

**REPORT Nº 1/09**  
PETITION 1491-05  
ADMISSIBILITY  
BENITO ANTONIO BARRIOS *ET AL.*  
VENEZUELA  
January 17, 2009

**I. SUMMARY**

1. On December 30, 2005, the Inter-American Commission on Human Rights (hereinafter "the Commission") received a petition lodged by Eloisa Barrios, the Human Rights, Justice, and Peace Commission of Aragua State, and the Center for Justice and International Law (CEJIL) (hereinafter "the petitioners"), in which they allege the responsibility of agents of the Bolivarian Republic of Venezuela (hereinafter "the State") for the illegal arrest and extrajudicial execution of Benito Antonio Barrios on August 28, 1998, in the rural village of Guanayen in the municipality of Urdaneta. While the petition was being processed they added submissions concerning the alleged extrajudicial execution of Rigoberto Barrios, illegal arrests and violations of the right to humane treatment of several Barrios family members by agents of the State, and the subsequent displacement of those family members.

2. The petitioners allege that the State is responsible for violation of the rights to life, humane treatment, personal liberty, a fair trial, and judicial protection established in Articles 4.1, 5.1, 5.2, 7.1, 7.2, 7.3, 7.4, 7.5, 8.1, 22.1, and 25.1 of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in connection with the general obligation to respect the rights, set forth in Article 1.1 of the same instrument, to the detriment of Benito Barrios, Rigoberto Barrios, and their family members<sup>1</sup> (hereinafter "the alleged victims").

3. After examining the parties' positions and pursuant to the requirements stipulated in Articles 46 and 47 of the American Convention, the Commission decided to declare the case admissible for the purpose of considering the alleged violations of Articles 4.1, 5.1, 5.2, 7.1, 7.2, 7.3, 7.4, 7.5, 8.1, 22.1, and 25.1 and Article 19 of the American Convention, in application of the *iura novit curia* principle, in connection with the obligations set forth in Article 1.1 of the same instrument. It also decided to notify the parties of the report and publish it.

**II. PROCESSING BY THE COMMISSION**

4. On December 30, 2005 the Commission received a petition, which was registered as P-1491-05. On January 13, 2006 the Commission forwarded a copy of the relevant parts to the State, giving it two months to submit observations, as provided in Article 30.2 of the Rules of Procedure.

5. On March 9, 2006, the Commission received a request from the State for an extension. On March 13, 2006 the Commission notified the parties that the petition had been joined to case 12.488 (Eloisa Barrios et al.), and that in application of Article 37.3 of its Rules of Procedure, it had decided to defer treatment of admissibility of petition 1491-05 until the debate and decision on the merits, asking the petitioners to submit their observations. On May 8, 2006, the petitioners presented their observations on the merits, which were forwarded to the State on May 16, 2006. The Commission requested the State to submit its observations and copies of the files on the criminal investigations undertaken in connection with joined case 12.488 (Eloisa Barrios et al.).

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1 The principal members of the Barrios family are Justina Barrios (mother of the deceased Benito Antonio, Narciso, and Luis Alberto Barrios), her seven children Eloísa, Elvira, Luisa del Carmen, Oneida, Maritza, Inés Josefina Barrios, and Pablo Solórzano and their spouses or live-in companions, and her grandchildren and great-grandchildren.

6. On June 20, 2006, the Commission received arguments on the merits from the State, which were sent to the petitioners on July 5, 2006, with a request to present their observations. On August 11, 2006, the petitioners asked the Commission for a one-month extension, which was granted. On September 19, 2006, the petitioners submitted their observations, which were forwarded to the State on September 27, 2006. The State's observations were received on April 18, 2007, and forwarded to the petitioners.

7. On July 5, 2007, the Commission notified the parties that petition 1491-05 had been separated from case 12.488 (Eloisa Barrios et al.). On September 5, 2007, the State submitted its observations, which were forwarded to the petitioners on September 19, 2007. On the same date the petitioners presented additional information that was forwarded to the State for its observations on September 24, 2007. The State submitted its final observations on October 24, 2007, which were transmitted to the petitioners. On November 14, 2007, the petitioners presented their observations, which were forwarded to the State on November 19, giving it one month to comment. Those observations were not received.

### **III. CONTEXT**

8. The facts alleged in this petition are related to those of Case 12.488 Eloísa Barrios et al., which is now in the merits stage. Case 12.448 involves the deaths of Narciso and Luis Barrios and a series of house searches and acts of harassment against members of the Barrios family. The Commission found that case<sup>2</sup> admissible as regards allegations of possible violations of Articles 1, 4, 5, 8, 21, and 25 of the Convention, to the detriment of Narciso,<sup>3</sup> Eloísa, Elvira, Justina, Luis, and Oneida Barrios, and Benito Barrios' family members. In addition, the Commission granted precautionary measures for members of the Barrios family<sup>4</sup> and as of the date of this report's approval, they are beneficiaries of provisional measures<sup>5</sup> granted by the Inter-American Court of Human Rights.

### **IV. POSITIONS OF THE PARTIES**

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

9. By way of context for this case, the petitioners alleged it is in the framework of a recognized practice of extrajudicial executions and excessive and indiscriminate use of force by regional police, which has been going on for years. They contended that victims of this practice are generally young men in the economically disadvantaged social sectors,<sup>6</sup> and that Aragua is particularly notorious for the greatest number of "executions" by police agents, especially by the *Cuerpo de Seguridad y Orden Público* [Security and Public Order Corps] (hereinafter "the CSOP"), which constitutes a pattern of extrajudicial executions.<sup>7</sup>

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2 See IACHR, Report N° 23/05, *Narciso Barrios et al. v. Venezuela*, Petition 204-04, of February 25, 2005.

3 Narciso Barrios was assassinated on December 11, 2003.

4 The IACHR granted precautionary measures on June 22, 2004 to protect the life and humane treatment of Eloisa Barrios and her family.

5 On September 24, 2004, the Inter-American Court ordered provisional measures to protect the life and physical integrity of Eloisa, Inés, Beatriz, Jorge (15), Rigoberto, Oscar, Néstor Caudi, and Juan Barrios, Carolina García, and Pablo Solórzano. The measures were ordered after the death of Luis Barrios, (who demanded investigations into the death of Narciso Barrios) on September 20, 2004. Rigoberto Barrios (15) died on January 26, 2005, as result of an attack in which he received eight bullet wounds on January 9, 2005.

6 The petitioners cite PROVEA's annual report on the human rights situation in Venezuela, October 2004-September 2005, chapter on the right to life. Original petition received on December 30, 2005, p. 3.

7 The petitioners cite PROVEA's annual report on the human rights situation in Venezuela, October 2002-September 2003, p. 304. According to the petitioners, the modus operandi of this pattern typically includes: i) presentation of the facts as a shootout, which in most cases includes alteration of the crime scene and transfer of the wounded or dead victim to public hospitals without details of what happened; ii) the use of uniforms and/or official arms and equipment including vehicles; iii) the public discrediting of or criminal accusations against the victim, alleging that the individual resisted arrest or has a criminal background; iv) the intimidation, threatening, and even assassination of the eyewitnesses and the victim's family members; and v) the lack of clarification of the facts and their total impunity. Original petition received on December 30, 2005, p. 3.

10. The petitioners specified that it is difficult to exercise effective control over security forces in the rural village of Guanayen, in the municipality Urdaneta, south of the Aragua State, because of the geographical location. According to the petitioners, this situation has favored the development of a systematic practice of extrajudicial executions in the region, the excessive and arbitrary use of force, and mechanisms of impunity surrounding these situations.

11. The petitioners indicated that on August 28, 1998, at three o'clock in the morning, seven uniformed officers from the police stations in the towns of Barbacoa and Guanayen came to the house of worker Benito Barrios<sup>8</sup> (age 28), carrying firearms and lacking an arrest warrant. According to the petitioners, two of the police shot several times at Benito's brother Luis Alberto, without wounding him.

12. They alleged that four policemen threw Benito Barrios face down on the floor although he had not resisted, and in the presence of his sons Jorge Antonio (9) and Carlos Alberto (4), they hit him on the head with the butt of the weapons, causing Jorge Antonio to go off running to his paternal grandmother's house to tell her what was happening. The petitioners indicated that when Benito Barrios' nephew Victor learned of the situation, he went to his uncle's house and saw CSOP officers "mount" him and carry off Benito Barrios in a pick-up with cabins, which belonged to that police force.

13. They alleged that at 9:00 a.m. the next day, a man named Wilmer--representative of a funeral home--asked where some Barrios family representative lived, and was given the address of Ms. Oneida Barrios, a sister of Benito Barrios. According to the petitioners, this man went immediately to that home, and informed that at 6:00 a.m. that same day, August 29, 1998, Benito Barrios had been admitted at the Barbacoa hospital with two gunshot wounds and no vital signs. They indicated that according to the official death certificate, Benito Barrios died as a result of "acute anemia, thorax hemorrhaging, and a gunshot wound."<sup>9</sup> According to the petitioners, in the morning Benito's sisters, Oneida and Maritza Barrios, went to the Barbacoa hospital to identify their brother's body and were told that the police had reported the incident as an armed confrontation. They alleged the next day the body was turned over to the family for burial.

14. Concerning the exhaustion of domestic remedies regarding the death of Benito Barrios the petitioners indicated that the Technical Judicial Police, Villa de Cura station in Aragua State, began its investigation, the findings of which were submitted on June 18, 1999 to the Urdaneta Municipal Court and on July 28, 1999, to the *Tribunal Segundo de Transición* [Second Transition Court] of the State of Aragua. They reported that case was later submitted to the Superior Prosecutor's Office of Aragua and that it was still in the preparatory stage when the petition was lodged.

15. They alleged that the four of the policemen who took part in the arrest that preceded the execution of Benito Barrios were identified in the administrative file that was opened as a result of the incidents. They added that this administrative investigation remained open pending the results of the criminal investigation.

16. They indicated that on June 18, 2004, Eloisa Barrios filed a motion for *amparo* [constitutional injunction] against the Public Prosecutor's Office of the Aragua State District for denial of justice, procedural delay, and violation of due process. They alleged that on June 22, 2005, the *Tribunal Quinto de Juicio* [Fifth Law Court] rejected the *amparo*, finding the facts unclear.

17. The petitioners indicated that on June 29, 2005, Eloisa Barrios filed a complaint with the Public Ombudsman regarding the assassination of Benito Barrios, calling for an administrative

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8 Benito Antonio Barrios lived with Dalila Ordalys Ortuño, with whom he had two sons, Jorge Antonio and Carlos Alberto. Communication of the petitioners dated September 19, 2007, p. 3.

9 Civil death certificate of Benito Antonio Barrios, annex of original petition received on December 30, 2005, p. 7.

investigation against the prosecutors of the Public Prosecutor's Office of Aragua for losing the criminal case file and refusal to order completion of the investigations and presentation of the final report.<sup>10</sup>

18. They indicated that on July 11, 2005, Eloisa Barrios filed an appeal to the constitutional *amparo* that was decided on August 26, 2005, by the Appeals Court of the Aragua State Circuit, which threw out the lower court decision on *amparo* and remanded the case to the *Tribunal Sexto de Juicio* [Sixth Law Court] for a ruling.

19. The petitioners alleged that on June 29, 2005, Eloisa Barrios sent a note to the Attorney General's Office (hereinafter "the FGR") requesting closure in the investigations to determine the facts of her brother's assassination. They argued that on July 20, 2005, Eloisa Barrios received notification from the Public Prosecutor's Office that the FGR's *Dirección de Protección de Derechos Fundamentales* [Fundamental Rights Protection Office] was taking the necessary steps to find the case.

20. They stated that on September 26, 2005, the *Tribunal Sexto de Juicio* decided to admit the *amparo* decision and ordered the Public Prosecutor's Office to turn over within 48 hours the name of the prosecutors in charge of the case since August 28, 1998, and initiation of the criminal case regarding the death of Benito Barrios. They stated that in the constitutional hearing on November 11, 2005, the court ruled the *amparo* unfounded for lack of evidence of specific violation of the cited constitutional rights.<sup>11</sup>

21. The petitioners indicated that during 2006 there was a series of forensic investigations and some of Benito Barrios' family members testified at the Villa Cura station of the investigations police. In addition, they stated that on April 17, 2007, prosecutors of the Public Prosecutor's Office for the temporary judicial circuit of Aragua State filed first-degree murder charges against four state police officers for complicity to the intentional homicide of Benito Barrios.<sup>12</sup>

22. They stated that the date of the preliminary hearing was set for May 22, 2007, and later for October 23, 2007, in violation of the Organic Penal Procedure Code (hereinafter "COPP"),<sup>13</sup> and that it did not take place because the prosecutors of the Public Prosecutor's Office<sup>14</sup> failed to appear, and that the FGR Inspection and Discipline Office has still not begun an administrative investigation of them. They alleged that to date the investigation into the execution of Benito Barrios remains in the intermediate stage.

23. Concerning the requirements for admissibility, the petitioners stated that the excessive time elapsed since the death of Benito Barrios without the authorities having identified, arrested, tried, and punished the material and/or intellectual authors justifies application of the exception to the exhaustion of domestic remedies for unwarranted delay, as provided in Article 46.2.c of the American Convention, because the applicable remedy for clarification of the facts and punishment of the responsible parties has been totally ineffective. They add that the delay cannot be satisfactorily explained based on either the complexity of the case or the actions of Benito Barrios' family members, who have consistently demonstrated their interest and cooperation with the judicial authorities, and that the delay in reaching the required decisions

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10 They add that Eloisa Barrios filed similar complaints with the Ministries of the Interior and Justice, the Human Rights Committee of the National Assembly, and the Vice President and President of the Republic without receiving a reply. Original petition original received on December 30, 2005, pp. 11 and 12.

11 Petitioners' communication of November 14, 2007, p. 5. They say that on December 15, 2005 Eloisa Barrios submitted a written request to the prosecutor to tell her the number assigned to the case and the state of the proceeding, with no response. Petitioners' communication of November 14, 2007, p. 6.

12 Alexis José Amador Mujica, Amílcar José Henríquez Cerdeño, Carlos Alberto Sandoval Valor, Rizzon Vicente Superlano Rojas. Petitioners' communication of November 14, 2007, p. 7.

13 They say that Article 327 of the Organic Penal Procedure Code stipulates that the preliminary hearing shall be held "not less than ten days nor more than twenty days" after the indictment. Petitioners' communication of November 14, 2007, p. 8.

14 They say that the prosecutors are Reinaldo José Parasiliti and Maryori Cortéz Marin. Petitioners' communication of November 14, 2007, p. 8.

in the investigation is due solely to the lack of diligence and inactivity of the respective authorities.

24. The petitioners also argued that the officials in charge of the investigation failed to collect basic evidence, such as the testimony of Narciso and Luis Alberto,<sup>15</sup> Benito Barrios' brothers who were eyewitnesses of his arrest; and that as of the date the petition was lodged the officials had not conducted on-site forensic investigations such as reconstruction of the scene and physical measurements to prove the alleged shootout with the authorities; ballistic tests to reconstruct the trajectory of the shots; or a proper autopsy of Benito Barrios' body to determine whether he was tortured.<sup>16</sup>

25. As arguments of law, the petitioners stated that the arrest that preceded the extrajudicial execution of Benito Barrios was not done with a warrant and he was not told of the reasons for it. They added that it was not a *flagrante delicto* situation and Mr. Barrios did not resist arrest, even though the police beat him. They added that the purpose of the arrest was not to present the victim before a competent judicial authority, but on the contrary to facilitate his extrajudicial execution. The petitioners argued that these facts constitute violations of the rights established in Articles 7.1, 7.2, 7.3, 7.4, and 7.5 of the Convention, in connection with Article 1.1 of the same treaty.

26. The petitioners alleged that from the time Benito Barrios was taken from his home he was in the custody of State agents who were responsible for his life. They alleged that the members of the CSOP did not take him before a competent judicial authority and never explained how he received the gunshot wounds that killed him, and that the investigation has not contributed to clarification of the facts and punishment of the responsible parties. They therefore alleged that the State is responsible for the violation to the right to life guaranteed in Article 4.1 of the American Convention in connection with the obligations to respect and guarantee set forth in Article 1.1 of the same instrument.

27. In addition, they argued that while Benito Barrios was under arrest he was subjected to psychological torture, because in his extremely impotent and totally defenseless state he could foresee his fate. They stated that it is reasonable to infer that the circumstances of his arrest caused him to experience fear, terror, and consequent psychological and moral suffering in violation of the rights guaranteed in Articles 5.1 and 5.2 of the American Convention in connection with Article 1.1 of said instrument. The petitioners further argued that the State, by cloaking the facts in total impunity and allowing authorities to remain indifferent to the petitions and complaints, has caused members of the Benito Barrios family feelings of sadness, impotence, and frustration, in violation of their right to mental integrity established in Article 5.1 of the Convention, in connection with Article 1.1 of the same treaty.

28. Finally, they argued that the ineffectiveness of the criminal investigations is shown by the judicial authorities' failure to respect the principle of reasonable time and their duty for due diligence in conducting basic tests for clarification of the facts and full identification of the responsible parties, generating a situation of impunity, in violation of the rights set forth in Articles 8.1 and 25.1 of the American Convention in connection with Article 1.1 of that instrument.

29. The petitioners argued that the extrajudicial execution of Benito Barrios marked the beginning of an endless struggle to obtain justice and protection from the State, and that despite repeated overtures, the Barrios family has been living in constant fear because of the repeated acts of threats, harassment, searches, house burnings, robberies,<sup>17</sup> and assaults by

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15 Narciso Barrios was assassinated on December 11, 2003, and Luis Alberto Barrios was assassinated on September 20, 2004. Original petition received on December 30, 2005, p. 14.

16 Original petition received on December 30, 2005, p. 30.

17 The alleged searches, house burnings, and robberies are the subject of Case 12.488, currently in the merits stage.

members of the CSOP, who executed Narciso, Luis Alberto, and Rigoberto Barrios with total impunity.<sup>18</sup>

30. In addition, they stated that notwithstanding the executions of four members of the Barrios family and the complaints filed, acts of threats, intimidation, and harassment were extended to target other family members.<sup>19</sup> Among these acts, they alleged that Jorge Antonio (15), Benito's son, and Rigoberto (15) were illegally arrested by two police officers on March 3, 2004, and later found on the road to the Guárico River. They alleged the police forced Rigoberto to kneel and fired several shots near his left ear, first with a pistol and then with a submachine gun, and that they kicked him several times in the chest, legs, and face, leaving him unconscious. They stated that Jorge Antonio, whom the police had handcuffed, was obliged to witness the acts, was kicked, and was told that Rigoberto was dead. They alleged the boys were taken to the Barbacoa police station, and there Rigoberto was kicked and punched by seven police officers.<sup>20</sup> They indicated that three of these officers then tortured the minors, beating them on the arms and back with a metal tube and cutting Rigoberto's scalp with a knife. They alleged that the boys were released at 6:00 a.m. the next day, and that during their detention they were held incommunicado and their parents were not told of their arrest.<sup>21</sup>

31. They alleged that the minor Néstor Caudi Barrios was threatened during the hearing held on April 21, 2004, in the framework of a judicial investigation into the execution of Narciso Barrios, and on December 6, 2004, by two police who told him that "all his family members had been killed." They added that Néstor Caudi Barrios was arrested illegally and held incommunicado for one day in a cell of the Guanayen police station.<sup>22</sup>

32. They indicated that on June 19, 2004, Barrios family members were intercepted by a patrol of two police officers who forced Gustavo Ravelo, husband of Luisa del Carmen Barrios, and his father, Jesús Ravelo, to lie face down on the ground and kicked them in the face, legs, and ribs. They stated that when Luisa del Carmen asked the police to stop the beating, reminding them that the men were beneficiaries of provisional measures, the police insulted her and fired near her, threatening to lock her up so police could beat her in jail.<sup>23</sup> The petitioners indicated that the family members were all taken to the Barbacoa police station and released about 2:00 a.m. the next day, except for Oscar and Jorge Antonio Barrios, who continued to be detained until June 21, 2004.<sup>24</sup>

33. They stated that these acts of threats and harassment forced most of the family to leave the village of Guanayen for fear of suffering irreparable damage to their life and physical integrity, despite being beneficiaries of provisional measures ordered by the Inter-American Court.<sup>25</sup> In this regard they stated that Justina Barrios, the matriarch of the family, was forced to leave Guanayen in December 2003, following the extrajudicial execution of Narciso. In addition, Pablo Julián Solórzano Barrios and Elvira Barrios and her family<sup>26</sup> had to leave in

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18 Petitioners' communication received on September 19, 2007, p. 5.

19 They said that threats have continued against: Roni, Ronier, Arianna Nazareth, Oriana Zabaret, Wilmer José, Genesys Andreina, Victor Tomás, Geilin Alexandra, Elvira, Darelvis, Elvis Sarais, Cirilo Robert, Lorena, Eloisa, Inés, Beatriz, Oscar, Jorge, Caudi and Juan Barrios, Víctor and Beatriz Cabrera Barrios, Luimari and Luiseidy Guzmán Barrios, Yelitza Lugo Pelaez, Carolina García, Pablo Solórzano and Orismar Carolina Alzul García. Petitioners' communication received on September 19, 2007, p. 7.

20 They said that these officers included Inspector Wilmer Bravo. Petitioners' communication received on September 19, 2007, p. 7.

21 Petitioners' communication received on September 19, 2007, pp. 7 and 8.

22 Petitioners' communication received on September 19, 2007, p. 7.

23 Petitioners' communication received on September 19, 2007, p. 8.

24 They said that before Jesús Ravelo left the police station, Officer Oswaldo Blanco threatened that if he saw him again in the town "he would beat him until he remembered the day he was born." Petitioners' communication received on September 19, 2007, p. 8.

25 Petitioners' communication received on September 19, 2007, p. 7.

26 Elvira Barrios is the mother of Darelvis Carolina, Oscar, Elvis Sarai (14), Cirilo Antonio (10), and Lorena del Valle Barrios (2). Elvira Barrios returned to Guanayen in June 2005, after she could not find work.

February 2005, along with other Barrios family members, including a large number of boys and girls.<sup>27</sup>

34. The petitioners argued that the displacement has caused substantial deterioration in the family members' living conditions, because they have gone to live in squatter neighborhoods in poor housing with precarious public services. They further stated that the family has had to work in jobs unlike the former ones, and that the youth and children have had to interrupt their schooling.<sup>28</sup> They alleged that the family's ties in living together have been interrupted by displacement to different areas. They argued that thus far the State has failed to provide the conditions and means needed for the family members to return safely and decently to the village of Guanayen, despite the Inter-American Court's resolution calling upon it to do so.<sup>29</sup> They argued that all this has caused the family members to experience feelings of sadness, expulsion, and lack of protection, which has resulted in moral and psychological suffering. They therefore consider that the State has violated Articles 22.1, 5.1, and 5.2 of the American Convention in connection with its Article 1.1, to the detriment of the Barrios family.

35. Concerning the death of Rigoberto Barrios (16), Benito's nephew, the petitioners stated that on January 9, 2005, he was talking with his friend Genesys Martínez (16) when three policemen came out of a thicket with a revolver and shotgun and in a threatening tone ordered Genesys to get out of there or they would kill her. They indicated that when Rigoberto was left alone, the officers shot at him eight times and left. They indicated that the policemen did not exhibit a warrant and that the minor showed no signs of resisting authority. They stated that his mother took him to the Camatagua hospital, from where he was sent to the San Juan de Los Moros hospital and then to the Maracay hospital, where he died on January 19, 2005, as a result of the gunshot wounds.<sup>30</sup>

36. Finally, concerning the argument on duplication of proceedings adduced by the State (see IV.B *infra.*), the petitioners countered that the Special Rapporteurs of the United Nations have not addressed the merits of the case, and that they expressly stated: "without in any way implying a conclusion concerning the facts, we wish to call the attention of Your Excellency's Government to the basic rights set forth in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights."<sup>31</sup>

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

37. In response to the petitioners' arguments, the State invoked the exception of duplication of proceedings established in Article 33 of the Commission's Rules of Procedure, citing statements concerning the situation of Narciso, Luis Alberto, and Rigoberto Barrios made by Theo van Boven, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and Philip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, on November 16, 2004, and February 2, 2005.<sup>32</sup>

38. In addition, the State cited Article 39 of the Rules of Procedure of the Commission and asked the Commission to take into account the information supplied on the actions taken with

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27 Other displaced family members include: Oneida Barrios with her children Marcos Antonio (14), Sandra Maribí (9), Junio José (5), and Weneidy Barrios (4); Inés Josefina Barrios was displaced with her children Daniel Yoselin (11), Edixon Alexander (10), and Yoahan Ramón Barrios (4); Luisa del Carmen Barrios and her husband; and Néstor Caudi Barrios. Petitioners' communication received on September 19, 2007, p.10.

28 Students forced to interrupt their schooling are: Darelvia Carolina, Marco Antonio, Sandra Maribí, Daniela Yoselin, and Edixon Alexander Barrios. Petitioners' communication received on September 19, 2007, p.11.

29 The petitioners cite I/A Court H.R., *Case of Eloísa Barrios et al.*, Provisional Measures. Resolution June 29, 2005, operative paragraph 7. Petitioners' communication received on September 19, 2007, p. 12.

30 Petitioners' communication received on September 19, 2007, p. 6.

31 Petitioners' communication received on September 19, 2007, p. 6.

32 Note IAGEV/000763 of the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, received on June 20, 2006 pp. 17 and 18.

regard to the provisional measures ordered by the Inter-American Court, which had been duly reported to the Commission.<sup>33</sup>

39. Regarding the facts surrounding the death of Benito Barrios, the State argued that according to the police record written by the officers involved, the case was opened on August 28, 1998, at about 3:00 a.m. when the CSOP of Precinct No. 31 in Barbacoa, Aragua State, received a telephone call from an anonymous individual who said that several people were firing shots in the Las Casitas sector of San Francisco de Cara parish, so a detail composed of four officers<sup>34</sup> was dispatched to the scene to verify the complaint.<sup>35</sup>

40. The State indicated that once the policemen were on the scene, they saw two individuals with two shotguns that presumably started the exchange of shots that left one of the individuals wounded, and the other fled. The State argued that the wounded person, identified as Benito Barrios, was taken to the nearest hospital. It alleged that Mr. Barrios had no vital signs upon his arrival there.<sup>36</sup>

41. According to the State, police at the scene recovered two shotguns, both with spent cartridges in their chamber, one of which, apparently the one used by Benito Barrios, had been "requested."

42. The State indicated that months after the facts occurred Victor, Elvira, and Jorge Barrios (10) told authorities that the latter had been arrested and beaten by police officers and then was found dead.<sup>37</sup>

43. It alleged that in the light of this situation the appropriate investigation was begun, in the course of which there were various inquiries to clarify the facts and determine the truth of the police officer's statements. It indicated that on August 28, 1998 there was a search of the site of the facts, in which several shotgun cartridges and a knife were found.<sup>38</sup> In addition, it reported that there was an external examination of the corpse and a legal autopsy. It detailed that both examinations showed two bullet wounds without powder burns, and the cause of death was acute anemia due to perforations of the lung and liver by a projectile from a firearm. It added that other tests were performed.<sup>39</sup>

44. The State indicated that several people who could shed light on the investigation were interviewed. In this connection, it alleged that several people in the area reported hearing shots on the date of the facts and that other people said they were victims of criminal acts by Benito Barrios, who days before his death had robbed them at the point of a shotgun.<sup>40</sup>

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33 The State cites: "Article 39. Presumption. The facts alleged in the petition, the pertinent parts of which have been transmitted to the State in question, shall be presumed to be true if the State has not provided responsive information during the maximum period set by the Commission on the provisions of Article 38 of these Rules of Procedure, as long as other evidence does not lead to a different conclusion." Underlining by the State. Note IAGEV/000763 of the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, received on June 20, 2006 p. 18.

34 Sub-Inspector Alexis Amados, Sub-Official Carlos Sandoval, Sergeant Amilcar Cedeño, and Agent Rizzon Supelano Rojas. Note IAGEV/000763 of the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, received on June 20, 2006 pp. 8 and 9.

35 Note IAGEV/000763 of the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, received on June 20, 2006 pp. 8 and 9.

36 Note IAGEV/000999 of the Ministry of Popular Power for Foreign Affairs of the Bolivarian Government of Venezuela, received on September 5, 2007, p. 7.

37 Note IAGEV/000763 of the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, received on June 20, 2006 p. 9.

38 Note IAGEV/000763 of the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, received on June 20, 2006 p. 9.

39 The forensic reports on mechanism and design, legal registration, ballistic comparison of all firearms involved, and a partially deformed piece of lead. Note IAGEV/000763 of the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, received on June 20, 2006 p. 10.

40 Note IAGEV/000763 of the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, received on June 20, 2006 p. 10.

45. It alleged that the investigations revealed that there had been many complaints against Benito Barrios for alleged crimes against individuals, property, and public order, including robbery with knives and weapons similar to the one seized on the date of the facts. It added that Benito Barrios had a criminal and police record and that many people in the Guanayen community had called upon the authorities to intervene to stop the criminal activity of Benito Barrios.<sup>41</sup>

46. It indicated that the investigation into the death of the alleged victim was started under the Criminal Trial Code of 1962, which regulated a mixed penal code with heavy emphasis on the investigative system, in which the judges were in charge of the investigation. It added that as a result of the entry into force of the COPP in 1999,<sup>42</sup> the case was taken by the prosecutors of the Public Prosecutor's Office to the transitional court system of Aragua State,<sup>43</sup> which on April 17, 2007, decided to accuse four State officials<sup>44</sup> of first-degree murder as accessories to homicide before the fact, and that the Ninth Chamber of the First Instance, acting as the Criminal Circuit Court of the State of Aragua, is seized of the case.<sup>45</sup>

47. Concerning the alleged deprivation of liberty, wounding, and improper use of firearms to the detriment of Oscar and Jorge Barrios, Luisa del Carmen Barrios de Ravelo, and Gustavo and Jesús Ravelo, the State indicated that the case is in the preliminary phase, and that interviews and inquiries have been conducted, and that the indictment of police officers Oswaldo Blanco, Félix Ramos, and Giselo Ramos was scheduled for June 20, 2006.<sup>46</sup>

48. Regarding the alleged illegitimate arrest and wounding of Jorge and Rigoberto Barrios on May 3 and 4, 2004, the State indicated that the case is in the investigation phase. It added that the case involving the death of Rigoberto Barrios was archived in May 2006, given that the results of the investigation did not justify an indictment.<sup>47</sup>

49. The State alleged the proceeding on Benito Barrios' death has been complex, that there has been a great deal of procedural activity in the case, and that the competent entities have not stopped working on it. It argued that domestic remedies in the case have not been exhausted because higher courts have still not considered it. It therefore asked the Commission to find the petition not admissible.<sup>48</sup>

## **V. ANALYSIS OF ADMISSIBILITY**

### **A. Competence**

#### **1. The Commission's *ratione personae*, *ratione loci*, *ratione temporis* and *ratione materiae* competence**

50. The petitioners are eligible under Article 44 of the Convention to submit petitions on behalf of the alleged victims. The Venezuelan State ratified the American Convention on August 9,

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41 Note IAGEV/000763 of the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, received on June 20, 2006 p. 10.

42 The Organic Penal Procedure Code was published in the Official Gazette on January 23, 1998, and entered into force on July 1, 1999. Note IAGEV/000999 of the Ministry of Popular Power for Foreign Affairs of the Bolivarian Government of Venezuela, received on September 5, 2007, p. 11.

43 Note IAGEV/000763 of the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, received on June 20, 2006 p. 11.

44 Alexis José Amador Mujica, Amílcar José Henríquez Cerdeño, Carlos Alberto Sandoval Valor, Rizzon Vicente Superlano Rojas. Note IAGEV/000999 of the Ministry of Popular Power for Foreign Affairs of the Bolivarian Government of Venezuela, received on September 5, 2007, p. 9.

45 Note IAGEV/000999 of the Ministry of Popular Power for Foreign Affairs of the Bolivarian Government of Venezuela, received on September 5, 2007, p.9.

46 Note IAGEV/000763 of the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, received on June 20, 2006 pp. 2 and 3.

47 Decision to archive the case of citizen Rigoberto Barrios, annex to Note IAGEV/000763 of the Ministry of Foreign Affairs of the Bolivarian Republic of Venezuela, received on June 20, 2006 p. 4.

48 Note IAGEV/000999 of the Ministry of Popular Power for Foreign Affairs of the Bolivarian Government of Venezuela, received on September 5, 2007, p.13.

1977, and the United Nations Convention on the Rights of the Child on September 13, 1990. The Commission therefore has *ratione personae* competence to examine the petition. In addition, the Commission has *ratione temporis* competence because the American Convention was in force for the State on the date the facts alleged in the petition were said to have occurred.

51. The Commission has *ratione loci* competence because the violations allegedly occurred in the territory of a State party to that treaty. Finally, the Commission has *ratione materiae* competence, because the petition alleges violations of rights protected in the framework of the American Convention.

## **2. Exhaustion of domestic remedies**

52. Article 46.1.a of the American Convention stipulates as a requirement for admission of a petition alleging violations of the Convention "that the remedies under domestic law have been pursued and exhausted in accordance with generally recognized principles of international law."

53. 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.

54. According to the Rules of Procedure of the Commission and the Inter-American Court, it is up to the State to demonstrate that the remedies under domestic law that have not been exhausted are "adequate" for correcting the alleged violation, in other words, domestic remedies are those which are suitable to address an infringement of a legal right.<sup>49</sup>

55. In the instant case the State argues that the petition does not satisfy the requirement for prior exhaustion of domestic remedies set forth in Article 46.1.a of the Convention because there are pending investigations. On the other hand, the petitioners argue that authorities have failed to investigate the facts in a timely and effective manner, which would lead to application of the exception established in Article 46.2.c, because there has been an unwarranted delay in the proceeding.

56. In view of the positions of the parties and circumstances of this case, the Commission also considers it germane to determine the petition's purpose. It deals specifically with the facts related to the extrajudicial executions of Benito Antonio Barrios and Rigoberto Barrios, the alleged acts of harassment and threats against members of the Barrios family, the subsequent displacement of the Barrios family, and aspects concerning the investigations into the circumstances surrounding said events.

57. The Commission's jurisprudence recognizes that in crimes of public action the State has an obligation to set the criminal law system into motion and to process the matter until the end<sup>50</sup> and that in these cases it is the appropriate entity for clarification of the facts, prosecution of

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49 I/A Court H.R., Case of Velásquez-Rodríguez. Judgment of July 29, 1988, para. 64.

50 Report N° 52/97, Case 11.218, Arges Sequeira Mangas, Annual Report of the IACHR 1997, paras. 96 and 97. See also Report N° 55/97, para. 392. Report N° 62/00, Case 11.727, Hernando Osorio Correa, Annual Report of the IACHR 2000, para. 24.

the responsible parties, application of the appropriate criminal penalties, and other monetary forms of reparation. The Commission considers that the facts alleged by the petitioners in this case involve the alleged violation of inalienable basic rights, such as the right to life and humane treatment, which under domestic legislation are offenses that the State must prosecute as its own legal duty. It is therefore this process, set into motion by the State itself that must be considered in order to determine the petition's admissibility.

58. In this regard, the Commission notes that as a general rule a criminal investigation must be carried out promptly in order to protect the victims' rights, preserve the evidence, and also to safeguard the rights of every suspect in the context of the investigation. As the Inter-American Court has stated, although every criminal investigation must comply with a series of legal requirements, the rule of prior exhaustion must never lead to a halt or delay that would render international action in support of the defenseless victim ineffective.<sup>51</sup> The Inter-American Court has also established that in order for a remedy to be considered effective it must be capable of producing the result for which it was designed.<sup>52</sup>

59. The Commission moreover notes that this case is not particularly complex, given that in principle it concerns two alleged extrajudicial executions in which the alleged material authors have been fully identified.<sup>53</sup> In addition, the case file indicates that Eloisa Barrios has taken an active part in the proceedings, seeking their resumption when they were paralyzed, requesting inquiries and forensic tests that she considered indispensable for the investigation, and even filing motions for *amparo* to demand timely legal action. On this point, the Commission deems that the alleged victims' family members have exercised the means at their disposal to seek justice in the framework of an investigation that the State itself is responsible for conducting.

60. The Commission notes that the initial facts cited in this case took place on August 28, 1998, and that more than ten years has elapsed since the first extrajudicial execution, without a determination of the legal responsibilities or punishment of the authors of the facts in the petition. In addition, it notes that the investigation into the alleged extrajudicial execution of Rigoberto Barrios that occurred on January 9, 2005—during the processing of this petition—was archived in May 2006 and that there still has been no determination of the legal responsibilities or punishment of the authors of the facts. Finally, as regards the other complaints regarding the alleged illegal arrests and violation of the right to humane treatment, the investigations are incomplete. All of this constitutes an unwarranted delay in the terms of Article 46.2.c of the American Convention, so the petitioners should be exempt from exhausting domestic remedies before they have recourse to the inter-American system in search of protection.

61. The Commission reiterates that invocation of the exceptions to the rule for exhaustion of domestic remedies established in Article 46.2 of the Convention is intimately linked to the determination of possible violations of certain rights guaranteed in the convention, such as the right to a fair trial. However, Article 46.2 of the American Convention, by its nature and scope, is an autonomous norm *vis à vis* the Convention's substantive norms. Therefore, determination of whether exceptions to the rule of exhaustion of domestic remedies are applicable in this case must be made first and separately from the analysis of the merits, because it applies a different standard than the one used to determine violation of Articles 8 and 25 of the Convention. The causes and effects that have prevented the exhaustion of domestic remedies in this case will be analyzed, as appropriate, in the Commission's report on the merits of the dispute, to determine if they do in fact constitute violations of the American Convention.

### **3. Deadline for presentation of the petition**

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51 I/A Court H.R., Case of Velásquez-Rodríguez. Preliminary Objections, Judgment of June 26, 1987, para. 93.

52 I/A Court H.R., Case of Velásquez-Rodríguez. Judgment of July 29, 1988, para. 66.

53 IACHR, Report No. 23/07, Eduardo José Landaeta Mejías et al., Petition 435-2005, Admissibility, March 9, 2007, para. 45.

62. The American Convention stipulates that for a petition to be admissible it must be lodged within a period of six months from the date on which the party alleging violation of his rights was notified of the final judgment. In the petition under analysis, the IACHR has recognized applicability of the exceptions to the exhaustion of domestic remedies pursuant to Article 46.2.c of the American Convention. On this matter, Article 32 of the Commission's Rules of Procedure provides 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, as determined by the Commission. For this purpose, the Commission shall consider the date on which the alleged violation of rights occurred and the circumstances of each case.

63. In the instant case, the petition was received on December 30, 2005, and the alleged illegal arrests, torture, and two executions occurred for the first one on August 28, 1998, and for the second one (during the processing of the case by the Commission) on January 15, 2005, with investigations initiated on the same dates as the facts. The investigation of the facts involving Benito Barrios is in the intermediate stage and that related to Rigoberto Barrios was archived in May 2006. In addition, the investigations into some of the complaints regarding threats and harassment are pending, and have yielded no results. On this matter, the State's lack of an effective judicial response if it failed to exercise due diligence in the investigation would be continuing to the present time. Therefore, in view of the context and the characteristics of this case, and the fact that the responsible parties have still not been prosecuted and punished, the Commission considers that the petition was lodged within a reasonable period of time and that the deadline for the presentation of petitions has been met.

#### **4. Duplication of proceedings and *res judicata***

64. Article 46.1.c establishes that admission of a petition shall be subject to the requirement that the matter "is not pending in another international proceeding for settlement," and Article 47.d of the Convention provides that the Commission shall not admit a petition that "is substantially the same as one previously studied by the Commission or by another international organization."

65. In the case at hand, the State alleges the exception of duplication of proceedings established in Article 33 of the Commission's Rules of Procedure in view of the statements concerning the situation of Narciso, Luis Alberto, and Rigoberto Barrios made by Theo van Boven, Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and Philip Alston, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, on November 16, 2004, and February 2, 2005. The petitioners, however, argue that the UN Special Rapporteurs did not make definitive statements on the merits of the case, so it has not been examined by another international organization. (See IV.A *supra*.)

66. In this connection it must be noted that grounds for inadmissibility under Article 47.d of the Convention on duplication of international proceedings require that in addition to having identical subjects, purposes, and claims, the petition must be under consideration, or have been ruled upon, by an international organization that is competent to adopt decisions on the specific facts contained in the petition and measures for effective settlement.<sup>54</sup>

67. The Commission finds that when the Special Rapporteurs of the United Nations made comments and statements on a particular situation they were not adopting decisions or measures for the settlement of disputes such as the one under consideration. On this point, the Commission considers that the grounds for inadmissibility of the petition based on Articles 46.1.c and 47.d of the Convention and 33 of the IACHR Rules of Procedure are not present.

#### **5. Characterization of the alleged facts**

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<sup>54</sup> IACHR Report on Admissibility N° 96/98 Case 11.827 Peter Blaine, December 17, 1998, para. 42, and IACHR Report on Admissibility N° 47/08 Luis Gonzalo "Richard" Vélez Restrepo and family, July 24, 2008, para. 64.

68. Based on elements of fact and law presented by the parties and the nature of the matter submitted to it, the Commission considers that the petitioners' allegations of violations of the rights to life, humane treatment, personal liberty, a fair trial, and judicial protection tend to establish a violation of the rights protected in Articles 4.1, 5.1, 5.2, and 7.1-7.5, in connection with Article 1.1 of the American Convention to the detriment of Benito Antonio Barrios and Rigoberto Barrios; and of the rights to mental and moral integrity, due process, and judicial protection set forth in Articles 5.1, 8.1, and 25 of the American Convention respectively, in connection with Article 1.1 of the same treaty, to the detriment of their family members.

69. The Commission considers that the petitioners' allegations of violation of the right to personal liberty tend to establish violations of the rights protected in Article 7.1-7.5 of the American Convention to the detriment of Jorge Antonio, Néstor Caudi, Luisa del Carmen, and Oscar Barrios, and Jesús and Gustavo Ravelo. Furthermore, the allegations concerning alleged violation of the right to humane treatment tend to establish violations of the rights protected in Article 5.1 and 5.2 of the American Convention to the detriment of Jorge Antonio Barrios and Jesús and Gustavo Ravelo, and in Article 5.1 of the American Convention to the detriment of Luisa del Carmen and Oscar Barrios, all in connection with Article 1.1 of the same instrument.

70. The Commission considers that the petitioners' allegations of violation of the right to freedom of movement and residence tend to establish violations of the right protected in Article 22.1 of the American Convention in connection with its Article 1.1, to the detriment of several members of the Barrios family. (See IV.A *supra*.)

71. Applying the *iura novit curia* principle, the Commission finds that the facts also tend to establish violations of Article 19 of the American Convention, to the detriment of the minors Rigoberto and Jorge Antonio Barrios and the other girls and boys in the Barrios family (see IV.A *supra*). Finally, based on the restrictions regarding interpretation specified in the American Convention on Human Rights<sup>55</sup> and the criteria established by the Inter-American Court of Human Rights concerning the tendency to integrate the regional and universal systems for the protection of human rights<sup>56</sup> and the concept of a *corpus juris* for the protection of the child,<sup>57</sup> the Commission will interpret the scope and content of the rights that have allegedly been violated to the detriment of the boys and girls of the Barrios family in the light of the provisions of the United Nations Convention on the Rights of the Child.<sup>58</sup> Since there is no evidence that the petition is manifestly groundless or obviously out of order, the Commission deems that the requirements set forth in Articles 47.b and c de of the American Convention have been satisfied.

## VI. CONCLUSIONS

72. By virtue of the foregoing arguments of fact and law, and without prejudging the merits of the matter, the Inter-American Commission concludes that the instant case is admissible in accordance with Articles 46 and 47 of the American Convention and therefore,

### THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

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

56 I/A Court H.R., Advisory Opinion OC 1/82 of September 24, 1982 on "Other treaties" subject to the advisory jurisdiction of the Court (Article 64 of the American Convention on Human Rights), para. 41.

57 I/A Court H.R., The "Street Children" Case (Villagrán Morales et al.). Judgment of November 29, 1999, Series C Nº 63, para. 194; Case of the "Juvenile Reeducation Institute". Judgment of September 2, 2004, para. 148; Case of the Gómez Paquiyauri Brothers, Judgment of July 8, 2004, para. 166; I/A Court H.R., Juridical Condition and Human Rights of the Child. Advisory Opinion OC-17/02 of August 28, 2002, Series A, No. 17, paras. 24, 37, 53.

58 This Convention was adopted on November 20, 1989, and entered into force on September 2, 1990. The State of Venezuela ratified the Convention on the Rights of the Child on September 13, 1990.

1. To declare the present petition admissible as regards Articles 4.1, 5.1, 5.2, 7.1, 7.2, 7.3, 7.4, 7.5, 8.1, 19, 22.1, and 25.1 of the American Convention in connection with Article 1.1 of the same instrument.
2. To notify the State and the petitioners of this decision.
3. To begin consideration of the merits of the case.
4. To publish this decision and include it in the Annual Report to the OAS General Assembly.

Approved by the Inter-American Commission on Human Rights on January 17, 2009. (Signed): Paolo G. Carozza, Chairman; Felipe González, Second Vice-Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.