

**REPORT No. 154/10**  
PETITION 1462-07  
ADMISSIBILITY  
LINDA LOAIZA LÓPEZ SOTO and NEXT OF KIN  
VENEZUELA\*  
November 1, 2010

**I. SUMMARY**

1. On November 12, 2007, the Inter-American Commission on Human Rights (hereinafter referred as the “Inter-American Commission” or the “IACHR”) received a complaint filed by Linda Loaiza López Soto and Mr. Juan Bernardo Delgado, as representative of the victims (hereinafter referred to as “the petitioners”), alleging that the State of Venezuela had incurred international responsibility for the failure to act with due diligence to sanction crimes of rape committed by a private actor to the detriment of Ms. Linda Loaiza López Soto.

2. The petitioners contend that the facts constitute a violation of the following rights guaranteed by the American Convention on Human Rights (hereinafter referred to as the “American Convention”) to the detriment of Ms. Linda Loaiza López Soto<sup>1</sup> and her next of kin;<sup>2</sup> the obligation to adopt measures of domestic legal effect (Article 2); the right to life (Article 4.1); the right to humane treatment (Articles 5.1 and 5.2); the right to a fair trial (Article 8.1); the right to respect for honor and dignity (Article 11); the right to equal protection of the law (Article 24); and the right to judicial protection (Article 25), with respect to the obligations set forth in Article 1(1) of this instrument; and Article 7 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter referred to as the “Belém do Pará Convention”).

3. The State, for its part, considers that the petition is inadmissible because “the violations of the fundamental guarantees and rights of any person, perpetrated by another individual without the State’s approval, do not in any way constitute a responsibility for the State.”<sup>3</sup> It contends that the competent courts acted in the present case with the proper constraints imposed upon them by the law, having as a result the sanction of Luis Carrera Almoína, and that the petitioners did not exhaust the suitable domestic remedies provided for by the legal system.

4. After reviewing the positions of the parties and in compliance with the requirements set forth in Articles 46 and 47 of the American Convention, the Commission decided to declare this petition admissible for the purpose of examining the alleged violation of Articles 2, 5.1, 5.2, 8.1, 11.1, 24 and 25 of the American Convention, all in conjunction with the general obligation to respect and guarantee established in Article 1.1 of said international instrument, and Article 7 of the Convention of Belém do Pará to the detriment of Ms. Linda Loaiza López Soto. The Commission also rules that the present petition is admissible with respect to the alleged violations of rights enshrined in Articles 5.1, 8.1 and 25 of the American Convention, in connection with Article 1.1 of this instrument, to the detriment of the next of kin of Linda Loaiza López Soto identified in paragraph two, note two, of the present report. As for the alleged violation of Article 4.1 of the American Convention, the Commission finds the petition inadmissible.

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\* Pursuant to the provisions of Article 17(2)(a) of the IACHR Rules of Procedure, Commissioner Luz Patricia Mejía Guerrero, a Venezuelan national, did not participate in the discussion on this petition.

<sup>1</sup> The IACHR includes the complete name of Linda Loaiza López Soto at the express request of the victim made on August 10, 2010.

<sup>2</sup> The petition identifies the following next of kin of Ms. Linda Loaiza López Soto as the alleged victims: her father Nelson López Meza; her mother Luz Paulina Soto de López; her brothers and sisters Ana Cecilia, Diana Carolina, Anyi Karina, Nelson Enrique, Elith Johana, Gerson José, Yusmely del Valle, Luz Paulina, José Isidro and Emmanuel Adrián López Soto; Juan Bernardo Delgado Linares; and her son Juan Moisés Delgado García.

<sup>3</sup> Observations by the State submitted on January 15, 2009, page 1.

5. It also decided to notify the parties of the report and order its publication in its Annual Report.

## **II. PROCEEDINGS BEFORE THE IACHR**

6. On November 11, 2007, the Commission received the initial petition, which was assigned the case number 1462-07. On June 17, 2008, the Commission transmitted the relevant parts of the petition to the State requesting it submit its response within two months. On September 3, 2008, the State requested an extension of the deadline to submit its observations. On January 21, 2009, the Commission reiterated its request to the State for observations. On January 16, 2009, the Commission received the State's response, which was sent to the petitioners on March 30, 2010.

7. On May 27, 2009, the IACHR requested the petitioners to provide various documents to continue reviewing the petition's admissibility. On June 15, 2009, the petitioners requested a 20-day extension on the deadline, which was granted by the IACHR on June 16, 2009. On July 14, 2009, the petitioners submitted these documents, which were then sent to the State on July 22, 2009. The State submitted additional observations on September 3, 2009, which were transmitted to the petitioner on March 30, 2010 for their reference. On September 3, 2010, the petitioners submitted additional observations, which were sent to the State on September 22, 2010 with a term of one month to submit its observations. The response of the State has not been received by the date this report was approved.

## **III. POSITION OF THE PARTIES**

### **A. Position of the petitioners**

8. The petitioners contend that Linda Loaiza López Soto (hereinafter referred to as "Linda Loaiza López") was abducted by Luis Carrera Almoína in Caracas on March 27, 2001, who kept her deprived of her liberty for a period of two and a half months. They state that, during the abduction, she was severely abused and assaulted by Mr. Almoína, sustaining sexual, physical and psychological injuries of a grave nature. The petitioners focus their allegations before the IACHR on the investigation of the facts and the criminal proceedings lodged against the alleged assailant, claiming that they were characterized by numerous irregularities, a lack of judicial actions, unjustified delays, the interference of political personalities, and the constant mistreatment of Linda Loaiza López and her next of kin by officers of the justice system. They consider that this pattern of abuse, irregularities and neglect by the judiciary led to impunity with regard to the incidents of sexual violence. The petitioners consider that the above-mentioned flaws were especially severe, considering the sex and precarious economic situation of Linda Loaiza López, which entailed a greater obligation on the part of the State to duly prosecute and punish the incidents.

9. The petitioners claim that they are not requesting that the IACHR examines the merits of the six-year sentence, but rather that it examines the respective domestic proceedings to establish their compatibility with the American Convention. They consider that the fact that there is a judgment containing a partial conviction does not mean that the State has complied with all its obligations under the American Convention.

10. The petitioners specifically claim that, on March 27, 2001, Luis Carrera Almoína—son of the principal of the National Open University—abducted Linda Loaiza López when she was leaving her home and took her, under threat of death, to the Hotel Aventura in the San Bernardino neighborhood of Caracas. They indicate that Mr. Almoína kept Linda Loaiza López kidnapped until July 19, 2001 in Caracas and in the town of Petare, in the State of Sucre.

11. The petitioners indicate that, during those two and a half months, Mr. Almoína repeatedly victimized Linda Loaiza López, inflicting upon her severe forms of physical, psychological and sexual abuse. They indicate that the alleged assailant hit the victim, smoked and put out cigarettes on her body, burned her with a lighter and raped her repeatedly. They state that he also forced her to take drugs and watch pornographic movies. Oftentimes he left her tied up, handcuffed, with her mouth gagged,

sometimes enclosed in the bathroom or the closet or tied to the bed. They claim that the alleged assailant always made sure the curtains were drawn and the doors were well locked and that the victim was not close to the telephone. Luis Carrera Almoína would constantly tell her that he had previously killed eight women and dropped their bodies on the highway. They state that, during the kidnapping, the alleged assailant took Linda Loaiza López to the house of his father, who did nothing about the matter although he witnessed the abuse suffered by the victim.

12. The petitioners point out that, on July 19, 2001, Mr. Almoína contacted his father to inform him that Linda Loaiza López was no longer of any use to him and that he would look for black bags to take her out of the Hotel Aventura. Taking advantage of Mr. Almoína's absence from the room, the alleged victim went to the window, naked, injured and only covered by a sheet, to ask for help, as a result of which the neighbors called the police of the municipality of Chacao, who rescued her. They state that later came the firemen, an official of the Prosecutor's Office and the apartment's owner, who took Linda Loaiza López in an ambulance to the hospital. During her rescue, Linda Loaiza López identified Luis Carrera Almoína as her assailant.

13. They claim that, when she reached the hospital, Linda Loaiza López was taken to the operating room because of the severity of her physical condition, and that she thereafter stayed in various hospitals for a period of 15 months.<sup>4</sup> They claim that, since then, the alleged victim has undergone 10 reconstructive surgeries, although to date she has not yet fully recovered physically. According to the petition, Ms. López still suffers from a hearing impairment, mobility problems, severe problems of the pancreas because of the blows she received, and low probability of bearing children, among other after-effects, both physical and psychological.

14. The petitioners allege that the criminal process at issue started formally with the intervention of the Prosecutor's Office on July 19, 2001, date on which the corresponding criminal investigation began. On August 22, 2001, the Prosecutor assigned to the case also filed charges identifying Luis Carrera Almoína as the perpetrator of the crimes of hiding narcotic and psychotropic substances, rape, and generic bodily injuries to the detriment of Linda Loaiza López, and ordered preventive custody of the assailant. Linda Loaiza López also personally filed individual charges against Mr. Almoína on November 19, 2001, for the crimes of qualified attempted murder, rape, illegal restraint of liberty and torture.

15. The petitioners identify a series of abuses, irregularities, omissions and delays perpetrated by various justice officials which allegedly undermined the investigation and the criminal proceedings filed against Luis Carrera Almoína; errors that allegedly led to the impunity of the sexual violence incidents.

16. First of all, they contend that the Prosecutor in charge of the case did not conduct the initial investigation seriously and effectively, constantly mistreated the victim and her next of kin, and allowed "inappropriate influences" to affect the case during the criminal process because the accused belonged to a well-known family with financial means in Venezuela, in contrast to the victim. For example, the petitioners indicate that the Prosecutor in charge of the case always received information provided by Linda Loaiza López with expressions of disbelief and threats. They state that the Prosecutor also told the victim's next of kin that they had to say the truth because she knew that the son of a university principal

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<sup>4</sup> The petitioners claim that the medical examination of Linda Loaiza López when she was taken to the hospital yielded the following results:

Gynecological exam: Former defloration and signs of genital traumas occurring more than eight days earlier;

Extra-genital exam: Abrasion covered by a scab on the back of the nose, various anfractuous wounds of various sizes on both lips, loss of external substance and with signs of infection on the auricle of the left ear, small abrasions on the surface of the right side of the neck, a swollen bruise on the vertical half (ramus) of the lower left jaw, traces of abrasions on both hands and the thoracolumbar spine;

Polytraumas: traumatic brain injury complicated by a fracture of the lower jaw bone, chest trauma, closed abdominal trauma complicated by acute abdomen.

was incapable of committing such atrocious actions. They contend that, the day the victim filed individual charges, the Prosecutor forced her to sign a statement under threats, without allowing her to read it.

17. The petitioners submitted, along with their petition, three complaints that they filed with the Office of the Attorney General of the Republic, the Supreme Court of Justice and the Office of the Inspector General of the Courts, on November 14 and 21 of 2001, and December 13, 2001, respectively, regarding the alleged irregularities committed by the Prosecutor in charge of the case, but they claim that she was never sanctioned or withdrawn from the case.

18. They also claim that many mistakes and omissions were made during the investigation and the gathering of evidence related to the sexual abuse sustained by Linda Loaiza Linda López, citing guidelines from the World Health Organization. They argue that DNA tests were never performed even in the presence of sufficient elements; that material evidence of criminal interest was lost at the site of the incidents because of insufficient safekeeping; that evidence based on luminol applied to detect traces of blood in all sites of the incidents was never gathered; and the forensic tests were not conducted until eight days after the rescue of the alleged victim, among other omissions. Likewise, they indicate that no line of investigation was ever followed to establish the alleged victim's absence of consent to engage in sexual intercourse with the alleged assailant.

19. The petitioners also allege irregularities allegedly committed by the judges involved in the various stages of the criminal proceedings. They consider it unusual that a warrant for house arrest had been ordered on November 2, 2001 by Judge 18 of the Control of the Criminal Circuit Court of Justice of Caracas in view of the severity of the crimes involved in this case. They report that this measure led to an attempted escape by Luis Carrera Almoína, with his father's support<sup>5</sup> and with the use of State assets, on November 6, 2001. They state that this measure was ordered because the Prosecutor in charge of the case filed her charges after the statutory time limit had passed, for the sole purpose of having the assailant release on parole. They argue that the judge who issued the warrant for house arrest repealed it on November 6, ordering the accused to be imprisoned. As a result, the above-mentioned judge was dismissed on November 7, 2001 by the Chair of the Restructuring and Functioning Commission, who was a very close friend of the family of Luis Carrera Almoína.

20. The petitioners also claim that Judge Yakeline Herrera Soler unjustifiably dropped the charges personally filed by Linda Loaiza López on June 6, 2003, on the grounds that Ms. López had not appeared at the preliminary hearing, although she had submitted a medical report and proof of hospitalization. In response to this ruling, the petitioners filed an appeal for reconsideration on July 8, 2003, which was dismissed, and then an appeal on constitutional grounds on October 23, 2003, which was ruled inadmissible.<sup>6</sup>

21. The petitioners also specify irregularities regarding the selection of the lay juror-judges (*escabinos*), the many judges declining to judge the case, and a large number of deferrals during the trial. They indicate that a total number of 76 judges heard the case, because of the 59 motions for refusal to judge the case requested by various judges. During the trial, the petitioners claim that hearings were deferred on 38 occasions. They allege that, on various occasions, the judges requested to be recused because of threats they had received and because the case involved a powerful family with political influence. They indicate that one of the judges who heard the case expressed, in her recusal request, her disgust at the citizen Linda Loaiza López and her sister Ana Cecilia López. The petitioners highlight that they filed several writs to challenge the many deferrals and recusals with the Office of the Inspector General of the Courts on September 15, 2004 and with the Office of the Attorney General of the Republic on May 31, 2006, without any results.

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<sup>5</sup> The petitioners claim that the father of the alleged assailant was acquitted of the charges of embezzlement and obstruction of justice.

<sup>6</sup> The petitioners did not submit any information indicating that the personal accusation filed by Linda Loaiza López Soto has been reinstated in the framework of the criminal proceedings.

22. They allege that, on November 5, 2004, Judge Rosa Cádiz Randon, of the Twentieth Single-Judge Court of First Instance of the Criminal Circuit Court of the Metropolitan Area of Caracas, fully acquitted the accused in the case of injuries and other acts perpetrated against Linda Loaiza López. The petitioners indicate that, in this judgment, the judge stated that the crime of rape had occurred, but that there was not enough evidence to declare the accused. Therefore, the petitioners consider that the irregularities committed in the investigation stage, especially the errors and omissions in gathering the evidence highlighted above *supra* paragraph 18, led to the impunity of the crime of rape. The petitioners also emphasized that Venezuela's law on the crime of rape is obsolete and not in line with international standards on the matter, recognizing this crime is committed only if there is evidence of use of force or threats.

23. The petitioners claim that the judgment of November 5, 2004 was the target of a statement of repudiation by the Venezuela's National Congress. They point out that they filed a writ with the Judiciary Commission of the Supreme Court of Justice on October 25, 2004, reporting the irregularities committed by the Judge who issued the above-mentioned judgment, such as insulting the victim and her attorney, illegally incorporating evidence of facts that do not exist and for issuing a discriminatory judgment transforming the alleged victim into an assailant, without any measure ever having been adopted in response.

24. The petitioners state that they appealed the judgment of November 5, 2004, as a result of which the judgment was overturned and Luis Carrera Almoína imprisoned on April 12, 2005. On March 9, 2006, the Seventh Single-Judge Trial Court of First Instance of the Criminal Circuit Court of the Metropolitan Area of Caracas convicted Mr. Almoína to six years imprisonment for the crimes of inflicting grievous bodily injuries and the illegitimate deprivation of liberty, but acquitted him of the crime of rape. They allege that this ruling was upheld on May 11, 2007, date on which the appeal to a court of last resort to overrule the previous judgment filed by the attorney of the alleged victim was ruled inadmissible.

25. The petitioners contend that the case of Linda Loaiza López has had a high profile in the Venezuelan society, because of the seriousness of the physical, psychological and sexual injuries she suffered, and her persistent pursuit of justice. The petitioners claim that the "use of influences, cronyism, and the purchase of authorities creates a climate of impunity" regarding crimes of sexual violence. They contend that to blame a victim for the sexual violence suffered is a common phenomenon, which reflects a patriarchal mentality contrary to the rights of women. It implies that a victim is to blame for the trauma she suffered, and negatively exposes her and her family to the society, violating her honor and dignity.

26. Finally, the petitioners contend that, from the start of the criminal process in 2001, Linda Loaiza López, her next of kin and attorney have been victims of a series of threats and harassment in the country that have jeopardized their physical and psychological safety. They identify a series of attacks between 2004 and 2007, which were reported to state authorities. They allege that they were beneficiaries of state protection measures, but that the latter were not effectively complied with.

## **B. Position of the State**

27. The State contends that it cannot be held liable for the alleged violations because they were perpetrated by a private actor rather than a public official. It also explains that the acts were not perpetrated with the consent or approval of the State, because when the State learned of these, it opened an investigation that made it possible to prosecute and convict those responsible.

28. The State considers that, during the proceedings where Linda Loaiza López appeared as the victim, all the acts were substantiated in conformity with the rules of due process of law. It states that the Prosecutor started the investigation promptly, seriously and effectively to clarify the incidents during which Linda Loaiza López was injured. The State also asserts that, in the context of criminal proceedings, a balance must be struck between the victim's constitutional rights and the guarantees of due process provided by the Constitution to the accused. It alleges that the fact that the person charged, the victim or the Prosecutor's Office as parties to the proceedings are adversely affected by a court ruling does not imply that the right to due process of law has been infringed or that there has been discrimination.

29. It asserts that the victim has not exhausted all suitable domestic remedies in the Venezuelan legal system. Regarding this, it claims that the Extraordinary Recourse for Constitutional Review is a suitable remedy to challenge the above-mentioned judgment of last resort that stated that the remedy filed by the petitioner's attorney on March 16, 2007 to overrule the judgment issued by the Sixth Chamber of the Court of Appeals was "manifestly groundless."<sup>7</sup> The State considers that the recourse for constitutional review is adequate and effective to determine whether a human rights violation has occurred provides all that is needed to remedy it.

30. With its response, the State provides a detailed account of the main actions that took place in the framework of the investigation and the criminal proceedings being challenged, and various clarifications about the same.

31. It highlights that the 33<sup>rd</sup> District Prosecutor's Office of the Judiciary District of the Metropolitan Area of Caracas was initially assigned to hear the referred case. The Prosecutor in charge initiated the corresponding criminal investigation on July 19, 2001 and filed her charges on November 5, 2001 for the crimes of qualified attempted murder, rape, and the illegal deprivation of liberty. Regarding this matter, the State explains that, in view of the principle of innocent until proven guilty, the investigation conducted by the Prosecutor required a lapse of time that could comply or not with the two-month time-limit requirements provided for in Article 259 of the Criminal Organic Process Code. Therefore, it alleges that the investigation stage lasted three months and seventeen days, which "hardly exceeds a reasonable time-frame for the investigation of actions punishable by law which were highly controversial and subject to media attention as those internally examined"

32. It asserts that the Prosecutor in charge of the case requested various investigative steps. It indicates, for example, that on October 29, 2001 the Prosecutor requested an eyewitness inspection at the University Clinical Hospital where the victim was hospitalized to determine her physical condition. That same day, she requested a search warrant to examine the building where the victim lived to determine if traces of blood could be found there.

33. Regarding the house arrest of the alleged assailant on November 2, 2001, the State alleges that this measure did not constitute an excessive benefit. It clarifies that the measure of house arrest was initially granted to the accused on September 10, 2001, although the 33<sup>rd</sup> District Prosecutor's Office had requested the 18<sup>th</sup> Chamber of First Instance of the Criminal Circuit Court of Justice of the Metropolitan Area of Caracas (hereinafter referred to as the "18<sup>th</sup> Court") the preventive custody of the alleged assailant on August 22, 2001. It indicates that, afterwards, the 9<sup>th</sup> Court of Appeals of the Criminal Circuit Court of Justice of the Metropolitan Area of Caracas ordered the preventive custody of the alleged assailant and that he was imprisoned in a penitentiary between October 11 and November 2, 2001. On November 2, 2001, the 18<sup>th</sup> Court once again ordered the house arrest of the accused, because the Prosecutor filed formal charges three days after the statutory limit referred to in Article 240 of the Criminal Organic Process Code had expired. According to the State, the presiding judge in charge of the 18<sup>th</sup> Court was removed on November 7, 2001 by the Commission of Restructuring and Functioning of the Judiciary System for having improperly annulled on November 6, 2001 the house arrest order issued on November 2, 2001.

34. The State recognizes that, although it is true that the alleged assailant left the place of his house arrest on November 6, 2001, this incident was immediately investigated and the accused was arrested a few hours later. Regarding this, it also contends that, on November 8, 2001, an order was issued to arrest and imprison the alleged assailant, his father and two other persons; they were charged with the crimes of embezzlement and facilitating escape; they were charged by the Prosecutor; and they were subsequently acquitted by a duly substantiated judgment.

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<sup>7</sup> On December 19, 2006, the Sixth Chamber of the Court of Appeals dismissed the appeal filed by the complainant against the judgment convicting Luis Carrera Almoina of March 9, 2006.

35. As part of the criminal proceedings, the State asserts that various drawings were carried out to choose the lay juror-judges (*escabinos*) between March 11 and June 20, 2002, for the purpose of setting up a mixed court, including one professional judge and two lay juror-judges, without any concrete results. By default, on August 22, 2002, the Thirtieth Trial Court of First Instance of the Criminal Circuit Court of Justice (hereinafter referred to as the "Thirtieth Judge") set up a Single-Judge Trial Court, at the request of Luis Carrera Almoína and his father, in conformity with the provisions of Article 164 of the Criminal Organic Process Code. It points out that the institution of lay juror-judges in Venezuelan procedural law is aimed at ensuring that the facts submitted to the Preliminary Hearing during the oral and public discussion be reviewed not only by a law professional but also by a citizen who has no legal training, thus making sure that citizens can be judged by their peers and that they have the right to participate in the administration of justice. It alleges that, after five calls, the accused could waive the right to be judged by lay juror-judges. The State explained that, although on December 22, 2003, the Constitutional Chamber of the Supreme Court of Justice had issued a binding ruling considering as undue delay the inability to establish a court with lay juror-judges after two calls, this ruling was not applicable at the time of the events.

36. The State also considers that the duration of the criminal proceedings was determined by the abundance of objections and absences by the parties, in which the petitioner played an important role. It points out that the petitioners contributed to the delays in the criminal proceedings, repeatedly requesting deferral of the oral hearings between January 29 and June 4, 2003 because of the victim's health. It alleges that this led the Thirtieth Judge of the Trial Court of First Instance of the Criminal Circuit Court of the Metropolitan Area of Caracas to declare in a justified fashion the discharge of the personal accusation filed by Linda Loaiza López, by virtue of her failure to appear in court on various occasions. In any case, on January 26, 2004, the Third Interim Tribunal of the Court of Appeals of the Criminal Circuit Court of Justice restored the status of plaintiff to Linda Loaiza, thus remedying the violations that the petitioner might have suffered.

37. The State observes that the petitioners refer to the recusals requests of the judges and magistrates during the criminal proceedings as if these constituted themselves an irregularity in the performance of the court's duties, without explaining that the case file provides clear information on this matter and that only a few were admitted. It also provides a list of five recusals presented by Linda Loaiza López during the proceedings, which constituted a tool for fine-tuning the process for her benefit when she felt that the impartiality of the judges and prosecutors involved had been undermined.

38. The State contends that, on November 5, 2004, a judgment of acquittal was issued regarding the injuries and other acts perpetrated against Linda Loaiza López. They consider that the petitioner has neglected to explain that this court ruling was preceded by an explanation of its grounds. The State asserts that the court found that the charges of qualified attempted murder and rape had been configured, based on the physical condition and severity of the injuries shown by Linda Loaiza López at the time of her rescue. Nevertheless, the court considered that the statements made by the victim were not upheld by other elements of evidence that could demonstrate that the injuries were inflicted inside the apartment where she was found, among other considerations.

39. The State highlights that the plenary of the National Congress, on November 6, 2004, agreed to establish a working team of congresspersons with respect to the court ruling of November 5, 2004. Afterwards, the Congress unanimously issued a public communiqué rejecting this judgment on November 26, 2004.

40. The State highlights that, on March 9, 2006, after the judgment of November 5, 2004 was appealed, the Seventh Trial Court of the Metropolitan Area of Caracas convicted Luis Carrera Almoína to six years imprisonment and one month of hard labor for the crimes of grievous bodily injuries and illegal restraint. It indicates that the judgment – published on May 22, 2006 - acquitted Luis Carrera Almoína of the crime of rape, among others. On May 8, 2008, the Court of First Instance for Implementation of Sentencing of the Criminal Circuit Court of the Metropolitan Area of Caracas declared that Mr. Almoína's main sentence had been fully served.

41. The State considers that the allegations of the petitioners regarding the failure to prevent and to effectively sanction the crime of rape are not even moderately substantiated by serious arguments. It alleges that the injuries inflicted upon Linda Loaiza López were not perpetrated by government officials and, therefore, the Venezuelan State cannot be held liable for them. The State agrees with the petitioners when they assert that the international concept of rape has changed recently, which is reflected both in Venezuelan society and in its legislation. The State indicates that the Criminal Code in Venezuela in 2001 provided the following with respect to the crime of rape in its Article 375: “whoever by means of violence or threats has forced any person, whether of one sex or the other, to engage in sexual intercourse, shall be sentenced to imprisonment for five to ten years....” It indicates that the reform of the Criminal Code in 2005 constituted an advance by providing a more flexible understanding of what is meant by the “crime of rape” in the Venezuelan legal system.

42. The State disagrees with the assertion by the alleged victims regarding the protection measures requested by the petitioners. It indicates that, on December 29, 2006, Linda Loaiza López requested measures of protection, as a result of which the Nineteenth District Prosecutor’s Office with full authority nationwide and the Superior District Attorney’s Office of the Metropolitan Area of Caracas ordered the Twenty-Sixth Control Court of First Instance of the Criminal Circuit Court of the Metropolitan Area of Caracas to issue measures of protection for the benefit of the alleged victim. These included continuous patrols and police stationing at the place of residence of the victim, for which it appointed Metropolitan Police Officers. Therefore the Venezuelan State concludes that there was no violation of Article 7(d) of the Belém do Pará Convention which refers to the adoption of “legal measures to require the perpetrator to refrain from harassing, intimidating or threatening the woman or using any method that harms or endangers her life or integrity, or damages her property.”

43. The State finally points out that it guarantees gender equality as a human right as embodied in Article 21 and other provisions of the Constitution of the Bolivarian Republic of Venezuela. It provides abundant information about a series of actions undertaken to improve the living conditions of Venezuelan women, such as the establishment of the National Women’s Institute (hereinafter referred to as “INAMUJER”), the adoption of the Law on Equal Opportunities for Women in 1999, and the Law on the Right of Women to a Life without Violence, among other measures.

#### **IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY**

##### **A. Competence**

44. The petitioners are authorized, in principle, by Article 44 of the American Convention to lodge petitions with the Commission. The petition indicates individual persons as alleged victims, regarding whom the State of Venezuela has pledged to respect and guarantee the rights enshrined in the American Convention. Regarding the State, the Commission points out that Venezuela has been party to the Convention since August 9, 1977, the date on which it deposited the respective instrument of ratification, and it is also party to the Belém do Pará Convention since February 3, 1995. The Commission is therefore competent *ratione personae* to examine the petition.

45. The Commission is also competent *ratione loci* to hear the petition, because the alleged violations of the rights protected by the American Convention and Belém do Pará Convention were said to have occurred within the territory of Venezuela, which is a State party to the above-mentioned treaties. The Inter-American Commission is also competent *ratione temporis* because the obligation to respect and guarantee the rights protected under the American Convention and Belém do Pará Convention was already in force on the date the facts alleged in the petition were said to have occurred. Finally, the Commission is competent *ratione materiae*, because the petition reports the possible violation of human rights protected under the American Convention and the Belém do Pará Convention.

##### **B. Exhaustion of domestic remedies**

46. According to Article 46(1)(a) of the American Convention, for a case to be admissible, it must make sure “that the remedies under domestic law have been pursued and exhausted in accordance



with generally recognized principles of international law.” This requirement is aimed at enabling national authorities to hear the alleged violation of the protected right and, if appropriate, resolve the matter before it is heard by an international body.

47. The parties in the present case sustain a controversy regarding the exhaustion of domestic remedies. The State alleges that the petition is inadmissible because the petitioner did not file or exhaust an extraordinary recourse, the Extraordinary Recourse for Constitutional Review, with the Supreme Court of Justice. The State considers that, if the petitioner believes that there has been a breach of a constitutional norm, either because an obvious mistake was made in interpreting the Constitution or because the interpretation and the application of the above-mentioned norm was completely ignored, the Extraordinary Recourse for Constitutional Review is suitable for challenging the judgment of last resort which ruled that the appeal filed by the attorney of the victim was “manifestly groundless.”

48. As for the petitioners, they allege that they exhausted the criminal remedy aimed at securing due punishment and redress for the serious acts of violence suffered by Linda Loaiza López. They contend that an investigation of the incidents was opened on July 19, 2001, which culminated on March 9, 2006, with the conviction of Luis Carrera Almoina with a six-year sentence for the crime of grievous bodily injuries and the illegal deprivation of liberty of Linda Loaiza López, ruled by the Seventh Trial Court of the Criminal Circuit Court of Justice of the Metropolitan Area of Caracas. They claim that this judgment was appealed with the Superior Court of Appeals and that the appeal was dismissed and that, afterwards they filed an appeal of last resort for overturning the previous judgment with the Supreme Court of Justice, which was turned down as “manifestly groundless” on May 11, 2007. The petitioners consider that the recourse for constitutional review proposed by the State is “extraordinary, exceptional, restricted and discretionary,”<sup>8</sup> and is not suitable for the purpose of reviewing whether domestic remedies were exhausted.

49. In the present case, the Commission must decide which remedy must have been exhausted depending on the circumstances, that is, the one that is deemed capable of settling the legal situation that has been violated.<sup>9</sup> In the present case, involving the alleged crimes of rape, injury and attempted murder, the suitable remedy is filing criminal proceedings to identify and punish those responsible; proceedings that the State must process promptly and with due diligence.<sup>10</sup> The criminal proceeding brought by the Prosecutor’s Office on July 19, 2001 in the framework of which Linda Loaiza López personally filed charges on November 19, 2001, is the one that must be considered for the purpose of determining the admissibility of the complaint. The petitioners contend that this criminal proceeding passed through of all its respective stages and definitively culminated on May 11, 2007 when the appeal of last resort filed by the petitioner was dismissed, and said ruling has not been disputed by the State.

50. The Commission also observes that the petitioners have submitted evidence of a large number of complaints they filed with various bodies of the State such as the Office of the Attorney General of the Nation, the Supreme Court of Justice, the Office of the Inspector General of the Courts, and the Commission for the Restructuring and Functioning of the Judiciary System, aimed at correcting irregularities committed by the prosecutors and judges involved in the criminal proceeding between 2001 and 2007, without leading to any concrete results; claims which have not been disputed by the State. In particular they stress that, in view of the dismissal on June 6, 2003 of the individual charges filed by Linda Loaiza López, the petitioners filed appeals for reconsideration and constitutional review on July 8 and

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<sup>8</sup> Observations by the petitioners sent on September 3, 2010.

<sup>9</sup> IACHR, Report No. 22/09, Petition 908-04 (Admissibility), Igmarr Alexander Landaeta Mejías, Venezuela, March 20, 2009, paragraph 69; Inter-American Court of Human Rights, *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C, No. 4, paragraph 63.

<sup>10</sup> See, for example, IACHR, Report No. 54/01 (Admissibility and Merits), Case 12.051, Maria da Penha Maia Fernandes, Brazil, April 16, 2001.

October 23, 2003, both of which were dismissed. The State has not submitted any information indicating that one of the above-mentioned appeals is being actively processed or is pending an internal ruling.

51. Regarding the Extraordinary Recourse for Constitutional Review mentioned by the State, the Commission observes, first of all, that this remedy is extraordinary, while in principle, the petitioners must file and exhaust ordinary remedies.<sup>11</sup> Second, the Commission has established that, when the petitioners allege irregularities throughout the various stages of a criminal proceeding, in principle they do not have to exhaust an extraordinary remedy because it is not the purpose of said recourse to correct alleged irregularities occurring in the framework of a proceeding of this nature.<sup>12</sup> In the present case, the petitioners allege that the investigation and criminal proceedings were affected by many irregularities, delays and omissions, and the above-mentioned extraordinary recourse is not aimed at remedying the alleged violations claimed by the petitioners.

52. On the basis of the factors indicated above, the Commission concludes that the petitioners exhausted the ordinary remedies of the criminal justice system. Therefore, their claims meet the requirement of prior exhaustion of domestic remedies provided for in Article 46(1)(a) of the American Convention.

### **C. Timeliness of the petition**

53. Article 46(1)(b) of the American Convention states that a petition must be lodged within six months as of the date when the petitioners are notified of the final judgment exhausting domestic remedies. The petition being examined herein was lodged on November 11, 2007, that is, within six months subsequent to the May 11, 2007 ruling of the Supreme Court of Justice dismissing the appeal of last resort filed by the victim's attorney. Therefore this requirement has been met.

### **D. Duplication and *res judicata***

54. The case file shows no evidence that the matter of the petition is pending before any other international proceeding for settlement; nor is the petition substantially the same as any petition examined by it or any other international body. Therefore, the requirements set forth in Articles 46(1)(c) and 47(d) of the American Convention have been met.

### **E. Colorable claim**

55. At this stage of admissibility, the Commission considers that it is not relevant to determine whether or not the alleged violations took place. For admissibility purposes, all the IACHR need to establish is whether the facts described tend to establish a possible violation of the American Convention, as stipulated in Article 47(b) of the American Convention. The standard for evaluating these admissibility requirements is different from the standard required for deciding the merits of a complaint. The Inter-American Commission must conduct a *prima facie* evaluation to determine whether or not the complaint establishes grounds for the apparent or potential violation of a right guaranteed by the American Convention.<sup>13</sup> The present review involves a summary analysis that does not imply a prejudgment of the merits, neither does it suggest any opinion on the merits of the dispute. By establishing two separate stages—one for admissibility and the other for the merits—the IACHR's own Rules of Procedure make the distinction between the examination the Commission must make to determine whether or not a complaint is admissible and the examination required to determine whether or not a violation has in fact occurred.<sup>14</sup>

<sup>11</sup> IACHR, Report No. 22/09, Petition 908-04 (Admissibility), Igmarr Alexander Landaeta Mejías, Venezuela, March 20, 2009, paragraph 47; IACHR, Report No. 40/08 (Admissibility), I.V., Bolivia, July 23, 2008, paragraph 73.

<sup>12</sup> IACHR, Report No. 22/09, Petition 908-04 (Admissibility), Igmarr Alexander Landaeta Mejías, Venezuela, March 20, 2009, paragraph 47.

<sup>13</sup> See IACHR, Report No. 128/01, Case 12.367, Herrera and Vargas ("La Nación"), Costa Rica, December 3, 2001, paragraph 50.

<sup>14</sup> See IACHR, Report No. 31/03, Case 12.195, Mario Alberto Jara Oñate and others, Chile, March 7, 2003.

56. In view of the elements of fact and law submitted by the petitioners and the nature of the matter submitted for its review, the IACHR finds that, in the present case, it must be established that the allegations of the petitioners regarding the alleged violation of the rights to humane treatment, to a fair trial, to the protection of the honor and dignity, and to live a life free from violence could characterize violations of the rights protected under Articles 5.1, 5.2, 8.1, 11.1, and 25 of the American Convention, all in connection with Article 1.1 of said instrument, and Article 7 of the Convention of Belém do Pará to the detriment of Linda Loaiza López. The Commission also observes that the facts may characterize a violation of Articles 5.1, 8.1 and 25 of the American Convention to the detriment of the next of kin of Linda Loaiza López identified in paragraph 2, note 2 of the present report.

57. The Commission also considers that the claims involve issues related to the right to equal protection of the law established in Article 24 of the American Convention, in relation to Article 1.1 of said instrument, which require a detailed examination in the merits stage. The petitioners contend that the case of Linda Loaiza López is paradigmatic of a context where acts of sexual violence remain largely unpunished, which is a problem that disproportionately affects women as a group and fosters the repetition of these acts. In this framework, the petitioners also argue that the absence of due diligence by the State in investigating and punishing the person allegedly responsible for the acts of sexual violence constituted a form of discrimination, a breach of the State's obligation not to discriminate, and to guarantee an access to justice in conditions of equality.

58. The Commission shall also consider, when examining the merits of the case, the State's possible failure to fulfill the obligations set forth in Article 2 of the American Convention. The petitioners allege that the Venezuelan law related to the crime of rape does not comply with current international human rights standards, which led to impunity for the acts of sexual violence sustained by Linda Loaiza López.

59. The Commission also considers pertinent to review under article 5, subsets 1 and 2, the claims of the petitioners regarding abuses and the treatment imparted on Linda Loaiza López by officials of the justice system during the investigation of the acts denounced and the criminal proceeding undertaken; the alleged lack of due diligence in the investigation and treatment of the crime of rape by the authorities; and the presumed lack of response regarding the threats against Linda Loaiza López and her family members. Within this framework, the petitioners also allege that public officials from the justice system discredited and blamed the victim for the acts of sexual violence during the challenged investigation and criminal proceeding, violating her honor and dignity; claims that the Commission considers pertinent to analyze under Article 11.1 of the American Convention.

60. The Commission considers that it does not have enough elements to establish the characterization of a possible violation of Article 4.1 of the American Convention and therefore it must declare that this claim is inadmissible.

## **V. CONCLUSIONS**

61. The Commission concludes that it is competent to review the claims submitted by the petitioners on the alleged violation of Articles 2, 5.1, 5.2, 8.1, 11.1, 24 and 25 of the American Convention, all in connection with Article 1.1 of said instrument, and Article 7 of the Convention of Belém do Pará, and that they are admissible, in conformity with the requirements set forth in Articles 46 and 47 of the American Convention. It also concludes that it must declare inadmissible the claims regarding the alleged violation of Article 4.1 of the American Convention.

62. Based on the arguments of fact and law set forth above and without prejudging the merits of the case,

## **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,**

**DECIDES:**

1. To declare the present petition admissible regarding the alleged violation of the rights recognized by Articles 2, 5.1, 5.2, 8.1, 11.1, 24 and 25 of the American Convention, all in connection with Article 1.1 of said instrument, and Article 7 of the Convention Belém do Pará to the detriment of Linda Loaiza López Soto.

2. To declare the present petition admissible regarding the alleged violation of the rights recognized by Articles 5.1, 8.1 and 25 of the American Convention, in connection with Article 1.1 of said instrument, to the detriment of the next of kin of Linda Loaiza López identified in paragraph two, note two, of the present report.

3. To declare the present petition inadmissible as regards the alleged violation of Article 4.1 of the American Convention.

4. To notify the parties of this decision.

5. To proceed with its examination of the merits of the case; and

6. To publish this decision and include in its Annual Report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on November 1, 2010. (Signed): Felipe González, President; Dinah Shelton, Second Vice-President; María Silvia Guillén, José de Jesús Orozco Henríquez, and Rodrigo Escobar Gil, members of the Commission.