Loreto, Octavio Antonio Díaz Loreto, José Acopio, Alexandra Gualdrón de Díaz, Luz María Ledesma de Díaz, and José Rafael Acopio; 7 (personal liberty) of Octavio Ignacio Díaz Álvarez, Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto, Miguel Angel Díaz Loreto, and Jairo Alexis Díaz Loreto; and 8 (fair trial) and 25 (equal protection) of Octavio Ignacio Díaz Álvarez, Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and their family members, all pursuant to Article 1(1) of the Convention.

## B. The State

32. The State informed that the Attorney General’s Office, through the 23rd District Attorney’s Office with full jurisdiction at the national level and the 9th District Attorney’s Office of the Judicial District of the state of Aragua, began inquiries on January 6, 2003, the date they first knew of the death of Roberto Ignacio Díaz Loreto and David Octavio Díaz Loreto.

33. It states that said authorities took the necessary steps in determining what had happened and in identifying the liability of the perpetrators and accomplices, as a result of which charges were filed by the aforementioned Attorney’s Offices before the Fifth Trial Court overseeing the Judicial Circuit for Criminal Cases of the state of Aragua, on June 13, 2003.

34. The State specified that the Attorney General’s Office has accused officer Saúl Ricardo Ramos Mora of the crime of intentional homicide of Roberto Ignacio Díaz Loreto and, of being

an accomplice (en grado de complicidad correspectiva) in the intentional homicide of David Octavio Díaz Loreto and Octavio Díaz Álvarez. It also stated that Rafael Antonio Barrero Araque, Luís Di Camilo Colmenares, José Francisco Maldonado, Jorge Luis Alvarado Hernández, Erick Gilberto Torrealba Urbina, and Jesús Ramón Franco Martínez [had been charged with the crime of being an immediate accessory (cooperador inmediato) to the intentional homicide of Roberto Ignacio Díaz Loreto and an accomplice in the intentional homicide of David Octavio Díaz Loreto and Octavio Díaz Álvarez.

35. According to the State, on January 7, 2003, the Fifth Trial Court overseeing the Judicial Circuit for Criminal Cases of the state of Aragua admitted in full the charges brought by the Attorneys' Offices and the evidence they submitted and ordered the preventive arrest of the accused. The State indicated that oral and public hearings commenced on January 18, 2006 and ended on April 25, 2007 with the acquittal of the accused.

36. The State added that on July 19, 2007, the Attorney General's Office appealed the aforementioned judgment; that on October 4, 2007 oral hearings were scheduled for the parties to appear before the Court of Appeals of the Judicial Circuit for Criminal Cases of the state of Aragua; and that said hearings were postponed to February 14, 2008.

37. The State argued that, accordingly, the petition should be declared inadmissible because domestic remedies had not been exhausted and because the criminal proceedings had shown respect for effective judicial protection and the other rights and guarantees provided for under domestic law and in the international human rights instruments ratified by Venezuela.

#### IV. ADMISSIBILITY

##### A. Competence

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

38. The petitioners are entitled under Article 44 of the American Convention to lodge complaints with the IACHR on behalf of the alleged victims. The alleged victims named in the petition were under the jurisdiction of the Venezuelan State when the alleged facts occurred. As for the State, Venezuela ratified the American Convention on August 9, 1977. Therefore, the Commission has competence *ratione personae* to review the petition.

39. The Commission has competence *ratione loci* to review the petition since it alleges violations of rights protected by the American Convention to have occurred within the territory of a State Party to it.

40. The Commission also has competence *ratione temporis* since the obligation to respect and ensure the rights protected by the American Convention was in force for the State when the violations alleged in the petition took place.

41. Finally, the Commission has competence *ratione materiae* because the petition alleges violations of human rights that are protected by the American Convention.

2. Exhaustion of domestic remedies

42. Article 46(1)(a) of the American Convention provides that in order for a petition lodged before the Commission under 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 ensure that the State in question is aware of the alleged violation of a protected right, and has the opportunity to resolve controversies within its own legal framework before they are taken to an international body.

43. The requirement for prior exhaustion applies when the remedies actually available within the national system are appropriate and effective to rectify the alleged violation. Article 46(2) specifies that this requirement does not apply when: the domestic legislation does not afford due process of law to protect the right in question; the alleged victim did not have access to the remedies under domestic law; or there has been unwarranted delay in rendering a final judgment under those remedies. As is indicated in Article 31 of the Rules of Procedure of the Commission, when the petitioner alleges one of these exceptions, it is up to the State to demonstrate that the remedies under domestic law have not been previously exhausted, unless that is clearly evident from the record.

44. As is inferred from the principles of international law and reflected in the precedents set by the Inter-American Commission and Court, first, the State can expressly or tacitly relinquish the right to invoke this rule.[FN2] Secondly, in order for an objection based on non-exhaustion of domestic remedies to be timely, it must be raised in the early stages of the proceedings; failure to do so allows one to assume a tacit relinquishment by the State in question of such an objection.[FN3] Thirdly, according to the burden of proof applicable in such cases, a State alleging non-exhaustion must indicate the domestic remedies to be exhausted and provide evidence of their effectiveness.[FN4]

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[FN2] IACHR, Report N° 69/05, petition 960/03, Admissibility, Iván Eladio Torres, Argentina, October 13, 2005, para. 42; I/A Court H.R., Ximenes Lopes case. Preliminary Objection. Judgment of November 30, 2005. Series C No. 139, para. 5; I/A Court H.R., Moiwana Community Case. Judgment of June 15, 2005. Series C No. 124, para. 49; and I/A Court H.R., Serrano Cruz Sisters Case. Preliminary Objections. Judgment of November 23, 2004. Series C No. 118, para. 135.

[FN3] I/A Court H.R., 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 “the first stages of the proceedings” should be understood to be “the stage of admissibility of the proceedings before the Commission, that is, before any consideration of the merits [...]”. See, e.g., IACHR Report N° 71/05, petition 543/04, Admissibility, Ever de Jesús Montero Mindiola, Colombia, October 13,

2005, which cites I/A Court H.R., Herrera Ulloa case. Judgment of July 2, 2004. Series C No. 107, para. 81.

[FN4] IACHR Report N° 32/05, petition 642/03, Admissibility, Luis Rolando Cuscul Pivaral and others affected by HIV/AIDS, Guatemala, March 7, 2005, paras. 33-35; I/A Court H.R., 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.

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45. In its written reply to the petition, the Venezuelan State argued that domestic remedies had not been exhausted. For their part, the petitioners argued that there had been unwarranted delay in the proceedings concerned.

46. The Commission will analyze the requirement for exhaustion of domestic remedies in the following order: i) with regard to the alleged extrajudicial executions of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto, and Octavio Ignacio Díaz Álvarez; and ii) with regard to the alleged subsequent harassment of and threats against the family members of the three men.

a. With regard to the alleged extrajudicial executions of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto, and Octavio Ignacio Díaz Álvarez

47. As the Commission has indicated, in order to analyze fulfillment of the requirement for exhaustion of domestic remedies, one must first determine the appropriate remedy to be exhausted according to the circumstances of the case, as understood to be that which could reinstate the infringed rights.[FN5] In cases of alleged arbitrary deprivation of the right to life, the appropriate remedy is an investigation and criminal trial initiated and prosecuted by the State to identify and punish those responsible.[FN6]

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[FN5] IACHR Report No. 23/07. Eduardo José Landaeta Mejías et al. Petition 435-2006, Admissibility, para. 43, March 9, 2007.

[FN6] IACHR, Report No. 23/07, Eduardo José Landaeta Mejías et al, Petition 435-2006, Admissibility, para. 43, March 9, 2007; IACHR, Report No. 15/06, Maria Emilia González, Paula Micaela González and María Verónica Villar. Petition 618-01, Admissibility, para. 34, March 2, 2006; IACHR, Report N° 52/97, Case 11,218, Arges Sequeira Mangas, Annual Report 1997, paragraphs 96 and 97. See also Report N° 55/97, paragraph 392 and Report N° 55/04 paragraph 25.

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48. As regards the unwarranted delay, the Commission evaluates the circumstances and conducts a case-by-case analysis to determine whether improper delay has occurred. As a general rule, the Commission determines that “a criminal investigation must be conducted promptly in order to protect the interests of the victims and preserve the evidence.”[FN7] In order to establish whether an investigation has been conducted “promptly,” the Commission considers a series of

factors, such as the time which has lapsed since the crime was committed, whether the investigation has gone through the preliminary stage, what measures have been adopted by the authorities, and the complexity of the case.[FN8]

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[FN7] IACHR Report N° 16/02, Servellón García (Honduras), Petition 12.331, Admissibility, para. 31 (February 27, 2002).

[FN8] IACHR, Report N° 130/99, Víctor Manuel Oropeza (Mexico), Petition 11.740, paras. 30-32.

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49. The Commission observes that the petitioners presented two arguments regarding the existence of unwarranted delay: i) that the conduct and conclusion of the oral and public trial have been postponed unjustifiably; and ii) that the authorities in charge of conducting the investigation rushed the case to trial without gathering the necessary evidence, with the intent to ensure impunity, and that there has been a delay in conducting these evidence-gathering procedures.

50. From the information provided by the petitioners, it is seen that on the very day that the events occurred, January 6, 2003, an investigation was launched into the deaths of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto, and Octavio Ignacio Díaz Álvarez. Furthermore, within six months, some investigative steps were taken which resulted in charges being filed in June of 2003 by the Ninth Prosecutor's Office. Seven CSOPA officers were charged with intentional homicide and improper use of a firearm. As is seen from the available information, the oral and public trial has been delayed since that date as a result of judges being disqualified. To date there is no final decision attributing criminal liability to the perpetrators of the crimes. The State reported that, on April 25, 200, the officers accused had been acquitted; that, on July 19 2007, the Attorney General's Office had appealed; and that that appeal hearing had been postponed and had not yet been resolved.

51. The Commission notes that, according to the relevant provisions of Venezuela's Organic Code of Criminal Procedures, once an appeal has been lodged, the interested parties have 5 days in which to reply to the appeal[FN9], after which the respective court or tribunal must remit the file to the Court of Appeals for its ruling[FN10]. That judicial organ has 10 days in which to pronounce on the admissibility of the appeal and must immediately proceed to convene a hearing, which shall take place within no more than 10 days of the writ admitting the appeal.[FN11]The final ruling on the appeal must be pronounced at the end of the hearing or, in a complex case, within 10 days afterwards.[FN12]

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[FN9] Article 453.

[FN10] Article 454

[FN11] Article 455.

[FN12] Article 456.

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52. The appeal was lodged on July 19, 2007, which means that, today, the maximum time allowed for a decision to be made has been exceeded by a wide margin, without the State having presented arguments to justify that delay. The Commission considers that the Venezuelan State failed to meet the burden of proof which it bears when the petitioner alleges any exception to the rule established in Article 46(2) of the Convention. Furthermore, the information available allows the Commission to see that the case is not particularly complex. At any rate, the delay in concluding the trial is not because evidence is being gathered to clarify the facts of the matter; rather, the long periods of inactivity in the file appear to be the result, *inter alia*, of the disqualification of several trial judges.

53. Finally, it is seen from the file that the petitioners in the instant case became victims during the domestic proceedings. They submitted briefs to solicit the gathering of evidence and they filed a formal criminal complaint. They pursued the procedures that were available to them to seek justice, despite the fact that conduct of the investigation and trial, as well as punishment of the guilty parties, is the responsibility of the State.

54. The Commission considers that the above elements are sufficient to conclude that, with regard to the alleged extrajudicial execution of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto, and Octavio Ignacio Díaz Álvarez, there has been unwarranted delay in the criminal trial. Consequently, the petitioners are exempt from the requirement for exhaustion of domestic remedies by virtue of Article 46(2)(c) of the American Convention.

b. With regard to the alleged subsequent harassment of and threats against the family members of the three men

55. The petitioners indicated, and the State did not dispute, that several members of the Díaz Loreto family went before the authorities of the Public Ministry on May 2, 2003 and August 5, 2003 to lodge complaints over the alleged acts of harassment to which they had been subjected. To date no investigation of these allegations has been initiated. The State has also not presented any arguments to justify its lack of initiative in conducting such an investigation.

56. The Commission considers that since these are allegations of physical assault[FN13] as well as arbitrary and illegal arrests against members of the Díaz Loreto family by State agents, once the authorities in charge of prosecuting such crimes were made aware of the allegations, the State has an obligation to conduct a serious, diligent investigation in order to establish any possible criminal liability.

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[FN13] IACHR, Report N° 96/06, Jesús Mohamad Capote, Andrés Trujillo et al v. Venezuela, Petition 4348-02, para. 66. Citing: I/A Court H.R., Ximenes Lopes Case. Judgment of July 4, 2006. Series C No. 149, para. 148; I/A Court H.R., Baldeón García Case. Judgment of April 6, 2006. Series C No. 147, paras. 92 and 93

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57. Consequently, and according to the information available, the Commission concludes that with regard to the allegations of threats, illegal and arbitrary arrests, physical assault, and other forms of harassment against members of the Díaz Loreto family, there has also been unwarranted delay in rendering judgment, as described in Article 46(2)(c) of the Convention.

58. The Commission reiterates that invoking exceptions to the rule on exhaustion of domestic remedies, as set forth in Article 46(2) of the Convention, is closely linked to a determination of potential violations of certain rights established therein, such as the guarantees on access to justice. However, Article 46(2) of the Convention, because of its nature and purpose, is a rule with autonomous content vis-à-vis the substantive rules of the Convention. Therefore, any determination regarding whether exceptions to the rule on exhaustion of domestic remedies established in that clause are applicable to the instant case, must be conducted prior to and separate from an analysis of the merits of the case, since it relies on a standard of proof different from that used to determine whether there has been a violation of Articles 8 and 25 of the Convention. It should be clarified that the causes and effects which have prevented the exhaustion of domestic remedies in the instant case will be examined, where relevant, in the report adopted by the Commission during the merits stage, so as to verify whether they in fact constitute violations of the American Convention.

### 3. Time period for lodging a petition

59. According to Article 46(1)(b) of the Convention, in order for a petition to be admitted, it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment under domestic law. This rule does not apply when the Commission finds one of the exceptions to exhaustion of domestic remedies established in Article 46(2) of the Convention to exist. In such cases, the Commission must determine whether the petition was lodged within a reasonable time according to Article 32 of its Rules of Procedure.

60. The Commission observes that the events in the instant case began to unfold on January 6, 2003. There were internal proceedings underway regarding the alleged extrajudicial executions as well as complaints awaiting a decision regarding subsequent acts against some family members. The petition was lodged on March 14, 2007 and the petitioners alleged the existence of unwarranted delay in the domestic proceedings, meaning that over the years they have been expecting to obtain justice and reparations for what occurred. The Commission considers that the time which lapsed between the occurrence of the events and the lodging of the petition constitutes a reasonable time.

### 4. Duplication of proceedings and res judicata

61. Article 46(1)(c) of the Convention establishes that in order to be admissible, the subject of the petition “must not be pending in another international proceeding for settlement,” and Article 47(d) stipulates that it must not be “substantially the same as one previously studied by the Commission or by another international organization.” In the instant case, the parties do not allege, nor does it appear in the record, that either of these conditions of inadmissibility is present.[FN14]

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[FN14] While during the time that this petition was joined with case 12.488 (Eloisa Barrios et al.) the State alleged inadmissibility on the basis of duplication of proceedings, the Commission understands that those allegations referred to a request for revision of the Admissibility Report adopted in said case, and not regarding the admissibility of this petition. The Commission draws this conclusion since the documentation submitted by the State on those inadmissibility proceedings referred exclusively to persons linked to case 12,488, and the State had expressly requested a review of the aforementioned Admissibility Report, without indicating that it also found petition 1491 to be inadmissible.

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5. Characterization of the facts alleged

62. For the purposes of admissibility, the Commission must decide whether the petition states facts that tend to establish a violation, as stipulated in Article 47(b) of the Convention, or whether the petition is “manifestly groundless or obviously out of order” according to Article 47(c). The parameters for judgment on these grounds are different from the requirements for deciding on the merits of a petition. The Commission must conduct a prima facie review to determine whether the facts alleged would provide grounds for an apparent or potential violation of a right guaranteed by the American Convention, and not establish whether a violation actually occurred. This is a summary analysis, which does not imply prejudice or advance an opinion on the merits of the case.[FN15]

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[FN15] IACHR, Report N° 21/04, Petition 12,190, Admissibility, José Luis Tapia González et al., Chile, February 24, 2004, para. 33.

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63. The Commission finds that if true, the facts alleged regarding the deaths of Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto, and Octavio Ignacio Díaz Álvarez could constitute violations of their rights established in Articles 4 and 5 of the American Convention, in relation to Article 1(1) of same. Furthermore, the Commission finds that the prior arrest of Robert Ignacio Diaz Loreto may constitute a violation of the right established in Article 7 of the American Convention in relation to Article 1(1) of same. By virtue of the principle of jura novit curia, the Commission considers that if the alleged facts surrounding the death of Robert Ignacio Díaz Loreto are true, they may also constitute violations of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

64. The Commission further considers that the alleged failure to investigate and sanction those responsible for these acts may constitute violations of the rights of the victims’ family members as established in Articles 5, 8, and 25 of the American Convention, in relation to the obligations established in Article 1(1) of same.

65. Finally, the Commission considers that the facts reported regarding the allegedly illegal and arbitrary arrests of Bladimir Lenin Díaz Loreto and Miguel Angel Díaz Loreto, the alleged

physical assault on the latter, and the alleged failure to investigate these events, may characterize violations of the rights established in Articles 5, 7, 8, and 25 of the American Convention, in relation to the obligations established in Article 1(1) of same.

## V. CONCLUSIONS

66. Based on the arguments in fact and in law presented above, and with no pre-judgment on the merits of the case, the Commission concludes that it is competent to hear this case and that the petition is admissible according to Articles 46 and 47 of the American Convention, and therefore

### THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS

#### DECIDES:

1. To declare this case admissible with respect to the alleged violations of rights protected under Articles 4, 5, 7, 8, and 25, in relation to Article 1(1) of the American Convention. The alleged violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture was included by the Commission by virtue of the principle of *jura novit curia*.
2. To notify the parties of this decision.
3. To proceed to review the merits of the case; and
4. To publish this decision and include it in its Annual Report to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 24th day of July, 2008. (Signed): Paolo G. Carozza, Chairman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.