

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF OLIVARES MUÑOZ ET AL. V. VENEZUELA**  
**JUDGMENT OF NOVEMBER 10, 2020**  
***(Merits, Reparations and Costs)***

In the case of *Olivares Muñoz et al. v. Venezuela*,

the Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”), composed of the following judges:

Elizabeth Odio Benito, President;  
L. Patricio Pazmiño Freire, Vice President;  
Eduardo Vio Grossi, Judge;  
Humberto Antonio Sierra Porto, Judge;  
Eduardo Ferrer Mac-Gregor Poisot, Judge;  
Eugenio Raúl Zaffaroni, Judge, and  
Ricardo Pérez Manrique, Judge,

also present,

Pablo Saavedra Alessandri, Secretary, and  
Romina I. Sijniensky, Deputy Secretary,

in accordance with Articles 62(3) and 63(1) of American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and with Articles 31, 32, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules” or “Rules of the Court”), delivers this Judgment which is structured as follows:

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**I**  
**INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE**

1. *The case submitted to the Court.* On April 1, 2019, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of “Orlando Edgardo Olivares Muñoz and others (Deaths at Vista Hermosa Prison)” against the Bolivarian Republic of Venezuela (hereinafter “the State of Venezuela” or “the Venezuelan State”, “the State” or “Venezuela”). According to the Commission, the case concerns Venezuela’s international responsibility for the alleged extrajudicial executions of Orlando Edgardo Olivares Muñoz, Joel Ronaldy Reyes Nava,<sup>1</sup> Orangel José Figueroa, Héctor Javier Muñoz Valerio,<sup>2</sup> Pedro Ramón López Chaurán,<sup>3</sup> José Gregorio Bolívar Corro and Richard Alexis Núñez Palma, who were deprived of their liberty at the *Internado Judicial* of Ciudad Bolívar, also known as Vista Hermosa Prison, located in Ciudad Bolívar, in the State of Bolívar. The executions were allegedly committed by members of the National Bolivarian Guard (hereinafter “the National Guard”) during an operation carried out at the prison on November 10, 2003, in which another 27 inmates were injured.<sup>4</sup> The Commission considers that the State has not provided a satisfactory explanation for the deaths and injuries of the individuals in its custody. In addition, given the State’s failure to properly clarify the facts, it finds numerous indications that lead it to conclude that “the use of force was illegitimate, unnecessary and disproportionate.” The Commission also alleges that the investigation of the facts has not been exhaustive, that the autopsies conducted did not meet applicable international standards, that the context of the deaths was not properly analyzed and that the inquiry into what happened is still pending and, therefore, has not been carried out within a reasonable time. Lastly, the Commission indicated that the “loss of loved ones in circumstances described in this [Merits] Report as well as the lack of truth and justice, caused pain and suffering” to the next of kin of the deceased victims who were allegedly executed.”<sup>5</sup>

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

a) *Petition.* On October 16, 2007, the Venezuelan Observatory of Prisons submitted the initial petition.

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<sup>1</sup> His name also appears as Rinaldi, Ronaldi, Ronaldis and Ronaldo, and the surname as Navas. In this judgment the name stated on the corresponding death certificate is used.

<sup>2</sup> His name also appears as Héctor José Muñoz Valerio. In this judgment the name stated in the corresponding death certificate is used.

<sup>3</sup> His name also appears as Pedro Antonio López Chaurán and Pedro Chauram López. In this judgment the name stated in the corresponding death certificate is used.

<sup>4</sup> The injured persons identified as alleged victims, are: Ramón Zambrano, Jovanny Palomo, Carlos Durán (also appears as Carlos Alexis Durán Gracia), Richard Vallez, Carlos Alberto Torres, Galindo Urrieta, Edwin David Díaz, Luis Filgueira, Oswal Sotillo (also appears as Oswaldo Sotillo), Rafael Vera Himi, Miguel Marcano, Marcos Pacheco, Alcides Rafael Alcaza Barreto, Jesús Manuel Amaiz Borrrome, Rafael Villa Hermosa, Efraín Cordero, Carlos Alberto Martínez, Pedro de Jesús Montes Aguanes, Santa Jesús Gil Osuna, Omar Armando Vásquez, Getulio Piña Laya, Evelio Eugenio Martínez, Enrique José González, Javier Omar Lara, José Efraín Rosales Navas, Levis Simoza and Marco Antonio Ruíz Sucre (also appears as Marcos Antonio Ruíz Sucre). This Judgment uses the names stated in the Merits Report approved by the Commission.

<sup>5</sup> The next of kin of the deceased persons, identified also as alleged victims, are: Lorenza Josefina Pérez de Olivares, wife of Orlando Edgardo Olivares Muñoz; Elizabeth del Carmen Cañizales Palma, sister of Richard Alexis Núñez Palma; Elías José Aguirre Navas, brother-in-law of José Gregorio Bolívar Corro; Yngris Lorena Muñoz Valerio, sister of Héctor Javier Muñoz Valerio; José Luis Figueroa, brother of Orangel José Figueroa; Jenny Leomelia Reyes Guzmán, sister of Joel Ronaldy Reyes Nava, and Johamnata Martínez Coralís, wife of Pedro Ramón López Chaurán.

b) *Admissibility Report*. On March 23, 2011, the Commission issued Admissibility Report No. 14/11, in which it concluded that the petition was admissible.

c) *Merits Report*. On October 5, 2018, the Commission adopted Merits Report No. 119/18 (hereinafter “the Merits Report” or “Report No. 119/18”), in which it reached a series of conclusions<sup>6</sup> and made several recommendations to the State.

3. *Notification of the State*. On November 1, 2018, the Commission notified the Merits Report to the State, granting it a period of two months to provide information on compliance with the recommendations. For its part, the State of Venezuela submitted a brief indicating that it was in discussions with the representatives to hold a meeting to address compliance with the recommendations contained in the Merits Report. In response, the Commission granted an extension of two months as requested by the State. According to the Commission, despite the extension granted, the State did not submit the required information regarding compliance with the recommendations and did not request a further extension.

4. *Submission to the Court*. On April 1, 2019, the Commission decided to submit the case to the Court, “given the need to obtain justice and reparations for the victims.”<sup>7</sup> This Court notes with concern that 11 years and five months elapsed between the presentation of the initial petition before the Commission and the submission of the case before the Court.

5. *Requests of the Inter-American Commission*. Based on the foregoing, the Commission asked the Court to find and declare the international responsibility of Venezuela for the violations described in Report No. 119/18 and to order the State, as measures of reparation, to comply with the recommendations included in said report.

## **II PROCEEDINGS BEFORE THE COURT**

6. *Notification of the State and the representatives*. The submission of the case was notified to the State and to the representatives of the alleged victims on June 28, 2019.

7. *Brief with pleadings, motions and evidence*. On October 7, 2019, the Venezuelan Observatory of Prisons (hereinafter “the representatives”)<sup>8</sup> presented their brief with pleadings, motions and evidence (hereinafter “pleadings and motions brief”), in accordance with Articles 25 and 40 of the Court’s Rules of Procedure. The representatives substantially agreed with the arguments put forward by the Commission and, in addition, requested that the Court declare the State responsible for the violation of Articles 6, 7 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “IACPPT”), to the detriment

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<sup>6</sup> The Commission concluded that the State is responsible for the violation of the rights to life and personal integrity (humane treatment) recognized in Articles 4(1), 5(1) and 5(2) of the Convention, in conjunction with the obligations established in Articles 1(1) and 2 of the same instrument, to the detriment of the seven deceased persons and the 27 injured. It also determined that the State violated the rights to judicial guarantees (fair trial) and judicial protection recognized in Articles 8(1) and 25(1) of the Convention, in conjunction with the obligation established in Article 1(1) of the same instrument, to the detriment of the injured persons and the relatives of the deceased. Lastly, the Commission concluded that the State violated the right to physical and moral integrity, established in Article 5(1) of the Convention, in relation to the obligation contained in Article 1(1) thereof, to the detriment of the next of kin of the deceased persons.

<sup>7</sup> The Commission appointed Commissioner Francisco José Eguiguren Praeli and Executive Secretary Paulo Abrão as its delegates before the Court, and Analía Banfi and Silvia Serrano Guzmán, lawyers of the Executive Secretariat, as its legal advisers

<sup>8</sup> In a communication dated May 3, 2019, the Venezuelan Observatory of Prisons submitted the power of attorney granted by Lorenza Josefina Pérez to represent her.

of the alleged deceased victims and the injured victims, as well as the violation of Articles 8(1) and 25 of the Convention, in relation to Articles 1, 6 and 8 of the IACPPT, to the detriment of the injured persons "and their next of kin." In that regard, they argued that the facts demonstrate the State's responsibility for alleged acts of torture committed against the deceased and injured persons. They also requested that the State be ordered to implement various measures of reparation and to reimburse certain costs and expenses.

8. *Answering brief.* On December 26, 2019, the State presented to the Court its answer to the brief submitting the case, to the Merits Report of the Inter-American Commission and to the pleadings and motions brief of the representatives (hereinafter "answering brief").<sup>9</sup> In this brief the State acknowledged its "international responsibility [...] in the terms established in the Merits Report."

9. *Observations on the State's acknowledgment of responsibility.* On January 30, 2020, the representatives and the Commission presented their respective briefs with observations on the State's acknowledgment of responsibility.

10. *Public hearing.* In an Order dated February 21, 2020<sup>10</sup>, the President of the Court (hereinafter "the President") summoned the parties and the Commission to a public hearing in March, 2020, in order to receive their final oral arguments and observations on the merits and eventual reparations and costs, as well as to receive the statements of one of the alleged victims, a witness proposed by the representatives and an expert witness proposed by the State. In several communications dated March 11, 2020, the Secretariat of the Court informed the parties and the Commission that in view of the World Health Organization's formal declaration of a pandemic due to the spread of Coronavirus, issued on that same day, and in accordance with the "National Health Guidelines for Surveillance of Coronavirus Infection" issued by the Ministry of Public Health of Costa Rica, the President had decided to suspend the public hearings scheduled for the week of March 16 -20, 2020. Consequently, in an Order of June 30, 2020,<sup>11</sup> the President of the Court, in consultation with the full Court and mindful of the situation caused by the pandemic - the effects of which were deemed to be exceptional and insurmountable impediments to the holding of the public hearing initially convened - decided to continue the processing of the case. To this end, she amended the modality of the statements required in the aforementioned Order of February 21, 2020, which were to be received in person, and ordered that these be rendered, to the extent possible, before a notary public (affidavit). Lastly, in the Order of July 29, 2020,<sup>12</sup> the Court admitted the request for reconsideration presented by the representatives, in the sense that the statement of Mrs. Lorenza Josefina Pérez de Olivares would be received orally before the full Court via videoconference. This procedure took place on August 24, 2020, during the Court's 136<sup>th</sup> Regular Session.

11. *Amicus curiae.* The Court received an *amicus curiae* brief presented by the Prisons Group

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<sup>9</sup> In a communication of November 13, 2019, the State appointed Larry Devoe Márquez as its Agent. Likewise, in a communication of February 11, 2020, Venezuela appointed Edgardo Toro as Deputy Agent.

<sup>10</sup> *Cf. Case of Olivares Muñoz et al. v. Venezuela. Summons to a Hearing.* Order of the President of the Inter-American Court of February 21, 2020. Available at: [http://www.corteidh.or.cr/docs/asuntos/olivares\\_munoz\\_y\\_otros\\_21\\_02\\_2020.pdf](http://www.corteidh.or.cr/docs/asuntos/olivares_munoz_y_otros_21_02_2020.pdf).

<sup>11</sup> *Cf. Case of Olivares Muñoz et al. v. Venezuela.* Order of the President of the Inter-American Court of June 30, 2020. Available at: [https://www.corteidh.or.cr/docs/asuntos/olivaresmunozyotros\\_30\\_06\\_20.pdf](https://www.corteidh.or.cr/docs/asuntos/olivaresmunozyotros_30_06_20.pdf)

<sup>12</sup> *Cf. Case of Olivares Muñoz et al. v. Venezuela.* Order of the Inter-American Court of July 29, 2020. Available at: [http://www.corteidh.or.cr/docs/asuntos/olivares\\_29\\_07\\_20.pdf](http://www.corteidh.or.cr/docs/asuntos/olivares_29_07_20.pdf)

of the Universidad de los Andes.<sup>13</sup>

12. *Helpful evidence.* On August 27, 2020, the President ordered the State to forward the complete case file from the domestic jurisdiction, in accordance with Article 58(b) of the Court's Rules of Procedure. In a communication dated September 2, 2020, the State indicated, *inter alia*, that the measures adopted to address the COVID-19 pandemic made it "materially impossible to send the required documentation," and that given its acknowledgment of responsibility, "the aforementioned evidence [was] unnecessary." It therefore asked the Court to reconsider its requirement. For its part, in a communication of September 16, 2020, the Secretariat of the Court, upon the instructions of the President, reiterated the request made to the State as it "considered the evidence relevant and necessary, in exercise of the powers that the Rules of Procedure confer on the Court in this matter." However, the State did not submit the required evidence. In this regard, the Court recalls that the parties must provide all the evidentiary material requested so that the Court has the greatest number of probative elements to examine the facts and to justify its decisions.<sup>14</sup> In cases of human rights violations, this duty falls primarily on the State, which has the obligation to provide the Court with evidence that can only be obtained with its cooperation.<sup>15</sup> Consequently, in this judgment the Court will assess the consequences of the omission by the State.

13. *Final written arguments and observations.* On October 7, 2020, the State, the representatives and the Commission submitted, respectively, their final written arguments and observations. The representatives also submitted annexes with their final written arguments.

14. *Observations on the annexes to the final arguments.* On October 27, 2020, the Commission presented a brief in which it stated that it had no observations to make on the annexes submitted by the representatives with their final written arguments. For its part, the State did not present any observations to the annexes to the representatives' final written arguments.

15. *Deliberation of the case.* The Court deliberated this judgment during a virtual session held on November 10, 2020.<sup>16</sup>

### **III JURISDICTION**

16. The Inter-American Court is competent to hear this case because Venezuela has been a State Party to the American Convention since August 9, 1977, and accepted the Court's contentious jurisdiction on June 24, 1981. However, on September 10, 2012, the State

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<sup>13</sup> The brief was signed by Manuel Alejandro Iturralde Sánchez and Mario Andrés Torres Gómez. The document refers to prison conditions in Venezuela and to pertinent measures of reparation in this case.

<sup>14</sup> *Cf. Case of Durand and Ugarte v. Peru. Merits.* Judgment of August 16, 2000. Series C No. 68, para. 51, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2014. Series C No. 28, para. 38.

<sup>15</sup> *Cf. Case of Gómez Palomino v. Peru. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 136, para. 52, and *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, reparations and costs.* Judgment of March 29, 2006. Series C No. 146, para. 48.

<sup>16</sup> Owing to the exceptional circumstances caused by the COVID-19 pandemic, this Judgment was deliberated and approved during the 138<sup>th</sup> Regular Session, held virtually (online), in accordance with the Rules of the Court.

denounced the American Convention and this denunciation entered into force on September 10, 2013. According to Article 78(2) of the Convention, the Court is competent to hear this case because the facts examined occurred prior to the entry into force of the denunciation of the Convention.

#### IV PRIOR CONSIDERATIONS

17. As a prior consideration, the Court deems it necessary to rule on the determination of the alleged victims.

18. In their pleadings and motions brief, the **representatives** mentioned a group of alleged victims that does not correspond fully with the determination made by the Commission in Report No. 119/18. Indeed, with respect to the injured victims, the representatives referred to 31 alleged victims,<sup>17</sup> whereas in its Merits Report, the Commission referred to a total of 27 alleged victims.<sup>18</sup> They also mentioned a group of alleged victims, relatives of the deceased persons, which does not correspond in its entirety with the determination made by the Commission in its Merits Report, inasmuch as they added six more persons.<sup>19</sup>

19. Regarding the four persons added in the pleadings and motions brief as alleged injured victims, the **Commission**, expressly stated in the Merits Report that there is no evidence that they had been injured during the consummation of the facts. The **State** did not present any observations on this matter.

20. The Court recalls that, pursuant to Article 35(1) of the Rules, the case will be submitted to its jurisdiction through the presentation of the Merits Report, which must identify the alleged victims. Therefore, it is for the Commission to precisely identify the alleged victims at the proper procedural opportunity,<sup>20</sup> except in the exceptional circumstances provided for in Article 35(2) of the Rules, namely, when it has not been possible to identify alleged victims because the case concerns massive or collective violations. In these cases, the Court will decide, in a timely manner, whether or not to consider them as such, according to the nature of the violation.<sup>21</sup>

21. Thus, the Court has assessed the application of Article 35(2) in relation to the specific characteristics of each case and has applied it when difficulties arise in identifying or contacting all the alleged victims. This has occurred, for example, in cases of armed conflict,<sup>22</sup> forced

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<sup>17</sup> In addition to the individuals named in the Merits Report, the representatives identified the following as alleged injured victims: Angelo Barey Acevedo, Alexander Tejera Rodríguez, José Alberto González and Wilmer José Brizuela Veras.

<sup>18</sup> Although the Merits Report states that "26 inmates" were injured, a total of 27 persons are named.

<sup>19</sup> The representatives identified the following persons as next of kin of the alleged deceased victims, in addition to those mentioned in the Merits Report: Lorena Carolina Olivares Pérez, Claudia Andreina Olivares Pérez, Mónica Orlenis Olivares Pérez, Laura Oriannys Olivares Pérez, María Alejandra Olivares Pérez and Orlando Rafael Olivares Pérez, daughters and son of Orlando Edgardo Olivares Muñoz.

<sup>20</sup> Cf. *Case of the Ituango Massacres v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006. Series C No. 148, para. 98, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of July 15, 2020. Series C No. 407, para. 40.

<sup>21</sup> Cf. *Case of the Río Negro Massacres v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of September 4, 2012. Series C No. 250, para. 48 and *Case of Spoltore v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of June 9, 2020. Series C No. 404, para. 50.

<sup>22</sup> Cf. *Case of the Río Negro Massacres v. Guatemala, supra*, para. 48, and *Case of Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 30, 2016. Series C No. 328, para. 65.



displacement<sup>23</sup> or the mass murder of families, the burning of their bodies and the absence of records or certificates that could identify them,<sup>24</sup> or in cases in which entire families have been disappeared, and there is no one who can speak for them.<sup>25</sup> The Court has also taken into account aspects such as difficulties in accessing the area where the events occurred;<sup>26</sup> the absence of records related to the local inhabitants;<sup>27</sup> the passage of time;<sup>28</sup> and the particular characteristics of the alleged victims, such as those who belong to family clans with similar names and surnames,<sup>29</sup> or in the case of migrants<sup>30</sup> or nomadic communities whose ancestral social structure involves the dynamic known as “fission-fusion” – merging into new communities and separating to create others.<sup>31</sup> The Court has also taken into account the State’s conduct, for example, where it is alleged that its failure to investigate contributed to the incomplete identification of the alleged victims<sup>32</sup> and in a case of slavery.<sup>33</sup>

22. In the instant case, and based on precedents in which it has ruled on this matter, the Court concludes that none of the exceptions set forth in Article 35(2) of its Rules of Procedure are present or were argued. Therefore, the representatives’ proposal to include alleged victims other than those identified in the Merits Report is not viable. Thus, the Court will consider as alleged victims only those individuals whose names have been expressly included in Report No. 119/18.

## V ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

### ***A. The State’s acknowledgment of responsibility and observations of the Commission and of the representatives***

23. In its answering brief, the **State** acknowledged its international responsibility in the following terms:

The Venezuelan State declares [...] that it recognizes its international responsibility in the present proceedings for the violation of the right to life and personal integrity, established in Articles 4(1), 5(1), 5(2), 8(1) and

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<sup>23</sup> Cf. *Case of Río Negro Massacres v. Guatemala*, *supra*, para. 48, and *Case of Members of Chichupac Village and Neighboring Communities of the Municipality of Rabinal v. Guatemala*, *supra*, para. 65.

<sup>24</sup> Cf. *Case of the Massacres of El Mozote and nearby places v. El Salvador. Merits, reparations and costs.* Judgment of October 25, 2012. Series C No. 252, para. 50.

<sup>25</sup> Cf. *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 48.

<sup>26</sup> Cf. *Case of the Displaced Afrodescendant Communities of the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary objections, merits, reparations and costs.* Judgment of November 20, 2013. Series C. No. 270, para. 41.

<sup>27</sup> Cf. *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 48, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 50.

<sup>28</sup> Cf. *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 51, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 40.

<sup>29</sup> Cf. *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 48.

<sup>30</sup> Cf. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, reparations and costs.* Judgment of October 24, 2012. Series C No. 251, para. 30.

<sup>31</sup> Cf. *Case of the Indigenous Communities Members of the Lhaka Honhat (Nuestra Tierra) Association v. Argentina*, *supra*, para. 33.

<sup>32</sup> Cf. *Case of the Río Negro Massacres v. Guatemala*, *supra*, para. 48, and *Case of the Massacres of El Mozote and nearby places v. El Salvador*, *supra*, para. 50.

<sup>33</sup> Cf. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of October 20, 2016. Series C No. 318, para. 48.

25(1) of the American Convention on Human Rights, in relation to the obligations established in Articles 1(1) and 2, to the detriment of Mr. Orlando Edgardo Olivares Muñoz and others, under the terms and conditions established in the Merits Report [...].

24. With respect to reparations, the State expressed its commitment to comply with the measures established in accordance with the Court's case law and the criteria followed in similar cases. Regarding guarantees of non-repetition, it indicated that since the events occurred, it has "adopted, and continue[s] to adopt, a set of legislative, administrative and educational measures to guarantee that events such as [the one that occurred] are not repeated, both at the Vista Hermosa Prison, and in all the other [prisons]." Regarding the obligation to investigate, it argued that, since there is a final judicial decision that acquitted those accused of the facts in this case, it is not feasible to retry them in observance of the *non bis in idem* principle.

25. The **representatives** expressed their appreciation for the State's acknowledgment of responsibility, as an act that produces full legal effects, the scope of which must be determined by the Court. However, they pointed out that this acknowledgment is "ambiguous and lacks sufficient clarity to end the controversy on certain substantive issues." They noted that "it is clear that the international acknowledgment, as formulated by the State [...] is limited to the submission of the case by the Commission," and therefore would not include the facts set forth in the Merits Report, but only some legal consequences and violations of rights determined by the Commission. They stated that "the State's simplistic procedural approach of only referring to certain rights of the American Convention that have been determined to have been violated is not consistent with the purpose of the international proceedings before the Court, given that a part of justice is to determine the facts and the truth of what happened." Moreover, they considered that the State's acknowledgment does not refer to the alleged acts of torture and the failure to investigate such acts which, in their view, constitute violations that cannot be subsumed in the acknowledgment of the violation of Articles 5(1) and 5(2) of the Convention. They pointed out that the dispute concerning the allegations of torture persists, regarding which the Commission did not include conclusions. Therefore, the Court must decide and resolve such allegations, which are based on the factual framework contained in the Merits Report.

26. The representatives added that the measure of reparation consisting of the obligation to investigate is a matter of debate in light of the State's arguments. They requested that the Court dismiss the State's acknowledgment of responsibility and that the proceedings continue in accordance with the corresponding rules. They also pointed out that, if the acknowledgment is admitted, it will be necessary for the Court to specify the scope of its legal effects and determine what is relevant with respect to the allegations of torture and the duty to investigate such acts.

27. The **Commission** expressed its appreciation for the State's acquiescence, since it contributes to the development of the international process and to the dignity of the victims. It indicated that, since it is an acknowledgment of responsibility for all the violations declared in the Merits Report, it implies acceptance of the facts of the case. Therefore it requested that these facts be considered proven and included in the judgment on the merits, given the importance that establishing the official truth of what happened has for the victims and their next of kin.

28. As for the State's arguments regarding the obligation to investigate, the Commission indicated that although the *ne bis in idem* principle is a human right recognized in Article 8(4) of the Convention, the Court has stated that it is not an absolute right, and therefore it is not applicable when the domestic proceedings were not conducted in accordance with due process of law. With regard to the guarantees of non-repetition, it argued that, although it positively

values the legislative and administrative measures adopted to comply with its recommendations, in order to ensure their full implementation it is necessary to determine, based on the expert and documentary evidence provided, that such measures are being applied in practice and are effective. It therefore requested that the Court determine the legal effects of the acknowledgment of responsibility made by the State.

### ***B. Considerations of the Court***

29. The Court highlights the good will of the State, expressed in its acknowledgment of responsibility in this case. However, in accordance with Articles 62 and 64 of the Rules of Procedure, and in exercise of its powers of international legal protection of human rights, a matter of international public order that transcends the will of the parties, it is incumbent upon the Court to ensure that acts of acquiescence are acceptable for the purposes of the Inter-American System.<sup>34</sup> In this task, Court does not limit itself to merely confirming, recording or taking note of the acknowledgement made by the State, or verifying the formal conditions of such actions, but must weigh them against the nature and seriousness of the alleged violations, the requirements and interests of justice, the particular circumstances of the specific case, and the attitude and position of the parties,<sup>35</sup> in order to determine, insofar as possible, and in exercise of its competence, the truth of what happened.<sup>36</sup> Accordingly, the Court will analyze the situation raised in this specific case.

#### *B.1. Regarding the facts*

30. In the instant case, the State acknowledged its international responsibility for the violation of the rights recognized in Articles 4(1), 5(1), 5(2), 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 of that instrument.

31. In this regard, by virtue of the statement made by Venezuela acknowledging its international responsibility “under the terms and conditions established in the Merits Report,” the Court understands that the State, having accepted all the violations of rights alleged by the Commission in Report No. 119/18, has, in turn, acknowledged all the facts contained in said Report that gave rise to such violations.<sup>37</sup>

#### *B.2. Regarding the legal claims*

32. Based on the State’s acknowledgment of responsibility, the Court considers that the dispute regarding its international responsibility for the following violations has ceased: a) the rights to life and personal integrity recognized in Articles 4(1), 5(1) and 5(2) of the Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of the individuals killed and injured in the operation carried out by the National Guard at Vista Hermosa Prison on November 10, 2003; b) the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) thereof, to the detriment

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<sup>34</sup> Cf. *Case of Kimel v. Argentina. Merits, reparations and costs*. Judgment of May 2, 2008. Series C No. 177, para. 24, and *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and reparations*. Judgment of September 1, 2020. Series C No. 411, para. 19.

<sup>35</sup> Cf. *Case of Kimel v. Argentina, supra*, para. 24, and *Case of Valenzuela Ávila v. Guatemala. Merits, reparations and costs*. Judgment of October 11, 2019. Series C No. 386, para. 17.

<sup>36</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Valenzuela Ávila v. Guatemala, supra*, para. 17.

<sup>37</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 116, para. 17, and *Case of Villamizar Durán et al. v. Colombia. Preliminary objection, merits, reparations and costs*. Judgment of November 20, 2018. Series C No. 364, para. 21.

of the persons who were injured and the next of kin of the deceased, identified in the Merits Report, owing to the lack of due diligence in the investigation of the facts and because the inquiry of these was not carried out within a reasonable time, and c) the right to personal integrity recognized in Article 5(1) of the Convention, in relation to Article 1(1) of the same instrument, to the detriment of the next of kin of the deceased, due to the suffering and anguish caused by the loss of their loved ones and the failure to clarify the facts.

33. Consequently, the acknowledgment of responsibility made by the State produces full legal effects in accordance with Articles 62 and 64 of the Court's Rules of Procedure cited above.

34. However, the representatives questioned the State's failure to comment on the allegations related to acts of torture which, as they argued in their pleadings and motions brief, were allegedly committed, as well as the failure to investigate such acts which, they indicated, could not be subsumed in the acknowledgment of the violation of Articles 5(1) and 5(2) of the Convention.

35. In that regard, the Court notes that the State's acknowledgment of responsibility, being limited to the legal claims contained in the Merits Report, does not encompass the alleged violations of Articles 6, 7 and 8 of the IACPPT, formulated by the representatives, for the alleged acts of torture that were committed against the deceased and the injured persons, as well as the alleged violation of Articles 8(1) and 25 of the Convention, in relation to Articles 1, 6 and 8 of the IACPPT, to the detriment of the injured persons and the relatives of the deceased, due to the failure to investigate the aforementioned acts of torture. Thus, the dispute continues with respect to these specific legal claims.

### *B.3. Regarding the reparations*

36. With regard to reparations, the Court notes that the State expressed its commitment to comply with the measures ordered; that it has already implemented certain guarantees of non-repetition; and that it is legally prevented from complying with the measures concerning the obligation to investigate. Therefore, in the corresponding chapter, the Court will decide the pertinent aspects of the reparations requested by the Commission and the representatives, for which purpose it will analyze whether there is a causal link between the violations declared and the damages and measures sought.

### *B.4. Assessment of the scope of the acknowledgment of responsibility*

37. The Court appreciates the State's acknowledgment of international responsibility, which constitutes a positive contribution to the development of this process, to the application of the principles that inspire the Convention and to satisfying the need for reparation of the victims of human rights violations.<sup>38</sup>

38. In view of the foregoing, in exercise of its powers as an international body for the protection of human rights and taking into account the seriousness of the facts and the alleged violations, the Court will proceed to assess the facts that occurred in order to contribute to the reparation of the victims, to prevent the repetition of similar events and, in general, to satisfy the purposes of the inter-American human rights jurisdiction.<sup>39</sup> On this basis, the Court

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<sup>38</sup> Cf. *Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs*. Judgment of June 19, 1998. Series C No. 38, para. 57, and *Case of Spoltore v. Argentina, supra*, para. 44.

<sup>39</sup> Cf. *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs*. Judgment of November 26, 2008. Series C No. 190, para. 26, and *Case of Fernández Prieto and Tumbeiro v. Argentina, supra*, para. 21.

will analyze the violations alleged by the Commission and the representatives, as well as the corresponding consequences in terms of reparations.

## **VI EVIDENCE**

### ***A. Admission of the documentary evidence***

39. The Court received various documents presented as evidence by the Commission and the parties, attached to their main briefs. As in other cases, the Court accepts those documents that were submitted by the parties and the Commission at the appropriate procedural stage (Article 57 of the Rules),<sup>40</sup> and whose admissibility was not challenged or contested.<sup>41</sup>

### ***B. Admission of the testimonial and expert evidence***

40. The Court finds it pertinent to admit the statements provided by affidavit,<sup>42</sup> and the testimony of Mrs. Lorenza Josefina Pérez de Olivares received orally via videoconference, insofar as these are in keeping with the purpose defined in the order that required them and with the object of the present case.<sup>43</sup>

41. As for the statements of Antonietta de Dominicis and María Lucrecia Hernández Vitar, these were not provided by affidavit, owing to the situation caused by the global pandemic, which entailed restrictions on movement and difficulties in accessing notary services. In this regard, the Court recalls that, both in the Order of the President of June 30, 2020, and in the Court order of July 29, 2020, it was stipulated that the statements should be provided "to the extent possible" by affidavit. Thus, the Court considers that the justifications given are reasonable, and therefore admits both statements to the extent that these are in keeping with the purposes defined therein.

## **VII FACTS**

42. For the purposes mentioned previously (*supra* para. 38), the Court considers that the following facts have been established, which are presented in accordance with the factual framework acknowledged by the State and contained in the Merits Report (*supra* para. 31). Therefore, the facts will be presented in the following order: a) Vista Hermosa Prison and the days prior to November 10, 2003; b) operation by the National Guard on November 10, 2003; b.1) persons deprived of liberty killed and injured; c) investigation and judicial proceedings in the domestic jurisdiction; c.1) investigation of the facts; c.2) autopsies and exhumation of the

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<sup>40</sup> Documentary evidence may be presented, in general, and in accordance with Article 57(2) of the Rules of Procedure, together with the brief submitting the case, the pleadings and motions brief or the answering brief, as appropriate. Evidence submitted outside these procedural opportunities is not admissible, except in the circumstances set forth in the aforementioned Article 57(2) of the Rules (namely, *force majeure* or serious impediment) or in the case of a supervening event, i.e. occurring after the aforementioned procedural moments.

<sup>41</sup> *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Fernández Prieto and Tumbeiro v. Argentina, supra*, para. 23.

<sup>42</sup> The Court received the following statements provided by affidavit: a) the witnesses proposed by the representatives: Melissa Silva and Mayra Ramallo; b) a declarant for information purposes proposed by the State: Mirelys Zulay Contreras Moreno; c) the expert witness proposed by the Commission: Marta Monclús Masó, and d) expert witnesses proposed by the representatives: Víctor Rodríguez Rescia, Magaly Mercedes Vásquez González and Pedro Enrique Rodríguez Rojas.

<sup>43</sup> The purpose of all the statements was established in the Order of February 21, 2020, as well as in the Order of June 30, 2020, both issued by the President of the Court.

bodies, and c.3) judicial proceedings.

### **A. Vista Hermosa Prison and the days prior to November 10, 2003**

43. The *Internado Judicial de Ciudad Bolívar*, also known as Vista Hermosa Prison, is located in the Urbanization Vista Hermosa of that city, in the State of Bolívar, Venezuela.<sup>44</sup>

44. During the month of October 2003, the prison inmates held a protest (described as a “strike” or “self-kidnapping”) with the support of their relatives.<sup>45</sup> During the protest, José Gregorio Bolívar Corro, alias “Goyo”, acted as spokesman for the detainees, and the protest leaders included Orlando Edgardo Olivares Muñoz and Pedro Ramón López Chaurán.<sup>46</sup> Among the various demands, the inmates called for improvements in prison conditions and the removal of a member of the National Guard (a military unit that forms part of the National Bolivarian Armed Forces of Venezuela)<sup>47</sup> assigned to that detention center.<sup>48</sup>

45. Prison inmates reported that in the days leading up to November 10, 2003, members of the National Guard had committed acts of violence against them.<sup>49</sup>

### **B. Operation by the National Guard on November 10, 2003**

46. On November 10, 2003, the prison was under intervention by an evaluation council which was given the task of identifying shortcomings and providing solutions to the prison’s problems.<sup>50</sup>

47. Between 7:00am and 7:30am, approximately, a group of National Guard agents from Detachment 81 entered the prison.<sup>51</sup> In its Merits Report, the Commission mentioned three

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<sup>44</sup> Cf. Order of the Criminal Court of Appeals of Ciudad Bolívar issued on June 3, 2004 (evidence file, volume I, Annex 9 to the Merits Report, folio 34).

<sup>45</sup> Cf. Statement of Alcides Rafael Alcázar before the Fourth Supervisory Court of Ciudad Bolívar on March 2, 2004 (evidence file, volume I, Annex 10 to the Merits Report, folio 49); statement provided by Mayra Ramallo (evidence file, volume V, *affidavits*, folio 1469), and statement rendered by Melissa Silva (evidence file, volume V, *affidavits*, folio 1736).

<sup>46</sup> Cf. Statement of Deivis Romero Lascano before the Fourth Supervisory Court of Ciudad Bolívar on March 16, 2004 (evidence file, volume I, Annex 11 to the Merits Report, folio 53), and press article published in “La Nación” newspaper on December 23, 2003, entitled “We never imagined that they were going to kill him” (evidence file, volume I, Annex 8 to the Merits Report, folios 20 and 21).

<sup>47</sup> Article 328 of the Constitution of the Bolivarian Republic of Venezuela. Available at: <https://asambleanacional-media.s3.amazonaws.com/documentos/botones/constitucion-nacional-20191205135853.PDF>.

**Article 328.** The National Armed Forces constitute an essentially professional institution, with no political orientation, organized by the State to guarantee the independence and sovereignty of the Nation and to ensure the integrity of its geographical space, through military defense, cooperation for the purpose of maintaining internal order and active participation in national development, in accordance with this Constitution and the law. [...]The National Armed Forces consist of the Army, the Navy, the Air Force and the National Guard, which function in an integrated manner, within the scope of their competence, in order to fulfill their mission and with their own Social Security system, as established under the pertinent organic law.

<sup>48</sup> Cf. Statement of Luis Enrique Filgueira Lizcano before the Fourth Supervisory Court of Ciudad Bolívar on March 2, 2004 (evidence file, volume I, Annex 15 to the Merits Report, folio 64).

<sup>49</sup> Cf. Statement of Andi Bermúdez Sifontes before the Fourth Supervisory Court of Ciudad Bolívar on March 16, 2004 (evidence file, volume I, Annex 16 to the Merits Report, folio 72).

<sup>50</sup> Cf. Cited by the State in its written observations of November 12, 2008 (evidence file, volume II, procedure before the Commission, folio 380).

<sup>51</sup> Cf. Cited in the order to commence proceedings issued by the Third Supervisory Court of First Instance of

versions of the facts,<sup>52</sup> and noted that “in terms of the facts, the State recognize[d] that on the day of the events, the National Guard intervened in the Vista Hermosa Prison and ‘as a result of this procedure’ seven victims died and approximately 27 others were injured.”

48. Once inside the prison, the National Guard agents took the inmates to the prison’s inner yard,<sup>53</sup> where they ordered several of them to undress.<sup>54</sup> They then ordered some of the inmates to lie face down on the ground<sup>55</sup> and others to stand facing the wall.<sup>56</sup>

49. During the operation, the agents fired shots<sup>57</sup> and inflicted kicks and beatings using different objects, including sticks and stones, against several inmates.<sup>58</sup> As a result of the actions taken by the National Guard seven inmates died from injuries caused by firearms<sup>59</sup> and 27 others were wounded.<sup>60</sup> In its Merits Report, the Commission noted that “the case file [...] does not properly clarify the specific way in which these deaths and injuries occurred, or the specific role of the soldiers and prison guards present at the prison that day.” From this account, the Court has not been able to establish precisely how the different deaths and injuries caused to each of the victims would have occurred.

### *B.1. Persons deprived of liberty killed and injured*

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Ciudad Bolívar on June 4, 2014 (evidence file, volume III, Annex 15 to the pleadings and motions brief, folio 1042).

<sup>52</sup> The three versions of events are summarized as follows: (i) according to the inmates and the media, there was no fighting among the inmates on the day of the events, but rather a plan agreed upon in advance with the National Guard, whose objective was to threaten the lives and integrity of the prison inmates; (ii) according to the National Guard members, a fight took place among the inmates, which resulted in a number of deaths and injuries; they also claimed to have entered the prison “after the situation had calmed down” and, (iii) according to the Public Prosecutor’s Office and the Intervention Director, in response to the fight among the inmates, the National Guard intervened, “leaving people injured and dead.”

<sup>53</sup> Cf. Fact cited in the order to commence proceedings issued by the Third Supervisory Court of First Instance of Ciudad Bolívar on June 4, 2014 (evidence file, volume III, Annex 15 to the pleadings and motions brief, folios 1042).

<sup>54</sup> Cf. Statement of Alcides Rafael Alcázar before the Fourth Supervisory Court of Ciudad Bolívar on March 2, 2004 (evidence file, volume I, Annex 10 to the Merits Report, folio 49).

<sup>55</sup> Cf. Statement of Edgar Oswaldo Natera Medina as set forth in the order to commence proceedings issued by the Third Court issued by the Third Supervisory Court of First Instance of Ciudad Bolívar on June 4, 2014 (evidence file, volume III, Annex 15 to the pleadings and motions brief, folios 1043).

<sup>56</sup> Cf. Statement of Deivis Romero Lascano before the Fourth Supervisory Court of Ciudad Bolívar on March 16, 2004 (evidence file, volume I, Annex 11 to the Merits Report, folio 52).

<sup>57</sup> Cf. Statement of Edgar Oswaldo Natera Medina contained in the order to commence proceedings issued by the Third Supervisory Court of Ciudad Bolívar on June 4, 2014 (evidence file, volume III, Annex 15 to the pleadings and motions brief, folios 1043).

<sup>58</sup> Cf. Statement of Alexander Rodríguez before the Fourth Supervisory Court of Ciudad Bolívar on March 16, 2004 (evidence file, volume I, Annex 14 to the Merits Report, folio 60).

<sup>59</sup> Cf. Fact cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 717 and 718). See also, order to commence proceedings issued by the Third Supervisory Court of First Instance of Ciudad Bolívar on June 4, 2014 (evidence file, volume III, Annex 15 to the pleadings and motions brief, folio 1042), and statement of Antonietta de Dominicis (evidence file, volume VII, affidavits, folios 1791 to 1797).

<sup>60</sup> Cf. Fact cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 717 and 718), and fact cited in the order to commence proceedings issued by the Third Supervisory Court of First Instance of Ciudad Bolívar on June 4, 2014 (evidence file, volume III, Annex 15 to the pleadings and motions brief, folio 1042).

50. The inmates who died during the operation<sup>61</sup> and their next of kin,<sup>62</sup> who are also considered victims in the instant case, are the following:

- 1) Orlando Edgardo Olivares Muñoz, born in the Republic of Chile on December 29, 1965, was 37 years old at the time of his death.<sup>63</sup> His wife is Lorenza Josefina Pérez de Olivares.
- 2) Joel Ronaldy Reyes Nava, born in Venezuela on June 12, 1982, was 21 years old at the time of his death.<sup>64</sup> His sister is Jenny Leomelia Reyes Guzmán.
- 3) Orangel José Figueroa, born in Venezuela on October 7, 1982, was 21 years old at the time of his death.<sup>65</sup> His brother is José Luis Figueroa.
- 4) Héctor Javier Muñoz Valerio, born in Venezuela on October 16, 1981, was 22 years old at the time of his death.<sup>66</sup> His sister is Yngris Lorena Muñoz Valerio.
- 5) Pedro Ramón López Chaurán, born in Venezuela in 1978, was 24 years old at the time of his death.<sup>67</sup> His wife is Johamnata Martínez Coralis.
- 6) José Gregorio Bolívar Corro, born in Venezuela on May 19, 1975, was 28 years old at the time of his death.<sup>68</sup> His brother-in-law is Elías José Aguirre Navas.
- 7) Richard Alexis Núñez Palma, born in Venezuela on May 28, 1978, was 25 years old at the time of his death.<sup>69</sup> His sister is Elizabeth Carmen Cañizales Palma.

51. The persons deprived of liberty who were injured were the following: 1) Ramón Zambrano; 2) Jovanny Palomo; 3) Carlos Durán; 4) Richard Vallez; 5) Carlos Alberto Torres; 6) Galindo Urrieta; 7) Edwin David Díaz; 8) Luis Filgueira; 9) Oswal Sotillo; 10) Rafael Vera Himi; 11) Miguel Marcano; 12) Marcos Pacheco; 13) Alcides Rafael Alcaza Barreto; 14) Jesús Manuel Amaiz Borrrome; 15) Rafael Villa Hermosa; 16) Efraín Cordero; 17) Carlos Alberto Martínez; 18) Pedro de Jesús Montes Aguanes; 19) Santa Jesús Gil Osuna; 20) Omar Armando Vásquez; 21) Getulio Piña Laya; 22) Evelio Eugenio Martínez; 23) Enrique José González; 24) Javier Omar Lara; 25) José Efraín Rosales Navas; 26) Levis Simoza, and 27) Marco Antonio

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<sup>61</sup> The ages recorded are based on evidence provided during the proceedings and on information provided by the representatives, which was not contested by the State.

<sup>62</sup> The State mentioned the records of interviews with each of the persons identified as relatives of the alleged deceased victims. *Cf.* Written observations of the State of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 725 and 726).

<sup>63</sup> *Cf.* Death certificate of Orlando Edgardo Olivares Muñoz (evidence file, volume I, Annex 1 to the Merits Report, folio 6).

<sup>64</sup> *Cf.* Death certificate of Joel Ronaldy Reyes Nava (evidence file, volume I, Annex 2 to the Merits Report, folio 8).

<sup>65</sup> *Cf.* Death certificate of Orangel José Figueroa (evidence file, volume I, Annex 3 to the Merits Report, folio 10).

<sup>66</sup> *Cf.* Death certificate of Héctor Javier Muñoz Valerio (evidence file, volume I, Annex 4 to the Merits Report, folio 12).

<sup>67</sup> *Cf.* Death certificate of Pedro Ramón López Chaurán (evidence file, volume I, Annex 5 to the Merits Report, folio 14).

<sup>68</sup> *Cf.* Death certificate of José Gregorio Bolívar Corro (evidence file, volume I, Annex 6 to the Merits Report, folio 16).

<sup>69</sup> *Cf.* Death certificate of Richard Alexis Núñez Palma (evidence file, volume I, Annex 7 to the Merits Report, folio 18).



Ruíz Sucre.<sup>70</sup>

### ***C. Investigation and judicial proceedings in the domestic jurisdiction***

#### *C.1. Investigation of the facts*

52. The judicial investigation began on the same day of the facts.<sup>71</sup> From that date forward, a number of investigative procedures were reportedly carried out, including seven autopsies, the collection of statements as pretrial evidence, interviews, ocular inspections, forensic medical examinations, medical legal reports, expert examinations of firearms, bullets and projectiles, ballistic comparison tests, and the exhumation of bodies, etc.<sup>72</sup>

#### *C.2. Autopsies and exhumation of bodies*

53. On November 11, 2003, pathologists of the Forensic Medicine Unit of the Scientific and Criminal Investigations Corps, Sub-delegation of Ciudad Bolívar, performed autopsies on the bodies of the seven deceased inmates.

54. On January 19, 2004, the Public Prosecutor's Office requested the exhumation of five of the bodies, which was authorized on January 26, 2004, by the First Supervisory Court of the Criminal Judicial Circuit of the State of Bolívar, in the territory of Puerto Ordaz.<sup>73</sup>

55. The bodies of Richard Alexis Palma, Orangel José Figueroa, José Gregorio Bolívar Corro, Héctor Javier Muñoz Valerio and Joel Ronaldy Reyes Nava were exhumed on February 4 and 5, 2004, by Antonietta de Dominicis and Leny Rojas, experts attached to the National Coordinator of the Scientific, Criminal and Forensic Investigation Corps (CICPC). Both professionals submitted a report on March 22, 2004, in which they described the exhumations and autopsies performed, accompanied by photographs taken during the procedures.<sup>74</sup>

56. With regard to Richard Alexis Palma, the autopsy performed on November 11, 2003, revealed the cause of death to be "hypovolemic shock from internal hemorrhaging due to one gunshot wound."<sup>75</sup> The exhumation and autopsy report of March 22, 2004, concluded that the cause of death was "[skull fracture due to a gunshot wound to the head]," noting that the

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<sup>70</sup> The State referred to the forensic medical examinations or medical legal reports for each of the individuals identified as alleged injured victims. It also referred to the record of the interview with Carlos Alexis Durán Gracia, on December 2, 2003. *Cf.* Observations of the State of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 731, 742, 745, 746, 747 and 748).

<sup>71</sup> *Cf.* Fact cited by the State in its written observations of November 12, 2008 (evidence file, volume II, procedure before the Commission, folio 382).

<sup>72</sup> *Cf.* Procedures cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 723 to 769).

<sup>73</sup> *Cf.* Procedures cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 754 and 755).

<sup>74</sup> *Cf.* Procedures cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 755 and 760). See also, exhumation record of March 22, 2004 (evidence file, volume I, Annex 22 to the Merits Report, folios 90 to 92, and evidence file, volume II, Annex to the initial petition in the procedure before the Commission, folios 230 to 278). The copy of that record, included as evidence in the present case, included a report on exhumations and autopsies, as well as photographs of the procedures carried out on the bodies of Richard Alexis Palma, Orangel José Figueroa, José Gregorio Bolívar Corro and Héctor Javier Muñoz Valerio, but not on the body of Joel Ronaldy Reyes Nava, for whom it only included photographs of the procedure. See also, statement rendered by Antonietta de Dominicis (evidence file, volume VII, affidavits, folio 1788).

<sup>75</sup> *Cf.* Procedure cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folio 724).

examination of the corpse showed that no cranial autopsy had been performed previously.<sup>76</sup>

57. With respect to Orangel José Figueroa, the autopsy of November 11, 2003, indicated that the cause of death was "hypovolemic shock from internal hemorrhage caused by a gunshot wound."<sup>77</sup> The exhumation and autopsy report of March 22, 2004, revealed the cause of death to be "hypovolemic shock from a gunshot wound." It added that no cranial autopsy had been performed previously.<sup>78</sup>

58. With regard to José Gregorio Bolívar Corro, the autopsy of November 11, 2003, concluded that the cause of death was "traumatic brain injury and hypovolemic shock from a gunshot wound."<sup>79</sup> According to the exhumation and autopsy report of March 22, 2004, the cause of death was "skull fracture resulting from a gunshot wound to the head." The report also indicated that an examination of the body showed that no cranial autopsy had been performed previously.<sup>80</sup>

59. With respect to Héctor Javier Muñoz Valerio, the autopsy of November 11, 2003, revealed the cause of death to be "traumatic brain injury from one gunshot wound."<sup>81</sup> The exhumation and autopsy report of March 22, 2004, concluded that the cause of death was "a polyfragmentary skull fracture resulting from a gunshot wound to the head." It also specified that no cranial autopsy had been performed previously.<sup>82</sup>

60. In relation to Joel Ronaldy Reyes Nava, the autopsy of November 11, 2003, stated as the cause of death "traumatic brain injury from one bullet wound."<sup>83</sup> The body was also exhumed in the procedure carried out on February 4 and 5, 2004.<sup>84</sup>

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<sup>76</sup> Cf. Exhumation record of March 22, 2004 (evidence file, volume I, Annex 22 to the Merits Report, folios 91 and 92). The report stated that the projectile followed a "trajectory from back to front, from right to left and from below upward" and that there were no signs of traumatic injury to the rest of the body.

<sup>77</sup> Cf. Procedure cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folio 724).

<sup>78</sup> Cf. Exhumation record of March 22, 2004 (evidence file, volume II, Annex to the initial petition in the procedure before the Commission, folios 237 and 238). The report also stated that no traumatic injuries were found on the head and neck, that the "fractures on the right and left sides of the ribcage could correspond to the trajectory of a projectile [from a firearm]", and that "two entry holes were found in the pelvic bone, caused by a projectile fired from a firearm."

<sup>79</sup> Cf. Procedure cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 723 and 724).

<sup>80</sup> Cf. Exhumation record of March 22, 2004 (evidence file, volume II, Annex to the initial petition in the procedure before the Commission, folios 251 to 253). The report indicated that the skull presented a fracture caused by a projectile from a firearm "with a trajectory from front to back, left to right and from up to down." Also, at the level of the hemi thorax, the loss of 4 cm of tissue was observed, corresponding to an entry hole caused by multiple projectiles (pellets) [...] without exit holes" and that "[i]n the right hypochondrium there was irregular tissue loss." In addition, fractures of the costal arch were observed that "were not caused by projectiles, given the extensive loss of tissue," but "must have been the result of blunt force trauma."

<sup>81</sup> Cf. Procedure cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folio 724).

<sup>82</sup> Cf. Exhumation record of March 22, 2004 (evidence file, volume II, Annex to the initial petition in the procedure before the Commission, folios 264 to 266). The report indicated that on the skull, "three orifices [were observed] produced by the passage of a bullet fired from a firearm," two with a "trajectory from back to front, right to left and slightly downward" and the third with "a trajectory from front to back, from right to left and from up to down," without any sign of traumatic injuries to the rest of the body.

<sup>83</sup> Cf. Procedure cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folio 724).

<sup>84</sup> Cf. Exhumation record of March 22, 2004 (evidence file, tome I, Annex 22 to the Merits Report, folio 90). The body was exhumed during the procedure carried out on February 4 and 5, 2004; however, the Court does not have the exhumation and autopsy report (*supra* footnote 74). In her statement, the witness Antonietta de Dominicis stated

61. In relation to Orlando Edgardo Olivares Muñoz, the autopsy of November 11, 2003, indicated that the cause of death was "hypovolemic shock from internal hemorrhage due to gunshot wound and knife injury."<sup>85</sup>

62. As for Pedro Ramón López Chaurán, according to the autopsy of November 11, 2003, the cause of death was "traumatic brain injury from a bullet wound."<sup>86</sup>

63. The Public Prosecutor's Office ordered the exhumation of the bodies of Orlando Edgardo Olivares Muñoz<sup>87</sup> and Pedro Ramón López Chaurán<sup>88</sup> on March 17, 2004.<sup>89</sup> The procedure was carried out on April 21, 2004, and was led by the professional Antonietta de Dominicis.<sup>90</sup>

### *C.3. Judicial proceedings*

64. On March 18, 2004, the 127<sup>th</sup> Prosecutor's Office of the Metropolitan Area of Caracas, jointly with the First Prosecutor's Office of the Public Ministry of the First Judicial Circuit of the Judicial District of Bolívar State,<sup>91</sup> asked the supervising Judge of the Judicial Circuit of the State of Bolívar to issue an arrest warrant against four National Guard officers assigned to Detachment 81. The warrant was issued on March 22, 2004.<sup>92</sup>

65. On March 28, 2004, the arraignment hearing was held for the four individuals accused before the Second Supervisory Court of the Criminal Judicial Circuit of Bolívar State,<sup>93</sup> and that same day, the Public Prosecutor's Office requested the "pretrial detention" of the accused. The request was rejected on March 29, 2004, by the supervising judge who ordered the

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that after the exhumation of the body, "the skull was opened up, since no cranial autopsy had been performed previously." *Cf.* Statement rendered by Antonietta de Dominicis (evidence file, volume VII, affidavits, folio 1795).

<sup>85</sup> *Cf.* Procedure cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 724 and 725).

<sup>86</sup> *Cf.* Procedure cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folio 724).

<sup>87</sup> In her statement, the witness Antonietta de Dominicis reported that after the exhumation of the body, "a cranial autopsy was carried out, in view of the fact that the skull was unopened." *Cf.* Statement rendered by Antonietta de Dominicis (evidence file, volume VII, affidavits, folio 1796).

<sup>88</sup> In her statement, the witness Antonietta de Dominicis explained that after the exhumation of the body, "a cranial autopsy was carried out, in view of the fact that the skull was unopened." *Cf.* Statement rendered by Antonietta de Dominicis (evidence file, volume VII, affidavits, folio 1797).

<sup>89</sup> *Cf.* Procedure cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folio 769).

<sup>90</sup> *Cf.* Procedures cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folio 769), and statement rendered by Antonietta de Dominicis (evidence file, volume VII, affidavits, folio 1788).

<sup>91</sup> In an official letter dated December 26, 2003, the Public Prosecutor's Office announced that it had expanded the jurisdiction of the 127<sup>th</sup> Prosecutor of the Metropolitan Area of Caracas so that, together with the Prosecutor of the Judicial District of Bolívar State, it would investigate the facts. *Cf.* Official letter of December 16, 2003, signed by the Director of Protection of Fundamental Rights of the Public Prosecutor's Office addressed to the General Coordinator of the Venezuelan Observatory of Prisons (evidence file, volume II, Annex to the initial petition in the procedure before the Commission, folio 295).

<sup>92</sup> *Cf.* Procedures cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 758 to 760). See also, brief of March 28, 2004 presented by the 127<sup>th</sup> Prosecutor of the Metropolitan Area of Caracas with expanded jurisdiction at national level and the First Prosecutor of the First Judicial Circuit of the Judicial District of Bolívar State before the supervising Judge of the Criminal Judicial Circuit of Bolívar State (evidence file, volume III, Annex 10 A to the pleadings and motions brief, folios 999 to 1005).

<sup>93</sup> *Cf.* Procedure cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 719 and 760).

“unconditional release” of the defendants.<sup>94</sup>

66. The Public Prosecutor’s Office appealed the decision on April 2, 2004; in response, the Court of Criminal Appeals of Ciudad Bolívar, in a ruling on June 3, 2004, upheld the appeal, revoked the contested decision and, consequently, decreed “a measure of pretrial detention against the accused.”<sup>95</sup>

67. On April 1, 2004, the Venezuelan Observatory of Prisons requested to intervene as a plaintiff in the proceedings, a petition that was granted on April 5 of the same year.<sup>96</sup>

68. On July 15, 2004, the defense attorneys of the defendants requested before the Criminal Cassation Chamber of the Supreme Court of Justice the transfer of the case, a petition that was rejected by the Chamber in a ruling of October 7, 2004.<sup>97</sup>

69. On October 25, 2004, the defense attorneys filed an *amparo* action against the ruling issued by the Criminal Court of Appeals of Ciudad Bolívar on June 3, 2004, which ordered the pretrial detention of the defendants. On April 5, 2005, the Constitutional Chamber of the Supreme Court of Justice declared the action inadmissible.<sup>98</sup>

70. On May 9, 2005, the Public Prosecutor’s Office requested a 15-day extension to prepare the “closing act.” In response, on May 11 of the same year the Third Supervisory Court of First Instance of Ciudad Bolívar granted an extension of seven days.<sup>99</sup>

71. On March 28, 2006, the plaintiff requested that the Public Prosecutor’s Office be granted “a reasonable period of time to present the closing acts.” On June 19, 2006, that jurisdictional body did not accede to the request, considering that due to the nature of the facts under investigation, classified as “crimes against human rights,” it was not appropriate to set a term for the Public Prosecutor’s Office in application of the Organic Code of Criminal Procedure

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<sup>94</sup> Cf. Procedure cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 719 and 760); Brief of March 28, 2004, filed by the 127<sup>th</sup> Prosecutor of the Metropolitan Area of Caracas with expanded jurisdiction at national level and the First Prosecutor of the First Judicial Circuit of the Judicial District of Bolívar State before the supervising judge of the Criminal Judicial Circuit of the State of Bolívar (evidence file, volume III, Annex 10 A to the pleadings and motions brief, folios 999 to 1005), and order of unconditional release of March 29, 2004, signed by the Second Supervising Judge of Ciudad Bolívar, addressed to the Head of Regional Command No. 8 (evidence file, volume I, Annex 24 to the Merits Report, folio 94).

<sup>95</sup> Cf. Cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 719 and 762), and order issued by the Criminal Court of Appeals of Ciudad Bolívar on June 3, 2004 (evidence file, volume I, Annex 9 to the Merits Report, folios 24 to 45).

<sup>96</sup> Cf. Brief presented on April 1, 2004, by the Venezuelan Observatory of Prisons before the Judge of the First Supervisory Court of the Criminal Judicial Circuit of Bolívar State (evidence file, volume I, Annex 27 to the Merits Report, folios 100 to 108); confirmation of receipt of a new matter by the Unit of Reception and Distribution of Documents of the Criminal Judicial Circuit of Ciudad Bolívar of April 1, 2004 (evidence file, volume I, Annex 25 to the Merits Report, folio 96), and order of joinder of April 5, 2004, issued by the Second Supervisory Judge of Ciudad Bolívar (evidence file, volume I, Annex 26 to the Merits Report, folio 98).

<sup>97</sup> Cf. Procedures cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 719 and 765). See also, Acknowledgment of receipt of a document in the Unit of Reception and Distribution of Documents of the Criminal Judicial Circuit of Ciudad Bolívar of November 10, 2004 (evidence file, volume I, Annex 28 to the Merits Report, folio 110).

<sup>98</sup> Cf. Procedures cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folio 720).

<sup>99</sup> Cf. Procedures cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 720, 721 and 763); and Record of the oral hearing held before the Third Supervisory Court of First Instance of Ciudad Bolívar on May 11, 2005 (evidence file, volume I, Annex 31 to the Merits Report, folios 118 to 122).

(Article 313).<sup>100</sup>

72. According to court records, on November 30, 2012, the Public Prosecutor's Office filed an indictment against four members of the National Guard "for the crime of aggravated homicide with malice aforethought" committed against José Gregorio Bolívar Corro, Pedro "Antonio" López Chaurán, Orlando Edgardo Olivares Muñoz and Orangel José Figueroa.<sup>101</sup> However, the preliminary hearing, the purpose of which was to decide on the admissibility of the accusation, was postponed on at least three occasions, between May and August of 2013, owing to the lack of attendance by all the parties involved in the proceedings.<sup>102</sup>

73. The preliminary hearing was held on June 3, 2014, when the Third Supervisory Court of First Instance of Ciudad Bolívar declared admissible "the exception of a lack of formal requirements to try the victim's own private accusation" filed by his private attorneys and, consequently, "dismissed the case in relation to the claim made by the victim and his legal representatives in the complaint." To this effect, the court argued that the power of attorney granted by Lorenza Josefina Pérez did not identify the person or persons against whom the accusation was directed or the punishable act or acts, which were "essential requirements for the validity of criminal powers of attorney," according to Article 406 of the Organic Code of Criminal Procedure. It added that the appointment of four legal representatives exceeded the limit of three imposed by the aforementioned procedural rule.<sup>103</sup>

74. On June 4, 2014, the order to commence the trial was issued, in which the accusation of the Public Prosecutor's Office was admitted.<sup>104</sup>

75. On June 10, 2014, the legal representatives Humberto Prado and Luis Manuel Guevara filed an appeal against the decision of June 3, 2014, which ordered the dismissal of the private prosecution. In view of this, the Single Chamber of the Court of Appeals of the Criminal Judicial Circuit of the State of Bolívar, through a resolution of November 17, 2014, rejected the appeal and confirmed the contested decision.<sup>105</sup>

76. The oral and public trial took place during the months of September, October and

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<sup>100</sup> Cf. Confirmation of receipt of a document by the Unit of Reception and Distribution of Documents of the Criminal Judicial Circuit of Ciudad Bolívar of March 28, 2006 (evidence file, volume I, Annex 32 to the Merits Report, folio 124), and Order issued by the Third Supervisory Court of First Instance of Ciudad Bolívar on June 19, 2006 (evidence file, volume I, Annex 34 to the Merits Report, folios 130 to 133).

<sup>101</sup> Cf. Record of preliminary hearing and trial held before the Third Supervisory Court of First Instance of Ciudad Bolívar the June 3, 2014 (evidence file, volume III, Annex 12 to the pleadings and motions brief, folios 1009 to 1011).

<sup>102</sup> On May 21, 2013, the hearing was deferred owing to failure to notify the defense attorneys. Cf. Record of deferment of preliminary hearing of May 21, 2013 (evidence file, volume I, Annex 36 to the Merits Report, folios 138 and 139). On July 12, 2013, the hearing was deferred again owing to the non-attendance of the defense attorneys, "who claimed travel difficulties due to flight delays from the city of Caracas." Cf. Record of deferment of preliminary hearing, July 12, 2013 (evidence file, volume I, Annex 36 to the Merits Report, folios 140 and 141). Finally, the hearing was deferred on August 29, 2013 owing to the absence of the defense attorneys, the accused and one of the prosecutors. Cf. Record of deferment of preliminary hearing of August 29, 2013 (evidence file, volume I, Annex 36 to the Merits Report, folios 142 and 143).

<sup>103</sup> Cf. Record of preliminary hearing and trial held before the Third Supervisory Court of First Instance of Ciudad Bolívar on June 3, 2014 (evidence file, volume III, Annex 12 to the pleadings and motions brief, folios 1009 to 1020).

<sup>104</sup> Cf. Order to commence proceedings issued by the Third Supervisory Court of First Instance of Ciudad Bolívar on June 4, 2014 (evidence file, volume III, Annex 15 to the pleadings and motions brief, folios 1041 to 1046).

<sup>105</sup> Cf. Confirmation of receipt of a document by the Unit of Reception and Distribution of Documents of the Criminal Judicial Circuit of Ciudad Bolívar of June 10, 2014 (evidence file, volume III, Annex 13 to the pleadings and motions brief, folio 1023), and Order issued by the Single Chamber of the Court of Appeals of the Criminal Judicial Circuit of the State Bolívar on November 17, 2014 (evidence file, volume III, Annex 14 to the pleadings and motions brief, folios 1026 to 1039).

November of 2016, before the Fourth Trial Court of First Instance of Ciudad Bolívar,<sup>106</sup> which issued a judgment on December 6, 2016, in which it acquitted the defendants and ordered their “full release.” In this regard, the court considered that “with the body of evidence incorporated in the course of the public oral proceedings, the authorship or participation and consequent responsibility of the accused was not demonstrated.”<sup>107</sup>

## **VIII MERITS**

77. The instant case concerns the alleged violation of various rights in relation to the death of seven persons deprived of their liberty and the injuries caused to 27 others as result of an operation carried out by members of the National Guard, a military unit that is part of the Venezuelan National Armed Forces (*supra* para. 44), at the Vista Hermosa Prison, located in Ciudad Bolívar.

78. Based on the arguments of the Commission and the representatives, as well as the acknowledgment of responsibility made by the State, the Court will proceed to analyze the merits in the following order: a) rights to life and personal integrity, in relation to the obligations to respect and guarantee rights and to adopt domestic legal provisions; b) rights to judicial guarantees and judicial protection, in relation to the obligations to respect and guarantee rights and to investigate possible acts of torture, and c) right to personal integrity of the relatives of the deceased persons, in relation to the obligations to respect and guarantee rights.

### **VIII.1 RIGHTS TO LIFE AND TO PERSONAL INTEGRITY, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS AND TO ADOPT DOMESTIC LEGAL PROVISIONS<sup>108</sup>**

#### ***A. Arguments of the parties and of the Commission***

79. The **Commission** argued that there is a presumption of State responsibility for the deaths and injuries caused to persons under its custody, which has not been disproved since the State has not provided a satisfactory explanation and, in addition, has acknowledged its responsibility. It pointed out that there were insufficient elements to determine with certainty that there had been a riot in the prison on the day of the events, which derived from the lack of due diligence in the investigation of the facts; consequently, the use of force against the inmates was arbitrary because it lacked a legitimate purpose and was unnecessary. It added that, even assuming that the action by members of the National Guard was for the legitimate

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<sup>106</sup> Cf. Records of the oral and public trial held before the Fourth Trial Court of First Instance of Ciudad Bolívar on September 19, October 4, 18, 25 and 31; and November 4, 7, 9, 14 and 18, 2016 (evidence file, volume III, Annexes 27 to 36 to the pleadings and motions brief, folios 1107 to 1172). According to the judgment of December 6, 2016, the trial began on September 6, 2016, and continued on September 19, and October 4, 18, 25 and 31; and November 4, 7, 9, 14, 16, 18, 22 and 24 of 2016. Cf. Judgment issued by the Fourth Supervisory Court of First Instance of Ciudad Bolívar on December 6, 2016 (evidence file, volume III, Annex 39 to the pleadings and motions brief, folios 1208 to 1247). Although the case file contains the records of the oral and public proceedings held on February 24, March 8 and 28; April 6, 13, 21 and 25; May 10, 23 and 30, and June 6, 2016 (evidence file, volume III, Annexes 16 to 26 to the pleadings and motions brief, folios 1049 to 1104), these court records show the name of a judge other than the official who signed the judgment of December 6, in addition to which the judgment does not refer to such dates. Thus, it is concluded that the oral and public trial in which the decision of acquittal was handed down took place between September and November of 2016, on the dates indicated.

<sup>107</sup> Cf. Judgment issued by the Fourth Supervisory Court of First Instance of Ciudad Bolívar on December 6, 2016 (evidence file, volume III, Annex 39 to the pleadings and motions brief, folios 1205 to 1273).

<sup>108</sup> Articles 4 and 5 of the American Convention, in relation to Articles 1(1) and 2 of the same instrument.

purpose of controlling a riot and protecting the lives of the inmates, the use of force would have been disproportionate, since the evidence shows that the agents entered the prison shooting, indiscriminately beat the prisoners in the inner courtyard and did not use antiriot equipment or less lethal means.

80. The Commission added that the National Guard entered the prison in accordance with Article 8 of the Penitentiary Regime Law, according to which the external surveillance of prisons may be entrusted to military agencies, which shall refrain from any intervention in their internal regime and security, "except when expressly required by the director of the establishment." It pointed out that this regulation does not define with sufficient clarity the grounds for requesting the entry of the National Guard, especially when inter-American standards stipulate that the entry of military forces into a prison, if permitted, must respond to a criterion of strict exceptionality, and must only be used to safeguard the rights of inmates.

81. The **representatives** argued that the facts of this case should be characterized as "a massacre" committed by State agents through extrajudicial executions. They stated that this was evidenced in the examinations carried out on the bodies of the victims that were exhumed, most of which concluded that the cause of death was the result of gunshot wounds to the head, and in several cases the trajectories of the bullets showed that the inmates were in a position of defenselessness. They concluded that the use of force by the military authorities was neither legitimate nor necessary, as well as excessive and unacceptable, given the manner in which the circumstances occurred and the seriousness of the attacks suffered by the fatal victims.

82. The representatives added that, based on presumptions such as the vulnerability of the victims, the role of State agents as guarantors, the purpose of the measure used to punish the inmates and the seriousness of the physical and mental injuries they suffered, there are sufficient elements to conclude that the acts committed against the deceased and injured persons constituted torture. They pointed out that such arguments, in line with the facts contained in the Merits Report, are aimed at the proper interpretation of these facts and of the applicable law.

83. The **State** acknowledged its international responsibility for the violation of the rights to life and personal integrity "under the terms and conditions established in the Merits Report."

### **B. Considerations of the Court**

84. The Court will proceed to the joint analysis of the right to life of the deceased persons and the right to personal integrity of the injured victims, since the violations were caused by the same event, namely, the operation carried out by the National Guard on November 10, 2003, at the Vista Hermosa Prison.

85. In that regard, this Court's case law has repeatedly established that the right to life plays a fundamental role in the American Convention because it is the essential prerequisite for the realization of the other rights. Thus, compliance with Article 4, in conjunction with Article 1(1) of the Convention, requires not only that no person be arbitrarily deprived of his or her life (negative obligation), but also requires that States take all appropriate measures to protect and preserve the right to life (positive obligation),<sup>109</sup> in accordance with their duty to ensure

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<sup>109</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 144, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil, supra*, para. 116.

the full and free exercise of this right by all individuals under their jurisdiction.<sup>110</sup>

86. Consequently, the State has the obligation to create the necessary conditions to ensure that no violations of this right occur and, in particular, the duty to prevent its agents from committing such violations. Thus, the active protection of the right to life by the State involves not only its legislators, but all State institutions and those who must protect security, whether they are members of its police forces or its armed forces.<sup>111</sup>

87. Accordingly, States must adopt the necessary measures to create an appropriate regulatory framework to deter any threat to the right to life, and establish an effective justice system capable of investigating, punishing and providing reparation for the deprivation of life by State agents or private individuals.<sup>112</sup> In particular, States must ensure that their security forces, which are authorized to use legitimate force, respect the right to life of the individuals under their jurisdiction.<sup>113</sup>

88. Furthermore, the Court recalls that the Convention expressly recognizes the right to personal integrity, which is a legal right whose protection is the main purpose of the imperative prohibition of torture and cruel, inhuman or degrading punishment or treatment.<sup>114</sup>

89. With regard to persons deprived of their liberty, the Court has indicated that since the State is responsible for prison establishments, it is the guarantor of the rights of all persons under its custody.<sup>115</sup> The Court also recalls that, according to its case law, whenever the use of force by State agents has caused death or injuries to one or more persons, the State must offer a satisfactory and convincing explanation of the events and rebut the allegations regarding its responsibility by providing appropriate evidence.<sup>116</sup> Similarly, the constant case law of this Court has recognized that there is a presumption that the State is responsible for the injuries suffered by a person who has been in the custody of State agents.<sup>117</sup>

### *B.1. The State's responsibility for the deaths and injuries caused to persons deprived of liberty at Vista Hermosa Prison*

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<sup>110</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, reparations and costs.* Judgment of November 25, 2003. Series C No. 101, para. 153, and *Case of Noguera et al. v. Paraguay. Merits, reparations and costs.* Judgment of March 9, 2020. Series C No. 401, para. 65.

<sup>111</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, paras. 144 and 145, and *Case of Noguera et al. v. Paraguay, supra*, para. 66.

<sup>112</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia.* Judgment of January 31, 2006. Series C No. 140, para. 120; *Case of Baldeón García v. Peru. Merits, reparations and costs.* Judgment of April 6, 2006. Series C No. 147, para. 85, and *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of April 17, 2015. Series C No. 292, para. 260.

<sup>113</sup> Cf. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela. Merits, reparations and costs.* Judgment of July 5, 2006. Series C No. 150, para. 66, and *Case of Valencia Hinojosa et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of November 29, 2016. Series C No. 327, para. 136.

<sup>114</sup> Cf. *Case of Ximenes Lopes v. Brazil. Merits, reparations and costs.* Judgment of July 4, 2006. Series C No. 149, para. 126, and *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of November 19, 2019. Series C No. 392, para. 91.

<sup>115</sup> Cf. *Case of Neira Alegría et al. v. Peru. Merits.* Judgment of January 19, 1995. Series C No. 20, para. 60, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of January 27, 2020. Series C No. 398, para. 150.

<sup>116</sup> Cf. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela, supra*, para. 80, and *Case of Roche Azaña et al. v. Nicaragua. Merits and reparations.* Judgment of June 3, 2020. Series C No. 403, para. 69.

<sup>117</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, para. 170; *Case of Escué Zapata v. Colombia. Merits, reparations and costs.* Judgment of July 4, 2007. Series C No. 165, para. 71, and *Case Díaz Loreto et al. v. Venezuela, supra*, para. 92.



90. The Court recalls that the State acknowledged its international responsibility for the violation of the right to life (Article 4(1) of the Convention) of seven persons deprived of their liberty in the Vista Hermosa Prison. It also acknowledged its responsibility for the violation of the right to personal integrity (Articles 5(1) and 5(2)) to the detriment of 27 other inmates in that penitentiary. Indeed, Venezuela recognized that these deaths and injuries occurred "as a result" of the operation by the National Guard,<sup>118</sup> and that the attacks against the seven deceased inmates "may perfectly be characterized as extra-legal, arbitrary or summary executions."<sup>119</sup>

91. Notwithstanding the State's acknowledgment of international responsibility, in this case the Court finds it pertinent to make specific observations concerning the actions of the military agents on the day of the events, for the sole purpose of corroborating the arbitrariness with which they proceeded to use force against the persons deprived of their liberty.

92. In this regard, this Court has acknowledged that States have the obligation to guarantee security and maintain public order within their territory and, therefore, are empowered to legitimately use force to reestablish order, if necessary. However, while State agents may resort to the use of force, the State does not have unlimited power to achieve its ends, regardless of the gravity of certain actions and the culpability of the perpetrators.<sup>120</sup> Therefore, the Court has established certain measures that must be observed in the event that the use of force becomes essential, based on the principles of legality, legitimate purpose, absolute necessity and proportionality:

1) *Legality*: the exceptional use of force must be defined by law and a regulatory framework must exist for its use.<sup>121</sup>

2) *Legitimate purpose*: the use of force must be aimed at achieving a legitimate objective.<sup>122</sup>

3) *Absolute necessity*: it is necessary to ascertain whether there are other less harmful means available to safeguard the life and safety of the person or situation to be protected, in accordance with the circumstances of the case.<sup>123</sup> The use of lethal force and firearms by State security forces against people - which should be prohibited as a general rule - is only justified in even more extraordinary cases. The exceptional circumstances under which firearms and lethal force may be used shall be determined by law and restrictively construed, so that they are used to the minimum extent possible in all

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<sup>118</sup> Cf. Fact cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 717 and 718).

<sup>119</sup> Cf. Fact cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folio 720).

<sup>120</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 154, and *Case of Díaz Loreto et al. v. Venezuela, supra*, para. 63.

<sup>121</sup> Cf. *Case of Nadege Dorzema et al. v. Dominican Republic, supra*, para. 85, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 53.

<sup>122</sup> Cf. *Case of Nadege Dorzema et al. v. Dominican Republic, supra*, para. 85; *Case of the Landaeta Mejías Brothers et al. v. Venezuela, supra*, para. 134, and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 53.

<sup>123</sup> Cf. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela, supra*, paras. 67 and 68; *Case of Nadege Dorzema et al. v. Dominican Republic, supra*, para. 85 and *Case of Roche Azaña et al. v. Nicaragua, supra*, para. 53. See also, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* (hereinafter "*Basic principles on the use of force*"), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana, Cuba, of August 27 - September 7, 1990, Principle No. 4.

cases, but never exceeding use that is “absolutely necessary” in relation to the force or threat to be repelled.<sup>124</sup>

4) *Proportionality*: The level of force used must be in keeping with the level of resistance offered.<sup>125</sup> This implies establishing a balance between the situation faced by the agent and his response, considering the potential harm that could be caused. Thus, agents must apply a standard of differentiated and progressive use of force, determining the level of cooperation, resistance or aggressiveness of the person against whom the intervention is intended and, on that basis, use tactics of negotiation, control or use of force, as appropriate.<sup>126</sup> To determine the proportionality of the use of force, the severity of the situation that the agent faces must be assessed. To this end, among other circumstances, it is necessary to consider: the level of intensity and danger of the threat; the attitude of the individual; the conditions of the surrounding area, and the means available to the agent to deal with the specific situation.<sup>127</sup>

93. The Universal System of Protection of Human Rights reflects the same principle regarding the use of force and firearms by the police.<sup>128</sup> For example, the *Expanded Pocket Book on Human Rights for the Police, “Human Rights Standards and Practice for the Police,”* states that “[a]ll officers are to be trained in the use of the various means for differentiated use of force” and “in the use of non-violent means.”<sup>129</sup>

94. Similarly, the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, stipulate that in their relations with persons in custody or detention, law enforcement officials shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.<sup>130</sup> In addition, they shall not use firearms, except in self-defense or in the defense of others against the immediate threat of death or serious injury, or when strictly necessary in order to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9,<sup>131</sup> that is, to prevent the perpetration of a particularly serious crime involving a grave threat to life.<sup>132</sup>

95. Likewise, the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* state that “the personnel of places of deprivation of liberty shall not

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<sup>124</sup> Cf. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, *supra*, para. 68, and *Case of Roche Azaña et al. v. Nicaragua*, *supra*, para. 53.

<sup>125</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador*, *supra*, para. 85; *Case of Nadege Dorzema et al. v. Dominican Republic*, *supra*, para. 85, and *Case of Roche Azaña et al. v. Nicaragua*, *supra*, para. 53. See also, *Basic principles on the use of force*, *supra*, Principles No. 5 and 9.

<sup>126</sup> Cf. *Case of Nadege Dorzema et al. v. Dominican Republic*, *supra*, para. 85, and *Case of Roche Azaña et al. v. Nicaragua*, *supra*, para. 53. See also, *Basic principles on the use of force*, Principles No. 2, 4, 5 and 9.

<sup>127</sup> Cf. *Case of the Landaeta Mejías Brothers et al. v. Venezuela*, *supra*, para. 136, and *Case of Roche Azaña et al. v. Nicaragua*, *supra*, para. 53.

<sup>128</sup> See, Human Rights Committee, *General Comment No. 36, Article 6: Right to life*, CCPR/C/GC/36, October 30, 2018, paras. 25 and 29. Available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fGC%2f36&Lang=es](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fGC%2f36&Lang=es).

<sup>129</sup> Office of the United Nations High Commissioner for Human Rights, *Human Rights Standards and Practice for the Police. Expanded Pocket Book on Human Rights for the Police*, Doc. HR/P/PT/5/Add.3 (2003). Available at: <https://www.ohchr.org/documents/publications/training5add3sp.pdf>.

<sup>130</sup> Cf. *Basic principles on the use of force*, Principle 15.

<sup>131</sup> Cf. *Basic principles on the use of force*, Principle 16.

<sup>132</sup> In this regard see the *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*, approved by the United Nations General Assembly in Resolution 70/175, of December 17, 2015, Rule No. 82. See also, expert opinion of Marta Monclús Masó (evidence file, volume V, affidavits, folios 1743 to 1757).

use force and other coercive means, save exceptionally and proportionally, in serious, urgent and necessary cases as a last resort after having previously exhausted all other options, and for the time and to the extent strictly necessary in order to ensure security, internal order, the protection of the fundamental rights of persons deprived of liberty, the personnel, or visitors. The personnel shall be forbidden to use firearms or other lethal weapons inside places of deprivation of liberty, except when strictly unavoidable in order to protect the lives of persons."<sup>133</sup>

96. In the instant case, the Court considers that it does not have sufficient elements to analyze the requirement of legality with respect to the use of force, since the State did not provide the legal framework regulating the use of force at the time when the facts occurred, nor were specific allegations made by the Commission or the representatives.

97. Regarding the legitimate purpose, it should be noted that a lack of information and adequate evidence has prevented the Court from establishing the reasons that prompted the National Guard to enter the prison. Therefore, it is not possible to determine the purpose of the use of force and, consequently, its legitimacy. Similarly, the lack of clarity regarding the purpose of the use of firearms and lethal force prevents the Court from analyzing their absolute necessity. In any event, as indicated previously, the State has an obligation to provide a satisfactory and convincing explanation of what happened by means of adequate evidence (*supra* para. 89). Therefore, given the lack of an explanation in this regard, the Court concludes that, in the instant case, the requirements of legitimate purpose and absolute necessity in the use of force were not satisfied.

98. With respect to the requirement of proportionality, in addition to the lack of certainty about the existence of a riot among the inmates, the Court emphasizes that it has not been argued - and much less proven - that any action occurred that required the military agents to use their firearms in self-defense or in defense of third parties in the face of an imminent threat of death or serious injury, or that the agents had attempted to prevent the escape of an inmate who represented a danger because he might possibly commit a particularly serious crime that posed a serious threat to life.

99. Indeed, it should be noted that the military agents who claimed to have entered the prison during the operation of November 10, 2003, when giving their statements as part of the internal investigations, did not mention any specific situation that would suggest that, once they were inside the prison, the security or order of the center was threatened enough to use force against the inmates, which also rules out the possibility that there was a risk to their physical integrity.<sup>134</sup> Thus, in their statements, the agents indicated, *inter alia*, that having entered the prison, they ordered the inmates to move to the inner courtyard,<sup>135</sup> where

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<sup>133</sup> Cf. *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, adopted by the Inter-American Commission in Resolution 1/08 of March 31, 2008, Principle XXIII.2. Available at: <http://www.cidh.oas.org/pdf%20files/RESOLUCION%201-08%20ESP%20FINAL.pdf>.

<sup>134</sup> The State mentioned the records of interviews with Luis Beltrán Yegres Graffe, Salvador José Framchis Rincones, Gustavo Enrique Puerta Martínez, José Alexander Malva Guerrero, José de Jesús Aponte Rosales, Eloy José Salcedo and Vicente Abel Barrios Barela. Cf. Written observations of the State of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 731, 732, 735 and 741).

<sup>135</sup> Cf. Records of interviews with Salvador José Framchis Rincones, José Alexander Malva Guerrero, José de Jesús Aponte Rosales and Vicente Abel Barrios Barela. Cf. Written observations of the State of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 733, 735 and 739).

they held a roll call<sup>136</sup> “thereby controlling the situation,”<sup>137</sup> without mentioning any aggression, attacks or incidents that could lead them to presume any danger or threat against them. Moreover, there is no information or evidence of injuries suffered by any of the military agents.<sup>138</sup> Therefore, it could be asserted that the State agents used the maximum expression of the use of force without objectively encountering any resistance or threat on the part of the persons deprived of liberty.

100. As a corollary, the Court concludes that the use of force by the National Guard officers was arbitrary, inasmuch as the requirements of legitimate purpose and absolute necessity were not met. Furthermore, no degree of resistance or aggression was observed on the part of the inmates, which shows the lack of proportionality in the actions of the agents.

101. As acknowledged by the State,<sup>139</sup> the military agents were authorized to enter the prison under Article 8 of the Penitentiary Regime Law, in force at the time of the facts, the text of which stated the following:

The external security of the establishments may be entrusted to military agencies, which shall refrain from any intervention in the internal regime and surveillance, except when expressly requested by the director of the facility or the person acting in that capacity.

102. On this point, the Court recalls the importance of ensuring the suitability and proper training of prison personnel, with special emphasis on those responsible for security in detention centers as a measure to ensure dignified treatment of inmates, thus avoiding the risk of acts of torture and any cruel, inhuman or degrading treatment.<sup>140</sup> This, without prejudice to the considerations set forth in this judgment regarding the actions of the police or military agencies in relation to security, custody or surveillance tasks in prisons (*infra* para. 107).

103. In that regard, the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* establish that personnel responsible for “the direction, custody, care, transfer, discipline and surveillance of persons deprived of liberty shall, at all times and under any circumstances, respect the human rights of persons deprived of liberty and of their families.” They also stipulate that prisons must have sufficient and qualified personnel available to ensure security, surveillance and custody, assigning them the necessary resources and equipment so as to allow them to perform their duties in suitable conditions. Furthermore, such personnel must receive initial instruction and periodic specialized training, which should include, at least, education on human rights; on the rights, duties, and prohibitions in the

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<sup>136</sup> Cf. Records of interviews with Luis Beltrán Yegres Graffe, Salvador José Franchis Rincones, José de Jesús Aponte Rosales and Vicente Abel Barrios Barela. Cf. Written observations of the State of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 732, 733, 735 and 739).

<sup>137</sup> Cf. Record of interview with José de Jesús Aponte Rosales. Cf. Written observations of the State of September 20, 2013 (evidence file, volume II, procedure before the Commission, folio 735).

<sup>138</sup> The Public Prosecutor's Office, in formulating the indictment in the criminal proceedings against the National Guard agents, expressly stated: “[...] the officers [of the National Guard] without any reason whatsoever proceeded to use firearms to shoot at the victims, causing them gunshot wounds, which resulted in their instant death.” Cf. Record of preliminary hearing and trial held before the Third Supervisory Court of First Instance of Ciudad Bolívar on June 3, 2014 (evidence file, volume III, Annex 12 to the pleadings and motions brief, folio 1010).

<sup>139</sup> Cf. Written observations of the State of November 12, 2008 (evidence file, volume II, procedure before the Commission, folio 406).

<sup>140</sup> Cf. *United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules)*, Rules No. 74, 75 and 76, and *United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules)*, approved by the United Nations General Assembly in Resolution 65/229, December 21, 2010, Rule No. 29.

exercise of their functions; and on national and international principles and rules regarding the use of force, firearms, and physical restraint.<sup>141</sup>

104. It should be noted that in the case of *Montero Aranguren et al. v. Venezuela*, which has similarities with the present case given the context in which the facts took place, the Court emphasized that States should limit, to the maximum extent possible, the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is generally assigned to police forces.<sup>142</sup>

105. Similarly, the *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas* expressly state that prison staff shall comprise persons preferably with civil service and civilian status and, as a general rule, "members of the police or armed forces shall be prohibited from exercising direct custody of persons deprived of liberty, unless it is a police or military institution."<sup>143</sup>

106. In its Report on *the Human Rights of Persons Deprived of Liberty in the Americas*, the Inter-American Commission emphasized the following:

193. [...] States need to guarantee that penitentiaries are run and guarded by qualified, civilian staff, with civil servant status. That is to say, those functions must be entrusted to an independent security body independent of the military and police forces, and educated and trained in penitentiary issues. Those professionals must have been trained in programs, schools, or penitentiary academies established specifically for that purpose and pertaining to the institutional structure of the authority responsible for administering the penitentiary system.

217. [...] the deployment of members of the armed forces to control security in prisons must be exceptional, commensurate with the gravity of the situation prompting it, and restricted to exceptional cases explicitly contemplated by law and geared to achieving legitimate goals in a democratic society. In such cases, the actions of the armed forces must be subject to the scrutiny and control of the civilian authority, in particular as regards the establishment of the corresponding legal liabilities.<sup>144</sup>

107. Consequently, the Court reiterates that the tasks of security, custody and surveillance of persons deprived of liberty should preferably be carried out by civilian personnel specifically trained to perform prison work, other than police and military forces.<sup>145</sup> However, when exceptional cases require the intervention of the latter, their participation must be:<sup>146</sup>

- 1) *Exceptional*, so that any intervention is justified and exceptional, temporary and restricted to what is strictly necessary in the circumstances of the case;
- 2) Subordinated and supplementary to the work of the prison authorities;

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<sup>141</sup> Cf. *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle XX.

<sup>142</sup> Cf. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, *supra*, para. 78, and *Case of Roche Azaña et al. v. Nicaragua*, *supra*, para. 65.

<sup>143</sup> Cf. *Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas*, Principle XX.

<sup>144</sup> Cf. *Report on the Human Rights of Persons Deprived of Liberty in the Americas*, adopted by the Inter-American Commission on Human Rights, December 31, 2011. Available at: <https://www.oas.org/es/cidh/ppl/docs/pdf/ppl2011esp.pdf>.

<sup>145</sup> In the European sphere, the *European Prison Rules* establish that "Prisons shall be the responsibility of public authorities separate from military, police or criminal investigation services," and that "staff of other law enforcement agencies shall only be involved in dealing with prisoners inside prisons in exceptional circumstances." Cf. Recommendation (2006)2 of the Committee of Ministers to member states on the European Prison Rules, adopted by the Committee of Ministers on January 11, 2006, Rules 67.1 and 71. Available at: <https://rm.coe.int/16804cc2f1>.

<sup>146</sup> Cf. *Mutatis mutandis*, *Case of Alvarado Espinoza et al. v. Mexico. Merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 370, para. 182.

3) *Regulated*, by legal mechanisms and protocols on the use of force, under the principles of exceptionality, proportionality and absolute necessity, and based on the relevant training, and

4) *Supervised*, by competent, independent and technically capable civil authorities.

108. Based on the foregoing, the Court notes that the regulation of Article 8 of the Penitentiary Regime Law, by not defining the grounds for determining the intervention of the armed forces in the internal regimen and surveillance of prisons, and by making it subject only to the request of the director of the establishment or the person acting in that capacity, was contrary to international standards on the matter, since it allowed for discretion in the request and, consequently, in the actions of the military agents, without providing for subordination to and supervision by the civilian authorities. Ultimately, these regulatory shortcomings had a direct bearing on the violation of the rights to life and personal integrity of the victims in this specific case.

109. All the above considerations reinforce the State's international responsibility, and indicate that the deaths caused during the operation of November 10, 2003, as a consequence of the use of excessive and disproportionate force, constitute arbitrary deprivation of life,<sup>147</sup> which the State expressly recognized as cases that "perfectly fit into the category of extra-legal, arbitrary or summary executions." (*supra* para. 90).

110. With regard to the injured persons, since the force used against them was not strictly necessitated by the conduct of the inmates, it constitutes an attack on their integrity, in violation of Article 5 of the American Convention.<sup>148</sup>

111. Furthermore, given the content of Article 8 of the Penitentiary Regime Law, the State's regulations allowed the intervention of military agencies in the internal regime of a prison solely at the request of the director of the establishment, without stipulating the exceptional nature of their actions and without guaranteeing adequate regulation, as well as subordination to and supervision by the civil authorities, of such intervention, which is contrary to Article 2 of the Convention.

112. With respect to the representatives' arguments regarding the characterization of acts committed against the deceased and injured persons as torture, the Court considers that it does not have the necessary elements to carry out the intended analysis.

113. As a result, the State of Venezuela is responsible for the violation of the right to life, recognized in Article 4(1) of the Convention, in relation to the obligations to respect and guarantee such rights and to adopt domestic legal provisions, as established in Articles 1(1) and 2 of the same instrument, to the detriment of Orlando Edgardo Olivares Muñoz, Joel Ronaldy Reyes Nava, Orangel José Figueroa, Héctor Javier Muñoz Valerio, Pedro Ramón López Chaurán, José Gregorio Bolívar Corro and Richard Alexis Núñez Palma.

114. In addition, the Venezuelan State is responsible for the violation of the right to personal integrity, recognized in Articles 5(1) and 5(2) of the Convention, in relation to Articles 1(1)

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<sup>147</sup> Cf. *Case of Montero Aranguren et al. (Detention Center of Catia)*, *supra*, para. 68, and *Case of Roche Azaña et al. v. Nicaragua*, *supra*, para. 71.

<sup>148</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 57, and *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 12, 2020. Series C No. 402, para. 158.

and 2 of the same instrument, to the detriment of Ramón Zambrano, Jovanny Palomo, Carlos Durán, Richard Vallez, Carlos Alberto Torres, Galindo Urrieta, Edwin David Díaz, Luis Filgueira, Oswal Sotillo, Rafael Vera Himi, Miguel Marcano, Marcos Pacheco, Alcides Rafael Alcaza Barreto, Jesús Manuel Amaiz Borrrome, Rafael Villa Hermosa, Efraín Cordero, Carlos Alberto Martínez, Pedro de Jesús Montes Aguanes, Santa Jesús Gil Osuna, Omar Armando Vásquez, Getulio Piña Laya, Evelio Eugenio Martínez, Enrique José González, Javier Omar Lara, José Efraín Rosales Navas, Levis Simoza and Marco Antonio Ruíz Sucre.

## VIII.2

### **RIGHTS TO JUDICIAL GUARANTEES AND JUDICIAL PROTECTION, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS AND TO INVESTIGATE POSSIBLE ACTS OF TORTURE<sup>149</sup>**

#### ***A. Arguments of the parties and of the Commission***

115. The **Commission** argued that the investigation conducted at the domestic level was not exhaustive because, *inter alia*, no investigation was carried out to clarify the alleged violations of personal integrity. It pointed out that the autopsies performed were not compatible with the standards set forth in the *Minnesota Protocol*; in particular, it highlighted the lack of contextual analysis of the deaths, which would include the determination of possible patterns among the injuries caused, the caliber of the firearms that caused them and the distance at which they were fired, as well as the absence of color photographs and full-body x-rays. Regarding the reasonable period of time, it indicated that, although the investigation began on November 10, 2003, the preliminary hearing of the case did not take place until June 3, 2014.

116. The **representatives** alleged that the initial investigative procedures were not carried out with due diligence. They pointed out that the bodies of the deceased victims were transported in an inappropriate vehicle, without the intervention of specialized personnel. They mentioned various failings detected in the first autopsies performed on the bodies, including the absence of photographs, the lack of cranial autopsies and the omission of a description of the autopsy procedure.

117. They also alleged that formalities were imposed to prevent their participation as private accusers in the criminal proceedings, which constitutes "an unacceptable situation, in which the Public Prosecutor's Office did not appeal the decision. They argued that despite the existence of a body of evidence demonstrating the responsibility of the defendants, they were acquitted, which suggests judicial fraud, in addition to the fact that the Public Prosecutor's Office did not appeal the ruling. As for the reasonable time, they indicated that the complexity of the matter did not justify the excessive delay in providing an adequate response to the events that have arisen.

118. The **State** acknowledged its international responsibility for the violation of the rights recognized in Articles 8(1) and 25(1) of the American Convention "under the terms and conditions established in the Merits Report."

#### ***B. Considerations of the Court***

##### ***B.1. Due diligence and reasonable time***

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<sup>149</sup> Articles 8 and 25 of the American Convention, in relation to Article 1(1) of the same instrument, and Articles 1, 6 and 8 of the IACPPT.

119. The Court has established that the right of access to justice must ensure, within a reasonable time, the right of alleged victims or their next of kin to have everything necessary done to determine the truth of what happened and to investigate, prosecute and, if appropriate, punish those eventually found responsible.<sup>150</sup>

120. The Court has also established that the duty to investigate is an obligation of means and not of results, which must be assumed by the State as its own legal duty, and not as a mere formality preordained to be ineffective, or as a step taken by private interests that depends upon the procedural initiative of the victim or his family or upon their offer of proof.<sup>151</sup> In that regard, the Court has indicated that for an investigation to be effective in the terms of the Convention, it must be carried out with due diligence, which requires the investigating body to carry out all measures and investigations necessary to try to obtain the required result.<sup>152</sup> Thus, to ensure the effectiveness of an investigation it is essential to prevent omissions in the gathering of evidence and follow logical lines of investigation.<sup>153</sup>

121. This Court has also considered that the efficient determination of the truth in the context of the obligation to investigate a possible death, must be demonstrated from the first procedures with full diligence.<sup>154</sup> In that regard, it has specified that the State authorities in charge of such an investigation must endeavor at minimum to: a) identify the victim; b) collect and preserve evidence related to the death in order to assist a potential criminal investigation of those responsible; c) identify potential witnesses and obtain their statements regarding the death under investigation; d) determine the cause, manner, place and time of death, as well as any pattern or practice that may have caused the death, and e) distinguish between natural death, accidental death, suicide and homicide. In addition, it is essential to conduct an exhaustive investigation of the crime scene, and to carry out autopsies and rigorous analyses of human remains by competent professionals, using the most appropriate methods.<sup>155</sup>

122. In particular, the Court has indicated that when the State is aware that its security forces have used firearms with fatal consequences, it is obliged to initiate *ex officio* and without delay, a serious, independent, impartial and effective investigation.<sup>156</sup>

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<sup>150</sup> Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 114, and *Case of Guzmán Albarracín et al. v. Ecuador. Merits, reparations and costs*. Judgment of June 24, 2020. Series C No. 405, para. 176.

<sup>151</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 177, and *Case of Noguera et al. v. Paraguay, supra*, para. 81.

<sup>152</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 83, and *Case of Noguera et al. v. Paraguay, supra*, para. 81.

<sup>153</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador, supra*, paras. 88 and 105, and *Case of Noguera et al. v. Paraguay, supra*, para. 82.

<sup>154</sup> The Court case law has established the guiding principles that must be observed in the investigation of a violent death, with reference to the *United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol)*, highlighting the duty to carry out some basic and indispensable procedures to preserve probative elements and evidence that may contribute to the success of the investigation. Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 127; *Case of Velásquez Paiz et al. v. Guatemala. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2015. Series C No. 307, para. 150, and *Case of Ruiz Fuentes et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of October 10, 2019. Series C No. 385, para. 180.

<sup>155</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras, supra*, para. 127, and *Case of Ruiz Fuentes et al. v. Guatemala, supra*, para. 178.

<sup>156</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador, supra*, para. 88, and *Case of Valencia Hinojosa v. Ecuador, supra*, para. 131.



123. In its constant case law the Court has also established that a prolonged delay in the process may constitute, *per se*, a violation of judicial guarantees.<sup>157</sup> It has indicated that the matter of reasonable time should be examined in each specific case, in relation to the total duration of the proceedings, from the first procedural act and until the final judgment is handed down, which may also include its execution. Thus, the Court has considered four elements in order to determine whether the guarantee of a reasonable time has been met, namely: a) the complexity of the matter;<sup>158</sup> b) the procedural activity of the interested party;<sup>159</sup> c) the conduct of the judicial authorities,<sup>160</sup> and d) the effects on the legal situation of the alleged victim.<sup>161</sup> The Court recalls that it is incumbent upon the State to justify, on the basis of those criteria, the reason why it has required the time that has elapsed to process a case and, in the absence of such justification, the Court has broad powers to reach its own conclusions in this regard.<sup>162</sup> The Court also reiterates that the total duration of the process must be taken into account, from the first procedural act until the final judgment is handed down, including any appeals that may be filed.<sup>163</sup>

124. In the instant case, the State acknowledged its responsibility for the violation of the rights recognized in Articles 8(1) and 25(1) of the American Convention. In that regard, the Court notes that the events at the Vista Hermosa Prison have not been clarified, the persons responsible have not been identified and no reparation has been provided to the victims of those events. In this context, the investigation, in addition to failing to investigate the injuries caused to the 27 inmates who were wounded, did not include other agents of the aforementioned military unit or the prison guards who were present at the time of the events.

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<sup>157</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. Merits, reparations and costs. Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 222.

<sup>158</sup> With regard to the analysis of the complexity of the matter, the Court has taken into account, among other criteria, the complexity of the evidence, the number of procedural subjects or the number of victims, the time elapsed since the matter to be investigated occurred, the nature of the remedies available under the domestic legislation and the context in which the violation occurred. Cf. *Case of Genie Lacayo v. Nicaragua*. Preliminary objections. Judgment of January 27, 1995. Series C No. 21, para. 78, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 225.

<sup>159</sup> Regarding the activity of the party interested in obtaining justice, the Court has taken into consideration whether the procedural conduct has contributed to some degree to unduly prolonging the duration of the process. Cf. *Case of Cantos v. Argentina*. Merits, reparations and costs. Judgment of November 28, 2002. Series C No. 97, para. 57; *Case of Noguera et al. v. Paraguay*, *supra*, para. 83, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 223.

<sup>160</sup> The Court has understood that in order to ensure full effectiveness of the judgment, the judicial authorities must act promptly and without delay, because the principle of effective judicial protection requires that the procedures be carried out without undue obstacles or delays, in order to achieve the objective in a prompt, simple and integral manner. Cf. *Case of Mejía Idrovo v. Ecuador*. Preliminary objections, merits, reparations and costs. Judgment of July 5, 2011. Series C No. 228, para. 106, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 223.

<sup>161</sup> With regard to the effect on the legal situation of the alleged victim, the Court has indicated that, to determine the reasonableness of the time, it is necessary to take into account the effect caused by the duration of the proceedings on the legal situation of the person involved, considering, among other aspects, the matter in dispute. Cf. *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru*. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2019. Series C No. 394, para. 148, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 223.

<sup>162</sup> Cf. *Case of Anzualdo Castro v. Peru*. Preliminary objection, merits, reparations and costs. Judgment of September 22, 2009. Series C No. 202, para. 156, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 224.

<sup>163</sup> Cf. *Case of Suárez Rosero v. Ecuador*. Reparations and costs. Judgment of January 20, 1999. Series C No. 44, para. 71, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, *supra*, para. 222.

This omission, which was duly noted by the Court of Criminal Appeals of Ciudad Bolívar,<sup>164</sup> determines that there was a lack of due diligence, since the investigation did not include all the actions and procedures necessary to achieve the intended result.

125. In addition, the authorities in charge did not pursue, as a logical line of investigation, the possibility of a retaliation for the protest held days earlier by the prisoners, which might have allowed them to identify the possible reasons for the actions of the State agents. Thus, this element was not investigated in the domestic proceedings, which affected the failure to clarify the facts.

126. Regarding the forensic autopsies, the Court recalls that their purpose is to collect, at a minimum, information to identify the deceased person and to determine the time, date, cause and manner of death.<sup>165</sup> It is also necessary to photograph the body comprehensively; to x-ray the body, the bag or any wrappings, and then undress it and record any injuries.<sup>166</sup> Among other aspects that are incompatible with the standards of the *Minnesota Protocol*,<sup>167</sup> the Court notes that during the autopsies performed on November 11, 2003, there was no examination of the internal surface of the skull of the bodies of the seven victims, six of whom died from skull fractures due to gunshot wounds.<sup>168</sup> Furthermore, as pointed out by the Commission and the representatives - and not disputed by the State - no photographs or x-rays of the bodies were taken on that occasion.<sup>169</sup>

127. In addition, although more than 16 years have elapsed since the events occurred, the facts have still not been fully clarified. Even allowing for the fact that this case involves a considerable number of victims, the Court notes that all of them were inmates of the Vista Hermosa Prison who were under the custody of the State, and that other inmates in the same facility were witnesses; therefore, the delay is not justified by the complexity of the case. Regarding the procedural activity of the party interested in obtaining justice, the Court finds that the actions of the legal representatives of Lorenza Josefina Pérez, prior to the dismissal of her claim,<sup>170</sup> were reasonable and did not have an impact on the undue prolongation of the case. At the time, the State tried to justify the delay citing the actions of the defendants and

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<sup>164</sup> At the time, the Court of Appeals considered that: "[...] there is evidence of the existence of other elements of criminal interest that could lead to the indictment of other persons who were present at the time of the unlawful act, but who have not yet been charged [...], for which reason this Chamber must urge the Office of the Public Prosecutor to consider continuing with the pertinent investigations so that this serious crime does not go unpunished [...]." Cf. Order issued by the Criminal Court of Appeals of Ciudad Bolívar on June 3, 2004 (evidence file, volume I, Annex 9 to the Merits Report, folios 24 to 45).

<sup>165</sup> The representatives' allegation regarding the lack of due diligence in the transfer of the bodies is a matter that goes beyond the factual framework contained in the Merits Report, and therefore it is not analyzed by the Court.

<sup>166</sup> Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 16, 2009. Series C No. 205, para. 310, and *Case of Ruiz Fuentes et al. v. Guatemala, supra*, para. 180.

<sup>167</sup> Cf. U.N., *Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Minnesota Protocol)*, Doc. E/ST/CSDHA/.12 (1991).

<sup>168</sup> Cf. Exhumation record of March 22, 2004, related to the bodies of Richard Alexis Palma, Orangel José Figueroa, José Gregorio Bolívar Corro and Héctor Javier Muñoz Valerio (evidence file, volume I, Annex 22 to the Merits Report, folios 91 and 92, and evidence file, volume II, Annex to the initial petition in the procedure before the Commission, folios 237, 238, 251 to 253, and 264 to 266). See also, statement rendered by Antonietta de Dominis (evidence file, volume VII, affidavits, folios 1791 to 1797).

<sup>169</sup> Cf. Statement rendered by Antonietta de Dominis (evidence file, volume VII, affidavits, folio 1809).

<sup>170</sup> Cf. Record of the preliminary hearing and trial held before the Third Supervisory Court of First Instance of Ciudad Bolívar the June 3, 2014 (evidence file, volume III, Annex 12 to the pleadings and motions brief, folios 1009 to 1020).

their defense attorneys,<sup>171</sup> who requested that the case be referred to the Criminal Cassation Chamber of the Supreme Court of Justice<sup>172</sup> and filed a writ of *amparo* against the decision of the Court of Criminal Appeals of Ciudad Bolívar that issued an order for the pretrial detention of the defendants.<sup>173</sup> However, such claims were dismissed in October 2004 and April 2005, respectively, which would not explain the reason for the excessive delay.

128. Regarding the impact of the duration of the proceedings on the legal situation of the persons involved, the Court considers that it does not have sufficient elements to rule on this matter.

129. In this regard, the unjustified prolongation of the proceedings is notable, with evident periods of inactivity, particularly from 2006 to 2012. Thus, in the absence of an explanation by the State, and given its failure to submit helpful evidence, it is inferred that during this period the case file would have remained inactive.

130. Similarly, there has been no justification for why the Public Prosecutor's Office did not present the closing act until the end of 2012 (after requesting an extension for that purpose in May 2005<sup>174</sup> and the rejection of the request to set a deadline in June 2006<sup>175</sup>), the preliminary hearing took place in June 2014 (after being deferred at least three times<sup>176</sup>) and the oral trial and subsequent acquittal did not take place until the third quarter of 2016.<sup>177</sup>

131. In the instant case, the Court notes that after more than 16 years, those responsible for the facts have not been punished and no reparation has been provided for the human rights violations. In this regard, the Court recalls that it has defined impunity as the failure to investigate, prosecute, capture, try and convict those responsible for crimes involving violations of the rights protected by the American Convention.<sup>178</sup> It has also indicated that the State is obliged to combat this situation by all available means, since impunity fosters the chronic repetition of human rights violations and the total defenselessness of the victims and

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<sup>171</sup> Cf. Written observations of the State of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 720 and 771).

<sup>172</sup> Cf. Procedures cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 719 and 765).

<sup>173</sup> Cf. Procedures cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folio 720).

<sup>174</sup> Cf. Procedures cited by the State in its written observations of September 20, 2013 (evidence file, volume II, procedure before the Commission, folios 720, 721 and 763), and Record of oral hearing held before the Third Supervisory Court of Ciudad Bolívar on May 11, 2005 (evidence file, volume I, Annex 31 to the Merits Report, folios 118 to 122).

<sup>175</sup> Cf. Order issued by the Third Supervisory Court of Ciudad Bolívar the June 19, 2006 (evidence file, volume I, Annex 34 to the Merits Report, folios 130 to 133).

<sup>176</sup> Cf. Record of deferment of preliminary hearing of May 21, 2013 (evidence file, volume I, Annex 36 to the Merits Report, folios 138 and 139); Record of deferment of preliminary hearing of July 12, 2013 (evidence file, volume I, Annex 36 to the Merits Report, folios 140 and 141), and Record of deferment of preliminary hearing of August 29, 2013 (evidence file, volume I, Annex 36 to the Merits Report, folios 142 and 143).

<sup>177</sup> Cf. Records of oral and public trial held before the Fourth Court of First Instance of Ciudad Bolívar on September 19; October 4, 18, 25 and 31; and November 4, 7, 9, 14 and 18, 2016 (evidence file, volume III, Annexes 27 to 36 to the pleadings and motions brief, folios 1107 to 1172), and Judgment issued by the Fourth Trial Court of First Instance of Ciudad Bolívar on December 6, 2016 (evidence file, volume III, Annex 39 to the pleadings and motions brief, folios 1208 to 1247).

<sup>178</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 173, and *Case of Gutiérrez and Family v. Argentina. Merits, reparations and costs*. Judgment of November 25, 2013. Series C No. 271, para. 119.

their families.<sup>179</sup>

132. Therefore, the Court concludes that the Venezuelan State is responsible for the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25(1) of the American Convention, in relation to the obligations to respect and ensure those rights, established in Article 1(1) thereof, to the detriment of the injured victims and the next of kin of the deceased persons.

133. Finally, the Court considers that, based on the evidence provided and the arguments put forward, it does not have sufficient elements to analyze the violations alleged by the representatives regarding the refusal to accept their participation as private plaintiffs in the proceedings, the errors they attribute to the acquittal ruling, which they describe as "indicative of judicial fraud" and the failure of the Public Prosecutor's Office to appeal the judgment.

#### *B.2. Obligation to investigate possible acts of torture*

134. The Court has established that, under Article 1(1) of the American Convention, the obligation to guarantee the rights recognized in Articles 5(1) and 5(2) of the Convention implies the duty of the State to investigate possible acts of torture or other cruel, inhuman or degrading treatment, which is specified in Articles 1, 6 and 8 of the IACPPT.<sup>180</sup> In this regard, the Court has pointed out that Article 8 of the IACPPT clearly establishes that when there is a complaint or a well-founded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall ensure that their respective authorities proceed *ex officio* and immediately to investigate the case and to initiate, where appropriate, the corresponding criminal proceedings.<sup>181</sup>

135. Although it has not been concluded that members of the National Guard committed acts of torture - essentially because of the failure to clarify the facts - the Court considers that different elements resulting from the inquiries carried out into the deaths at the Vista Hermosa Prison would have determined that, based on the suspicion of their possible commission, the State had an obligation to initiate an investigation in this regard *ex officio* and without delay.

136. Indeed, the results of the autopsies, which revealed injuries caused to two of the deceased victims, other than wounds caused by firearm projectiles,<sup>182</sup> and the statements of inmates who reported having suffered different forms of mistreatment, possibly of varying severity,<sup>183</sup> in addition to the context of the arbitrary use of force, which was noted by the

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<sup>179</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala, supra*, para. 173, and *Case of Valenzuela Ávila v. Guatemala, supra*, para. 142.

<sup>180</sup> Cf. *Case of Ximenes Lopes v. Brazil, supra*, para. 147, and *Case of Montesinos Mejía v. Ecuador, supra*, para. 151.

<sup>181</sup> Cf. *Case of Gutiérrez Soler v. Colombia*. Judgment of September 12, 2005. Series C No. 132, para. 54, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 174.

<sup>182</sup> *Supra* para. 61 and footnote 80.

<sup>183</sup> Cf. Statement of Alcides Rafael Alcázar before the Fourth Supervisory Court of Ciudad Bolívar on March 2, 2004 (evidence file, volume I, Annex 10 to the Merits Report, folio 48); statement of Deivis Romero Lascano before the Fourth Supervisory Court of Ciudad Bolívar on March 16, 2004 (evidence file, volume I, Annex 11 to the Merits Report, folio 52); statement of Marcos Pachano Guevara contained in the order to commence proceedings issued by the Third Supervisory Court of First Instance of Ciudad Bolívar on June 4, 2014 (evidence file, volume III, Annex 15 to the pleadings and motions brief, folio 1043); and statement of Luis Enrique Filgueira Lizcano before the Fourth Supervisory Court of Ciudad Bolívar on March 2, 2004 (evidence file, volume I, Annex 15 to the Merits Report, folios 64 and 65).

Public Prosecutor's Office,<sup>184</sup> required the State to open an investigation to ascertain whether acts of torture were committed during the operation of November 10, 2003, and, if so, to identify those responsible, impose the corresponding punishments and, ultimately, ensure adequate reparation for the victims.

137. It should be reiterated that the failure to investigate extended not only to possible acts of torture, but also to all the facts related to violations of the right to personal integrity of the persons deprived of liberty.

138. Therefore, the Court concludes that the State violated Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of the same instrument, as well as Articles 1, 6 and 8 of the IACPPT, to the detriment of the injured persons and the next of kin of the deceased persons.

### **VIII.3 THE RIGHT TO PERSONAL INTEGRITY OF THE NEXT OF KIN OF THE DECEASED VICTIMS, IN RELATION TO THE OBLIGATIONS TO RESPECT AND GUARANTEE RIGHTS<sup>185</sup>**

#### **A. Arguments of the parties and of the Commission**

139. The **Commission** argued that the loss of their loved ones in the circumstances that occurred, as well as the absence of truth and justice, caused suffering and anguish to the next of kin of the deceased victims, in violation of their right to psychological and moral integrity. The **representatives** alleged that the context in which the events took place and the prevailing impunity have affected the families of the deceased victims, both psychologically and morally, due to the profound suffering and the radical change in their lives. The **State**, for its part, acknowledged its international responsibility "under the terms and conditions established in the Merits Report."

#### **B. Considerations of the Court**

140. The Court has considered that in cases of serious human rights violations such as forced disappearances,<sup>186</sup> extrajudicial executions,<sup>187</sup> sexual violence and torture,<sup>188</sup> a *iuris tantum* presumption is applicable with respect to the violation of the right to personal integrity of mothers and fathers, sons and daughters, husbands and wives, and permanent partners, as well as brothers and sisters of the victims.<sup>189</sup>

141. In the instant case, the Court established that the deaths of Orlando Edgardo Olivares

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<sup>184</sup> *Supra* footnote 138.

<sup>185</sup> Article 5 of the American Convention, in relation to Article 1(1) thereof.

<sup>186</sup> *Cf. Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs. Judgment of November 27, 2008. Series C No. 192, para. 119; Case of Munárriz Escobar et al. v. Peru. Preliminary objection, merits, reparations and costs. Judgment of August 20, 2018. Series C No. 355, para. 114.*

<sup>187</sup> *Cf. Case of La Cantuta v. Peru. Merits, reparations and costs. Judgment of November 29, 2006. Series C No. 162, para. 218, and Case of Ruiz Fuentes et al. v. Guatemala, supra, para. 191.*

<sup>188</sup> *Cf. Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs. Judgment of August 31, 2010. Series C No. 216, paras. 137 to 139, and Case of Azul Rojas Marín v. Peru, supra, paras. 221 and 222.*

<sup>189</sup> *Cf. Case of Valle Jaramillo et al. v. Colombia, supra, para. 119, and Case of Azul Rojas Marín v. Peru, supra, para. 221.*

Muñoz, Joel Ronaldy Reyes Nava, Orangel José Figueroa, Héctor Javier Muñoz Valerio, Pedro Ramón López Chaurán, José Gregorio Bolívar Corro and Richard Alexis Núñez Palma constituted arbitrary deprivations of life (*supra* para. 109), which the State characterized as “extra-legal, arbitrary or summary executions” (*supra* para. 90). Accordingly, given the State’s acquiescence and the *ius tantum* presumption that operates in these cases, the Court concludes that Venezuela is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the Convention, in relation to Article 1(1) of the same instrument, to the detriment of Lorenza Josefina Pérez de Olivares, wife of Orlando Edgardo Olivares Muñoz; Elizabeth del Carmen Cañizales Palma, sister of Richard Alexis Núñez Palma; Elías José Aguirre Navas, brother-in-law of José Gregorio Bolívar Corro;<sup>190</sup> Yngris Lorena Muñoz Valerio, sister of Héctor Javier Muñoz Valerio; José Luis Figueroa, brother of Orangel José Figueroa; Jenny Leomelia Reyes Guzmán, sister of Joel Ronaldy Reyes Nava; and Johamnata Martínez Coralis, wife of Pedro Ramón López Chaurán.

## **IX REPARATIONS**

142. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has produced harm entails the obligation to make adequate reparation, and that this provision reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.<sup>191</sup> The Court has considered the need to grant various measures of reparation in order to fully redress the harm; therefore, in addition to pecuniary compensation, the measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition have special relevance for the harm caused.<sup>192</sup> Moreover, this Court has established that the reparations must have a causal link with the facts of the case, the violations declared, the damage proven, and the measures requested to repair the respective harm.<sup>193</sup>

143. Consequently, the Court will proceed to analyze the claims made by the Commission and the victims’ representatives, as well as the arguments of the State.

### **A. Injured party**

144. Based on Article 63(1) of the Convention, this Court considers as injured party anyone who has been declared the victim of the violation of any right recognized in said international instrument. Therefore, this Court considers as “injured parties” (i) the deceased victims: Orlando Edgardo Olivares Muñoz, Joel Ronaldy Reyes Nava, Orangel José Figueroa, Héctor Javier Muñoz Valerio, Pedro Ramón López Chaurán, José Gregorio Bolívar Corro and Richard Alexis Núñez Palma; (ii) the injured victims: Ramón Zambrano, Jovanny Palomo, Carlos Durán, Richard Vallez, Carlos Alberto Torres, Galindo Urrieta, Edwin David Díaz, Luis Filgueira, Oswal Sotillo, Rafael Vera Himi, Miguel Marcano, Marcos Pacheco, Alcides Rafael Alcaza

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<sup>190</sup> It should be noted that according to the Court’s case law, in the case of Elías José Aguirre Navas, brother-in-law of José Gregorio Bolívar Corro, the violation of his right to personal integrity derives, specifically, from the State’s acknowledgment of responsibility.

<sup>191</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, paras. 24 and 25, and *Case of Martínez Esquivia v. Colombia. Preliminary objections, merits and reparations*. Judgment of October 6, 2020. Series C No. 412, para. 147.

<sup>192</sup> Cf. *Case of the Dos Erres Massacre v. Guatemala, Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Martínez Esquivia v. Colombia, supra*, para. 148.

<sup>193</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Martínez Esquivia v. Colombia, supra*, para. 149.

Barreto, Jesús Manuel Amaiz Borrrome, Rafael Villa Hermosa, Efraín Cordero, Carlos Alberto Martínez, Pedro de Jesús Montes Aguanes, Santa Jesús Gil Osuna, Omar Armando Vásquez, Getulio Piña Laya, Evelio Eugenio Martínez, Enrique José González, Javier Omar Lara, José Efraín Rosales Navas, Levis Simoza and Marco Antonio Ruíz Sucre, and (iii) the next of kin of the deceased victims: Lorenza Josefina Pérez de Olivares, Elizabeth del Carmen Cañizales Palma, Elías José Aguirre Navas, Yngris Lorena Muñoz Valerio, José Luis Figueroa, Jenny Leomelia Reyes Guzmán and Johamnata Martínez Coralís.

### **B. Obligation to investigate**

145. The **Commission** requested that the State continue the criminal investigation diligently, effectively and within a reasonable time in order to fully clarify the facts, identify those responsible and impose the appropriate sanctions.

146. The **representatives** requested that a complete, impartial and effective investigation be carried out within a reasonable time, in order to identify, prosecute and punish the perpetrators and masterminds of the human rights violations. To this end, the State should refrain from using procedural obstacles that impede the proper investigation of the facts and their prosecution. They added that the possible misconduct of the officials in charge of the investigation should be investigated and, if appropriate, they should be punished.

147. The **State** argued that in November 2016, a judgment of acquittal was handed down in favor of the four defendants prosecuted for their alleged responsibility for the facts of this case, a decision that became final. In view of this, it indicated that "it would be impossible from the legal and human rights point of view of the defendants to try them again for the same facts, based on the *non bis in idem* principle." It added that, "given the complexity of the facts and the long period of time that has elapsed since they occurred, [it] makes it highly difficult to investigate and determine what happened, particularly the individual criminal responsibility that derives from these facts."

148. The Court concludes that the State violated the rights to judicial guarantees and judicial protection, since it has not clarified the facts that gave rise to this case and, in addition, has not initiated an investigation regarding the injuries caused to the inmates at the Vista Hermosa Prison or an investigation into potential acts of torture.

149. Accordingly, the Court orders the State to resume, with due diligence, the corresponding investigation and criminal proceedings for the events that occurred at the Vista Hermosa Prison on November 10, 2003. In this regard, the State must investigate with due diligence the facts that resulted in (i) the deaths of seven persons deprived of their liberty; (ii) the injuries caused to 27 others, and (iii) the possible acts of torture committed.

150. It should be noted that since the facts of this case constitute "extra-legal, arbitrary or summary executions" (*supra* para. 90) as was expressly acknowledged by the State, the alleged impossibility of investigating what happened is unfounded, since, as the Court has considered on several occasions, this type of human rights violation requires the State to refrain from resorting to the *ne bis in idem* principle or any similar exemption of responsibility, to excuse itself from this obligation.<sup>194</sup>

151. At the same time, due diligence in the investigation implies that all relevant State authorities are obliged to collaborate in the gathering of evidence so that the objectives of an

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<sup>194</sup> Cf. *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75, para. 41, and *Case of Alvarado Espinoza et al. v. Mexico, supra*, para. 301.

investigation may be achieved. To this end, they must provide the judges, prosecutors or other competent authorities with all the information they require and refrain from actions that obstruct the investigative process.<sup>195</sup> In particular, the State must carry out the relevant investigations taking into account the context of the case, avoiding omissions in the collection of evidence and in the follow-up of logical lines of investigation.

152. Based on its constant case law, the Court considers that the State must ensure to the victims or their next of kin full access and capacity to act at all stages of the investigation and prosecution of those responsible, in accordance with domestic law and the provisions of the American Convention.<sup>196</sup>

### **C. Measures of rehabilitation**

153. The **Commission** requested that the Court order the necessary physical and mental health care measures for the rehabilitation of the next of kin of the deceased victims, as well as the injured inmates, if they so wish and in agreement with them.

154. The **representatives** requested that the Court order the State to guarantee voluntary, free and permanent medical and psychological treatment for the injured victims, as well as for the next of kin of the deceased victims. They added that the State should cover other related expenses incurred in the provision of treatment, such as the cost of transportation, and provide persons deprived of their liberty with assurances that their health situation will be reviewed.

155. The **State** indicated its commitment to offer and provide health care measures for the victims, in accordance with the criteria established in the Court's case law and those followed in similar cases by the State itself. It added that it "invites interested victims to contact the authorities [...] in order to implement the measures required to address their health conditions arising from this case, on a voluntary and concerted basis."

156. The Court recalls that it was established that 27 persons deprived of liberty were injured as result of an operation carried out by the National Guard, and that as a consequence of said operation, the next of kin of the deceased victims had their right to personal integrity violated. Therefore, the Court deems it necessary to order, as a measure of reparation, that the State provide adequate care for the physical, psychological and/or psychiatric ailments suffered by the victims, in accordance with their specific characteristics and background.<sup>197</sup>

157. Consequently, this Court orders the State of Venezuela to provide free of charge, and as a priority, medical and psychological and/or psychiatric treatment to the 27 injured victims. In the event that any of these individuals are still deprived of their liberty, the Court recalls that the State has the duty to provide them with regular medical checkups and adequate care

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<sup>195</sup> Cf. *Case of García Prieto et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2007. Series C No. 168, para. 112, and *Case of Alvarado Espinoza et al. v. Mexico, supra*, para. 301.

<sup>196</sup> Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Acosta Martínez et al. v. Argentina. Merits, reparations and costs*. Judgment of August 31, 2020. Series C No. 410, para. 230.

<sup>197</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, para. 42 and 45, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil, supra*, para. 272.



and treatment when required,<sup>198</sup> and to establish the necessary mechanisms to ensure their physical and mental health.

158. The Court also orders the State to provide free psychological and/or psychiatric treatment to the next of kin of the deceased victims.

159. The various treatments should include the provision of medicines and, where appropriate, transportation and other directly related and necessary expenses.<sup>199</sup> These treatments should be provided, to the extent possible, at the health centers closest to the beneficiaries' place of residence,<sup>200</sup> for as long as necessary. In providing psychological and/or psychiatric treatment, consideration should also be given to the particular circumstances and needs of each victim, as agreed with the victim and after an individual assessment.<sup>201</sup>

160. The beneficiaries of this measure have six months from the notification of this judgment to confirm to the State their consent to receive medical, psychological and/or psychiatric treatment, as appropriate. In turn, the State will have three months from the receipt of said request to effectively provide the requested medical, psychological and/or psychiatric care.<sup>202</sup>

#### **D. Measures of satisfaction**

161. The **representatives** requested that this judgment be published within six months, at least the sections on context and proven facts, as well as the operative paragraphs, in Venezuela's Official Gazette and in another newspaper with national circulation. They also requested that it be published on the web page of the Public Prosecutor's Office, with a direct link to access that page, and that it be made available until the judgment has been fully complied with. They also requested that the State hold a public act of acknowledgment of international responsibility in Ciudad Bolívar, with public apologies and a commitment to non-repetition, and in the presence of high-ranking State officials, particularly the highest authorities of the State security forces and of the judicial and investigative powers, as well as the victims and the media, to ensure the widest possible dissemination of the act. In this regard, they requested that the ceremony be broadcast by the public media with the widest national coverage, and that the State be ordered to agree with the victims on the format, place and date of the public ceremony. The **State** and the **Commission** made no comment regarding these measures of reparation requested.

##### *D.1. Publication of the judgment*

162. As it has done in other cases,<sup>203</sup> the Court orders the State to publish, within six months of notification of this judgment, in a legible font of appropriate size, the following: a) the official

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<sup>198</sup> Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 156, and *Case of Rodríguez Revolorio et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of October 14, 2019. Series C No. 387, para. 90.

<sup>199</sup> Cf. *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 349, para. 231, and *Case of Guzmán Albarracín et al. v. Ecuador, supra*, para. 226.

<sup>200</sup> Cf. *Case of the Dos Erres Massacre v. Guatemala, supra*, para. 270, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 236.

<sup>201</sup> Cf. *Case of the Dos Erres Massacre v. Guatemala, supra*, para. 270, and *Case of Guzmán Albarracín et al. v. Ecuador, supra*, para. 226.

<sup>202</sup> Cf. *Case of Rosendo Cantú et al. v. Mexico, supra*, para. 253, and *Case of Guzmán Albarracín et al. v. Ecuador, supra*, para. 227.

<sup>203</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Martínez Esquivia v. Colombia, supra*, para. 158.

summary of this judgment prepared by the Court, once, in the Official Gazette; b) the official summary of this judgment prepared by the Court, once, in a newspaper with widespread national circulation, and c) this judgment in full, available for one year, on the official web page of the Public Prosecutor's Office. The State must advise the Court immediately when it has made each of the publications ordered, irrespective of the one-year time frame for presenting its first report, as established in the thirteenth operative paragraph of this judgment.

#### *D.2. Public act of acknowledgment of international responsibility*

163. The Court positively assesses the acknowledgment of international responsibility made by the State, which could represent a partial satisfaction for the victims in relation to the violations declared in this judgment.<sup>204</sup> Nevertheless, in order to repair the harm caused to the victims and to prevent a repetition of similar events, and in consideration of the representatives' request, the Court deems it necessary, as it has in other cases,<sup>205</sup> to order Venezuela to hold a public act of acknowledgment of international responsibility in relation to the facts of this case. During this act, which shall be carried out through a public ceremony and be widely publicized, the State shall refer to the facts and human rights violations declared in this judgment. The State shall also ensure the participation of the victims declared in this judgment, if they so wish, and of their representatives.

164. The State and the victims, or their representatives, shall agree on the format of the public act, as well as on specific details such as the place and date for its realization.<sup>206</sup> The State authorities who attend or participate in the event must be high-ranking State officials, including the highest authorities of the National Guard and the State security forces. In order to comply with this obligation, the State has a period of one year from the notification of this judgment.

#### **E. Guarantees of non-repetition**

165. The **Commission** requested that the Court order measures of non-repetition, including: a) amendments to Article 8 of the Penitentiary Regime Law to bring it into compliance with the standards set forth in the Merits Report, and b) the adoption of all measures necessary to ensure that custodial staff or guards at detention facilities, even in emergency situations, are civilians and are duly trained in correctional matters and standards related to the use of force. It noted that the violence and impunity observed in Venezuela's prisons is due, among other reasons, to the lack of training in penitentiary matters and the non-application of inter-American standards regarding the use of force, making it necessary to order measures of reparation in this area.

166. The **representatives** requested, *inter alia*, that the Court order the State to comply with the measures ordered in the case of *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, specifically those that have not been implemented, including the following: a) to adopt measures of a legislative, political, administrative, economic and any others that

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<sup>204</sup> Cf. *Case of Rodríguez Vera et al. (Disappeared of the Palace of Justice) v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of November 14, 2014. Series C No. 287, para. 576, and *Case of Omeara Carrascal et al. v. Colombia. Merits, reparations and costs*. Judgment of November 21, 2018. Series C No. 368, para. 305.

<sup>205</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs, supra*, para. 81, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil, supra*, para. 281.

<sup>206</sup> Cf. *Case of Radilla Pacheco v. Mexico. Preliminary objections, merits, reparations and costs. Judgment of November 23, 2009. Series C No. 209*, para. 353, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil, supra*, para. 281.

may be necessary to prevent similar facts from occurring again, and b) to educate and train all members of the armed forces and security agencies on principles and standards for the protection of human rights, and on the rules governing the use of weapons by law enforcement officers, even under states of exception.

167. The **State** pointed out that since the facts of this case occurred, it has “adopted and continues to adopt a set of legislative, administrative and educational measures to ensure that events [such as the one that occurred] are not repeated, both in the Vista Hermosa Prison, and in all the others.” It recalled that on December 28, 2015, the “Organic Prison Code,”<sup>207</sup> approved by the National Assembly, was published in the Official Gazette of the Bolivarian Republic of Venezuela, which expressly repealed the Penitentiary Regime Law and the Law on Judicial Redemption of Sentences Through Work and Study (*Ley de Redención Judicial de la Pena por el Trabajo y el Estudio*).<sup>208</sup> It mentioned that Article 84 of the aforementioned Code provides for the creation of a civilian security and custodial body responsible for the internal and external security of prisons,<sup>209</sup> and that Article 92 of the Code prohibits civilian or military authorities from entering prisons carrying firearms, with specific exceptions in the case of situations of *force majeure* that justify it.<sup>210</sup>

168. The State also indicated that Articles 90 and 91 of the Code regulate the use of firearms by guard personnel, and that these regulations include rules on the progressive and differentiated use of force by such personnel, as provided for in Articles 101 to 105.

169. It explained that, in application of the Organic Prison Code, Venezuela has created “the National Penitentiary Training Program at the *Universidad Nacional Experimental de la Seguridad*,” aimed at individuals who aspire to work as prison personnel and those who are already providing their services at detention centers. This is a university program at the undergraduate and higher technical levels, which covers subjects related to international treaties and legislation on penitentiary matters, the progressive and differentiated use of force, alternative conflict resolution and crisis and emergency management, among other topics. The State added that the *Universidad Nacional Experimental de la Seguridad* also offers training programs directed at all personnel of the correctional system facilities, imparting basic training courses that include topics related to human rights and the progressive use of force. Finally, it emphasized that it has fully complied with the recommendations contained in the Merits Report regarding the civilian character of the custodial staff in detention centers and their proper training in correctional matters.

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<sup>207</sup> Organic Prison Code. Official Gazette of the Bolivarian Republic of Venezuela No. 6207 (Extraordinary), December 28, 2015. Available at: <https://data.miraquetemiro.org/sites/default/files/documents/Codigo%20Organico%20Penitenciario%202.pdf>.

<sup>208</sup> The regulation states the following: “The Penitentiary Regime Law, published in the [Official Gazette of the Bolivarian Republic of Venezuela N° 36.975](#) on June 19, 2000, the Law of Judicial Redemption of Sentence through Work and Study, published in the [Official Gazette of the Republic of Venezuela N° 4.623, Extraordinary](#), of September 3, 1993, and all other legal provisions that contravene the present Code are hereby repealed.” Organic Prison Code. Official Gazette of the Bolivarian Republic of Venezuela No. 6207 (Extraordinary) of December 28, 2015.

<sup>209</sup> **Article 84.** A security and custody unit attached to the Ministry of Popular Power with competence in penitentiary matters is hereby created, which shall function as an armed, professionalized, uniformed and civilian corps. It shall be in charge of guarding the external perimeter of penitentiary establishments, as well as the surveillance, custody and internal security of persons deprived of liberty, family members, visitors and public officials while on the premises of the penitentiary system. Organic Prison Code. Official Gazette of the Bolivarian Republic of Venezuela No. 6207 (Extraordinary) of December 28, 2015.

<sup>210</sup> **Article 92.** No civilian or military authority may enter a prison establishment carrying firearms. Exceptions to this rule shall be authorized by the Minister or, in his absence, by a Vice-Minister of the Popular Power with competence in penitentiary matters, in the event of situations of *force majeure* that justify it. Organic Prison Code. Official Gazette of the Bolivarian Republic of Venezuela No. 6207 (Extraordinary) of December 28, 2015.

170. The Court ///appreciates the information presented by the Venezuelan State, which provided details of the different actions undertaken, as well as regulatory amendments aimed at preventing a repetition of the facts of this case. From this account, the Court notes the implementation of measures in response to the requests made by the Commission and the representatives, in particular the following: a) the repeal of the Penitentiary Regime Law, including, as a logical consequence, Article 8, through the promulgation and enactment of the Organic Prison Code in December of 2015; b) the creation, by virtue of Article 84, of the Organic Prison Code, of "a security and custody corps [...] with competence in penitentiary matters, which will operate as an armed, professionalized, uniformed and civilian corps", in charge of "guarding the external perimeter of penitentiary establishments, as well as the surveillance, custody and internal security of persons deprived of liberty, family members, visitors and public officials while they remain on the premises of the penitentiary system"; c) the inclusion, in the aforementioned Code, of regulations concerning the use of force, including lethal force, by agents responsible for the surveillance, custody and internal security of prisons, and d) the implementation of the National Penitentiary Training Program by the National Experimental University of Security, aimed at personnel serving in penitentiary centers, which includes "subjects related to treaties and international legislation on penitentiary matters, the progressive and differentiated use of force, alternative conflict resolution, crisis and emergency management,"<sup>211</sup> among other topics.

171. Thus, the Court considers that, in order to comply with the requests of the Commission and the representatives, as well as their observations, the information provided by the State related to the measures described above shows that it has implemented actions in response to their requests related to guarantees of non-repetition. As for the Commission's observations regarding the training needs of prison staff, in this specific case, based on the information provided by the State, there appears to be no need to adopt training programs beyond the contents and actions specified by the State.

172. However, the Court notes that the provisions of Article 92 of the Organic Prison Code - which would replace Article 8 of the repealed Penitentiary Regime Law- by allowing exceptions to the prohibition of entry to prisons by military authorities carrying firearms, does not define, with the required specificity, the reasons for authorizing such an action, or explain its exceptional nature or guarantee that such an intervention would be adequately regulated and supervised by civilian authorities. As was noted when analyzing the text of the aforementioned Article 8 of the Penitentiary Regime Law (supra para. 108), this would allow for discretion in applying the regulation.

173. Consequently, the Court decides that the Venezuelan State, within a reasonable period of time, must adapt its domestic regulations to take into account the observations made in paragraphs 107 and 108 of this judgment. Without prejudice to the foregoing, the Court reiterates that judges and organs linked to the administration of justice at all levels have the obligation to exercise *ex officio* control of conventionality between domestic norms and the American Convention, obviously within the framework of their respective competencies and of

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<sup>211</sup> With regard to the education and training of prison staff, in her statement the declarant for information purposes, Mirelys Zulay Contreras Moreno, referred to "the National Training School for Public Servants in Prisons (ENFOSEPP), [...] which was created for the purpose of offering improved theoretical and practical professional training to all prison staff" which, "from 2013 to 2019 [...] has provided instruction and training to more than 21,966 public servants working in prisons at national level." She added that the university-level training offers bachelor's degrees and higher technical degrees, "accompanied by refresher and retraining courses so that [personnel] are kept up to date on action protocols related to security and custody, with special emphasis on human rights issues, the progressive use of force and the [u]se of potentially lethal force," for which "the *Universidad Nacional Experimental de Seguridad* and the MPPSP [Ministry of Popular Power for the Prison Service] have highly trained specialists in these areas." Cf. Statement rendered by Mirelys Zulay Contreras Moreno (evidence file, volume V, affidavits, folios 1779 and 1780). See also, Statement of María Lucrecia Hernández Vitar (evidence file, volume VI, affidavits, folio 1825).

the corresponding procedural regulations. In this task, the domestic authorities must take into account not only the treaty, but also its interpretation by the Inter-American Court, as the final interpreter of the American Convention.<sup>212</sup> Therefore, regardless of the legal reforms adopted by the State, it is imperative that the authorities adjust their regulatory interpretation to the principles established in the case law of this Court, which have been reiterated in this judgment.

#### **F. Other measures requested**

174. The **representatives** requested the following additional measures: a) to create a "National Committee for the Prevention of the Use of Force and Torture in the Prison Setting," comprised of representatives of the Ministry of Justice, military or police forces with competence in the matter, the Ombudsman's Office, the Attorney General's Office, the Ministry of the Interior and civil society organizations working on issues related to detention facilities, prison conditions and torture. The Committee's role would be to act immediately to prevent the excessive use of force, supervise the official training given to prison personnel and promote measures ordered by the Court, both in the present case and in the case of *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. The Committee would also draw up an "action protocol on the use of force and the prevention of acts of torture in the prison setting;" b) incorporate victims' representatives into the process of monitoring judgments in relation to guarantees of non-repetition, in order to ensure the implementation of those measures; c) insist on compliance with the measures ordered in the case of *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, specifically with regard to the need to bring prison conditions into line with international standards; and d) given that not all the relatives of the deceased victims have been identified or contacted, it is necessary to establish a mechanism to locate other relatives of the victims during the procedure for monitoring compliance with the judgment, in order to guarantee their rights. The **State** and the **Commission** did not comment on this matter.

175. With regard to the first and third measures requested, the Court notes that they do not have a causal link with the violations determined in the instant case. Therefore, it does not consider it necessary to order such measures, as it has not been established that acts of torture actually occurred and also because this case does not address prison circumstances and conditions. Regarding the request to include the representatives in the process of monitoring compliance with judgments, the Court recalls that Article 69 of the Rules of Procedure regulates this matter and the specific intervention of victims or their representatives at that stage of the process; therefore, the Court does not find it pertinent to order any measure in this regard. Furthermore, the Court cannot agree to the final measure requested, given that the victims in this case have been duly determined, along with the nature and beneficiaries of the reparations, thus making it unnecessary to proceed as requested.

#### **G. Compensation**

##### *G.1. Pecuniary damage*

176. The **Commission** requested "comprehensive reparation for the human rights violations declared [...] in the material aspect [...]."

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<sup>212</sup> Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2006. Series C No. 154, para. 124, and *Case of Fernández Prieto and Tumbeiro v. Argentina, supra*, para. 100.

177. The **representatives** requested, as consequential damages, the reimbursement of funeral expenses and expenses incurred in the pursuit of justice. Regarding the latter, they stated that they had undertaken numerous actions before the national courts. They added that these expenses cover a period of more than 15 years, during which time they have incurred costs for transportation, telephone calls, and travel and accommodation expenses. They indicated that, in the absence of documents evidencing these expenses, it is appropriate that the Court determine the amount in equity.

178. The representatives also requested compensation for loss of earnings in the case of the victims who lost their lives. In this regard, they indicated that the respective calculation should take into account "the minimum wage applicable at that time [...] corresponding to USD 287.82, the age of each victim and the years remaining to reach the average life expectancy in Venezuela at that time, which was 72.61 years, plus [sic] a percentage (25%) for expenses of a personal nature." On that basis, they requested the following amounts: b.1) Orlando Edgardo Olivares Muñoz, one hundred and seven thousand, six hundred and seventeen United States dollars and thirty-three cents (USD \$107,617.33); b.2) Joel Ronaldy Reyes Nava, one hundred and fifty-five thousand, nine hundred and seventy-one United States dollars and nine cents (USD \$155,971.09); b.3) Orangel José Figueroa, one hundred and fifty-five thousand, nine hundred and seventy-one United States dollars and nine cents (USD \$155,971.09); b.4) Héctor Javier Muñoz Valerio, one hundred and fifty-two thousand, nine hundred and forty-eight United States dollars and ninety-eight cents (USD \$152,948.98); b.5) Pedro Ramón López Chaurán, one hundred and forty-six thousand, nine hundred and four United States dollars and seventy-six cents (USD \$146,904.76); b.6) José Gregorio Bolívar Corro, one hundred and thirty-four thousand, eight hundred and sixteen United States dollars and thirty-two cents (USD \$134,816.32), and b.7) Richard Alexis Núñez Palma, one hundred and forty-three thousand, eight hundred and eighty-two United States dollars and sixty-five cents (USD \$143,882.65). The **State** did not comment on this matter.

179. In its case law the Court has established that pecuniary damage supposes the loss of or detriment to the victims' income, the expenses incurred as a result of the facts and the monetary consequences that have a causal link with the facts of the case.<sup>213</sup>

180. In view of the circumstances of this case and the violations declared, the Court considers it reasonable to order the State to pay compensation for consequential damages, since although no proof of the expenses incurred was provided, it is reasonable to assume, as in previous cases,<sup>214</sup> that the families of the deceased victims incurred such expenses. In this regard, it should be noted that the evidence provided shows that Mrs. Lorenza Josefina Pérez de Olivares, wife of Mr. Orlando Edgardo Olivares Muñoz, tried, unsuccessfully, to bring a private prosecution in the respective criminal proceedings (*supra* para. 73); as for the next of kin of the other deceased victims, they provided their statements to the State authorities.<sup>215</sup> Therefore, the Court sets in equity the sum of five thousand United States dollars (USD \$5,000.00) in the case of Orlando Edgardo Olivares Muñoz, and two thousand five hundred United States dollars (USD \$2,500.00) for each of the other six deceased persons.

181. With respect to loss of earnings, the Court sets in equity the sum of fifty thousand United States dollars (USD \$50,000.00) in favor of each of the deceased victims.

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<sup>213</sup> Cf. *Case Bámaca Velásquez Vs. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, *supra*, para. 132.

<sup>214</sup> Cf. *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, para. 207, and *Case of Díaz Loreto et al. v. Venezuela*, *supra*, para. 162.

<sup>215</sup> *Supra* footnote 62.

182. Consequently, the State must pay the following total amounts for pecuniary damage: a) Orlando Edgardo Olivares Muñoz, fifty-five thousand United States dollars (USD \$55,000.00); b) Joel Ronaldy Reyes Nava, fifty-two thousand five hundred United States dollars (USD \$52,500.00); c) Orangel José Figueroa, fifty-two thousand five hundred United States dollars (USD \$52,500.00); b.4) Héctor Javier Muñoz Valerio, fifty-two thousand five hundred United States dollars (USD \$52,500.00); d) Pedro Ramón López Chaurán, fifty-two thousand five hundred United States dollars (USD \$52,500.00); e) José Gregorio Bolívar Corro, fifty-two thousand five hundred United States dollars (USD \$52,500.00), and f) Richard Alexis Núñez Palma, fifty-two thousand five hundred United States dollars (USD \$52,500.00). In the case of Orlando Edgardo Olivares Muñoz, the amount shall be distributed as follows: fifty per cent (50%) to his wife, Lorenza Josefina Pérez de Olivares, and the remaining fifty per cent (50%) shall be divided, in equal parts, among his children; if one or more of the children have already died, the share that corresponds to them shall be added to the share of the remaining children of the same victim. In the case of the other six deceased persons, the amount of compensation shall be paid to their heirs, in accordance with applicable domestic law.

### *G.2. Non-pecuniary damage*

183. The **Commission** requested “comprehensive reparation for the human rights violations [...] in the [...] non-pecuniary aspect.”

184. The **representatives** requested compensation for moral damages to the detriment of the deceased victims. To this effect, they pointed out that the murders of the victims were characterized by extreme violence, which must be taken into considered when deciding on this form of reparation. Therefore, they requested the following amounts: a.1) Orlando Edgardo Olivares Muñoz, fifty thousand United States dollars (USD \$50,000.00), and identified as the beneficiaries Lorenza Josefina Pérez of Olivares, Lorena Carolina Olivares Pérez, Claudia Andreina Olivares Pérez, Mónica Orlenis Olivares Pérez, Laura Oriannys Olivares Pérez, María Alejandra Olivares Pérez and Orlando Rafael Olivares Pérez; a.2) Joel Ronaldy Reyes Nava, fifty thousand United States dollars (USD \$50,000.00), identifying Jenny Leomalia Reyes Guzmán as the beneficiary; a.3) Orangel José Figueroa, fifty thousand United States dollars (USD \$50,000.00), identifying José Luis Figueroa as the beneficiary; a.4) Héctor Javier Muñoz Valerio, fifty thousand United States dollars (USD \$50,000.00), identifying Lorena Muñoz Valerio as the beneficiary; a.5) Pedro Ramón López Chaurán, fifty thousand United States dollars (USD \$50,000.00), identifying Johamnata Martínez Coralis as the beneficiary; a.6) José Gregorio Bolívar Corro, fifty thousand United States dollars (USD \$50,000.00), identifying Elías José Aguirre Navas as the beneficiary and a.7) Richard Alexis Núñez Palma, fifty thousand United States dollars (USD \$50,000.00), identifying Elizabeth del Carmen Cañizales Palma as the beneficiary.

185. The representatives also requested compensation for moral damages to the detriment of the “indirect victims of the deaths;” in this regard, they requested that the Court determine “compensation in equity, of USD \$50,000.00 (fifty thousand United States dollars) in accordance with its jurisprudence, for each of the direct next of kin or family group of the deceased victims and their heirs.” The **State** did not comment on this point.

186. In its case law, the Court has developed the concept of non-pecuniary damage and has established that this may include both the suffering and distress caused to the direct victims and their next of kin, and the detriment caused to individuals’ very significant values, such as non-pecuniary alterations in the living conditions of the victim or his family.<sup>216</sup>

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<sup>216</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and costs. Judgment of May 26, 2001*. Series C No. 77, para. 84, and *Case of Martínez Esquivia v. Colombia, supra*, para. 169.

187. In view of the circumstances of this case, the violations committed, the suffering caused<sup>217</sup> and the time elapsed, the Court sets in equity the following amounts of compensation for non-pecuniary damage in favor of the victims: the sum of fifty thousand (USD \$50,000.00) United States dollars for each of the deceased victims. In the case of Mr. Orlando Edgardo Olivares Muñoz, this amount shall be distributed as follows: fifty per cent (50%) to his wife, Lorenza Josefina Pérez de Olivares, and the remaining fifty per cent (50%) shall be divided, in equal parts, among his children; if one or more of the children have already died, the share that corresponds to them shall be added to the share of the other children of the same victim. In the case of the six other deceased victims, the compensation shall be delivered to their heirs, in accordance with the applicable domestic law.

188. As for the 27 injured victims, the Court sets in equity the sum of twenty-five thousand United States dollars (USD \$25,000.00) as non-pecuniary damage for each victim.

189. Furthermore, in view of the violations proven to the detriment of the next of kin of the deceased victims, the Court establishes, in equity, the sum of fifteen thousand United States dollars (USD \$15,000.00) in favor of each of the following persons: Lorenza Josefina Pérez de Olivares, Elizabeth del Carmen Cañizales Palma, Elías José Aguirre Navas, Yngris Lorena Muñoz Valerio, José Luis Figueroa, Jenny Leomelia Reyes Guzmán and Johamnata Martínez Coralis.

#### **H. Costs and expenses**

190. With regard to costs and expenses, the **representatives** requested the amounts corresponding to expenses incurred by the family; on this point, they requested that “[s]ince [...] they have not kept receipts for the expenses incurred” the Court should “establish in equity the sum of ten thousand (\$10,000 USD) United States dollars,” which should take into account “the effort made by the victims [...] to travel and to protect their safety during these long fifteen years waiting for justice.”

191. They also requested the reimbursement of costs and expenses incurred by the Venezuelan Observatory of Prisons. To this effect, they pointed out that expenditures were made before the Inter-American System, and requested that the Court quantify these prudently and fairly, given the impossibility of presenting vouchers that would allow for their calculation. They also asked the Court to take into account that the organization “accompanied the process internally and internationally” and that “[a]t least one professional has accompanied the process throughout these fifteen years.” Accordingly, they asked the Court to award one thousand United States dollars (USD \$1,000.00) for each year of accompaniment of the case at the national and international level, and requested that it estimate these expenses “based on the principle of equity, in the amount of fifteen thousand (15,000 USD) United States dollars, and that this sum be delivered directly to the organization.” The **State** made no comment in this regard.

192. The Court reiterates that costs and expenses form part of the concept of reparation, because the efforts made by the victims to obtain justice, both at national and international level, entail expenses that must be compensated when the State’s international responsibility is declared in a judgment. As for the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, which includes expenses generated before the authorities of the domestic jurisdiction, as well as those incurred in the course of the proceedings before the Inter-

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<sup>217</sup> Cf. Statement rendered by Lorenza Josefina Pérez de Olivares via videoconference on August 24, 2020. See also the expert opinion of Pedro E. Rodríguez R. (evidence file, volume V, affidavits, folios 1721 to 1734).



American System, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment may be made based the principle of equity and taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.<sup>218</sup>

193. This Court has indicated that the claims of victims or their representatives for costs and expenses, and the supporting evidence, must be presented to the Court at the first procedural opportunity granted to them, that is, in the pleadings and motions brief, without prejudice to those claims being updated subsequently with the new costs and expenses arising from the proceedings before this Court.<sup>219</sup> The Court also reiterates that it is not sufficient to merely forward the probative documents; rather, the parties are required to include arguments that relate the evidence to the fact that it represents and, in the case of alleged financial disbursements, to establish clearly the items and their justification.<sup>220</sup>

194. In the instant case, there is no specific evidence in the case file to confirm the costs and expenses incurred by the representatives in the processing of the case before the Court. However, the Court considers that such procedures necessarily involved expenditures, and therefore decides that the State must pay the Venezuelan Observatory of Prisons the sum of USD \$20,000.00 (twenty thousand United States dollars) for costs and expenses. Furthermore, the Court notes that the representatives requested the payment of a sum for costs and expenses directly to “the family”; however, the expenses related to the search for justice were already contemplated as part of the pecuniary damages, as requested by the representatives themselves. At the stage of monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representatives for any reasonable expenses incurred during that procedural stage.<sup>221</sup>

### ***I. Reimbursement of expenses to the Victims’ Legal Assistance Fund***

195. In the Order issued on February 21, 2020, the President of the Court approved the request submitted by Lorenza Josefina Pérez de Olivares, through her representatives, to have access to the Victims’ Legal Assistance Fund of the Court (hereinafter “Legal Assistance Fund”). The Order granted financial assistance to cover travel and living expenses necessary to enable Lorenza Josefina Pérez de Olivares and Antonietta de Dominicis to appear before the Court to render their statements, and for two legal representatives to attend the public hearing scheduled for March 16, 2020, as well as for reasonable expenses for formalizing and sending the affidavits of Víctor Rodríguez Rescia, Hani Abdelwahab, Melissa Silva, Mayra Ramallo, Magaly Mercedes Vásquez González and Pedro Enrique Rodríguez Rojas, offered by the representatives.

196. In a communication dated March 11, 2020, the Secretariat of the Court informed the parties and the Commission that in view of the situation created by the propagation of the global pandemic, the President had decided to suspend the public hearings programed for the week of March 16-20, 2020. Therefore, in an Order dated June 30, 2020, the President, in

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<sup>218</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Acosta Martínez et al. v Argentina, supra*, para. 145.

<sup>219</sup> Cf. *Case of Garrido and Baigorria v. Argentina, supra*, para. 79, and *Case of Martínez Esquivia v. Colombia, supra*, para. 172.

<sup>220</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs, supra*, para. 277, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil, supra*, para. 310.

<sup>221</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Martínez Esquivia v. Colombia, supra*, para. 173.

consultation with the full Court, modified the format of the statements required in the Order of February 21, 2020, which were to be received in person, and requested that these be provided, as far as possible, by affidavit. The Order also specified the object and purpose of the financial assistance to be granted through the Legal Assistance Fund, to cover reasonable expenses of formalizing and sending the written statements of Lorenza Josefina Pérez de Olivares and Antonietta de Dominicis. Finally, in the Order of July 29, 2020, the Court admitted the request for reconsideration filed by the representatives so that Mrs. Lorenza Josefina Pérez of Olivares could make her statement orally before the full Court, via videoconference, on August 24, 2020 (*supra* para. 10).

197. In the aforementioned Order of the President of June 30, 2020, the representatives were required "to present, at the latest, together with their final written arguments, [...] evidence of reasonable expenditures incurred, [to be] covered by the Legal Assistance Fund" (seventh operative paragraph). The representatives submitted their final written arguments without providing the respective receipts, which was duly noted by the Secretariat in its communication of October 14, 2020. Subsequently, on October 16, 2020, the representatives forwarded various supporting documents confirming those expenses. They argued that they were submitting the "annexes to request reimbursement of the expenses of the affidavits to be paid by the Victims' Legal Assistance Fund" within the "time limit stipulated in Article 28 of the [Court's] Rules of Procedure." In a communication dated October 21, 2020, the Secretariat indicated that "given the date on which the annexes were sent, their admissibility w[ould] be decided in the respective judgment." The **State** did not present observations in this regard.

198. The Court notes that the Order of the President of June 30, 2020, expressly indicated that supporting documents to prove reasonable expenses to be covered by the Victims' Legal Assistance Fund should be submitted by the representatives "at the latest, together with their final written arguments," on the understanding that such documents are different from the annexes to the briefs referred to in Article 28 of the Rules of the Court and, therefore, the time limit established in the latter provision is not applicable.

199. In view of the foregoing, and given that the documents forwarded by the representatives to account for expenses charged to the Legal Assistance Fund were submitted extemporaneously, the Court does not admit them and, consequently, it will not order the State to reimburse any amount in this regard.

#### ***J. Method of compliance with the payments ordered***

200. The State shall make the payments of compensation for pecuniary and non-pecuniary damage and to reimburse the costs and expenses ordered in this judgment directly to the persons and to the organization indicated, within one year of notification of this judgment, in accordance with the following paragraphs.

201. If the beneficiaries should die before they receive the respective compensation, this shall be paid directly to their heirs in accordance with the applicable domestic law.

202. With regard to the payment of compensation and the reimbursement of costs and expenses, the State shall comply with its monetary obligations by paying in United States dollars or, if this is not feasible, the equivalent amount in Venezuelan currency, using the highest and most beneficial rate for the victims allowed by its domestic law in force at the time of payment. At the stage of monitoring compliance with this judgment, the Court may prudently readjust the equivalent amounts in Venezuelan currency, in order to prevent exchange rate variations from substantially affecting their purchasing power.

203. If, for reasons attributable to the beneficiaries of the compensation or to their heirs, it is not possible to pay the compensation established within the time frame indicated, the State shall deposit these amounts in an account or certificate of deposit in their favor, in a solvent Venezuelan financial institution, in United States dollars, and on the most favorable financial terms permitted by banking law and practice. If the corresponding compensation is not claimed within ten years, the amounts shall be returned to the State with the accrued interest.

204. The amounts allocated as compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses shall be delivered in full to the persons and to the organization indicated, as established in this judgment, without any deductions arising from possible charges or taxes.

205. If the State should fall into arrears, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Bolivarian Republic of Venezuela.

**X**  
**OPERATIVE PARAGRAPHS**

206. Therefore,

**THE COURT**

**DECIDES**

Unanimously:

1. To accept the State's acknowledgment of international responsibility, under the terms of paragraphs 23 to 38 of this Judgment.

**DECLARES,**

Unanimously, that:

2. The State is responsible for the violation of the right to life, enshrined in Article 4(1) of American Convention on Human Rights, in relation to Articles 1(1) and 2 thereof, to the detriment of Orlando Edgardo Olivares Muñoz, Joel Ronaldy Reyes Nava, Orangel José Figueroa, Héctor Javier Muñoz Valerio, Pedro Ramón López Chaurán, José Gregorio Bolívar Corro and Richard Alexis Núñez Palma, pursuant to paragraphs 90 to 109, 111 and 113 of this Judgment.

3. The State is responsible for the violation of the right to personal integrity, recognized in Articles 5(1) and 5(2) of American Convention on Human Rights, in relation to Articles 1(1) and 2 of the same instrument, to the detriment of Ramón Zambrano, Jovanny Palomo, Carlos Durán, Richard Vallez, Carlos Alberto Torres, Galindo Urrieta, Edwin David Díaz, Luis Filgueira, Oswal Sotillo, Rafael Vera Himi, Miguel Marcano, Marcos Pacheco, Alcides Rafael Alcaza Barreto, Jesús Manuel Amaiz Borrrome, Rafael Villa Hermosa, Efraín Cordero, Carlos Alberto Martínez, Pedro de Jesús Montes Aguanes, Santa Jesús Gil Osuna, Omar Armando Vásquez, Getulio Piña Laya, Evelio Eugenio Martínez, Enrique José González, Javier Omar Lara, José Efraín Rosales Navas, Levis Simoza and Marco Antonio Ruíz Sucre, pursuant to paragraphs 90 to 108, 110, 111 and 114 of this Judgment.

4. The State is responsible for the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25(1) American Convention on Human Rights, in relation to Article 1(1) thereof, and in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of the injured victims and the next of kin of the deceased victims, pursuant to paragraphs 119 to 138 of this Judgment.

5. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Lorenza Josefina Pérez de Olivares, Elizabeth del Carmen Cañizales Palma, Elías José Aguirre Navas, Yngris Lorena Muñoz Valerio, José Luis Figueroa, Jenny Leomelia Reyes Guzmán and Johamnata Martínez Coralis, pursuant to paragraphs 140 and 141 of this Judgment.

**AND ORDERS:**

Unanimously, that:

6. This Judgment constitutes, *per se*, a form of reparation.

7. The State shall resume, with due diligence, the relevant investigations and criminal proceedings for the events that occurred at the Vista Hermosa Prison on November 10, 2003, in order to identify, prosecute, and, if appropriate, punish those responsible for such acts, pursuant to paragraphs 148 to 152 of this Judgment.

8. The State shall provide, free of charge and immediately, timely, adequate and effective medical and psychological and/or psychiatric treatment to the victims, as specified in paragraphs 156 to 160 of this Judgment.

9. The State shall issue the publications indicated in paragraph 162 of this Judgment.

10. The State shall hold a public act to acknowledge its international responsibility, in the terms of paragraphs 163 and 164 of this Judgment.

11. The State shall adapt, within a reasonable period of time, its domestic legal system to the parameters established in this Judgment, in the terms of paragraphs 172 and 173.

12. The State shall pay the amounts established in paragraphs 180 to 182, 187 to 189 and 194 of this Judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, pursuant to paragraphs 200 to 205 of this Judgment.

13. The State shall submit to the Court, within one year of notification of this Judgment, a report on the measures taken to comply with it, notwithstanding the provisions of paragraph 162 of this Judgment.

14. The Court will monitor full compliance with this Judgment, in exercise of its authority and in fulfilment of its duties under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with all its provisions.

DONE, at San José, Costa Rica, on November 10, 2020, in the Spanish language.

IA/Court HR *Case of Olivares Muñoz et al. v. Venezuela*. Merits, Reparations and Costs. Judgment of November 10, 2020. Judgment adopted in San José, Costa Rica, in a virtual session.

Elizabeth Odio Benito  
President

L. Patricio Pazmiño Freire

Eduardo Vio Grossi

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri  
Secretary

So ordered,

Elizabeth Odio Benito  
President

Pablo Saavedra Alessandri  
Secretary