

REPORT No. 103/11
PETITION 1142-04
ADMISSIBILITY
FREDY ALBERTO ÁLVAREZ AND FAMILY (COMUNA 13)
COLOMBIA¹
July 22, 2011

I. SUMMARY

1. On October 27, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition filed by the Interdisciplinary Group for Human Rights (hereinafter “the petitioners”) alleging that the Republic of Colombia (hereinafter “the State” or “the Colombian State”) is responsible for the death of a 12-year old boy, Fredy Alberto Álvarez, in a 2002 operation conducted in Comuna 13 in Medellín, department of Antioquía; and for the lack of due diligence on the part of judicial authorities in investigating and punishing the ones responsible, and for having suspended certain non-derogable guarantees during the period that the events alleged in the petition were said to have occurred.

2. The petitioners contend that the State is responsible for violation of the right to life, the right to humane treatment, the right to a fair trial, the right to protection of the family, the rights of the child, the right to judicial protection and the prohibition against suspending judicial guarantees, recognized in articles 4, 5, 8, 17, 19, 25, and 27 of the American Convention on Human Rights (hereinafter “the American Convention”), in conjunction with the general obligation to respect and ensure those rights, undertaken in Article 1(1) of the Convention. They further contend that the petition is admissible based on the exception to the rule requiring exhaustion of domestic remedies allowed under Article 46(2)(c) of the American Convention, given the unwarranted delay in rendering a final judgment in the criminal case. The State, for its part, argues that the petition is inadmissible because the criminal case is still underway. The State also contends that the petition does not state facts that tend to characterize violations committed by agents of the State; it also argues that if the Commission admitted the case, it would be performing the functions of an appellate court.

3. After examining the positions of the parties in light of the admissibility requirements spelled out in articles 46 and 47 of the Convention, the Commission concludes that it is competent to consider the petition, which is admissible with respect to the alleged violation of the rights recognized in articles 4, 5 and 19 of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of Fredy Alberto Álvarez. The Commission also considers the petition admissible as regards the possible violation of articles 5, 8 and 25 of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of the alleged victim’s next of kin. Finally, the Commission finds that the petition is inadmissible with respect to the alleged violation of articles 17 and 27 of the American Convention. Therefore, it is ordering that the parties be notified of the report and that it be published and included in the Commission’s Annual Report to the OAS General Assembly.

II. PROCESSING BY THE COMMISSION

4. The IACHR registered the petition as number 1142-04 and, following a preliminary analysis, forwarded it to the Colombian State on November 23, 2004, which was given two months in which to submit its observations. On July 11, 2005, the State requested that all the petitions “bearing the epigraph *Comuna 13*” be joined. The State’s request was forwarded to the petitioners for their observations.

5. On September 16, 2005, the Commission convened the parties for a hearing, which was held on October 18, 2005. On May 31, 2006 the Commission again asked the State to submit its

¹ In accordance with Article 17(2) of the Commission’s Rules of Procedure, Commissioner Rodrigo Escobar Gil, a Colombian national, did not participate in either the discussion or the decision on this petition.

observations. The State sent its reply on October 26, 2006, which was forwarded to the petitioners for comment. On June 28, 2007, the petitioners sent their response, which on May 6, 2009 was forwarded to the State for its comments.

6. On June 8, 2009, the State requested an extension, which the Commission granted. On July 8, 2009, the State submitted its response, which was forwarded to the petitioners for informational purposes.

III. THE PARTIES' POSITIONS

A. The petitioners

7. By way of background, the petitioners state that Comuna 13 in the city of Medellín is made up of 22 neighborhoods, home to some 130,000 families, the majority of whom live on an income that is below the minimum wage. The petitioners contend that because of the poverty conditions in Comuna 13, armed criminal groups have made this area their home and military operations to combat those groups have become more frequent and more aggressive toward the civilian population. The petitioners allege that it was in this embattled context that Fredy Alberto Álvarez was killed.

8. In the original petition, the petitioners stated that in an attempt to win back this territory from the guerrillas and from the so-called People's Armed Commandos (*Comandos Armados del Pueblo*, CAP),² on May 21, 2002 the State staged a military offensive in Comuna 13, called "Operation Mariscal". This operation allegedly left 39 persons injured and nine civilians dead, one of whom was the boy Fredy Alberto Álvarez. The civilians were reportedly caught in the crossfire and shot by military, who fired indiscriminately, without distinguishing the civilian population from the guerrilla groups.

9. Later, in their observations on the State's response, the petitioners changed their allegation and have since maintained that the death of the boy Fredy Alberto Álvarez happened against the backdrop of the non-stop law enforcement operations conducted in Comuna 13 during the first half of 2002 and during the course of which basic rights and the principles of international humanitarian law (hereinafter "IHL") were violated. The petitioners supplied information indicating that Fredy Alberto Álvarez had allegedly died on March 22, 2002, and not May 21, 2002 during "Operation Mariscal", as they had originally alleged.

10. As for the facts, they state that in 2002, more than 21 large-scale combined military operations were conducted, and countless small, lightning operations. Specifically, they provided information indicating that on March 22, 2002, in the area of Cuatro Esquinas and the "El Refugio del Niño" school, police and members of the Technical Investigation Corps of the Attorney General's Office (hereinafter the "CTI") were engaged in an exchange of fire with armed outlaw groups. The information indicates that the fighting had subsided when Fredy Alberto Álvarez, who was returning from his job selling candies, was walking from the school to his house and was shot in the leg; the shot came from the direction of the location where police and members of the CTI had positioned themselves.

11. The information states that at the time, the only persons on the street were the police; when the alleged victim's aunt and sister tried to come to his aid, the police fired on them. The two women called out asking them to hold their fire. The information states that a neighbor then helped the family members carry Fredy Alberto Álvarez to a health clinic; from there he was taken to a hospital, where he died on March 22, 2002.

12. The petitioners contend that the State violated its international obligation to protect and ensure the right to life and the right to humane treatment, and had allegedly attacked an unarmed and defenseless civilian population, in violation of the IHL principles of proportionality and distinction. The

² According to the petitioners, the operation was said to have involved combined forces consisting of almost 1,000 members of the National Army, the National Police Force attached to the Antioquia Police Command, the Colombian Air Force, the Department of Security ("DAS") and the Technical Investigations Corps of the Office of the Attorney General of the Nation ("CTI").

petitioners allege further that the operations were conducted as if a state of emergency had been declared, but without respecting the principle of legality and the basic rights. They contend that the State allowed the Army and the Police to perform the functions of a judicial police force, functions that the law does not allow them to perform, thus violating Article 27(2) of the Convention.

13. As for the exhaustion of domestic remedies, the petitioners observe that the Medellín Circuit Courts' Sixth Prosecutor's Office Assigned to the First Homicide Division began inquiries into the death of Fredy Alberto Álvarez. The petitioners state further that the Office of the Special Prosecutor for the Defense of Human Rights undertook an investigation that was closed on June 4, 2003, without any charges being brought.

14. The petitioners allege that no proper investigation was conducted that could have identified, prosecuted and punished those responsible, with the result that the investigation has been ineffective. They believe that there has been an unwarranted delay, triggering the exception to the rule requiring exhaustion of local remedies.

15. They further contend that the killing of a defenseless child is a violation of the mental and moral integrity of the alleged victim's mother and siblings³ and that the State failed to honor its obligation to protect the family. They also consider that the State failed to respect Fredy Alberto Álvarez' special condition as a child.

16. The petitioners therefore contend that the case is admissible and that the State has violated the rights recognized in articles 4, 5, and 19 of the American Convention to the detriment of Fredy Alberto Álvarez, and the rights recognized in articles 5, 8, 17 and 25, to the detriment of his mother and siblings. They also argue that the State violated Article 27 of the Convention.

B. The State

17. In response to the petitioners' claim, the State is alleging that the petition is inadmissible on the grounds that internal remedies have not been exhausted and that the conditions to allow the exception provided for in Article 46(2)(c) of the American Convention do not obtain. It also contends that because the petition does not state facts that tend to establish the violations being alleged, the State bears no responsibility for any such violations by virtue of the actions or omissions of its agents. It argues that it observed the rights to due process, access to justice and the judicial guarantees.

18. The State indicates that in the complaint originally filed, the petitioners categorically asserted that Fredy Alberto Álvarez lost his life during a confrontation between military and illegal armed groups in the course of "Operation Mariscal" on May 21, 2002; the petitioners also made a claim – unsupported by any evidence- that his death had allegedly been caused by the forces of law and order.

19. The State contends that "Operation Mariscal" was conducted on May 21, 2002, and that according to Fredy Alberto Álvarez' body removal report, No. 20981, his death occurred on March 22, 2002, in other words two months before "Operation Mariscal" took place. The State argues that because of that, "the petitioners changed their version of the facts, and are now claiming that the death of the minor Álvarez occurred during a police operation, and not during Operation Mariscal, as they had asserted in the original complaint."⁴

20. The State alleges that the operations conducted by law enforcement in Comuna 13 were done in strict observance of its duties to ensure the safety and protection of their inhabitants against criminal groups; therefore, the State fully complied with its duties to prevent violations of human rights by third parties. The State emphatically rejects the petitioners' attempts to make the case, without proof and

³ His mother, Luz Dary Álvarez, and his siblings Diana Cristina Álvarez Ríos, Lina Marcela Álvarez Ríos, Rubén Darío Álvarez, Carlos Andrés Álvarez Ríos and Fabio Nelson Herrera Álvarez.

⁴ Note from the State DDH/GOI No. 35989/1835, dated July 9, 2009, p. 6.

without arguments, that military operations were supposedly being carried out independently of the officially planned and executed Military Operations, in one of which Fredy Alberto Álvarez was alleged to have died. The State contends that the only operations conducted were those that were officially planned and carried out, and there were no armed clashes between members of the forces of law and order and armed outlaw groups.

21. The State contends that on March 23, 2002, the Office of Local Prosecutor 199 of the Single Rapid Response Unit ordered a preliminary investigation into the homicide of Fredy Alberto Álvarez, and the Sixth Unit of the Medellín Homicide and Public Security Crimes Division ordered the taking of evidence and various other measures in the investigation. The State observes that for reasons of jurisdiction, the investigation was transferred to the military justice system and, as a result of a positive conflict of competence, was later returned to the regular criminal justice system in August 2005. It indicates that the investigation by the National Human Rights and IHL Unit, in which a number of measures were taken, is still fully underway to clarify the facts and identify those responsible.

22. The State further contends that the Office of the Attorney General of the Nation conducted investigation 008-80636-2003 against members of the National Police for their alleged responsibility in the homicide of Fredy Alberto Álvarez. That investigation was closed “as no expert’s technical assessment allows us to state that the bullet that caused the minor’s death came from police agents; thus, it might well have come from the armed groups who were also firing their weapons.”⁵

23. The State further asserts that there is no proof that the Police played any part in the events, since there was no operation in that neighborhood on March 22, 2002; “therefore, this raises another question; it might have been one of the rival gangs, some of whom might have dressed as police officers to conceal their true identity.”⁶

24. The State alleges that the version of events given by the mother of Fredy Alberto Álvarez and her brother-in-law is that the boy was almost home when an armed clash between gangs broke out and a stray bullet hit the boy in the leg. When the exchange of fire ceased, they were able to retrieve the boy; they took him to the clinic, where they operated on him and he later died.

25. It states that a suit seeking direct reparations was filed with the Administrative Tribunal of Antioquia, which was decided in the State’s favor on October 18, 2005. The claims made in the suit were denied. The Tribunal wrote that

The mere fact that the National Police Force was present within the sector does not mean that it was responsible for the death of minor Álvarez, as that circumstance is not an indicator that suggests that members of that institution caused the harm done [...] there is no causal nexus between the activity of the police officers and the minor’s death since the testimony on record in the case tells how they picked up the injured boy and took him away, but not how he came to be wounded. Therefore, there is no evidence to support the claims being made [...] no blame can be attached to the Government.⁷

26. The State alleges also that were the IACHR to declare the petition admissible, it would be functioning as an appellate court, at least with respect to the issue of compensatory damages, as the contentious administrative suit was brought and decided at the domestic level. The State contends that the disciplinary and administrative rulings must be counted as decisions by a body having jurisdiction. The State reasons, therefore, that whoever they were, the persons who caused Fredy Alberto Álvarez’ death were not agents of the State and were not acting under its supervision, or with its protection, tolerance or acquiescence.

⁵ Note from the State DDH/GOI No. 52561/2460, dated October 26, 2006, p. 5.

⁶ Note from the State DDH/GOI No. 52561/2460, dated October 26, 2006, p. 5.

⁷ Note from the State DDH/GOI No. 35989/1835, dated July 9, 2009, p. 9.

27. It alleges that the exceptions being claimed to the rule requiring exhaustion of domestic remedies do not apply since the domestic courts reviewed the validity of the claims and no practice or policy was either ordered or tolerated by the State to obstruct recourse to the domestic remedies.

28. On the matter of the alleged unwarranted delay, the State makes reference to the criteria for determining the reasonableness of the time period. It reasons that given the homicide rate in Comuna 13 -434 for every 100,000 inhabitants- the situation is complicated. It adds that between mid 2002 and October 2004, that homicide rate was down by some 70%. It alleges that the situation is further complicated by the significant percentage of terrorist actions, kidnappings, extortion, seizure of property and forced displacement in the area.

29. It contends that despite the difficulties the authorities have been diligent in pursuing the respective cases and that the judicial measures and proceedings have been coherent and appropriate for the respective inquiries.

IV. ANALYSIS OF ADMISSIBILITY

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

30. The petitioners are entitled, in principle, to lodge petitions with the Commission under Article 44 of the American Convention. The petition names, as its alleged victims, individual persons whose Convention-protected rights the State of Colombia undertook to respect and ensure. With reference to the State, the Commission notes that Colombia has been a State party to the American Convention since July 31, 1977, the date on which it deposited its instrument of ratification. The Commission therefore has competence *ratione personae* to examine the petition. The Commission also has competence *ratione loci* to hear the matter since the petition alleges violations of rights protected by the American Convention occurring within the territory of Colombia, which is a State party to that treaty.

31. The Commission has competence *ratione temporis* inasmuch as the obligation to respect and ensure the rights protected under the American Convention was already in effect for Colombia on the date on which the facts alleged in the petition were said to have occurred. Finally, the Commission has competence *ratione materiae* since the petition describes possible violations of human rights that are protected by the American Convention.

B. Admissibility requirements

1. Exhaustion of domestic remedies

32. Article 46(1)(a) of the Convention requires that in order for the Commission to admit a claim alleging violations of the American Convention, the remedies under domestic law must have been pursued and exhausted in accordance with the generally recognized principles of international law.⁸ Article 46(2) of the Convention provides that the requirement of prior exhaustion of domestic remedies shall not be applicable when: (i) the domestic legislation of the state concerned does not afford due process of law for the protection of the right or rights that have allegedly been violated; (ii) the party alleging violation of his rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or (iii) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

33. In the present case, the State contends that the petition does not satisfy the rule requiring prior exhaustion of domestic remedies inasmuch as a criminal investigation is still ongoing. For their part,

⁸ I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para. 48; *Case of Tibi v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, para. 48; and *Case of Herrera Ulloa v. Costa Rica*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 2, 2004. Series C No. 107, para. 80.

the petitioners allege that the exception allowed under Article 46(2)(c) of the American Convention applies in view of the unwarranted delay in the criminal case.

34. Under Article 31(3) of the Commission's Rules of Procedure and in keeping with the case law of the Inter-American Court, whenever a State claims that a petitioner has not exhausted the relevant domestic remedies, it is required to demonstrate that the remedies that have not been exhausted are "adequate" for remedying the alleged violation and that the function of those remedies within the domestic legal system is suitable to address an infringement of a legal right.⁹

35. In view of the arguments made by the parties, the first order of business is to determine which domestic remedies must be exhausted in the instant case. The Inter-American Court has written that the only remedies that need be exhausted are those that are suitable to address the violations alleged to have been committed. It held that:

Adequate domestic remedies are those which are suitable to address an infringement of a legal right. A number of remedies exist in the legal system of every country, but not all are applicable in every circumstance. If a remedy is not adequate in a specific case, it obviously need not be exhausted. A norm is meant to have an effect and should not be interpreted in such a way as to negate its effect or lead to a result that is manifestly absurd or unreasonable.¹⁰

36. Precedents established by the Commission hold that whenever a crime has been committed that is prosecutable by the State, the latter has the obligation to advance and expedite criminal proceedings¹¹ and that in such cases, prosecution by the State is the proper way to clarify the facts, bring the responsible parties to trial, establish the appropriate penalties, and make any other forms of pecuniary damages possible. The Commission considers that the facts alleged by the petitioners in the instant case involve an alleged violation of basic rights, which under Colombia's domestic laws can be prosecuted at the State's initiative; therefore, it must be the State itself that takes the lead in prosecuting this case.

37. In the instant case, after the events of March 22, 2002, the Prosecutor's Office launched a preliminary investigation on March 23, 2002. The investigation was then transferred to the military justice system. However, as a result of a positive conflict of competence, the case was returned to the regular criminal justice system in August 2005, where it is currently in its preliminary phase with the National Human Rights and International Humanitarian Law Unit (UNDH).

38. The Commission also observes that as a general rule, a criminal investigation must be conducted swiftly to protect the victims' interests, preserve the evidence, and even safeguard the rights of any persons who come under suspicion during the investigation.¹² Furthermore, as the Inter-American Court has held since its earliest judgments, while every criminal investigation must meet a number of legal requirements, the rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.¹³

39. The Commission notes that both parties agree that the alleged facts that are the subject of the petition occurred on March 22, 2002, and the State has not reported any recent investigative activity. Nine years have passed since the alleged events, yet there are no signs of recent activity on the case and the criminal case is still in its preliminary phase. This implies an unwarranted delay under the

⁹ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 64.

¹⁰ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 64.

¹¹ IACHR. Report No. 52/97, *Arges Sequeira Mangas*, February 18, 1998, paragraphs 96 and 97; Report No. 55/97, *Juan Carlos Abella*, November 18, 1997, para. 392, and Report No. 62/00, *Hernando Osorio Correa*, October 3, 2000, para. 24.

¹² IACHR, Report No. 87/06, *Carlos Alberto Valbuena and Luis Alfonso Hamburger Diazgranados*, October 21, 2006, para. 25; Report No. 70/09, *José Rusbell Lara*, August 5, 2009, para. 31; and Report No. 15/09, *Massacre and Forced Displacement of Montes de María*, March 19, 2009.

¹³ I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 93.

terms of Article 46(2)(c) of the American Convention. Hence, the petitioners are exempt from the rule requiring that they exhaust domestic remedies before turning to the inter-American system for protection.

40. As for the contentious-administrative and disciplinary proceedings to which the State alludes, the Commission has previously held that decisions issued in disciplinary and contentious-administrative jurisdictions are not adequate remedies that meet the requirements of Article 46 of the American Convention. The contentious-administrative jurisdiction is a mechanism for oversight of the State's administrative activity, and only allows for compensation for any damages and injuries caused by abuse of authority. Therefore, such a proceeding is neither adequate nor suitable in the present case.¹⁴

41. Finally, the IACHR observes that the rule of prior exhaustion in Article 46(2) of the American Convention is closely related to the determination of possible violations of rights recognized in the American Convention –such as the right to judicial guarantees and the right to judicial protection-. Therefore, the examination of compliance with these provisions must consider each one's nature and purpose. Hence, the Commission will examine the factors that prevented exhaustion of the domestic remedies in the merits phase.

2. Deadline for filing a petition with the Commission

42. Under Article 46(1)(b) of the American Convention, in order for the Commission to find a petition to be admissible, it must be lodged within six months of the date on which the party alleging violation of his or her rights was notified of the final judgment. In this regard, Article 32 of the Commission's Rules of Procedure establishes that in cases in which the exceptions to prior exhaustion of domestic remedies are applicable, the petition must be lodged within a reasonable period of time, as determined by the Commission. For that purpose, the Commission will consider the date on which the alleged violation of rights occurred and the circumstances of each case.

43. In the instant case, the petition was received on October 27, 2004, the facts alleged in the complaint were said to have started on March 21, 2002, and their effects in terms of the alleged failure of the administration of justice to produce results are said to have continued up to the present day. Hence, in view of the context and the characteristics of this case and considering that the criminal case is still in its preliminary phase, the Commission considers that the petition was filed within a reasonable period of time and finds, therefore, that the admissibility requirement concerning the filing deadline has been satisfied.

3. Duplication of proceedings and *res judicata*

44. Nothing in the case file indicates that the subject of the petition is pending in another international proceeding for settlement or that it is substantially the same as any other petition already examined by this Commission or another international body. Hence, the requirements set forth in Articles 46.1.c and 47.d of the Convention have been met.

4. Characterization of the facts alleged

45. The petitioners allege that the State is responsible for the death of Fredy Alberto Álvarez, who reportedly died in a clash between law enforcement and outlaw groups; it also alleges that the State is responsible for not having investigated, prosecuted and punished the facts in a proper and timely manner; the petition also claims that the State is responsible for *de facto* suspension of certain non-derogable judicial guarantees at the time the events that are the subject of the petition occurred. The State, for its part, argues that it is not responsible for the alleged violations by virtue of any action or omission of its agents and that it observed the rights to due process, access to justice and judicial guarantees. It therefore contends that no violation of the Convention is at issue in this case and that an

¹⁴ IACHR. Report No. 68/09, *Wilfredo Quiñónez Barcenas and family*, August 5, 2009, para. 42, and Report No. 123/10 *Gerson Jairzinho González Arroyo et al*, para. 45.

investigation is pending. On the matter of compensation, the State claims that the IACHR would be performing the function of an appellate court.

46. Given the information and arguments of both parties and the nature of the matter put to it for consideration, and because there are indications that the National Police may have been involved in the events at issue in the complaint, the IACHR concludes that in instant case, it must find that *prima facie*, the petitioners' claims regarding the alleged violation of the rights to life, to humane treatment and the rights of the child could constitute violations of the rights protected under articles 4, 5 and 19 of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of Fredy Alberto Álvarez. It must also find that the petitioners' claims could constitute a violation of the right to humane treatment and the rights to judicial guarantees and judicial protection recognized in articles 5, 8 and 25 of the American Convention, in conjunction with Article 1(1) thereof, to the detriment of the alleged victim's next of kin.

47. In keeping with the standards regarding interpretation of the human rights established in the American Convention,¹⁵ the criteria established by the Inter-American Court of Human Rights regarding the tendency to integrate the regional and universal systems for the protection of human rights,¹⁶ and the comprehensive international *corpus juris* that exists for the protection of the child,¹⁷ the Commission will interpret the scope and content of the rights alleged to have been violated to the detriment of the child Fredy Alberto Álvarez on the basis of the provisions of the United Nations Convention on the Rights of the Child.¹⁸

48. Inasmuch as these aspects of the petition are not manifestly unfounded or obviously out of order, the Commission considers that the requirements established in articles 47(b) and (c) of the American Convention have been met. Finally, the Commission considers that the information presented by the petitioners was not sufficient as to tend to characterize a possible violation of the rights protected under articles 17 and 27 of the American Convention.

V. CONCLUSIONS

49. The Commission concludes that it is competent to examine the claims made by the petitioners regarding the alleged violation of articles 4, 5, 8, 19 and 25 of the Convention, in conjunction with Article 1(1) thereof, and that the claims are admissible under the requirements established in articles 46 and 47 of the American Convention. It also concludes that the claims made with respect to the alleged violation of articles 17 and 27 of the American Convention must be declared inadmissible.

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

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

¹⁵ American Convention, Article 29, Restrictions Regarding Interpretation. "No provision of this Convention shall be interpreted as: [...] b. restricting the enjoyment or exercise of any right or freedom recognized by virtue of the laws of any State Party or by virtue of another convention to which one of the said states is a party[...]"

¹⁶ I/A Court H.R., "Other Treaties" Subject to the Consultative Jurisdiction of the Inter-American Court (Article 64 of the American Convention on Human Rights). Advisory Opinion OC-1/82 of September 24, 1982, Series A No. 1, paragraph 41.

¹⁷ I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, paragraph 194. *Case of the "Juvenile Re-education Institute"*. Judgment of September 2, 2004. Series C No. 112, paragraph 148. *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 166. I/A Court H.R., *Judicial Condition and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paragraphs 24, 37, 53.

¹⁸ IACHR. Report No. 74/09 *Mickey Alexis Mendoza Sánchez and Family*, August 5, 2009, paragraph 29, and Report No. 72-09 *Herson Javier Caro (Javier Apache) and Family*, August 5, 2009, paragraph 34.

1. To declare the present petition admissible with respect to articles 4, 5, 8, 19 and 25 of the American Convention, in conjunction with Article 1(1) thereof.

2. To declare the present petition inadmissible with respect to articles 17 and 27 of the American Convention.

3. To notify the parties of this decision

4. To proceed with the analysis of the merits of the case.

5. To publish this decision and include it in the Annual Report to be presented to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 22nd day of July 2011. (Signed): Dinah Shelton, President; José de Jesús Orozco Henríquez, First Vice-President; Felipe González, Luz Patricia Mejía Guerrero, and María Silvia Guillén, Commissioners.