

REPORT No. 122/11¹

PETITION 454-06

ADMISSIBILITY

DIANORA MALENO

VENEZUELA

October 19, 2011

I. SUMMARY

1. On May 29, 2006 the Inter-American Commission on Human Rights (“the Commission”, “the IACHR” or “the Inter-American Commission”) received a petition submitted by the organization *Hogares sin Violencia* (“the petitioners”) in which they alleged the responsibility of the Bolivarian Republic of Venezuela (“the State”) for the rape of Mrs. Dianora Maleno (“the alleged victim” or “Mrs. Maleno”) while she was deprived of liberty in the José Antonio Anzoátegui Prison in Barcelona, state of Anzoátegui, and for the harm suffered as the result of the conditions of detention in the Lechería Metropolitan Police Jail in that city. The petitioners contend that the State held the alleged victim in detention conditions such that she was exposed to sexual abuse by male prisoners, and that this act has remained unpunished due to the absence of a diligent investigation and punishment of those presumed responsible. Alleged violations of the right to due process in the criminal case brought against Mrs. Maleno are also claimed.

2. The petitioners argue that the State is responsible for violation of her rights to humane treatment, due process, and judicial protection established in Articles 5, 8 and 25 respectively of the American Convention on Human Rights (“the Convention” or “the American Convention”), in conjunction with the general duties of respect and guarantees established in Articles 1.1 and 2 thereof. They also allege that the State failed to comply with its obligations under Articles 1, 2, 5 and 6 of the Inter-American Convention to Prevent and Punish Torture, and Articles 3, 4, 5, 6 and 7 of the Convention of Belém do Pará.

3. The State alleges that fundamentally, the criminal case brought against Mrs. Dianora Maleno for the crime of aggravated homicide was conducted in accordance with the rules of criminal procedure in force, and that her right to due process and effective judicial protection was protected. As to the criminal trial conducted in relation to the acts of sexual violence to which Mrs. Maleno had been subjected, the State argued that it was under investigation and therefore that domestic remedies have not been exhausted, and it thus requested that the present petition be declared inadmissible.

4. Without prejudging the merits of the complaint, the Commission examined the positions of the Parties and, in compliance with the requirements of Articles 46 and 47 of the American Convention, decided to declare the petition admissible for the purpose of examining the alleged violation of the rights enshrined in Articles 5, 8, and 25 of the American Convention, in conjunction with Article 1.1 thereof; Article 7 of the Convention of Belém do Pará, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture. The Inter-American Commission also finds that the petition is admissible in respect of Article 11 of the American Convention. The Commission further decided to give notice of this decision to the Parties, to publish it and to include it in its annual report to the OAS General Assembly.

¹ As provided in Article 17.2 of the Rules of Procedure of the Commission, Commissioner Luz Patricia Mejía, who is a Venezuelan national, did not participate in the debate or in the decision on the present petition.

II. PROCESSING BY THE COMMISSION

5. The Inter-American Commission recorded the petition as number P-454-06, and forwarded the relevant parts of the petition to the State on July 5, 2006, along with a period of two months in which to present its response, in accordance with Article 30(3) of the Rules of Procedure of the IACHR.

6. On October 11, 2006, additional information was received from the petitioners; it was forwarded to the State by note of October 23, 2006 for its observations. On February 26, 2008, the State's observations were received and forwarded to the petitioners for their comments.

7. The petitioners' comments on the response by the State were received on June 10, 2009, and were forwarded to the State on June 11, 2009, with a deadline of one month in which to present its observations. However, as of the date on which the present report was approved, no response has been received from the State.

8. In their observations on the State's response, the petitioners requested that four other women who had also been subjected to sexual abuse by prisoners in the José Antonio Anzoátegui Prison be included as victims². However, the petitioners made only generic allegations about these individuals and did not submit sufficient information to enable the admissibility of these claims to be examined.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

9. The petitioners state that Mrs. Dianora Maleno was the victim of an interrelated set of violations of her human rights, which were aggravated by her sex and her gender and socioeconomic situation. They indicate that she is a *campesina* living in extreme poverty.

10. Firstly, the petitioners contend that Mrs. Dianora Maleno was detained on October 18, 2001 for the alleged crime of aggravated homicide (infanticide), and on October 20, was brought by the 16th public prosecutor of the Judicial District of the State of Anzoátegui before the 4th *Tribunal de Control*. Subsequently, on October 22, that court ordered Mrs. Maleno detention at the José Antonio Anzoátegui Prison, the Public Defender did not appeal this decision.

11. They allege that at the time of her detention in the José Antonio Anzoátegui Prison, the control over the facility –including the women's wing– was totally in the hands of the prisoners themselves, who for a number of years had taken over the prison and had *de facto* control of the internal order; the authorities almost never entered the facility and did not control what happened inside. For that reason, the State's authorities offered no minimum guarantees of the safety of the male and female prisoners in the establishment. The petitioners also stress that there was no effective separation of males and females within the facility, nor were convicted prisoners held separately from those awaiting trial [*procesados*]; that the levels of violence were high –with a reported average of four violent deaths a month–; and that the women prisoners were constantly subject to acts of violence and sexual servitude by male prisoners. It is claimed that as a rule, such acts of sexual assault went unpunished, because the female victims were afraid to denounce the prisoners who abused them.

12. In this context, it is claimed that on January 6, 2002, Mrs. Maleno was threatened and “savagely” raped for two hours by five armed prisoners who broke into the women's cellblock. The petitioners maintain that the victim was “submitted to every kind of sexual aberration, and was raped, vaginally and anally, by her torturers”; that she received no help of any kind; and that no-one appeared in the facility during the time the sexual assault lasted. Hours after these events, the alleged victim was taken by the prison authorities to a public hospital where she received emergency medical care, following which, she was returned to the same prison facility. However, Mrs. Maleno did not receive the medical,

² Petitioners' observations on the response by the State, received in the IACHR on June 10, 2009, paragraphs 54 – 59.

physical and psychological care needed in cases of sexual violence, nor were tests for venereal disease or HIV carried out.

13. The petitioners maintain that the following day, Mrs. Maleno reported the rape to the Director of the prison, and that on January 8, a number of judicial authorities, local prosecutors and representatives of the Office of the Ombudsman [*Defensoría del Pueblo*] appeared at the place where the events had occurred. The alleged victim denounced the acts to the authorities present, and gave the names and nicknames of the five prisoners who had allegedly raped her.

14. It is alleged, however, that the State failed in its duty to investigate these acts with all due diligence and failed to punish those responsible for the rape of Mrs. Dianora Maleno. The petitioners state that the test carried out after the events was a medical examination performed on January 15, 2002 (nine days after the events); the contents [of the medical report] were laconic in the extreme, to the point where the acting Public Prosecutor had to ask for further clarification, which was forthcoming on February 22.

15. The petitioners maintain that even though the alleged victim identified from the very beginning the five prisoners who had sexually assaulted her, the criminal case in the matter is still under investigation. They contend, for example, that the alleged perpetrators were not secured (as prisoners, they were at the disposal of the authorities), nor were statements taken or the relevant examinations performed. They say it is highly significant that in January 2008, the Second Public Prosecutor in charge of the investigations was still awaiting the results of some of the measures he had asked for six years earlier.

16. Regarding the conditions of Mrs. Maleno's detention –the second point in the petition–, they indicate that following the abovementioned acts of sexual violence (which were covered in the local press), the authorities decided, as a temporary measure, to immediately remove all female prisoners from the José Antonio Anzoátegui Prison. The convicted prisoners were transferred to the Monagas “La Pica” Prison, while those being held for trial [*las procesadas*] –including Mrs. Maleno– were sent to the Lecherías Municipal Police Jail.

17. The petitioners contend that the Lecherías Metropolitan Police Jail was a facility designed only for temporary detention of individuals for a maximum of 72 hours, and therefore, did not have normal food services, water supply or food; it was without adequate bathing facilities; and had insufficient ventilation. Mrs. Maleno found herself in a hostile environment: she was the victim of threats and aggression by the other female prisoners, most of whom resented having been transferred to the police station, and who therefore saw Mrs. Maleno as the person directly responsible for the situation. Because of this, the police authorities were obliged to place the alleged victim in a cell apart from the other women.

18. This transfer meant that Mrs. Maleno's situation worsened, since she was reduced to subhuman conditions of detention while still recovering from the physical and psychological effects of the sexual assault she had suffered. They contend that the victim was unable to walk or sit down, and was obliged to lie on the floor for several days, without food or medicine, and without medical or psychological treatment. The petitioners also state that her cell had no bed or mattress; that she had to bathe alongside a large number of people, given the lack of adequate facilities; and that her food was scarce, since her family lacked the money to bring food to her. She remained in these conditions for two years, until the judge in the case lifted the preventive detention measure on November 6, 2003.

19. With regard to the conditions of Mrs. Maleno's detention in the jail, the petitioners filed a petition for a writ of constitutional *amparo* on July 1, 2002, in which they requested, *inter alia*, that the alleged victim be ordered transferred to an “ad-hoc” place, and that she be given the medical and psychiatric care needed for the injuries she had suffered. This request was denied by the pertinent courts, and the Constitutional Chamber of the Supreme Court of Justice took the final decision on November 11, 2005. While the Constitutional Chamber found that the petitioners did not submit their arguments on the merits in time, it did hear the case, but denied it on the basis of the local doctrine of “misjoinder of action”

[“*inepta acumulación*”] (to join in the same petition a number of causes of action that may not be heard by the same court).

20. Concerning the conditions of detention, the Public Defender had requested in the preliminary hearing held March 13, 2002 before Control Court No. 4 of the Criminal Judicial District of Anzoátegui, that Mrs. Maleno be transferred to another facility; however, the court confirmed that she would remain in the Lecherías Police Station.

21. As to the criminal case brought against Mrs. Dianora Maleno for the alleged crime of aggravated homicide –the third point of the petition–, the petitioners allege basically that even though the public defender requested a psychiatric examination of Mrs. Maleno on three occasions (October 20, 2001 when she was brought before the Criminal Court of the First Instance; October 22, 2001 in the oral hearing; and March 12, 2002 in the preliminary hearing), it was not carried out. According to the petitioners, it was extremely important that this evaluation be conducted, since Mrs. Maleno was in the post-partum phase, which is often related to a psychiatric diagnosis of psychosis and criminal behavior. They thus claim that a psychiatric examination was essential to determine the circumstances in which the alleged victim found herself at the time of the events, and that it would have been favorable to her defense.

22. They also maintain that the Public Defender was not the most competent, because he appealed neither the court’s decision on preventive detention of the alleged victim, nor the ratification of that measure. They contend that, looking at the criminal proceedings against Mrs. Maleno as a whole from the time she was detained, the State occasioned a “serious procedural delay”, since as of October 2007 (six years after the alleged victim had been detained), the oral proceedings in the case had still not taken place.

23. In general terms, the petitioners report on the adverse conditions in which women are detained in prison, and their particular risk of sexual attack, a situation that the authorities regarded with “complete indifference”. The petitioners also indicate that the José Antonio Anzoátegui Prison is one of the prisons in Venezuela in which inhuman conditions have subsisted for more than ten years; that there have been various types of violations of women’s dignity and sexual freedom, including rape, from the time the prisoners took over the prison and controlled the women’s cellblock, and that the authorities did not take adequate measures to resolve the problem. The petitioners therefore understand that the case of Dianora Maleno is not an isolated one, but exemplifies the State’s failure to meet its obligations to prevent, punish and eradicate violence against women in the prisons.

B. Position of the State

24. The State reported that on February 8, 2002, the criminal investigation into the rape of Mrs. Dianora Maleno by five prisoners in the José Antonio Anzoátegui Prison was ordered to start, and that as of January 2, 2008, the case was still at the stage of “preparation of the criminal case”. The Public Prosecutor’s Office [*Ministerio Público*] had ordered that all steps be taken to establish the facts alleged. Thus, for example, visual inspections of the location where the acts took place were ordered, the complainant’s undergarments were collected, and those accused were located and their blood tests taken.

25. The State indicates that as of January 2, 2008, the Second Public Prosecutor of the *Ministerio Público* was awaiting the results of the measures ordered, in order to issue a final resolution of the matter.

26. As to the criminal case against Mrs. Dianora Maleno for alleged homicide of her newborn baby girl, the State reported that she was brought before the 4th Court of First Instance (acting as Control Court) on October 20, 2001; that on November 11, 2001, the Public Prosecutor filed a criminal charge against her; and that on March 12, 2002, the preliminary hearing took place, the charge was admitted, and the case was opened.

27. As reported by the State, on November 4, 2002, Trial Court No. 1 of the First Instance, at the request of the defense, ordered that a psychiatric evaluation of Mrs. Dianora Maleno be performed. That court, in a decision of August 20, 2003, decided to suspend the trial until the psychiatric examination could be incorporated into the case file. Subsequently, on November 6, 2003, it ruled that the accused be granted precautionary measures in place of preventive detention.

28. The oral hearing then took place on June 15, 2007 for the purpose of discussing the status of the case and assessing resumption of the trial. Mrs. Maleno told the judge that it had been impossible for her to have a psychiatric evaluation because of lack of funds, and the judge therefore decided to send another communication to the pertinent medical authorities, to have the evaluation performed on June 20, 2007.

29. It indicates that the court set the public oral hearing of the case for October 17, 2007, but that it was postponed until November 29, 2007 because the accused did not appear; that it was decided to have the police bring her to the trial, and that she had not appeared for the psychiatric evaluation.

30. In light of the above, the State concludes that since both cases are still awaiting final resolution, the present petition should be declared inadmissible because domestic remedies have not been exhausted.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Competence

31. The petitioners are entitled, in principle, to lodge petitions with the Commission under Article 44 of the American Convention. The petition names Mrs. Dianora Maleno as the alleged victim, an individual person, with respect to whom the Venezuelan State has undertaken to respect and guarantee the rights enshrined in the American Convention. As to the State, the Bolivarian Republic of Venezuela has been a State Party to the American Convention since September 8, 1977, when it deposited its instrument of ratification. The Commission therefore has competence *ratione personae* and *ratione temporis* to examine the petition.

32. Venezuela ratified the Convention of Belém do Pará on February 3, 1995, and the Inter-American Convention to Prevent and Punish Torture on August 26, 1991. The IACHR therefore has competence *ratione temporis* to examine, in the merits phase, the claims about alleged violations of these international instruments.

33. The IACHR has competence *ratione loci* and *ratione materiae* to take up the petition, inasmuch as it alleges violations of human rights established in the American Convention, the Convention of Belém do Pará and the Inter-American Convention to Prevent and Punish Torture that may have been committed within the territory of the Bolivarian Republic of Venezuela, a State Party to those treaties.

B. Exhaustion of domestic remedies

34. Article 46(1)(a) of the American Convention requires that in order for a petition on alleged violations of the American Convention to be admitted, the remedies under domestic law must have been pursued and exhausted in accordance with generally recognized principles of international law.

35. Article 46(2) of the Convention provides that the requirement for exhaustion of domestic remedies shall not be applicable when: (a) 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; (b) 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 (c) there has been unwarranted delay in rendering a final judgment under the aforementioned remedies.

36. The requirement for exhaustion of domestic remedies applies when remedies under national law are in fact available, adequate and effective in finding a remedy for the alleged violation. The purpose of this condition of admissibility is to enable the national authorities to learn of the alleged violation of a protected right and, if appropriate, to resolve it before it is taken up by an international body.

37. The Parties to the present case are in disagreement as to exhaustion of domestic remedies. The State expressly cited the failure to exhaust domestic remedies, on the basis that both the criminal case brought regarding the alleged rape of Mrs. Dianora Maleno, and the criminal trial against her for alleged aggravated homicide, were still pending a decision.

38. As to the first of their claims, the petitioners contend there was an unwarranted delay in the criminal investigations of the rape suffered by the alleged victim. They claim that the delay is patent, since the State itself acknowledged that as of February 2008, Public Prosecutor II in charge of the investigation had not even received the evidence that he had ordered six years earlier, and that that investigation, which was still open, had been delayed beyond what was reasonable. This alleged lack of diligence in the taking of evidence was all the more patent since the individuals named by Mrs. Maleno as her rapists were, as prisoners, at the disposal of the authorities.

39. In this regard, the IACHR notes that the most appropriate remedy in a case like the present one, in which violation of the right to humane treatment of a person in the custody of the State is alleged, is in fact a criminal trial; as is clear from the case file, this trial has not yet concluded, after a delay in resolving it of nearly a decade.

40. The State reported that the pertinent measures had not been taken for more than six years, and has not explained the possible reasons that might justify such a delay in the trial. Nor did the State make any report subsequent to its response of February 26, 2008 on specific advances or significant progress in the investigations undertaken of the assault on the alleged victim. The Inter-American Commission considers that the case file shows there was an unwarranted delay in the criminal investigations undertaken with regard to the supposed rape of the alleged victim.

41. In light of the above, the IACHR considers that with regard to the petitioners' first claim, namely, that there was an unwarranted delay in proceeding with the remedy most suited to the alleged violations, the exception provided for in Article 46(2) (c) of the American Convention therefore applies.

42. With regard to the conditions of detention –the second point of the petition–, the petitioners filed a petition for a writ of constitutional *amparo* on July 1, 2002, in which they informed the pertinent judicial authorities about Mrs. Dianora Maleno's situation as a victim of acts of sexual assault, her personal background and her detention subsequent to those events, and specifically, during her stay in the Lechería Metropolitan Police Jail. The petitioners requested, *inter alia*, that the alleged victim be transferred to somewhere other than the police station, and that she be given appropriate medical and psychological care. The Supreme Court of Justice in its decision of November 11, 2005 finally denied this request for a writ of *amparo*.

43. The IACHR also notes that in the preliminary hearing held on March 12, 2002, the public defender requested a revision of the preventive detention measure or, in lieu of that, that [Mrs. Maleno] be transferred to another police station, since he considered that her personal safety was in danger in the police station where she was being held. However, that request was expressly denied by Control Court No. 4 of the State of Anzoátegui in the document admitting the criminal charge against Mrs. Maleno. With that, in the opinion of the IACHR, Mrs. Maleno's situation during her detention was duly brought to the attention of the competent authorities via proper legal channels, and therefore, the State had the opportunity to remedy it.

44. Thus, as to the claims regarding violations stemming from the conditions of Mrs. Maleno's detention following the acts of rape to which she was allegedly subjected, the IACHR considers that domestic remedies under the terms of Article 46(1)(a) of the American Convention were in fact

exhausted. The IACHR also notes that the State made no objection to exhaustion of domestic remedies filed in relation to this second claim.

45. With respect to the criminal trial against Mrs. Maleno for the alleged crime of aggravated homicide, the IACHR notes that the first procedural act took place on October 18, 2001, the day on which she was detained, and that the last act reported by the State was the public oral hearing on November 29, 2007. The IACHR notes that the State alleges that the delay in the handling of this case is due to the fact that the trial court ordered a psychiatric examination of Mrs. Maleno, which was not performed; however, the State did not provide any information that might establish that that situation was attributable to Mrs. Dianora Maleno.

46. The IACHR considers that the fundamental responsibility for holding a criminal trial falls to the competent judicial authorities –who should have begun it *de officio* and should have directed it–, and that, in the face of an allegation about unwarranted delay in a case such as this, in which it appears that the trial has been going on for more than six years in stages prior to the judgment in the first instance, it was up to the State to provide the information necessary to substantiate that such delay was not attributable to it.

47. The IACHR also notes that the State has not submitted any response since February 26, 2008; it has therefore not used the procedural opportunity available to it to report on proceedings in the criminal trial of Mrs. Maleno, or to present its possible allegations about the inadmissibility of the petitioners' specific claim on that matter.

48. Therefore, with regard to the petitioners' third claim, about the alleged violation of Mrs. Maleno's right to a fair trial, the IACHR finds that there has been an unwarranted delay in the handling of the case, and therefore that the exception established in Article 46(2)(c) of the American Convention applies.

49. Finally, the Commission reiterates that the exceptions to the rule on exhaustion of domestic remedies provided for in Article 46(2) of the Convention are closely linked to a determination of possible violations of certain rights upheld therein, such as guarantees of access to justice. However, by its nature and purpose, the content of Article 46(2) is independent *vis-à-vis* the substantive rules of the Convention. Thus, a determination as to whether the exceptions to the rule on exhaustion of domestic remedies apply to the case at hand must be made prior to and separately from the analysis of the merits, since it rests on a standard of judgment different from that used to determine possible violation of Articles 8 and 25 of the Convention.

C. Filing period of the petition

50. The American Convention establishes, in Article 46(1) (b), that in order for a petition to be admissible by the Commission, 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. Article 32 of the Commission's Rules of Procedure provides that in those cases in which the exceptions to the requirement of exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time, as determined by the Commission. To that end, the Commission shall consider the date on which the alleged violation of rights occurred, and the circumstances of each case.

51. In the present case, the IACHR has found that the exception on exhaustion of domestic remedies stipulated in Article 46(2)(c) of the American Convention applies with respect to the first and third of the petitioners' claims, that is, those concerning, respectively: (a) the alleged sexual assaults on Mrs. Dianora Maleno and the subsequent investigations, and (b) the allegations of violations of the right to a fair in the criminal trial of Mrs. Maleno for the alleged crime of aggravated homicide.

52. In relation to these two points, the IACHR notes that the petition was received on May 29, 2006, and that the acts regarding the failure to investigate the alleged rape of Mrs. Maleno began on January 8, 2002 when she denounced the events to the authorities. Similarly, the alleged violations of the

right to a fair trial committed in the criminal trial of Mrs. Maleno began on October 18, 2001. Therefore, according to information provided by the Parties, both trials are awaiting resolution nearly ten years after they began.

53. Therefore, in light of the context and characteristics of these two claims, the Commission finds that the petition was presented within a reasonable period of time in the terms of Article 46 (1) (b) of the IACHR's Rules of Procedure and in accordance with its practice in similar cases.

54. Regarding the conditions of detention in which Mrs. Dianora Maleno was held –the second claim presented in the petition–, the IACHR found that domestic remedies were exhausted with the decision to deny a writ of *amparo*, which was issued by the Constitutional Bench of the Supreme Court of Justice on November 11, 2005. Bearing in mind that the present petition was lodged on May 29, 2006, it is therefore clear that the petition was received within the period of six months provided for in Article 46(1) (b) of the American Convention.

D. Duplication of international proceedings and *res judicata*

55. It does not appear from the case file that that the matter of the petition is pending in another international proceeding for settlement; or that it is substantially the same as one previously studied by this or any other international organization. The requirements established in Articles 46(1) (c) and 47(d) of the Convention are therefore met.

E. Characterization of the alleged facts

56. For the purposes of admissibility, the Commission must decide whether the alleged facts tend to establish a rights violation, as stipulated in Article 47(b) of the American Convention, or whether the petition is "manifestly groundless" or is "obviously out of order" in accordance with paragraph (c) of that Article. The standard for evaluating these requirements differs from that used to rule on the merits of a petition; the Commission must conduct a *prima facie* evaluation not to establish the existence of a violation, but in order to determine whether the petition establishes grounds for the possible or potential violation of a right guaranteed by the Convention. This determination is a summary analysis, which does not imply a prejudgment on the substance of the matter³.

57. 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 on the basis of the evidence and the legal arguments.

58. In light of the elements of fact and of law presented by the Parties and the nature of the matter brought before it, the IACHR finds that the facts alleged by the petitioners could constitute possible violations of Mrs. Dianora Maleno's rights protected in Articles 5, 8 and 25 of the American Convention, in conjunction with Article 1.1 of the Convention. It also considers that the facts set forth represent possible violations of Article 7 of the Convention of Belém do Pará, and of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

59. In the merits stage of this case, the Commission, will assess the possible responsibility of the State for the violation of Article 11 of the Convention with respect of Mrs. Maleno. In this analysis, the Commission will consider the petitioner's claims about the rape that occurred under the control and supposed tolerance of the prison authorities; the subhuman and adverse conditions of detention; and the failure to separate male and female prisoners in the José Antonio Anzoátegui Prison, all of which resulted in acts that allegedly threatened her honor, dignity and privacy.

60. The Commission also finds that the claims raise questions related to the right to equal protection before the law enshrined in Article 24 of the American Convention, in conjunction with Article 1.1 thereof, which warrant a detailed analysis in the merits phase. In this analysis, the IACHR will consider the petitioner's claims that the State's failed to act with due diligence to prevent and punish alleged acts of sexual violence and other assaults, which may constitute a form of discrimination against women; and the State's alleged tolerance and inaction towards discriminatory practices against female prisoners and their effects, and failure to separate male and female prisoners in the José Antonio Anzoátegui Prison. Thus, the Commission will examine the claim of alleged violations of that Article in the merits stage.

61. Finally, the IACHR notes that the petitioner's claim that the State failed to comply with the general obligations set forth in Article 2 of the American Convention; however, they do not provide information that would enable it to establish *prima facie* a possible violation of this Article.

³ In general, see: IACHR, Report No. 12/10, Case 12.106, Admissibility, Enrique Hermann Pfister Frías and Lucrecia Pfister Frías, Argentina, March 16, 2010., para. 46; IACHR, Report No. 10/10, Petition No. 214-08, Admissibility, Koempai *et al.*, Suriname, March 16, 2010, para. 43.

V. CONCLUSIONS

62. On the basis of 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:

1. To admit the present petition regarding alleged violations of Mrs. Dianora Maleno's rights protected Articles 5, 8, 11 and 25 of the American Convention on Human Rights, in conjunction with the general obligations set forth in Article 1.1 thereof, as well as Article 7 of the Convention of Belém do Pará and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To notify the Venezuelan State and the petitioners of this decision.

3. To continue with its analysis of the merits of the case.

4. To publish this decision and include it in its annual report to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 19th day of the month 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.