

REPORT Nº 23/05¹

PETITION 204/04
ADMISSIBILITY
Narciso Barrios *Et Al.*
VENEZUELA
February 25, 2005

I. SUMMARY

1. On March 16, 2004, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the IACHR") received a petition from Mr. Luis Aguilera, Secretary General of the Human Rights, Justice, and Peace Commission of Aragua State (hereinafter "the petitioner"), representing Narciso Barrios (deceased) and his family Eloisa Barrios, Elvira Barrios, Justina Barrios, Luis Barrios (deceased), and Oneida Barrios. The petition alleges the responsibility of the Bolivarian Republic of Venezuela (hereinafter, "the State" or "the Venezuelan State") in the extrajudicial killing of Mr. Narciso Barrios on December 11, 2003, and incidents of harassment and violence against the other members of the Barrios family named in this paragraph.

2. The petitioner claims that the incidents reported in the complaint constitute violations of several provisions of the American Convention on Human Rights (hereinafter "the American Convention"): the right to life (Article 4), the right to humane treatment (Article 5), the right to a fair trial (Article 8), and the right to judicial protection (Article 25), all in accordance with the general obligation established in Article 1(1) thereof.

3. During the processing of the petition, the Commission was informed that two members of the Barrios family had died: Luis Barrios died of gunshot wounds on September 20, 2004, and the 15-year-old minor Rigoberto Barrios died of a stomach hemorrhage after being hit by eight (8) bullets on January 9, 2005. It should be noted that Luis Barrios and other members of the Barrios family were the subject of a request for precautionary measures requested by the IACHR on June 22, 2004. Upon receiving the information of the death of Luis Barrios, and in light of the continued harassment suffered by several members of the Barrios family, the Commission asked the Inter-American Court of Human Rights (hereinafter, "the Inter-American Court" or "the Court") to order Provisional Measures on behalf of several members of the Barrios family on September 23, 2004. Among the persons protected by the measures ordered by the Court was the minor Rigoberto Barrios.

4. As of the date of this report, the State has submitted no comments regarding the admissibility of this petition.

5. After analyzing the positions of the parties, the Commission concludes that it is competent to decide on the claim lodged by the alleged victims and that the case is admissible pursuant to Articles 46 and 47 of the American Convention. Consequently, the Commission resolves to inform the parties, to publish this report on admissibility, and to include it in its Annual Report.

II. PROCESSING BY THE COMMISSION

A. Petition

6. On March 16, 2004, the Inter-American Commission on Human Rights received a petition lodged by Luis Aguilera, Secretary General of the Human Rights, Justice, and Peace Commission of Aragua State, representing Narciso Barrios, Eloisa Barrios, Elvira Barrios, Luis Barrios, Oneida Barrios, and Justina Barrios, against the Venezuelan State. The Commission registered the petition as No. number P-204/04. On May 13, additional information was

¹ Commissioner Freddy Gutiérrez, a Venezuelan national, did not participate in the debate and vote on this report, in compliance with Article 17(2)(a) of the Commission's Rules of Procedure.

received from the petitioner, reporting the arrest, torture, and physical mistreatment of the minor Oscar José Díaz Barrios. On June 3 the Commission received, from the petitioner, an update on progress with the investigations being carried out into the death of Narciso Barrios. On August 9, 2004, the Commission received additional information from the petitioner.

7. On August 19, 2004, the IACHR forwarded the relevant parts of the complaint to the State in compliance with Article 30(2) of the IACHR's Rules of Procedure, giving it a period of two months in which to submit its comments.

8. On October 14, 2004, the IACHR received additional information in which the petitioner alleged there had been procedural delays in the investigations into the death of Narciso Barrios and claimed that there were problems in the investigation into the murder of Luis Barrios. This communication was forwarded to the State on November 18, 2004. As of the date of this report, the Commission has received no reply from the State in connection with the petition.

B. Precautionary measures

1. The petitioner reports that:

a) On March 15, 2004, the Senior Prosecutor of the Public Prosecution Service in Aragua State requested protective measures for the Barrios family.²

b) On March 18, 2004, the Ninth Court of Judicial Criminal Oversight of Aragua State received, from the State's Higher Prosecutor's Office, a protective measure sought for Mrs. Eloisa Barrios and several members of her family. Twelve days later, the court sent the request for protective measures to the 14th Prosecutor's Office of the Public Prosecution Service in Aragua State, which then forwarded the request to the Higher Prosecutor's Office for execution.

c) On April 21, 2004, given the failure to implement the aforesaid protective measure, the petitioner presented the Commission with a request for precautionary measures.³

9. On May 6, 2004, based on the above information, the Commission asked the State for information about whether the protective measure requested by the Public Prosecution Service had been implemented and what specific measures had been adopted.

10. On May 18, 2004, the State informed the Commission that Detachment No. 21 of the National Guard had checked compliance with the aforesaid measures.⁴

11. Also on May 18, the petitioner informed the Commission that an officer of the National Guard had gone to Mrs. Eloisa Barrios's home in the early morning hours and had told her he was the official charged with enforcing the protective measure issued by the Oversight Court. The officer said he would come by once a day and also told Mrs. Barrios that he would be unable to provide her with protection when he did not have permission, when it was raining, or when his motorcycle was not in good mechanical operating order. In addition, he had been instructed to provide only Mrs. Eloisa Barrios with protection, and not the rest of her family.

12. On June 22, 2004, the Commission asked the State to adopt precautionary measures to protect the life and person of Eloisa Barrios and her family; it also requested that it carry out a thorough investigation of the threats and harassment targeted at the individuals covered by those measures.

² State's communication with the IACHR, May 18, 2004.

³ Complaint lodged with the Senior Prosecutor of the Public Prosecution Service in the Aragua State judicial district, April 21, 2004.

⁴ State's communication with the IACHR, May 18, 2004.

13. On four occasions (July 2 and 13, and August 4 and 13, 2004, the Commission repeated its request for information from the State about the Barrios family's situation and about the measures adopted to protect the lives and persons of the individuals named in the IACHR's request for precautionary measures. The Commission received no reply. The Commission noted that:

a) On September 4, 2004, Caudy Barrios and Rigoberto Barrios were arrested by a patrol of Aragua police – comprising three units, all attached to the police station in the town of Guanayen. Once detained, they were taken to the Barbacoa station and beaten. Rigoberto Barrios was released the next day; in contrast, on September 6 Caudy Barrios was transferred to the sub-office of the Scientific, Penal, and Criminal Investigation Corps, based in the town of Villa Cura in the same state. Once there, after verifying that he was not wanted for the commission of any crime, he was released.⁵

b) On September 18, 2004, a squadron of state police attached to the Guanayen station visited the home of Oscar and Luis Barrios and told them not to be surprised if a group of men wearing masks were to pay a call.

(c) On September 20, 2004, Luis Barrios was murdered in the yard of his home in the town of Guanayen.⁶

C. Provisional Measures

14. On September 20, 2004, the Commission was informed that Mr. Luis Barrios, the instigator of the investigations into the death of Narciso Barrios and a beneficiary of the precautionary measures that the Commission had requested, had been extrajudicially killed in the yard of his home, located in the town of Guanayen, by two masked men who shot him four times, killing him instantly. In light of that information, seeing that the IACHR's precautionary measures had been ineffective in preventing Mr. Luis Barrios's death, and given the continued intimidation of several other family members, on September 23, 2004, the IACHR sent the Inter-American Court a request for provisional measures on behalf of Eloisa Barrios, Jorge Barrios, Rigoberto Barrios, Oscar Barrios, Inés Barrios, Pablo Solórzano, Beatriz Barrios, Caudy Barrios, Carolina García, and Juan Barrios. In lodging the provisional measures request with the Court, the Commission explained that the beneficiaries were relatives of Mr. Narciso Barrios and that they had been eye witnesses to his murder or instigators of the corresponding investigation.

15. In a resolution of September 24, 2004, the President of the Inter-American Court extended urgent measures to protect the lives and persons of Eloisa Barrios, Inés Barrios, Beatriz Barrios, and Carolina García, and of Jorge Barrios, Rigoberto Barrios, Oscar Barrios, Pablo Solórzano, Caudy Barrios, and Juan Barrios.

16. On November 23, 2004, the Inter-American Court ratified all points of the President's resolution of September 24, 2004.

17. On January 13, 2005, the Commission sent additional, urgent information to the Court, telling it that on January 9 of that year the minor child Rigoberto Barrios, covered by the protective measures extended by the Court, had been shot eight times and was in a critical condition at Maracay Central Hospital. On January 26, 2005, the Commission informed the Court that it had been notified that, on January 19, Rigoberto Barrios had died at the aforesaid hospital.

5 Communication of September 16, 2004, to the IACHR from the Human Rights, Justice, and Peace Commission of Aragua State.

6 Communication of September 21, 2004, to the IACHR from the Human Rights, Justice, and Peace Commission of Aragua State.

III. POSITIONS OF THE PARTIES

A. Petitioners

18. According to the petition, on November 30, 2003, uniformed officers from the Aragua State police turned up at the liquor business leased by Messrs. Luis and Narciso Barrios. The officers began to drink beer and one of them, by then inebriated, had a heated exchange of words with Narciso Barrios. According to the information furnished, Mr. Narciso Barrios struck the officer on the head, with which the officer's service weapon fell to the floor. Given the "policeman's excessively aggressive state," Narciso Barrios kept the gun, planning to hand it over to the Guanayen police station the following day. They claim that the same day, a group of 15 armed officers arrived at the business, including commanding inspector Mr. Wilmer Bravo and town prefect Mr. Walter Pacheco. The petitioner claims that on that occasion, the officers stole 15 cases of beer and some money in cash from Narciso Barrios's business. This same group apparently raided, without a court order, four homes belonging to members of the Barrios family: First, the home of Mrs. Oneida Barrios, where they allegedly stole items of value and money, and verbally assaulted her. Second, the home of Mrs. Justina Barrios where, after stealing television sets, stereo equipment, and other valuables,⁷ they started a fire, leaving the house partially uninhabitable. The third raided house belonged to Mrs. Elvira Barrios, from which the officers took away various items of value. The fourth house to be raided was the home of Mr. Luis Barrios, to which, after taking various valuables, they set fire, leaving it partially uninhabitable. Upon hearing of all these attacks, claim the petitioners, Narciso Barrios returned the gun.

19. The petitioner reports that on December 11, 2003, a police commission arrested Jorge Antonio Barrios, Narciso Barrios's 15-year-old nephew. Upon hearing of this, Narciso Barrios went out to look for him, accompanied by another nephew, Caudy Barrios. When he found the commission, the police apparently released the nephew and murdered Narciso Barrios by shooting him several times. A commission from the Scientific, Penal, and Criminal Investigation Corps of the La Villa de Cura station, Aragua State, began an investigation. In the judicial proceedings, Narciso Barrios was accused of committing the crime of resisting the authorities.⁸

20. The petitioner states that given the lack of progress with the investigations, on April 21, 2004, he filed a motion for eight witnesses to give statements before the 14th Prosecutor's Office, based in the town of Villa de Cura.⁹ The petitioner reports that on May 20, 2004, the official responsible took statements from six of the witnesses and that during his hearing, Caudy Barrios was threatened by the investigating official.

21. He says that on May 12, 2004, Mrs. Eloisa Barrios went to the offices of the Scientific Investigation Corps in order to review the case file. There, he claims, she was denied access to the file, in violation of the Organic Criminal Procedural Code.¹⁰ He states that as a result of this refusal, on June 17, 2004, they lodged a complaint with the National Director of the Scientific Investigation Corps, to which no reply was ever received. On June 25, 2004, the investigation file was sent to the 14th Prosecutor's Office of the Public Prosecution Service, based in the town of La Villa. The petitioner says that once the case file was with the Public Prosecution Service, they were able to see that:

- a) The expert examination of the firearms belonging to the officers involved in the slaying of Narciso Barrios had not been performed.

7 Complaint lodged with the Senior Prosecutor of the Public Prosecution Service in the Aragua State judicial district.

8 Ibid.

9 The witnesses called upon were: Wilfredo Antonio Cerezo Rangel, Yelitza Lugo Pelaez, Jorge Barrios, Pablo Solórzano, Elvira Barrios, Yarelis Caldero Colorado, Inés Josefina Barrios, Orismar Carolina Alzul García, and Caudy Barrios.

10 Article 304 of the Organic Criminal Procedural Code stipulates that: "The complainant may ask the prosecutor for such documents as he may deem necessary for the investigation of the facts." Published in the Official Gazette. Nº 5,208 (extraordinary), January 23, 1998

- b) The ballistic comparison of the two bullets retrieved from Narciso Barrios's corpse had not been performed.
- c) The reconstruction of the incident had not taken place.
- d) The file does not contain the certified copy of the incident register kept by the police station in Guanayen, or the guard roll.
- e) There were no photographs of the incident site to indicate the bullet holes in the walls and doors of the establishment where Mr. Narciso Barrios was slain.
- f) The trajectory ballistics and planimetry had not been calculated.

22. The fact that officers of the Scientific, Penal, and Criminal Investigation Corps submitted the file without concluding the investigations, claims the petitioner, indicates both delay and negligence. In addition, the petitioner claims to have filed an accusation regarding the death of Narciso Barrios with the Senior Prosecutor of the Public Prosecution Service on March 1, 2004, to which he received no reply. On July 28 he filed a procedural delay complaint with the Senior Prosecutor. He states that on July 29, 2004, he lodged a complaint with the Senior Prosecutor's office, informing her of all the irregularities he had found in the case file.

23. After the end of the six-month period set by Venezuela's Organic Criminal Procedural Code within which the Public Prosecution Service had to identify the accused and present the conclusions of its investigation to the Oversight Court, the petitioner reports that on June 14, 2004, he lodged a deed with the bailiff that was later sent to the Sixth Oversight Court, requesting that a deadline be set for the 14th Prosecutor to present the conclusion document.¹¹ The petitioner says that by July 23, 2004, the Oversight Judge had not yet ruled on the request and so, on that same date, he filed a complaint with the President of the Criminal Judicial Circuit of Aragua State; by August 2, 2004, the petitioner had still received no replies to any of his complaints. The petitioner says he also presented the complaint about the death of Narciso Barrios, the negligence in the investigations, and the judicial delays to the National Office of the People's Defender and to the Aragua State office of the People's Defender, but no reply was received from either.

24. The petitioner alleges negligence, denial of justice, and procedural delays: more than a year after its start, the investigation into the murder of Narciso Barrios is not progressing and is still with the 14th Prosecutor of the Public Prosecution Service, and, as of the date on which he lodged his report with the Court, November 8, 2004, the investigation to identify and punish the guilty has not yet been concluded.

25. The petitioner has also told the Commission that the investigations into the break-ins, theft, and arson at four of the Barrios family's homes and the complaints reporting the mistreatment and harassment suffered by several members of the Barrios family have not proceeded, in spite of complaints having been duly made with the competent authorities.

26. Because of the circumstances in which Narciso Barrios was killed, the failure of the courts to clear up the incidents surrounding it, the subsequent acts of violence and intimidation against the alleged victims identified in this report, and the unwarranted delay in the criminal proceedings, the petitioner asks that this case be declared admissible for alleged violations of the right to life, human treatment, a fair trial, and judicial protection, as enshrined in Articles

¹¹ Article 321 of the Organic Criminal Procedural Code stipulates that:

Duration: The Public Prosecution Service shall strive to conclude the preparatory procedure with the diligence required by the case.

Six months after the accused has been identified, he may request the oversight judge to set a reasonable deadline for concluding the investigation.

Once the set date has passed, the Public Prosecution Service shall present charges or request dismissal within the following 30 days.

4, 5, 8, and 25 of the American Convention, in compliance with the obligations arising from Article 1(1) thereof.

B. State

27. The Commission has received no reply from the State regarding the admissibility of the petition, in spite of due notice having been served.

IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

A. Preliminary considerations

28. The IACHR notes that the State has neither responded to the petitioner's claims nor questioned the admissibility of the petition. The IACHR would like to stress the fact that Venezuela has assumed a series of international obligations under the American Convention on Human Rights, including those set forth in Article 48(1)(a) thereof, to wit: "When the Commission receives a petition or communication (...) (a) it shall request information from the government of the state indicated as being responsible for the alleged violations (...) This information shall be submitted within a reasonable period (...) The Commission may request the states concerned to furnish any pertinent information." States parties are thus required by the Convention to provide the information that the Commission requests for the purpose of processing a case.¹²

29. In the Commission's view, it should also be noted that the information it requests will presumably enable it to reach a decision in a case that has been brought before it. The Inter-American Court of Human Rights has ruled that cooperation by states is a basic obligation in international proceedings under the inter-American system:

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.¹³

30. The IACHR and the Inter-American Court of Human Rights have also said that: "the silence of the accused or elusive or ambiguous answers on its part may be interpreted as an acknowledgment of the truth of the allegations, so long as the contrary is not indicated by the record or is not compelled as a matter of law."¹⁴ The Commission therefore reminds Venezuela that it is obliged to cooperate with the organs of the inter-American human rights system in the interests of the optimal performance of its duties in protecting human rights.

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

31. The petitioner has *locus standi* for presenting petitions, in accordance with Article 44 of the Convention. The petition identifies, as the alleged victims, individuals whose rights under the Convention the Bolivarian Republic of Venezuela has agreed to respect and ensure. With reference to the State, Venezuela has been a state party to the American Convention since August 9, 1977. The petitioner reports acts or omissions for which responsibility can be directly

12 See, for example, IACHR N° 129/01, Case 12.389, Admissibility, Jean Michel Richardson, Haiti, December 3, 2001, paragraph 11.

13 Inter-Am.Ct.H.R., Velásquez Rodríguez Case (Honduras), Series C N° 4, Judgment of July 29, 1988, paragraphs 135-36.

14 Ibid., paragraph 138; and IACHR, Report No. 28/96, Case 11.297, Guatemala, October 16, 1996, paragraph 45.

placed with the State. The Commission therefore believes that it is competent *ratione personae*.

32. The Commission is competent *ratione materiae* in that the petition alleges violations by the State of human rights of the alleged victims that are protected by the American Convention.

33. The Commission is competent *ratione temporis*, since the alleged incidents in the petition occurred when the obligation of respecting and ensuring the rights protected by the American Convention was already in force for the State.

34. The Commission is competent *ratione loci* to hear the petition since it alleges violations of rights protected by the American Convention occurring within the territory of a state party thereto.

C. Exhaustion of domestic remedies

35. Article 46(1)(a) of the American Convention states that for a petition to be admissible, the remedies available under the State's domestic jurisdiction must first have been exhausted.

36. In the case, the petitioner claims that alleged victims were denied effective access to justice under domestic jurisdiction. He alleges negligence, omissions, and delay tactics by both the Scientific, Penal, and Criminal Investigation Corps and the Public Prosecution Service, which alone is empowered to begin investigations and pursue criminal proceedings for crimes defined as publicly actionable. The petitioner claims that more than a year after the incident that gave rise to the complaint, a serious investigation into the reported crimes committed against the alleged victims has yet to commence.

37. The Commission and the Court have repeatedly insisted on their status as "reinforcing or complementary" bodies¹⁵ within the inter-American system for the protection of human rights,¹⁶ and this situation is reflected in Article 46(1)(a) of the Convention, which allows the states parties to resolve cases within their own legal frameworks before it becomes necessary to resort to international proceedings.

38. Article 31(3) of the Commission's Rules of Procedure stipulates that when a petitioner claims he is unable to exhaust domestic remedies, it falls to the state to demonstrate that certain internal remedies still offer an effective solution for the harm allegedly suffered. Nevertheless, the state may waive, either explicitly or tacitly, its right to argue that domestic remedies have not been exhausted. Specifically, if it fails to send a response to the petition within the allotted time, providing therewith its arguments vis-à-vis the exhaustion of domestic remedies, then that failure constitutes a tacit waiver of the right to argue that they have not been exhausted.¹⁷ In the instant case, the petition was conveyed to the State on August 19, 2004, at which time it was granted a period of two months in which to respond. As of the date of this report, the State has offered no comments and has therefore tacitly waived its right to argue the nonexhaustion of domestic remedies.

D. Filing Period

39. In reference to the present petition, the IACHR has concluded that the State of Venezuela tacitly waived its right to argue the nonexhaustion of domestic remedies, and so Article 46(1)(b) of the American Convention is not applicable. That notwithstanding, the provisions of

15 American Convention on Human Rights, Preamble, paragraph 2.

16 Inter-Am.Ct.H.R., Velásquez Rodríguez Case (Honduras), Series C No 4, Judgment of July 29, 1988, paragraph 61.

17 IACHR, Report No 31/031, Case 12.195, Admissibility, Mario Alberto Jara Oñate et al., Chile, March 7, 2003, paragraph 35; Inter-Am.Ct.H.R., Mayagna (Sumo) Awas Tingni Community Case, Preliminary Objections, Judgment of February 1, 2000.

the Convention requiring the prior exhaustion of domestic remedies and the submission of petitions within a period of six months following the date of the final judgment issued under domestic jurisdiction are independent. The Inter-American Commission must therefore determine whether or not the petition was lodged within a reasonable period. Thus, the IACHR notes that the original petition was received on March 15, 2004. The incidents described in the complaint began in December 2003. The IACHR consequently holds that the petition was submitted within a reasonable period of time.

E. Duplication of international proceedings and *res judicata*

40. The petitioner's claims do not indicate that this petition is pending in any other international proceeding or venue or that it is substantially the same as any earlier petition previously examined by the Commission or any other international body. The Commission therefore believes that in case at hand, the admissibility requirements set in Articles 46(1)(c) and 47(d) of the Convention have been met.

F. Characterization of the alleged facts

41. In ruling on admissibility, the IACHR must determine whether the incidents described in the petition tend to establish a violation of rights enshrined in the American Convention, as required by Article 47(b), or whether the petition, in compliance with Article 47(c), is to be dismissed as "manifestly groundless" or "obviously out of order."

42. The petitioner has made claims that, if proven true, could constitute violations of the right to life (Article 4), to humane treatment (Article 5), to a fair trial (Article 8), and to judicial protection (Article 25), in conjunction with the general obligation set forth in Article 1(1) of the Convention, and that are not "manifestly groundless" or "obviously out of order." Additionally, in accordance with the general principle in international law of *iura novit curia*, international agencies have the power—indeed, the duty—to enforce all applicable legal provisions, even those not invoked by the parties.¹⁸ In application of this principle, the IACHR believes that the facts alleged by the petitioner could entail violations to Article 21 (right to property) of the American Convention. Consequently, and without prejudging the merits of the case, the Commission believes that the requirements set by Articles 47(b) and (c) of the American Convention have been met.

V. CONCLUSIONS

43. The Commission believes that it is competent to hear the instant petition and that the petition is admissible under the admissibility requirements set forth in Articles 46 and 47 of the American Convention on Human Rights as regards the alleged violations of Articles 1, 4, 5, 8, 21, and 25 of the American Convention with respect to Narciso Barrios, Eloisa Barrios, Elvira Barrios, Justina Barrios, Luis Barrios, and Oneida Barrios.

44. In light of the foregoing arguments of fact and law, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS DECIDES:

1. To declare this petition admissible as regards the alleged violations of the rights protected by Articles 1, 4, 5, 8, 21, and 25 of the American Convention.
2. To notify the parties of this decision.

¹⁸ IACHR, Report No 38/96, Case 10.506, Argentina, October 15, 1996.

3. To continue with its examination of the case.

4. To publish this decision and to include it in its Annual Report 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., on the 25th day of February, 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Evelio Fernández Arévalos, Jose Zalaquett and Florentín Meléndez, Commissioners.