

REPORT N° 6/04¹
PETITION 4109/2002
ADMISSIBILITY
LUISIANA RÍOS *ET AL.*
VENEZUELA
February 27, 2004

I. SUMMARY OF THE FACTS

1. On July 23, 2002, the Inter-American Commission on Human rights (the "Commission" or "IACHR") received a petition from Luisiana Ríos; Luis Augusto Contreras Alvarado; Eduardo Sapene Granier; Javier García; Isnardo Bravo; David Pérez Hansen; Wilmer Marcano; Winston Gutiérrez and Isabel Mavarez, all employees of the television station RCTV, C.A. ("RCTV") (hereinafter, "the petitioners") against the Bolivarian Republic of Venezuela (hereinafter "the State").

2. The report maintains that the State is responsible for a series of acts and omissions prejudicial to the petitioners, which constitute violations of the rights to freedom of expression (Article 13), personal integrity (Article 5), judicial guarantees (Article 8), and judicial protection (Article 25), as well as the generic obligations set out in Articles 1(1) (right to respect for and guarantees of rights) and 2 (obligation to adapt domestic legislation) of the American Convention on Human Rights (hereinafter the "Convention" or "American Convention").

3. According to the petitioners, the prevailing situation in Venezuela, as a result of the official policy of the government authorities, can be generally described as one of attacks on and threats to the freedom of expression and personal integrity of the petitioners, which has resulted in physical and verbal abuse of the petitioners and vandalism and destruction of the property of RCTV. According to the report, partisans of the Government actively led these attacks, especially the so-called "*Círculos Bolivarianos*" or "Bolivarian Circles," entities which, according to the petitioners, act on behalf of the State, executing the Government's policies, funded and protected by the Government in their attacks on the petitioners.

4. The petitioners also allege undue delay on the part of the Attorney General's Office (the only office that can take criminal action against the Government), in carrying out the necessary investigations into both of the reports lodged, to establish responsibility for the assaults on the reporters, identify their perpetrators, prosecute, punish, and seek the compensation due to the victims.

5. In the State's opinion, domestic remedies have not been exhausted, given that the facts of 22 criminal charges are being investigated or are in an intermediate stage of the criminal process. The State claims that there has been no undue delay in the investigation by the Attorney General's Office in light of the complexity of the facts in question. It therefore requests that the IACHR declare the petition inadmissible.

6. As this report states, after a review of the arguments presented by the parties, and without prejudice to the merits of the case, the Commission, pursuant to Article 46 of the Convention, has decided to admit the claims in the petitions of Luisiana Ríos; Luis Augusto Contreras Alvarado; Eduardo Sapene Granier; Javier García; Isnardo Bravo; David Pérez Hansen; Wilmer Marcano; Winston Gutiérrez and Isabel Mavarez, in connection with Articles 1(1), 2, 5, 8, 13 and 25 of the American Convention and to continue reviewing the merits of the case. Finally, the Inter-American Commission has decided to notify the parties of said decision, to publish the report and include it in the Annual Report of the IACHR, and to continue to examine the facts of the alleged violation of Articles 1(1), 2, 5, 8, 13 and 25 of the American Convention

¹ Pursuant to Article 17(2) of the Commission's Rules of Procedure, Commissioner Freddy Gutierrez, a Venezuelan national, did not participate in the debate or in the decision on this case.

pertaining to Luisiana Ríos; Luis Augusto Contreras Alvarado; Eduardo Sapene Granier; Javier García; Isnardo Bravo; David Pérez Hansen; Wilmer Marcano; Winston Gutiérrez and Isabel Mavarez.

II. PROCEEDINGS BEFORE THE COMMISSION

A. Petition

7. After having received the petition, the Commission transmitted the pertinent parts to the State with a cover letter dated September 26, 2002. The Commission requested that the State submit its comments within two months, pursuant to Article 30(3) of the Commission's Rules of Procedure.

8. On July 10, 2003, the IACHR requested additional information from the petitioners. On August 8, the IACHR received the information requested from the petitioners, transmitting it to the State on August 15, 2003. The IACHR granted the State a time limit of 30 days to present its comments.

9. On September 22, 2003, the IACHR received a request from the State for a three-month extension for submitting its comments. On September 24, 2003, the IACHR resolved to grant the State an additional 15 days to respond, as the IACHR had received no communication from the State since the petition was forwarded to it on September 26, 2002. On October 8, 2003, the State presented its comments on the petition, which were transmitted to the petitioners on October 10, 2003.

10. On October 15, 2003, the IACHR requested additional information from the State outlining in detail the action taken by the Attorney General's Office on the claims in the petition, and identifying the remedies available to the petitioners and their effectiveness. The IACHR granted a deadline of 15 days for the State to remit the additional information requested. At the time of writing this report, the Commission had not received the information requested from the State.

B. Precautionary Measures

11. On January 29, 2002, a number of employees of RCTV and *Globovisión*, another media outlet in Venezuela, including Luisiana Ríos, Luis Augusto Contreras and Eduardo Sapene Granier from RCTV, requested that the Commission adopt precautionary measures, based on the attacks they suffered on January 10, 2002, during their coverage of the President of the Republic's Sunday program "Aló Presidente."

12. On January 30, 2002, the Commission adopted precautionary measures, requesting that the Venezuelan State protect the life and physical integrity of the reporters named and abstain from any action that could have the effect of intimidating reporters and other media workers employed by *Globovisión* and RCTV in the exercise of their profession. The Commission further requested that the State exhaustively investigate what happened to Luisiana Ríos from RCTV and Mayela León Rodríguez from *Globovisión*, and the crews accompanying them, which included Luis Augusto Contreras Alvarado, Armando Amaya and Eduardo Sapene Granier of RCTV. The Commission gave the Venezuelan State a deadline of 15 days to report to the Commission on the specific action taken to comply with that request.

13. On March 11, the State responded to the request for precautionary measures, reporting that on January 31, 2002, the Attorney General of the Republic commissioned two public prosecutors from the jurisdiction of the Caracas Metropolitan Area to initiate "the corresponding investigations, for the purpose of elucidating events and establishing responsibility as appropriate." This communication was forwarded to the petitioners on March 20, 2002.

14. On May 30, 2002, the petitioners presented additional information. In their written submission they allege that despite the Commission's request to investigate the facts, the Public Prosecutor's Office did not act with due diligence and that "more than a reasonable amount of time had elapsed for an investigation into the facts to be initiated, but there had been no progress in that direction." They also reported a rise in aggression against reporters since the adoption of the precautionary measures by the Commission. Given the threat to reporters and the State's failure to implement measures to protect them, RCTV was required to take steps to protect its workers, equipping them with bulletproof vests, helmets, and gas masks.

15. The State sent a letter on May 30 stating that the case of the RCTV reporters was "being investigated."

16. On July 29, 2002, after reviewing the comments of the parties, the Commission considered it necessary to extend the precautionary measures for six months.

17. On August 22, 2002, the petitioners sent another communication indicating that the State had failed to comply with the precautionary measures. They also reported new attacks on RCTV reporters Laura Castellanos, José Antonio Monroy, Argenis Uribe, and David Pérez Hansen and requested that the precautionary measures be expressly extended to them. On September 16, 2002, the Commission submitted that information to the State, requesting compliance with the measures granted on January 29, 2002 and extended on July 29, 2002 and broadening the request to cover reporters Laura Castellanos, José Antonio Monroy, Argenis Uribe, and David Pérez Hansen and other RCTV media workers.

18. On March 5, 2003, the IACHR received a new request for an extension, which was granted on March 17, 2003, to protect the right to life, personal integrity, and freedom of expression of Eduardo Sapene, Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Luis Augusto Contreras Alvarado, Javier García; Isnardo Bravo, David Pérez Hansen, Wilmer Marcano, Wiston Gutiérrez, Isabel Mavárez and other staff of the RCTV network in Venezuela, giving the State a 15-day deadline to report on the measures it had adopted.

C. Provisional Measures

19. On November 25, 2002, Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe requested that the Commission file with the Inter-American Court of Human Rights for the adoption of provisional measures on behalf of RCTV staffers Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe.

20. On November 27, 2002, the Commission requested provisional measures from the Inter-American Court in view of the fact that the precautionary measures "had not had the desired effect, as the attacks [had] continued." The same Court handed down a resolution granting the measures in question and requiring the Government of the Bolivarian Republic of Venezuela, *inter alia*, "to adopt without delay any measures necessary to protect the lives and personal integrity of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe, employees of Radio Caracas Televisión (RCTV) [and] to require the State to investigate the reported facts, which led to the current measures intended to seek out and punish those responsible." The Court set a deadline of December 12, 2002 for the Government to submit its first report on the measures adopted.

21. The Government sent its reply to the Court on December 12, 2002. In that written report, the Government stated that the Attorney General had commissioned two public prosecutors in the jurisdiction of the Metropolitan Area of Caracas "in compliance with the measure stated in substantive point 3 of the resolution handed down by the Court."

22. On December 20, 2002, the Commission transmitted to the Court the response to the first report by the Government on the provisional measures. The Commission observed that the written submissions of the State "were limited to notifying the various state agencies, and did not translate into effective measures to protect the legal right under reference, which in this case is the right to life and personal integrity of the persons included in this provisional measure."

23. On January 10, 2003, the State sent a response to the Commission's communication of December 20. In that communication, it reported that the Ministry of the Interior and Justice had instructed the Directorate of Intelligence and Prevention Services (DISIP), the Metropolitan Police, and the Libertador Municipal Police to provide the reporters with the required protection.

24. On January 16, 2003, the petitioners sent the Commission their comments on the State's written submission of January 10. The Commission transmitted its observations to the Court, expressing its concern about the failure to comply with the provisional measures and requesting the Court to summon the parties to a hearing "to assess the State's compliance with the provisional measures." The Court granted the hearing in a resolution dated January 24, 2003.

25. On February 17, 2003, a hearing was held before the Court and on February 20, the Court issued a new resolution declaring "that the State has not effectively implemented the provisional measures ordered by the Inter-American Court of Human Rights in its resolution of November 27, 2002." It reiterated to the State, *inter alia*, "the requirement to adopt, without delay, any measures necessary to protect the lives and personal integrity of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos and Argenis Uribe." It also required the Commission and the State "to take the necessary measures to create an appropriate mechanism to coordinate and supervise the aforementioned measures no later than March 21, 2003."

26. On February 28, 2003, the State sent a communication with annexes to the Court to report to the Court that "pursuant to the provisional measures, the Ministry of the Interior and Justice, Ombudsman's Office, and Attorney General's Office were ordered to carry out the actions necessary to comply with the said measures. The Court has been informed of this."

27. On March 12, 2003 the State requested an extension for submission of the information on the steps taken by the State to comply with the provisional measures ordered.

28. On March 13, 2003, the Commission sent a letter to the State to set up a meeting between the two parties to establish and activate the coordination and supervision mechanism requested by the Court in its resolution of February 20.

29. On March 13, 2003, the Commission sent the Court the petitioners' and its own comments on the communication presented by the State on compliance with the provisional measures. The Commission and the petitioners observed that the acts of intimidation of the reporters had continued and that the State had not taken effective protective measures to safeguard their lives and personal integrity. It also reported that "the State had obviously delayed in investigating the reports that were the grounds for the provisional measures."

30. On March 26, 2003, the Court sent a reminder to the Commission that both it and the State were required to establish a mechanism for coordination and supervision of the provisional measures and that the said mechanism had to be in place by March 21, 2003. The Court also reminded the State of its obligation to submit information on the mechanism in its next report on the provisional measures, which was due on April 28, 2003 and that the Commission had six weeks from its receipt of that report to make comments on it.

31. On April 15, the Commission sent another communication to the State to set up a meeting between the two parties to establish and activate the coordination and supervision mechanism requested by the Court in its resolution of February 20.

32. On April 23, 2003, the State communicated with the Commission to report that it was looking into a date for the meeting between the Commission and the State, as requested by the Commission in its note of April 15, 2003. On April 28, 2003, the Commission informed the Court of the State's response of April 23, 2003.

33. On April 25, 2003, the State presented its fourth report on the implementation of the provisional measures, which was transmitted to the Commission on April 28.

34. On June 9, 2003, the Commission sent the Court its comments and the comments of the petitioners on the State's fourth report on the provisional measures. The Commission reiterated its concern that "the investigations had yielded no concrete results to date and that after being in place for one year, they were still in the preliminary stages of implementation." It also commented that, "regarding the protective measures, they have not been effectively implemented, as a result of which the beneficiaries of such measures remain defenseless against any action taken against their lives."

35. On June 19, the Commission again sent a note to the State requesting a meeting at the seat of Government at a time and date proposed by the State, to comply with the decision of the Inter-American Court on the follow-up mechanism for the provisional measures. As of the writing of this report, no date has been set for this meeting.

36. On September 16, 2003, the IACHR received a request to extend the provisional measures to RCTV employees Pedro Nikken, Carlos Colmenares, and Noé Pernía, which was submitted to the Court on September 29, 2003.

37. On October 3, 2003, the IACHR received a resolution dated October 2, 2003 from the President of the Court concerning the request for extending the above-mentioned provisional measures. The resolution, *inter alia*, reiterated to the State the requirement to adopt as many measures as necessary to protect the lives and personal integrity of the persons subject to the provisional measures, and to extend their coverage to Carlos Colmenares, Noé Pernía and Pedro Nikken. The Court also resolved to require the State to investigate the facts that gave rise to the measures for the purpose of identifying those responsible and punishing them.

38. On November 21, 2003, the IACHR received a resolution handed down by the Court ratifying all the terms of the October 2, 2003 resolution of the President of the Court. In the preamble, the Court noted that the State had to date failed to produce "the urgent report that was required under the President's October 2, 2003 resolution on the measure adopted to effectively safeguard the lives, personal integrity, and freedom of expression of Carlos Colmenares, Noé Pernía and Pedro Nikken," while reminding the State of its obligation to "investigate the facts that gave rise to the provisional measures with a view to identifying those responsible and meting out the pertinent punishments." On December 2, 2003, the Court issued a resolution, which stated in its preamble, *inter alia*, that "the Court finds that Venezuela has submitted four reports. However, the documents submitted do not show effective implementation of the measures requested by this Court to protect the lives and personal integrity of the beneficiaries; ensure participation of the petitioners in coordinating and planning the type of protection; research the facts underlying the measures; and submit reports by the State to the Court every two months. Furthermore, the deadline for presenting the pending report on the provisional measures expired on September 11, 2003, the extended deadline for the emergency measures expired on October 15, 2003, and the extended deadline for the provisional measures on November 28, 2003, but none of the reports has been received." By that resolution, the Court decided:

1. To reiterate that the State has not effectively implemented the various provisional measures ordered by the Inter-American Court of Human Rights in this case.
2. To declare the State noncompliant with its obligation under Article 68.1 of the American Convention on Human Rights.
3. To declare the State noncompliant with the obligation to report to the Inter-American Court of Human Rights on implementation of the measures ordered by the Court.
4. In the event that the current situation continues, to report the State's failure to comply with the decisions of this Court to the General Assembly of the Organization of American States, in accordance with Article 65 of the American Convention on Human Rights and Article 30 of the Statute of the Inter-American Court of Human Rights.
5. To remind the State of its obligation to adopt, without delay, all measures necessary to protect the lives and personal integrity of Luisiana Ríos, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Carlos Colmenares, Noé Pernía and Pedro Nikken.
6. To remind the State that it is required to allow the petitioners to participate in the planning and implementation of the protective measures and, in general, to keep them informed of the progress of the measures dictated by the Inter-American Court of Human Rights.
7. To reiterate to the State its obligation to investigate the reports that gave rise to the said measures, in order to discover and punish those responsible.
8. To require that the State report to the Inter-American Court of Human Rights on the measures it has adopted in compliance with this resolution by January 7, 2004.
9. To request that the Inter-American Commission on Human Rights make any comments it may have to the Inter-American Court of Human Rights within 15 days of notification of the State's report.
10. To request that the State, after submitting the report referred to in substantive point 8 of the resolution, continue reporting to the Inter-American Court of Human Rights, every two months, on the provisional measures adopted, and to request that the Inter-American Commission on Human Rights continue to submit its comments on the reports within six weeks of their receipt.
11. To notify the State and the Inter-American Commission on Human Rights of this resolution.

III. POSITION OF THE PARTIES

A. The Petitioners

39. According to the petition, reporters, cameramen, their assistants, directors, and other employees of RCTV identified as Luisiana Ríos; Luis Augusto Contreras Alvarado; Eduardo Sapene Granier; Javier García; Isnardo Bravo; David Pérez Hansen; Wilmer Marcano; Winston Gutiérrez and Isabel Mavarez have been subjected to physical and verbal abuse designed to prevent them from performing their reporting work, or fully exercising the right to seek,

receive, and disseminate information and ideas of all kinds established in Article 13 of the American Convention. Among the reported facts that were particularly harmful to the petitioners, the following are recounted:

On January 20, 2002, reporter Luisiana Rios together with Javier García; Isnardo Bravo; David Pérez Hansen met to cover the program "Aló Presidente," which is usually transmitted by President Hugo Chávez Frías every Sunday by radio and television from the Cajibal Observatory. The vehicles arrived in the area with markings identifying the respective networks and, when the reporter stepped out, groups of approximately 50 persons surrounded the vehicle and proceeded to bang on it, kick it, and shout expletives. These persons wore T-shirts marked "Coordinadora Simón Bolívar." At that time, Javier García; Isnardo Bravo; David Pérez Hansen and cameraman Luis Augusto Contreras Alvarado were also threatened and physically attacked.

On April 18, 2002, reporter Luisiana Ríos was subjected to verbal abuse at the Miraflores Presidential Palace, where she was covering her source, Army Captain José Rodrigo García Contreras.

On May 2, 2002, Luisiana Rios was verbally assailed by sympathizers of the so-called Bolivarian Circles, receiving with such threats as "we're going to kill you, dirty dog, rat, trash talker, conspirator, traitor to the country." These threats were issued while the reporter was covering Mr. Pedro Carmona's appearance before the parliament.

On May 28, 2002, at the residence where Ms. Rios lived, *when she was leaving for work (5:00 a.m.), a vehicle was parked blocking her car. Seeing that, she went to the Concierge to ask in which apartment the person who had blocked her car was staying and with whom Ms. Rios had had the incident described earlier. Ms. Rios was told that the person was in apartment 19 of my building, which belonged to Mr. Federico Carmine, and that the man who had caused the problem was his son-in-law Hernán, who did not live there. Rios reported that Hernán had written a note, which was stuck on my door. The note urged reporters to have me removed otherwise he himself would take charge of notifying the "Vega Warriors" (Bolivarian Circles). The reporter noted that this was the third incident involving the Carmine family, Federico Carmine, Nicolás Carmine and Hernán, Mr. Carmine's son-in-law, who had been urged to occupy her space or block her path in the parking lot, repeatedly causing incidents of malicious damage, such as scratches on the vehicle.*

On March 12, 2002, Isnardo Bravo and David Perez Hansen, among others, reported various and frequent attacks they suffered, especially around the Central university of Venezuela, by persons identifying themselves, as members of the M-28 (*Tomistas*, activists close to the Government). These attacks were also related to their coverage of the people's courts led by Attorney Alfonzo Cancino of the Lina Ron Bolivarian Circles.

On March 24, reporter Isnardo Bravo suffered verbal abuse while covering a demonstration outside the National Assembly.

On April 3, 2002, at the headquarters of the Social Security Institute, Isnardo Bravo; Wilmer Marcano; Winston Gutiérrez were stoned, doused with buckets of water, and threatened with a beating with chains while covering a demonstration.

On April 10, 2002, Isabel Mavarez was hit in the face with a blunt object, requiring immediate medical assistance, while she was covering the news at the PDVSA headquarters in Chuao.

On December 17, 2001, reporters Javier García and David Pérez Hansen were wounded with stones and issued death threats in the environs of the UCV, while reporting in the streets.

On April 13, 2002, a group of military personnel from the Casa Militar barracks held Eduardo Sapene Granier at RCTV headquarters during an "assault" by the Bolivarian circles on RCTV.

On July 31, 2002, in the immediate surroundings of the Supreme Court of Justice, reporters Isnardo Bravo, Wilmer Marcano; Winston Gutiérrez were verbally attacked (e.g. "we're going to kill you"), etc. The two RCTV vehicles that were parked in the area were attacked, first by scratching the cars, then breaking their windows and puncturing all eight tires, while insults were hurled at the reporters and technical personnel in the vehicles. In the afternoon of that same day, the second RCTV vehicle was set on fire when a teargas bomb exploded inside.

40. The petitioners stated that they had reported all the attacks they had endured to the Venezuelan Attorney General's Office, backed by audiovisual evidence, digital photos, and tapes, which presumably identify one of the aggressors as an alleged active member of the Bolivarian Circles. The petitioners hold the Venezuelan State internationally responsible for the "threats, intimidation, and attacks on reporters and directors of the RCTV (...) by the Bolivarian Circles," who "acting directly or indirectly on behalf of the State, with its prompting, support, encouragement, tolerance, or its general acquiescence, violate the human rights internationally (...) established by the Convention."²

41. The petitioners allege that there is a connection between the attacks they reported and the hostile statements against the media, especially RCTV and its management, by the President of the Republic Hugo Chávez Frías and other senior government officials.

42. The petitioners allege that the continued attacks they reported constitute risks to their physical, moral, and mental integrity, in violation of Article 5 of the American Convention. They add that this defenselessness has affected their work in the media by exposing them to continuous physical aggression, as well as pain and suffering in the face of insults and verbal abuse from senior government officials and individuals, who are protected by the State through its failure to act to condemn, investigate, or punish said abuse. The petitioners claim that as reporters, cameramen, and camera assistants working the streets, they fear for their lives and personal integrity, and that sometimes they cannot use network identification, logos, or uniforms or have to wear bulletproof vests and gas masks provided by the network.

43. They add that the repeated, continual, and systematic acts of verbal abuse of the petitioners by the State, from the highest levels of Government or from groups linked to the Government, has resulted in a pattern of harassment regarding the right to information and expression, which constitutes a violation of Article 13 of the American Convention.

44. With respect to exhaustion of domestic remedies, the petitioners indicate that they have physical access to the documents of the case filed with the Attorney General's Office, the judicial police, and the criminal courts of first instance in charge of oversight. They also report that they have been able to submit documents to the public prosecutor's office. However, they state that the action of the Attorney General's Office, the only authority that may take criminal action in crimes committed by the government³, has been limited to taking declarations from

² The petition includes the official Web page of the Government of the Bolivarian Republic of Venezuela, which gives the general guidelines and requirements for forming a Bolivarian Circle. The page also indicated that "the supreme leader of the Bolivarian Circles is the President of the Bolivarian Republic of Venezuela" and that "the national and international headquarters for the records of the Bolivarian Circles will be the Miraflores Palace." See www.venezuela.gov.ve. Last visited on January 29, 2004.

³ The Cassation Division of the Supreme Court of Justice, in Judgment No. 0013 presented by Magistrate Blanca Rosa Mármol de León, established the doctrine of victims' rights as follows:

Article 117, applying the *ejusdem generis* rule to victims' rights, establishes that any person considered a victim in accordance with the provisions of the Organic Code of Criminal Procedure, even if said person is not a complainant, may, upon request, exercise in criminal procedures various rights established in the eight points of that rule, of which point 8 in particular states that victims may contest a stay or acquittal, even if they are not parties to the action, provided that the public prosecutor in the Attorney General's Office files an appeal. The foregoing shows that in the

the alleged victims without taking serious action on the proof presented by the petitioners with a view to identifying and punishing those responsible.

45. The petitioners point out that under Article 285.4 of the Venezuelan Constitution, the Attorney General's Office must investigate and prosecute punishable acts on behalf of the State against the responsible parties. Furthermore, the petitioners noted that the State is responsible for omission or failure to exercise due diligence in the investigations, in noncompliance with the express instructions of the Inter-American Court of Human Rights, in two binding decisions on the provisional measures requested for the petitioner Luisiana Ríos, among other RCTV employees. The petitioners stress that a reasonable time has elapsed since the first investigation was opened in January 2002 for the State to have produced visible results to identify and take the pertinent criminal action against those allegedly responsible for the attacks, in keeping with the State's obligation to provide guarantees and make reparations as provided in Articles 1 and 2 of the American Convention.

46. The petitioners add that the Attorney General's Office must investigate and decide whether or not, if charges are brought, the victim will have the right to become a direct plaintiff or to join the public prosecutor's suit. The petitioners claim that the ineffectiveness in conducting an exhaustive and serious investigation into the reported facts, to ensure that the petitioners' judicial guarantees are protected lies in the lack of independence of the various branches of government, in particular the judiciary and the office of the Attorney General. Finally, the petitioners argue that, in violation of Articles 8 and 25 of the American Convention, there is no simple, fast, and useful remedy that provides the petitioners with effective judicial protection with respect to the reported facts. They also claim that the public authorities have not been impartial, thus judicial protection from the unlawful acts perpetrated against the petitioners is impossible. For this reason, they argue in this report that the exceptions envisaged in Article 46 of the American Convention apply.

B. The State

47. In the opinion of the State, the remedies under domestic jurisdiction have not been exhausted because the facts—involving 22 criminal reports—are being investigated or are going through the penal process. The State declares that there has been no unwarranted delay given the complexity of the investigation into the facts by the Attorney General's Office. On those grounds, it requests that the IACHR declare the present petition inadmissible.

48. Regarding the incidents of verbal abuse, the State notes that these fall under the penal provisions on slander and defamation. As such, the petitioners should not have reported these acts to the Office of the Attorney General because they are "private action" crimes and the proper legal channel is to file a private suit with the competent criminal court.

49. The State argues that the petitioners are not protected by the exception of having exhausted domestic remedies, as stated in Article 31.2 of the Commission's Rules of Procedures, given the fact that the petitioners have access to the files of the case with the Attorney General's Office and the *Tribunales Penales de Control* (Criminal Oversight Courts) and that on the Venezuelan law books there is "a wide range of legal and constitutional actions to punish, redress, and prevent the acts that allegedly occurred."

50. The State reported that the Attorney General's Office is actively working on the 22 criminal cases filed by the petitioners with the various public prosecutors' offices. The State stresses the complexity of the reports of threatening telephone calls, insults hurled from passing cars, and the two cases of projectiles launched from an unknown location, as well as the complexity of the investigation into the reported facts, "which occurred during a public disturbance involving many witnesses in the country's capital city, who must be located for questioning."

new criminal procedure, although the Organic Code of Criminal Procedure confers rights and ways and means of participation in the new process, **it is nonetheless true that contesting decisions is conditional upon the public prosecutor appealing as well.** (Emphasis added.)

51. Concerning the unwarranted delay alleged by the petitioners, the State argues that the latter have not exhausted the domestic remedies provided in Venezuela's Organic Code of Criminal Procedure.⁴ The State observed that if indeed the delay was unwarranted, the petitioners did not take legal action in the courts of the Republic to have them order the public prosecutors' offices to conduct the investigations and the deadlines by which each specific case must be investigated. Lastly, the State alleges that the petitioners had recourse to special legal actions such as constitutional *amparo*. The State did not respond to the request for specific information made by the IACHR on October 15, 2003.

IV. ANALYSIS

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

52. Under Article 44 of the American Convention, the petitioners are entitled to submit petitions to the IACHR. The petition claims that the alleged victim is an individual, in whose regard Venezuela made a commitment to respect and guarantee the rights established in the American Convention. In that connection, the Commission notes that the original submission by the petitioners gave the following as alleged victims: Luisiana Ríos; Luis Augusto Contreras Alvarado; Eduardo Sapene Granier; Javier García; Isnardo Bravo; David Pérez Hansen; Wilmer Marcano; Winston Gutiérrez and Isabel Mavarez.

53. Similarly, after the complaint was lodged with the IACHR, new and similar acts were perpetrated against RCTV employees Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía and Carlos Colmenares. This caused the Commission and, with respect to some of the individuals, the Inter-American Court of Human Rights, to issue precautionary and provisional measures, respectively (see paragraphs 15, 16 and 17 above). Given the similarity of the supervening acts and their relationship to the current petition and the petition of the persons protected by the precautionary and provisional measures, the Commission will decide whether to include Erika Paz, Samuel Sotomayor, Anahís Cruz, Herbigio Henríquez, Armando Amaya, Antonio José Monroy, Laura Castellanos, Argenis Uribe, Pedro Nikken, Noé Pernía and Carlos Colmenares as alleged victims in its report on the merits, after the two parties have had the opportunity to present their arguments in accordance with Article 38 and other relevant articles of the Rules of Procedure of the IACHR.

54. The State of Venezuela is a party to the American Convention. The petitioners report actions and omissions directly imputable to the State. The Commission estimates that it has competence *ratione personae* in this respect. The petitioners also allege that the acts of the "Bolivarian Circles" can be directly imputed to the State. The IACHR will determine in its report on the merits what, if any, responsibility the State may have for the action of such groups.

55. The Commission has competence *ratione materiae* because the petition makes reference to reports of violations of human rights protected by the American Convention in Articles 1(1), 2, 5, 8, 13 and 25, to the detriment of Luisiana Ríos; Luis Augusto Contreras Alvarado; Eduardo Sapene Granier; Javier García; Isnardo Bravo; David Pérez Hansen; Wilmer Marcano; Winston Gutiérrez and Isabel Mavarez.

56. The Commission has competence *ratione temporis*, given that the reported facts occurred when the obligation to respect and guarantee the rights established by the Convention was already in force for the State, which ratified the Convention on August 9, 1977.

57. The Commission has competence *ratione loci*, because the alleged acts took place in the Bolivarian Republic of Venezuela, a country that has ratified the American Convention.

⁴ The State's response indicated that the Organic Code of Criminal Procedure envisages a legal mechanism whereby the victim has recourse to the Criminal Oversight Judge of First Instance to set a deadline for the Attorney General's Office to complete the investigation, with a penalty for noncompliance.

B. Requirements for Admissibility

1. Exhaustion of domestic remedies and deadline for presentation of the petition

58. The State alleges that the petitioner in question does not meet the requirement of prior exhaustion of domestic remedies set out in Article 46(1)(a) of the American Convention. This claim is made in its communication of October 8, 2003, approximately one year after the original petition was filed on September 26, 2002. In keeping with its Rules of Procedure, the Commission requested a response from the State within two months. The delay of more than one year in submitting the response allows the Commission to consider the exception of failure to exhaust as untimely, following the numerous examples in the jurisprudence of the inter-American system, which has established that an exception must be protested in a timely manner in order to be valid and, for that purpose, must be proposed in the first stages of the procedure before the Commission, otherwise the State concerned is presumed to have tacitly forfeited any such protest.⁵ However, in light of the State's subsequent response and for the sake of legal security and to preserve the State's right to a defense, the Commission in this case shall not apply the said presumption and shall expressly issue an opinion on the question of the requirement of prior exhaustion of domestic remedies.

59. In its communication of October 8, 2003, the State reported that on the Venezuelan law books there is "a wide range of legal and constitutional actions to punish, redress, and prevent the acts that allegedly occurred." The State reported that the Attorney General's Office was actively working on the 22 criminal cases filed by the petitioners with various public prosecutors' offices. The State also alleged that the petitioners have special legal action at their disposal, such as constitutional *amparo*.

60. The State alleges that the time spent on elucidating the violations reported is reasonable given the complexity of the cases and the probative process. To illustrate this claim, the State cites the complexity of the cases of reports of threatening phone calls, insults hurled from passing cars, and the two cases of projectiles launched from an unknown location, as well as the complexity of the investigation into the reported facts, "which occurred during a public disturbance involving many witnesses in the country's capital city, who must be located for questioning."

61. The petitioners also allege the applicability of the exception of prior exhaustion of domestic remedies provided in Article 46(2)(c), owing to the unwarranted delay on the part of the Attorney General's Office in conducting investigations into the reported facts expeditiously and within the deadlines established by law. They also allege the existence of indices of impunity and lack of independence surrounding the investigation into this matter. The petitioners argue that the Attorney General's Office should review the evidence they have submitted identifying those responsible. They claim that, instead of performing its responsibilities, the Attorney General's Office limited itself to taking depositions only. The petitioners declare that in view of the lack of initiative on the part of the Attorney General's Office, they actively helped carry out the investigation by taking "statements from the victims, submitting video tapes, audio tapes, documentary evidence, digital photos identifying those responsible for the acts of violence, helping the experts trace the trajectory of bullets." The alleged victims also resorted to forensic agencies for expert diagnosis of the cause of their bodily injuries.

62. In light of the petitioners' claims of inactivity on the part of the Attorney General's Office, the State argues that the petitioners did not use the domestic remedies available to them in Venezuela's Organic Code of Criminal Procedure.⁶ The State notes that, if the delay were

⁵ See, *inter alia*, IACHR Report Nº 31/031, Petition 12.195, Admissibility, Mario Alberto Jara Oñate et al., Chile, March 7, 2003, para. 35 and Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community Case, Preliminary Exceptions*, Judgment of February 1, 2000, paras. 53 and 54.

⁶ The State's response points out that the Organic Code of Criminal Procedure provides for a legal mechanism whereby the victim has recourse to a Criminal Oversight Judge of First Instance, who will set a deadline for the Attorney General's Office to complete an investigation, with a penalty for noncompliance.

indeed unwarranted, the petitioners did not take legal action in the courts of the Republic to have the public prosecutors' offices ordered to investigate each specific case and set deadlines for completion of the investigations.

63. The petitioners state that in accordance with Article 313 of the Organic Code of Criminal Procedure,⁷ the public prosecutor in the Attorney General's Office must seek to complete the preparatory stage with the due diligence the case requires. This standard also grants the alleged perpetrator the right to request an oversight judge to establish a deadline of no more than 120 days for completion of the investigation, provided that six months have passed since the identification of the alleged perpetrators.

64. The petitioners maintain that, in addition to the provisions of Article 23 of that Code⁸ "90 days would be more than enough time for the persons responsible to be identified and charged." The petitioners argue that the Attorney General's Office is unwilling to carry out the investigations and that a reasonable deadline for the investigation should be no longer than 180 days. The petitioners claim that the original report to the Attorney General's Office was submitted on January 31, 2002 and that there has been no conclusive action taken to date despite the fact that the information they provided allegedly identifies a number of persons involved in the acts under investigation. The petitioners point out that Venezuelan law requires public prosecutors in the Attorney General's Office to take criminal action⁹ under the law or be sanctioned for failure to do so.¹⁰ It is therefore the Attorney General's Office, through its public prosecutors, that has the monopoly of criminal action, direction, supervision of the police and completion of the investigation.

65. Article 46(1)(a) of the American Convention requires exhaustion of domestic remedies in accordance with generally accepted principles of international law. The jurisprudence of the Inter-American Court of Human Rights states that the mere submission of information on the progress of domestic judicial processes is not equivalent to expressly invoking the requirement of prior exhaustion of domestic remedies.¹¹

66. The Commission notes that in light of the insufficient information provided by the State regarding the failure to exhaust domestic remedies and the fact that the State was granted a further opportunity to submit additional comments, on October 16, the IACHR submitted a letter to the State requesting that it provide specific and detailed information on the action taken by the Attorney General's Office regarding the criminal complaints being processed. It also requested that the State explicitly report on the domestic remedies available to the

⁷ Article 313 of the Organic Code of Criminal Procedure, Chapter III. Progress of the Investigation, establishes: Article 313. Duration. The Attorney General's Office will try to complete the preparatory stage with the due diligence the case requires. Six months after the identification of the accused, the latter may request that an oversight judge set a prudential deadline of no less than 30 days and no more than 120 days for completing the investigation. To set that deadline, the judge must hear the Attorney General's Office and the accused and take into consideration the scope of the damages caused, the complexity of the investigation, and any other circumstances that, in the judge's opinion, would help reach an outcome in the process. Exceptions to this rule are cases of crimes against humanity, against public property, human rights issues, war crimes, drug trafficking and related crimes.

⁸ Article 23 of the Organic Code of Criminal Procedure states: Article 23. Protection of victims. The victims of punishable events have the right of recourse to agencies that administer criminal justice at no cost, expeditiously, and without undue delay or useless formalities, without prejudice to the rights of the plaintiffs or defendants. Protection of the victims and the compensation to which they are entitled for the damage are also the subject of criminal procedures. Officials who fail to process reports by victims in a timely manner and with due diligence and who compromise their right of access to justice shall be subject to the punishments assigned in the respective Code of Conduct to be issued for that purpose, and any other legal instrument.

⁹ Numerals 1 and 2 of Article 198 of the Organic Code of Criminal Procedure states: Article 108. Functions and Powers of the Attorney General's Office. In the criminal procedure, the Attorney General's Office shall: 1. Direct the investigation of the punishable acts and the investigation activity of police agencies to establish the identity of the perpetrators and their accomplices; 2. Order and supervise the action taken by the investigating police agencies regarding the collection and preservation of evidence for conviction.

¹⁰ The petitioners cite Article 85 of Anti-Corruption Law, which states: Public prosecutors or representatives of the Attorney General's Office who deliberately do not file legal appeals, fail to take criminal or civil action, or to take the legal steps necessary to discover the truth, following proper procedures, in compliance with procedural deadlines, and respecting due process shall be punished with imprisonment for two to four years.

¹¹ Inter-American Court of Human Rights, *Mayagna (Sumo) Awas Tingni Community Case*. Judgment of February 1, 2000, paras. 55 and 56.

petitioners and their effectiveness. As indicated in the section on processing the case before the Commission, the State did not respond to this request.

67. The IACHR considers it necessary to state that the information required by the Commission allows it to make determinations on a case submitted to it. The Court has stated that the cooperation of States is a key requirement in the international procedure of the Inter-American system in the following terms:

In contrast to domestic criminal law, in proceedings to determine human rights violations the State cannot rely on the defense that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation.

The State controls the means to verify acts occurring within its territory. Although the Commission has investigatory powers, it cannot exercise them within a State's jurisdiction unless it has the cooperation of that State.¹²

68. The Commission finds that the response from the Venezuelan State lacks the necessary detail on the actions taken by the Attorney General's Office. In the first place, the IACHR determines that in cases such as the present one, involving reports of physical aggression, criminal investigation is the proper remedy that must be exhausted. In that connection, the IACHR finds that two years have elapsed since the first report of the aggression, the investigation has produced no results in identifying and prosecuting the alleged perpetrators and the State has not provided any proof of the investigations carried out. The Commission specifically requested information on the action taken by the Attorney General's Office in the investigations carried out without receiving any response. In the opinion of the IACHR, this constitutes an unwarranted delay, which triggers the exception envisaged in Article 46.2.c of the American Convention.

69. Customarily, the IACHR does not require specific remedies in the event of unwarranted delays. It is the State's obligation not the petitioner's initiative to carry out the criminal investigation.¹³ Only if the petitioners' action delays the investigation must the IACHR examine their conduct. The State did not allege nor did the case file imply that the petitioner had behaved in such a manner. On the contrary, in accordance with the proof submitted and not contested by the State, the petitioner actively facilitated the Attorney General's Office.

70. In addition to the IACHR's practices mentioned, Venezuela's Organic Code of Criminal Procedure establishes that victims of punishable acts have the right of recourse to the agencies that administer criminal justice at no cost, expeditiously, and without undue delays or useless formalities.¹⁴ As one of the objectives of Venezuelan criminal procedure is to protect the victim, the Attorney General's Office is required to safeguard those interests at all stages of the process.¹⁵ The Venezuelan Organic Code of Criminal Procedure establishes that the Attorney General's Office must seek to end the preparatory stage with the due diligence the case requires.¹⁶

71. Having examined the evidence provided by the petitioners, the Commission finds that the exception of unwarranted delay applies in the decision on the remedy covered in Article 46 (2)(c) of the American Convention, and that this petition is admissible, in view of the fact that at the date of drafting of this report, there has been no decision in the criminal investigation, which is called for in such cases, that would enable the Venezuelan State to resolve the matter internally.

¹² Inter-American Court of Human Rights, *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C. Nº 4, paras. 135 and 136. Also IACHR, Report Nº 28/96, Case 11.297, Guatemala, October 16, 1996, para. 43.

¹³ Inter-American Court of Human Rights, *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C. Nº 4

¹⁴ Organic Code of Criminal Procedure, published in the Official Gazette Nº 5.558 of November 14, 2001, Article 23

¹⁵ Organic Code of Criminal Procedure, published in the Official Gazette Nº 5.558 of November 14, 2001, Article 118.

¹⁶ Organic Code of Criminal Procedure, published in the Official Gazette Nº 5.558 of November 14, 2001, Article 313.

72. It should also be noted that invocation of the exceptions to the rule of exhaustion of domestic remedies envisaged in Article 46(2) of the Convention is closely linked to the determination of possible violations of some rights enshrined in that Convention, such as guarantees of access to the justice system. However, Article 46(2), by its nature and purpose, stands apart from the substantive rules of the Convention. Therefore, determining whether the exceptions to the rule of exhaustion of domestic remedies envisaged in that rule are applicable to the case in question is a procedure that must be prior to and separate from the analysis of the merits of the case, as it depends on a different standard of judgment than that used to determine violations of Articles 8 and 25 of the Convention. It should be explained that the effects that prevented exhaustion of domestic remedies in this case will be analyzed, as relevant, in the report adopted by the Commission on the merits of the controversy, to determine whether they effectively constitute violations of the American Convention.

2. Deadline for presentation of the petition

73. As stated in Article 46(1)(b) of the Convention, petitions must be lodged by the deadline for admission, namely within a period of six months from the date on which the party filing was notified of the final judgment adopted within the internal jurisdiction.

74. The petition in question complies with the provisions of Article 32(2) of the Rules of Procedure of the IACHR, which establishes that “in those cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition shall be presented within a reasonable period of time [...]”. The IACHR shall consider the requirement for presenting the petition within a reasonable period of time to be fulfilled taking into account the date on which the alleged violations occurred.

3. Duplication of procedures and *res judicata*

75. There is no indication in this case that the subject of the petition is pending in another international proceeding, or that it reproduces a petition that has already been examined by another international agency. Therefore, the requirements established in Articles 46(1)(c) and 47(d) of the Convention must be considered satisfied.

4. Characterization of the alleged facts

76. For purposes of admissibility, the Commission must decide whether the facts may constitute a violation of rights as described in Article 47(b) of the American Convention, or whether the petition is “manifestly groundless” or “obviously out of order,” according to paragraph (c) of that Article.

77. The criterion applicable to assessing compliance with these requirements differs from the one applied to determine the grounds for the petition; the IACHR must conduct *aprima facie* assessment to establish whether the petition is based on a clear or potential violation of a right guaranteed by the Convention, but not to determine the existence of a human rights violation. This determination involves a brief review that does not imply any prejudgment of the merits of the case. By establishing two stages—one for admissibility and the other for the merits—the Commission’s Rules of Procedure reflect this distinction.

78. In that respect, the Commission concludes, for the purposes of admissibility, that the petitioners have filed reports which, if proven true, would tend to constitute violations of the rights protected under the American Convention in Articles 1, 2, 5, 8, 13, and 25. Similarly, based on the petition, the Commission finds that the alleged report does not fall within the purview of Article 47(b) and (c) and therefore meets the requirements of the American Convention.

V. FINDINGS

79. The Commission finds that the case is admissible and that it is competent to review the petitioners' claim of alleged violations of Articles 1(1), 2, 5, 8, 13 and 25, in accordance with the requirements established in Articles 46 and 47 of the American Convention.

80. Based on the arguments in fact and in law expressed above and without prejudice to the merits of the case,

**THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,
DECIDES:**

1. To declare the admissibility of the claims of Luisiana Ríos; Luis Augusto Contreras Alvarado; Eduardo Sapene Granier; Javier García; Isnardo Bravo; David Pérez Hansen; Wilmer Marcano; Winston Gutiérrez and Isabel Mavarez, under Articles 1(1), 2, 5, 8, 13 and 25 of the American Convention.

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

3. To continue to review the merits of the case.

4. To publish this report and include it in the Annual Report presented to the General Assembly of the OAS.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in the city of Washington, D.C., the 27th day of February 2004. (Signed): José Zalaquett, President; Clare K. Roberts, First Vice-President, Susana Villarán de la Puente, Second Vice-President, Evelio Fernandez Arévalo, and Florentín Meléndez, Commission members.