

**REPORT No. 121/11<sup>1</sup>**  
PETITION 96-04  
ADMISSIBILITY  
MARÍA ANGÉLICA GONZÁLES, OLIMPIADES GONZÁLES AND FAMILY MEMBERS  
VENEZUELA  
October 19, 2011

**I. SUMMARY**

1. On January 22, 2004, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") received a complaint presented by Olimpiades González<sup>2</sup> and María Angélica González, (hereinafter "the petitioners"<sup>3</sup>), against the Bolivarian Republic of Venezuela, (hereinafter "the State" or "Venezuela"). The petition alleges a failure to provide compensation for the preventive detention of the Wayúu indigenous members of the González family: Fernando, María Angélica and Belkis Mirelis González and Wilmer Antonio Barliza González<sup>4</sup>, who had been arrested on November 23, 1998, tried and acquitted; and of Olimpiades and Luís Guillermo who had been arrested on January 29, 1999 and released due to a lack of evidence implicating them in criminal responsibility in the State of Zulia. As soon as the petition proceedings had begun, María Angélica González conveyed news of the murder of Olimpiades González, which occurred on December 11, 2006, including allegations of the lack of an investigation and punishment for those responsible for his death.

2. The petitioners allege that the State is responsible for the violation of the rights to personal integrity, personal liberty, to compensation, and to judicial protection, enshrined in Articles 5, 7, 10, and 25 of the American Convention on Human Rights (hereinafter "the American Convention"), all in conjunction with the general obligation to respect and guarantee rights, set out in its Article 1.1. For its part, the State alleges that: (1) compensation is unfounded, given that the preventive detention was in accordance with the law, (2) the domestic remedy relating to the interpretation of the rule recognizing the right to compensation has not been exhausted; and (3) that the investigation into Olimpiades González's death is still ongoing.

3. After considering the position of the parties in the light of the requirements on admissibility set out in Articles 46 and 47 of the American Convention, the Commission concludes that it is competent to examine the claim, and that it is admissible for the alleged violation of the rights enshrined in Articles 5, 7, and 25 of the American Convention, in relation to its Articles 1.1, and 2. In addition, the Commission considers admissible a possible violation of Articles 4 and 8 of the American Convention in relation to its Articles 1.1 and 2. Finally, the Commission concludes that the petition is inadmissible as regards the alleged violation of Article 10 of the American Convention and that the allegation as to the lack of compensation for the preventive detention of Olimpiades and Luís Alberto González is inadmissible due to a failure to exhaust domestic remedies. Therefore the Commission decides to notify the report to the parties, to order its publication and to include it in its Annual Report to the General Assembly of the OAS.

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<sup>1</sup> In accordance with the provisions of Article 17.2 of the Commission's Rules of Procedure, Commissioner Luz Patricia Mejía, of Venezuelan nationality, did not participate in either the deliberations or the decision in the present case.

<sup>2</sup> Died on December 11, 2006.

<sup>3</sup> After Olimpiades González' death, his cousin Dan William Barliza González became the petitioner.

<sup>4</sup> Deceased.

## II. PROCEEDINGS BEFORE THE COMMISSION

4. The IACHR registered the claim under No. 96-04, and after undertaking a preliminary examination, on December 20, 2004, sent it to the State for its observations. On February 17, 2005, the State presented its response, which was sent to the petitioners for their observations. On May 4, 2005, the petitioners presented their response, which was sent to the State for its observations. On August 8, 2005, the State requested an extension of time to respond. On November 15, 2005, the State presented its response, which was sent to the petitioners for them to present their observations.

5. On March 22, 2006, the petitioners presented an additional brief, which was sent to the State for its observations. On May 17, 2006, the State pointed out that in a meeting held with the petitioners, they had reached a friendly settlement agreement and sent the proposal signed by both parties. This agreement included a series of measures to resolve the claims raised as well as a time frame for adopting them. On June 20, 2006, the Commission sent this communication to the petitioners and formalized the beginning of the friendly settlement stage, putting itself at the disposal of the parties and requesting that within a time limit of one month they should comment on the said offer.

6. On June 22, 2006, the petitioners requested that the Commission conduct a follow-up and review on the fulfillment of the agreement. This communication was sent to the State for its observations. On July 20, 2006, the State reiterated its willingness to arrive at a friendly settlement and indicated on May 16, 2006 that it had drafted "an initial document establishing a number of parameters in the search for a friendly settlement between the parties."

7. On October 23, 2006, Olímpíades Gonzáles made it clear that the State had not fulfilled any of the points of the agreement and that the State had shown no willingness in this regard. The Commission was therefore requested to intervene and "bring the matter before the Inter-American Court for a definitive sanction" should the State persist in its failure to comply. It was also made clear that the State had not granted the protection ordered by the Second Control Tribunal, and that he was being threatened and was in a vulnerable condition. This communication was sent to the State for its observations on December 5, 2006.<sup>5</sup>

8. On August 28, 2007, the Commission informed the parties that it had concluded its intervention in the friendly settlement proceedings due to the lack of any meaningful response from the State and that it had decided to continue with the petition proceedings. On October 26, 2007, the Commission requested additional information from the petitioners. On March 7, 2008, the petitioners presented their response, which was sent to the State for its observations.

9. On August 22, 2008, the petitioners filed additional information, which was sent to the State together with a reiteration of a previous request for information. On March 25, 2011, the petitioners presented additional information, which was sent to the State for its observations. On May 26, 2011, the State asked for an extension of 10 days in order to present its observations, which was granted by the Commission. The State presented its response on June 22, 2011, which was sent to the petitioners for their information.

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<sup>5</sup> Olímpíades Gonzáles was allegedly murdered on December 11, 2006.

### III. POSITION OF THE PARTIES

#### A. The Petitioners

10. The petitioners allege that on November 23, 1998, the Anti-Homicide Brigade/Branch of the Zulia Technical Judicial Police Unit, issued a "warrant to proceed" for the death of Carmen Fernández. As a result of preliminary investigations, on the same day, Fernando, María Angélica and Belkis Mirelis Gonzáles were arrested.

11. They maintain that on December 10, 1998, the First Criminal Judge of First Instance for the State of Zulia (hereinafter the "First Instance Judge") ordered arrest warrants against these three individuals; the first as aider and abettor and the other two as perpetrators in the crime of first degree murder. On January 8, 1999, the accused lodged an appeal against the preventive detention decision, and the Fourth Superior Criminal Judge for the State of Zulia (hereinafter the "Fourth Judge") upheld the First Instance Judge's decision.

12. They point out that on January 29, 1999, the Intelligence Section of the Zulia State Police preventively detained took Olimpiades and Luís Guillermo Gonzáles, and Wilmer Antonio Barliza Gonzáles, and placed them under the jurisdiction of the Technical Judicial Police Unit. Subsequently, by a decision of February 12, 1999, the First Instance Judge ordered their detention as aiders and abettors in the crimes of first-degree murder (of Carmen Fernández) and illegal possession of firearms, at the Maracaibo National Penitentiary.

13. They indicate that on March 5, 1999, the three detainees lodged an appeal against the detention order and on April 21, 1999, the Ninth Superior Criminal Judge of the State of Zulia (hereinafter the "Ninth Judge") decided: i) to uphold the detention of Wilmer Antonio Barliza Gonzáles as material aider and abettor in the above-mentioned crimes; and ii) lift the detention order issued against Olimpiades and Luís Guillermo Gonzáles, given the absence of "several, well-founded, serious and consistent evidence of guilt" implicating their criminal responsibility.

14. They allege that on July 30, 1999, the Fourth Public Prosecutor of the same judicial circuit (hereinafter also the "Fourth Prosecutor") filed charges against Fernando, María Angélica and Belkis Mirelis Gonzáles and Wilmer Antonio Barliza Gonzáles, for the crimes of intentional homicide as material perpetrators and illegal possession of firearms. Said charges were to be considered by the Ninth Control Tribunal for the State of Zulia (hereinafter "the Ninth Court").

15. They point out that on August 2, 1999, the defense of the accused requested an alternative precautionary measure by virtue of the entry into force of Article 265 of the Organic Code of Criminal Procedure (hereinafter "COPP"), and on August 16, 1999, a preliminary hearing was held before the Ninth Court, which decided: i) to admit the charges against the four individuals named in the previous paragraph for the crime of intentional homicide; ii) to order a trial against them; and iii) to maintain the preventive detention, since they were an alleged 'flight risk'. They indicate that the trial was assigned to the Second Trial Judge for the State of Zulia (hereinafter "the Second Judge"), who fixed the oral and public trial for September 28, 1999. They indicate that the trial concluded on September 29, 1999, with an acquittal verdict, a decision that became final on October 20, 1999, in the absence of an appeal.

16. The petitioners allege that by virtue of the criminal procedure law in force at the time when the verdict was delivered, the State ought to have provided compensation for having kept them in preventive detention for a criminal trial that ended in an acquittal decision. They stress that Articles 284 and 288 of COPP<sup>6</sup> establish this right to compensation. In this regard, they allege that on May 24, 2001,

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<sup>6</sup> The petitioners cite Article 284 of COPP: "Compensation. When, due to a reconsideration of a judgment, the accused is acquitted, he shall be compensated by reason of the time spent in detention. The fine, or the excess, shall be remitted, with the monetary punishment given, according to the corresponding instructions of the Central Bank of Venezuela."

Art. 285: "Determination. The Court herewith ordering the revision on which compensation is based, shall fix the amount calculating a day of punishment or measure of security as a day's wages determined by the judge of first instance. Any prior

they requested compensation, reparations and restitution for their deprivation of liberty from the Second Judge. They indicate that this request was admitted and the State was ordered to pay compensation in the amount of 46,170,012 Bolivars to the four alleged victims through the Republic's Attorney General's Office (hereinafter the "FGR"). On August 28, 2001, they filed a written complaint against this amount before the Second Judge, which was processed as a reconsideration appeal and declared inadmissible on September 6, 2001.

17. Besides the above, the petitioners allege that on September 19, 2001, Olimpiades Gonzáles was the victim of an attempt on his life with three shots from persons unknown when he was travelling to the Public Prosecutor's Office to request a response to the compensation claim. They stress that as a result, he requested judicial protection, and this was granted by the State of Zulia Enforcement Court. It was not implemented however, and subsequently the case file relating to the protection was archived.

18. They allege that on October 17, 2001, they requested from the Second Judge enforcement of the compensation decision, a request that was answered on October 30, 2001 to the effect that the decision was not yet final since, given the irreparable encumbrance on the State, it should have been expressly notified to the FGR. They indicate that after this notification, on October 29, 2001, the FGR lodged an appeal. The appeal was decided on November 26, 2001 by Chamber No.3 of the Court of Appeals, which declared it well-founded and annulled the contested decision, based on the fact that the preventive detention had been legal under the Code of Criminal Prosecution (hereinafter the "CEC") - in force at the time of the detention - under which the required prerequisite had been fulfilled, i.e.: the existence of indicia suggesting that the accused had committed typical and illegal conduct.

19. The petitioners point out that they filed a cassation appeal against this decision, which was declared inadmissible on June 13, 2003, since it did not concern an appealable decision during the said appeal. They indicate that on May 29, 2003, they filed a complaint for reconsideration before the Constitutional Chamber of the Supreme Court of Justice, which declared it groundless on July 30, 2003. Additionally, on January 21, 2004, they had lodged an interpretative appeal on a point of law, which was declared inadmissible on October 5, 2005, by the Criminal Cassation Chamber of the Supreme Court of Justice.

20. As legal arguments, the petitioners alleged that despite the deprivation of liberty taking place in accordance with the CEC in force at the time, the said detention violated Article 7 of the American Convention, since personal freedom must be the "guarantee rule of the same process" so that preventive detention must only be applied in exceptional circumstances. They indicate that this deprivation of liberty caused them economic, social and cultural repercussions; and prevented them from exercising the rights enshrined in the Constitution. The petitioners make it clear that although the CEC allowed the application of preventive detention on the sole basis of the existence of indicia of responsibility - which, in practice meant that detention during trial was the rule not the exception - they requested on repeated occasions the application of other types of substituted precautionary measures, arguing their right to be tried whilst at liberty, in the light of the American Convention.

21. They point out that when the COPP came into force, which established the necessity of proving in each particular case the existence of a risk of absconding, or of a possibility of obstructing the

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compensation shall not prevent anyone claiming subsequent compensation, to be claimed before the appropriate competent courts."

Art. 286: "Judicial deprivation of liberty. This compensation shall also be granted when there is a declaration of an inexistent fact, when it does not concern a criminal matter, or the participation of the accused is not proven, when the latter has suffered a deprivation of liberty during the proceedings."

Art. 287: "Obligation. The State, under the circumstances of Articles 284 and 286, is obliged to make payment, without prejudice to its right to collect from the judge in case the latter has committed an offense.

Art. 288: "More favorable law. The enactment of any subsequent more favorable law shall not allow for compensation as regulated herein."

trial process, the alleged victims again requested the application of alternative precautionary measures. They allege that the response decision indicated that there was a risk of absconding, without taking into account the fact that the detainees had roots in the city of Maracaibo and also had offered security and all legal guarantees.

22. They argue that the violation of their right to judicial protection is based on the mistaken interpretation of the law by the Court of Appeals, as well as the lack of any possible appealing this decision via cassation and reconsideration, which implies a situation of defenselessness.

23. The petitioners also alleged that during their stay in the Sabaneta National Penitentiary of the State of Zulia, they were incarcerated with convicted criminals, which constituted a violation of their right to physical integrity.

24. Besides, they allege that in mid-November 2005, some of their sisters, *inter alia*, María Angélica Gonzáles, were arrested on similar grounds. They indicate that on May 3, 2006, Olimpiades Gonzáles was unlawfully detained for two hours by a commission of the National Guard.

25. The petitioners stress that Olimpiades Gonzáles was murdered on December 11, 2006, as he was returning home from the Public Prosecutor's Office and the Palace of Justice after taking procedural steps in search of justice. They indicate that Olimpiades Gonzáles entered a roast chicken vendor's at the side of his house, when Hilario Segundo Fernández shot him three times with a 9mm firearm in front of the premise's customers and then fled. They allege that Maria Angélica and Arianny Gonzáles, Olimpiades sisters, came out of their house on hearing the first shot and managed to see when Hilario Fernández fired the other two shots at Olimpiades. They indicate that after the arrival of one of his brothers, his father and sister, Laura Joselin, took him to the university hospital in Maracaibo, where he died some minutes after arriving.

26. They allege that after Olimpiades González's death, the investigation into his murder was assigned to the 11th Prosecutor of the Public Prosecutor's Office and that there has still not been any arrest warrant issued against the alleged murderer, who is still at large. Finally, the petitioners allege that the Constitution of Venezuela establishes that everyone has the right to protection by the State, through its security organs of the people regulated by law, when faced with threatening, vulnerable or risky situations for the physical integrity of persons and their property, and for the enjoyment of their rights and fulfillment of their duties.

## **B. The State**

27. In response to the petitioners' claim, the State maintains that the petition is inadmissible for lack of a colorable claim of violations of the American Convention. It argued that the alleged compensation was inappropriate, since, as the petitioners had indicated, the alleged victims' deprivation of liberty was in accordance with the law and there was a lack of factual elements required by the domestic legislation for it to apply.

28. It alleges that, contrary to the facts of the current petition, State liability only ensues in circumstances where deprivation of liberty is suffered for a length of time greater than that of the sentence, since the harm is caused due to the excessive delay in the resolution of cases. It alleges that the deprivation of liberty during a criminal trial is, in principle, lawful since it enables an investigation into the truth. It stresses that the very foundation of the criminal trial process permits, within reasonable limits, the deprivation of the liberty of individuals on trial, and that the detention of the alleged victims was in accordance with the principle of reasonableness. The State maintains that neither its responsibility, nor the compensation resulting therefrom, can be measured in the abstract, but in the light of the actual circumstances of each case, since the foundation of the right to compensation ought to be linked to the determination of the harm suffered.

29. With regard to the alleged violation of the right to judicial protection, it argued that simply because the alleged victims disagreed with the domestic decisions, does not imply a violation of Article 25

of the Convention. The State stresses that the petitioners appealed to each judicial instance and had access to all domestic remedies, each time obtaining a decision of the competent courts.

30. The State alleges that the petitioners had the wrong attitude towards the mechanisms of domestic law, since the remedy invoked for the interpretation on a point of law "was not used to obtain from the Judicial Authorities a decision which would cover the contents and extent of the legal texts, but to quash the Court of Appeals' decision." Finally, it argues that domestic remedies have not been exhausted, since there still exists the possibility that the petitioners might correctly file the remedy for interpretation on a point of law, which had been declared inadmissible.

31. As regards the attack against Olimpiades Gonzáles occurring on September 19, 2001, the State alleges that there has been a failure to exhaust domestic remedies. Specifically, it indicates that when the State became aware of the attack, it requested that the appropriate judge issue a *tutela* in favor of Olimpiades Gonzáles, and began an investigation, which was archived on June 13, 2002, by the Public Prosecutor. It indicates that Olimpiades Gonzáles requested that the investigation be reopened and revealed the name of his attacker (Roberto Meneses Fernández), so that the Public Prosecutor proceeded to reopen the investigation. It maintains that the person allegedly responsible for the attack was speedily brought before the competent court, which ordered, on July 28, 2004, a precautionary measure of periodical reporting before the judge. It indicates that the domestic remedy was thereby effective and appropriate for the protection of the victim.

32. With respect to Olimpiades Gonzáles' death, the State alleges that on December 11, 2006, it ordered the start of an investigation for the crimes against the individuals presumably committed by Hilario Segundo Fernández. It indicates that the Prosecutors of the Seventeenth National Level Public Prosecutors Office with Full Competence and the Eleventh of the Judicial District of the State of Zulia are in charge of this investigation. It alleges that a series of procedural steps have been taken, and that an arrest warrant has been issued against the alleged perpetrator.

#### **IV. ANALYSIS OF ADMISSIBILITY**

##### **A. Commission's Competence *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci***

33. The petitioners are entitled, in principle, under Article 44 of the American Convention to lodge claims before the Commission. The petition states that the alleged victims are individuals, with respect to whom the State of Venezuela has undertaken to respect and guarantee the rights enshrined in the American Convention. As far as concerns the State, the Commission points out that Venezuela has been a State party to the American Convention since August 9, 1977, the date upon which it deposited its instrument of ratification. Therefore, the Commission has competence *ratione personae* to examine the petition.

34. The Commission has competence *ratione loci* to examine the petition since it alleges violations of rights protected in these instruments, which took place within the territory of Venezuela, a State party to the said treaties. The Commission has competence *ratione temporis* regarding the obligation to respect and guarantee the rights protected in the American Convention as they were in force for the State on the date on which the actions alleged in the petition occurred. Finally, the Commission has competence *ratione materiae*, because the petition complains of possible violations of human rights protected by the American Convention.

##### **B. Requirements for the Admissibility of the Petition**

###### **1. Exhaustion of Domestic Remedies**

35. Article 46.1.a of the American Convention provides that, in order for a petition filed under Article 44 of the Convention to be declared admissible by the Inter-American Commission, it is necessary that domestic legal remedies have been begun and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow the national authorities to become aware of the alleged violation of a protected right and, if appropriate, to have the opportunity of resolving the matter before being examined by an international jurisdiction.

36. The Commission observes that the purpose of the current petition refers specifically to the facts related on the one hand to the alleged victims' arbitrary deprivation of liberty and the domestic trial aimed at obtaining compensation, and on the other hand to the alleged lack of protection for Olimpiades Gonzáles on the part of the State and the lack of results in the criminal investigation started due to his death.

37. In view of the various domestic remedies begun firstly by four of the alleged victims and then by two of them, the Commission will examine the fulfillment of the requirement of the exhaustion of domestic remedies in the following order: i) the preventive detention of Belkis Mirelis, Fernando and María Angélica Gonzáles and Wilmer Antonio Barliza Gonzáles and the alleged lack of an effective remedy for obtaining compensation; ii) the preventive detention of Olimpiades and Luís Guillermo Gonzáles; and (iii) in relation to the death of Olimpiades Gonzáles.

###### **a. Regarding the Preventive Detention of Belkis Mirelis, Fernando and María Angélica Gonzáles and Wilmer Antonio Barliza Gonzáles and the Alleged Lack of an Effective Remedy for Obtaining Compensation**

38. The petitioners allege that the preventive detention ought to apply as the exception and that the CEC allows the application of preventive detention on the sole basis of the existence of indicia of responsibility. In order to impugn the decision of preventive detention, the petitioners filed an appeal, which was denied and subsequently requested alternative precautionary measures, arguing their right to be tried while at liberty, which was denied.

39. After the judgment acquitting them, the petitioners continued with their claim for the alleged violation of their right to personal liberty with a suit for compensation for the alleged arbitrary deprivation of liberty, which was initially declared to be well founded. This decision was appealed by the representative of the Public Prosecutor. The Court of Appeals determined that the said compensation was not appropriate. The petitioners also filed an appeal in cassation, which was declared inadmissible on June 13, 2002, by the Criminal Cassation Chamber of the Supreme Court of Justice in view of the fact that the decision was not subject to appeal during the said proceedings. The petitioners then lodged an appeal for reconsideration against this decision, which was declared groundless on July 30, 2003 by the Constitutional Chamber of the Supreme Court of Justice, by reason of the fact the decision denying the appeal in cassation did not involve "an egregious error in interpreting the constitutional norms or a violation of the rights enshrined in the Constitution."<sup>7</sup>

40. The State, for its part, alleges that the petitioners may still "adequately file" a motion for the interpretation of a point of law; for their part, the petitioners consider that they have exhausted domestic remedies with the decision on the appeal for reconsideration.

41. The Commission observes that the motion for the interpretation of a point of law is provided for in Article 266.6 of the Political Constitution of Venezuela, and in Article 5 of the Organic Law of the Supreme Court of Justice, in the following terms:

The following are powers of the Supreme Court of Justice: (...) [t]o take competence of motions for an interpretation of the content and application of legal texts, on the terms contemplated by the law.<sup>8</sup>

As the highest Court of the Republic, the Supreme Court of Justice shall have jurisdiction: [...] 52. [t]o take competence of motions for interpretation and decide upon the questions asked regarding the scope and content of legal texts, in the cases provided by law, provided that this competence does not imply a substitution of the mechanism, means or appeal provided by law to resolve the situation should it have arisen.<sup>9</sup>

42. In the Commission's view, the motion for the interpretation on a point of law, as conceived in the Venezuelan judicial process and as the State itself suggested (see supra III B), is a mechanism involving an interpretation in the abstract of the rule, and it is ineffective in terms of restoring the rights of individuals, and, therefore is not a suitable remedy to provide a solution to the situation set out by the petitioners.

43. The Commission considers that the petitioners attempted -at every instance- domestic remedies to question preventive detention, as well as the remedies through which they might claim compensation for the alleged arbitrary deprivation of liberty. In view of this, the Commission concludes that the requirement of the prior exhaustion of domestic remedies has been satisfied -regarding this section of the petition- as from July 30, 2003, the date on which the reconsideration appeal was declared groundless.

**b. Regarding the Preventive Detention of Olimpiades Gonzáles and Luís Guillermo Gonzáles**

44. The Commission observes that Olimpiades and Luís Guillermo Gonzáles were held in preventive detention from January 29, 1999, until April 21, 1999, the date on which the appeal action against the detention warrant was decided, determining that there was no "various, well-founded, serious and consistent evidence of guilt" implicating their criminal responsibility.

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<sup>7</sup> Decision of the Constitutional Chamber of the Supreme Court of Justice of July 30, 2003.

<sup>8</sup> Article 266.6 of the 1999 Constitution of the Bolivarian Republic of Venezuela.

<sup>9</sup> Article 5 of the Organic Law of the Supreme Court of Justice of Venezuela, Official Gazette No. 37.942, May 20, 2004.

45. The Commission observes that the domestic appeal lodged to impugn the detention had the effect of a declaration of nullity and set the alleged victims free. In this sense, having restored the enjoyment of the right to liberty several years prior to the filing of the petition under analysis, the Commission understands that the purpose of the claim is compensation for the harm suffered during the time of the deprivation of liberty.

46. The Commission notes that Olimpiades and Luís Guillermo Gonzáles were not party of the remedies invoked by Belkis Mirelis, Fernando and María Angélica Gonzáles and Wilmer Antonio Barliza Gonzáles, in their search for reparations for the deprivation of liberty they suffered. Similarly, it is not evident from the claim that Olimpiades and Luís Guillermo Gonzáles had individually lodged any remedy aimed at obtaining compensation for their time in detention.

47. In this sense, the Commission considers that in relation to the compensation for the preventive detention of these individuals, the requirement of the prior exhaustion of domestic remedies is not satisfied, and so proceeds to declare that this section of the petition is inadmissible. In view of the above, the Commission abstains from examining the other requirements for admissibility in relation to these facts.

### **c. In Relation to Olimpiades Gonzáles' Death**

48. On September 19, 2001, Olimpiades Gonzáles was attacked and shot at three times when he was on his way to the Prosecutor's Office to request a response to the compensation claim, and therefore requested protection from the authorities. This was ordered by an Enforcement Court of the State of Zulia, and an investigation began which was later archived. The investigation was later reopened at the request of the alleged victim and in June 2004, precautionary measures of periodical reporting before the judge were ordered against the attacker. On December 11, 2006, Olimpiades Gonzáles was shot three times and killed. As a result, the same day, a criminal investigation was ordered to be opened against Hilario Segundo Hernández, which is still pending before the Public Prosecutor. Olimpiades Gonzáles' death occurred on December 11, 2006, subsequent to the attack on his life, which formed the basis of the request for protection from the State.

49. The Commission notes that the authorities initiated investigations since 2001 for the attack and the threats against Olimpiades Gonzáles' life. It notes that till today, more than ten years after that was denounced and more than four years since the death of the alleged victim, there are no results. Therefore, the Commission considers that this implies an undue delay in terms of Article 46.2.c of the American Convention and therefore the petitioners must be exempted from exhausting the domestic remedies before having recourse to the Inter-American system in search of protection, for this portion of the petition.

## **2. Timeliness of the Petition**

50. Article 46.1.b of the Convention establishes that for the petition to be admissible, 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. As the Commission has already stressed, the decision exhausting the domestic remedies as regards the four alleged victims was the judgment of July 30, 2003, which declared the reconsideration appeal groundless. The petition was presented on January 22, 2004, and therefore this requirement is satisfied, for this section of the petition.

51. With respect to the petitioners' allegations in relation to the investigation undertaken into the murder of Olimpiades Gonzáles, the IACHR has established the application of exceptions to the prior exhaustion of domestic remedies in accordance with Article 46.2.c of the American Convention. In this regard, Article 32 of the Commission's Rules establishes that in cases where the exceptions to the prior exhaustion of domestic remedies apply, the petition must be presented within a reasonable period of time, at the Commission's discretion. To this end, the Commission must consider the date when the alleged violation of the rights occurred and the circumstances of each case.

52. Olimpiades Gonzáles was the victim of an attack in September 2001, for which he requested domestic protective measures that, according to the petitioners, were not implemented. The petition was received on January 22, 2004, and the murder of Olimpiades Gonzáles occurred on December 11, 2006, the date on which the criminal investigation still pending was initiated. The effects of the lack of results in the administration of justice continue up to the present. Therefore, in view of the context and characteristics of the present petition, the Commission considers that for this section, the requirement for admissibility with reference to the time limit for submission is satisfied.

### **3. Duplication of Proceedings and International Res Judicata**

53. The case file of the petition does not contain any information to conclude that the present petition is pending before another international proceeding for settlement, nor that it reproduces a petition previously examined by the Inter-American Commission. Therefore, the IACHR concludes that the exceptions set out in Article 46.1.d and Article 47.d of the American Convention do not apply.

### **4. Colorable Claim**

54. The Commission considers that the alleged arbitrary deprivation of liberty of Belkis Mirelis Gonzáles, Fernando and María Angélica Gonzáles and Wilmer Antonio Barliza Gonzáles during the criminal trial held against them, if proved, may characterize possible violations of the rights to personal liberty and to judicial protection enshrined in Articles 7 and 25 of the American Convention, in conjunction with Article 1.1.

55. Neither the American Convention nor the IACHR Rules of Procedure require a petitioner to identify the specific rights allegedly violated by the State in the matter brought before the Commission, although petitioners may do so. It is for the Commission, based on the system's jurisprudence, to determine in its admissibility report which provisions of the relevant Inter-American instruments are applicable and could be found to have been violated if the alleged facts are proven by sufficient elements.

56. Furthermore, the Commission considers that the facts related to the alleged deprivation of liberty of the victims along with convicted individuals, if proved, may characterize a violation of the right to personal integrity enshrined in Article 5 of the American Convention, in conjunction with Article 1.1, to the prejudice of Belkis Mirelis, Fernando and María Angélica Gonzáles and Wilmer Antonio Barliza Gonzáles.

57. The Commission also considers that the allegations related to the relevance and application of the CEC which as a general rule established preventive detention due to the existence of the mere *indicia* of criminal responsibility, if proved, may characterize a failure to fulfill the duty established in Article 2 of the American Convention.<sup>10</sup>

58. The Commission considers that the allegations as to the failure to implement the protective measures for Olimpiades Gonzáles issued by the State and the delay in the investigation into his death may characterize violations of Article 4, 8 and 25 of the American Convention, in conjunction with its Article 1.1. The Commission also considers that the alleged facts may characterize a violation of Article 5 of the American Convention to the prejudice of the alleged victims' immediate family.<sup>11</sup>

59. Since it is not evident that these aspects of the claim are manifestly groundless or out of order, the Commission considers that the requirements established in Articles 47.b and c of the American Convention are satisfied. Finally, the Commission considers that the petitioners' allegations do not fit into

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<sup>10</sup> Cf. I/A Court H.R., *Case of Barreto Leiva v. Venezuela*. Judgment of November 17, 2009. Series C No. 206, paras. 115 y 116.

<sup>11</sup> The alleged victims' immediate family members are included taking into account the provisions of Article 35.1 of the Inter-American Court of Human Rights' Rules and its jurisprudence. See I/A Court H.R., *Case of Radilla Pacheco v. Mexico*. Judgment of November 23, 2009, and I/A Court H.R., Resolution of January 19, 2009, in *Case of González et al. ("Cotton Field") v. Mexico*. Request for widening the alleged victims and denial to send documentary evidence.

the premise of Article 10 of the American Convention, since the alleged victims were not convicted by a final sentence by judicial error. Therefore, the Commission considers that this section of the petition is manifestly groundless.

## **V. CONCLUSIONS**

60. The Commission concludes that it is competent to examine the claims presented by the petitioners on the alleged violation of Articles 4, 5, 7, 8 and 25 of the American Convention in relation to the obligations established in Articles 1.1 and 2, in accordance to what was established in the preceding paragraphs.

61. The Commission also concludes that the petition is inadmissible for a failure to exhaust domestic remedies in relation to the compensation for the preventive detention of Olimpiades and Luís Guillermo Gonzáles. In addition, the Commission concludes that that section of the petition related to the alleged violation of the right enshrined in Article 10 of the American Convention is inadmissible, since it is manifestly groundless.

62. Based on the arguments of fact and law set out above and without prejudice to an examination of the merits of the claim,

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

#### **DECIDES:**

1. To declare the present case admissible in relation to the alleged violations of the rights enshrined in Articles 4, 5, 7, 8 and 25 of the American Convention, in conjunction with the obligations established in Article 1.1 and 2 of the same instrument, to the prejudice of the Gonzáles' family.

2. To declare the present case inadmissible in relation to Olimpiades and Luís Guillermo Gonzáles' preventive detention and in relation to the alleged violation of the right enshrined in Article 10 of the American Convention.

3. To notify the parties.

4. To continue with an examination of merits and,

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

Done and signed in the city of Washington, D.C., on the 19th day of October 2011. (Signed): José de Jesús Orozco Henríquez, First Vice-President; Rodrigo Escobar Gil, Second Vice-President; Paulo Sérgio Pinheiro, Felipe González and María Silvia Guillén, Commissioners.