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CASE 12.814

MERITS REPORT

ORLANDO EDGARDO OLIVARES MUÑOZ AND OTHERS
(DEATHS AT THE VISTA HERMOSA PRISON)
VENEZUELA

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REPORT No. 119/18**CASE 12.814****MERITS**

ORLANDO EDGARDO OLIVARES MUÑOZ AND OTHERS

(DEATHS AT THE VISTA HERMOSA PRISON)

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I. SUMMARY

1. On October 16, 2007, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACR") received a petition presented by the *Observatorio Venezolano de Prisiones* (hereinafter "the petitioners") alleging the international responsibility of the Bolivarian Republic of Venezuela (hereinafter "the Venezuelan State", "the State" or "Venezuela") to the detriment of Orlando Edgardo Olivares Muñoz, Joel Rinaldi Reyes Nava, Orangel José Figueroa, Héctor Javier Muñoz Valerio, Pedro Ramón López Chaurán, José Gregorio Bolívar Corro, and Richard Alexis Núñez Palma, along with their relatives. The number of alleged victims was later increased.

2. The Commission approved admissibility report 14/11 on March 23, 2011.¹ On April 6, 2011, the Commission notified this report to the parties and placed itself at their disposal in order to reach a friendly settlement. The parties enjoyed the time periods provided for in the IACR's Rules of Procedure to present additional observations on the merits. All information received was duly transmitted between the parties.

3. The petitioners argued that the alleged victims, inmates at the Vista Hermosa Prison in Ciudad Bolívar, were extrajudicially executed by members of the National Guard during an operation carried out in the prison in the early morning hours of November 10, 2003. The petitioners alleged torture and mistreatment of the seven victims who died and of other prison inmates in the context of the same operation; a lack of due diligence in the investigation and unjustified delay in trying the case; and violations of the personal integrity of their family members.

4. The State argued that the action was a riot control operation permissible under domestic law. It rejected all the alleged violations on the grounds that the domestic legal proceedings were still ongoing, arguing that the case had a "reasonable level of complexity" and emphasizing that the soldiers accused in the case had obstructed the criminal process "in order to ensure facts that could perfectly be characterized as extralegal, arbitrary, or summary executions remained in impunity."

5. Based on the findings of fact and of law, the Inter-American Commission concluded that the State is responsible for the violation of articles 4.1 (life); 5.1 and 5.2 (humane treatment); 8.1 (fair trial); and 25.1 (judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention"), in conjunction with the obligations established in articles 1.1 and 2 of the Convention. The Commission issued the respective recommendations.

II. POSITIONS OF THE PARTIES**A. Petitioners**

6. The petitioners alleged that Orlando Edgardo Olivares Muñoz, Joel Rinaldi Reyes Nava, Orangel José Figueroa, Héctor Javier Muñoz Valerio, Pedro Ramón López Chaurán, José Gregorio Bolívar Corro and Richard Alexis Núñez Palma were inmates of the Vista Hermosa Prison in Bolívar State. They alleged that

¹ IACR. Report No. 14/11. Case 12.814. Admissibility. Orlando Olivares *et al.* (Deaths at the Vista Hermosa Prison). March 23, 2011. Admissible articles: 4, 5, 8, and 25 of the American Convention on Human Rights.

on November 10, 2003, in the early morning hours, members of the National Guard (a military body that is part of the National Bolivarian Armed Forces) entered the prison, and following series of violent actions, caused the deaths of these seven individuals. They alleged that four soldiers—members of the National Guard present in the prison that day—were responsible for the deaths. They have been criminally charged.

7. In the initial petition before the Commission, petitioners stated that these deaths took place during a prison riot during which the prison director requested that the National Guard enter the facility. However, at the merits stage, they alleged that there was no riot that day, but rather “a plan drawn up beforehand by members of the Armed Forces who [...] ended the lives of the seven individuals [and] injured another 26,” who the petitioner also identified as alleged victims.²

8. They alleged that the prison director requested that members of the National Guard enter the prison that morning in accordance Article 8 of the Penitentiary Regime Act, which allowed the National Guard to enter a penitentiary at the request of the director. It alleged that the actions of the National Guard in the prison constituted an undue use of force against inmates, which demonstrated that the entry into the prison was unjustified and disproportionate. It stated that these facts were a means of repression aimed at the leaders of a prison strike that had ended weeks before, whose “purpose was to get [Captain Campos] removed.” The petitioners alleged that “the goal [...] was to make an example for the rest of the inmates and punish the victims.”

9. They alleged violation of the **right to life** to the detriment of the seven deceased individuals because the National Guard caused their deaths. Alternatively, they alleged that the State has not overcome the presumption of responsibility for the deaths of individuals in its custody. Likewise, they underscored the existence of a structural context of “failure of all public officials to guarantee the security necessary at detention centers to prevent so many deaths from occurring in the country’s prisons.” It alleged the violation of the **right to personal integrity** to the detriment of the seven deceased individuals, arguing that the members of the National Guard caused the victims “physical and psychological suffering to different degrees [... and committed] inhuman acts and acts of torture.” They also alleged violations of the **right to personal integrity** to the detriment of the close relatives of the deceased individuals as a result of their suffering due to the deaths, as well as the exacerbation of their suffering by the justice system’s delay of more than 10 years in trying the case.

10. They alleged that although the investigation into the facts began on November 10, 2003, the preliminary hearing was not held until June 3, 2014. It stated that as of March 2015, the trial of those charged still had not taken place. Thus, they alleged violation of the **right to a fair trial and the right to judicial protection**, due to the State’s failure to comply with its duty to investigate with due diligence, *ex officio*, and within a reasonable period of time. Likewise, it alleged that the Public Prosecutor and Judicial Branch officials who heard the case lacked independence, and that the Executive Branch interfered in the Judicial Branch.

B. State

11. At the merits stage, the State presented arguments relating to the admissibility of the case—concretely, the alleged lack of exhaustion of domestic remedies—which will not be addressed in this report, as they were previously decided by the Commission in Admissibility Report 14/11.

12. The State alleged that on November 10, 2003, the Vista Hermosa Judicial Prison was under intervention by an evaluation council looking to address the prison’s problems; between 7:00 am and 7:30 am, Alfredo Veloz, the Intervention Director, was interviewing an inmate when multiple projectiles (pellets) were fired at the inmate. It stated that the director and two guards were injured. It stated that in response to this and other subsequent detonations, the director explicitly asked the National Guard to enter the prison “to control what was presumed to be a riot, and as a result of that action, the death [of the deceased alleged victims] took place, and 27 other inmates were injured.”

² Identified in paragraph 18 of this report.

13. It stated that the investigation carried out so far "has found a group of members of the National Guard under the Second Company of Detachment No. 81 to be responsible": both the four who were charged in the case and another 25 National Guard members involved in the facts. It indicated that "evidentiary elements have emerged indicating that [the four individuals charged] are criminally responsible." It later stated that it rejects the alleged violation of articles 4 and 5 of the American Convention, as the domestic investigation and trial remain ongoing. It argued that "although the alleged perpetrators were initially identified, the Public Prosecutor still does not have the evidence necessary to bring them to trial."

14. It reported that on June 3, 2004, the four members of the National Guard accused were ordered placed in pretrial detention. It stated that the accused individuals filed several appeals "in order to ensure facts that could perfectly be characterized as extralegal, arbitrary, or summary executions remained in impunity and to prevent being convicted of them under our justice system." It reported that on May 20, 2005, precautionary measures in lieu of pretrial detention were granted to the four accused.

15. It recognized that the Public Ministry exceeded the amount of time provided by law to present the "conclusive act" of the investigation in order to begin the trial phase, but argued that this was due to the investigation's "reasonable degree of complexity." It rejected the alleged violation of articles 8 and 25 of the Convention, arguing that the relatives had been heard during the investigation process and had been guaranteed a simple and quick remedy. It cited practical difficulties in securing the cooperation of the inmates who witnessed the facts and who remained in the custody of the State bodies allegedly responsible, who had been transferred to other prisons, or who had been released. It argued that the State could not be treated as "guilty" as long as final criminal responsibility had not been assigned through a court judgment, as this would violate the principle of the presumption of innocence.

III. ESTABLISHED FACTS

A. Alleged victims and their relatives

1. Deceased alleged victims

16. Orlando Edgardo Olivares Muñoz (born December 29, 1965, in the Republic of Chile³); Joel Rinaldi Reyes Nava (born June 12, 1982⁴); Orangel José Figueroa (born October 7, 1982⁵); Héctor Javier Muñoz Valerio (born October 16, 1981⁶); Pedro Ramón López Chaurán (born in 1978⁷); José Gregorio Bolívar Corro (born on May 19, 1975⁸); and Richard Alexis Núñez Palma (born on May 28, 1978⁹) were inmates at the Vista Hermosa Prison in Bolívar State and died there on November 10, 2003.¹⁰

17. The Commission has the names of the following relatives: Lorenza Josefina Pérez de Olivares, wife of Orlando Olivares¹¹; Elizabeth del Carmen Cañizales Palma, sister of Richard Nuñez; Elías José Aguirre Navas, brother-in-law of José Gregorio Bolívar; Yngris Lorena Muñoz Valerio, sister of Héctor Muñoz;

³ Annex 1. Death certificate. Annex A4 to initial petition.

⁴ Annex 2. Death certificate. Annex A1 to the initial petition of October 16, 2007. The names and surnames of the alleged victim are also written as "Jhoel," "Ronaldy," "Ronaldo," "Rolando," and "Navas" at different points in the documentation on this case. As it is understood that this is the same person, but unclear which is the correct version of his name, the Commission will use the spelling indicated above.

⁵ Annex 3. Death certificate. Annex A7 of the initial petition.

⁶ Annex 4. Death certificate. Annex A2 of the initial petition. The alleged victim was initially identified by the petitioners as "Héctor José Muñoz Valero;" the Commission uses the name from the death certificate.

⁷ Annex 5. Death certificate. Annex A6 of the initial petition. The date and month of birth are illegible. The alleged victim was initially identified by the petitioners as "Pedro Antonio López Chaurán;" the Commission uses the name from the death certificate.

⁸ Annex 6. Death certificate. Annex A3 of the initial petition.

⁹ Annex 7. Death certificate. Annex A5 of the initial petition.

¹⁰ Annexes 1-7. Death certificates. Annex A1-A7 to the initial petition.

¹¹ Annex 8. *La Nación*, "We never thought they were going to kill him. Lorenza Pérez, wife of Orlando Olivares, murdered in the Vista Hermosa Prison massacre, thought the retaliation for the self-kidnapping would be a transfer" (12/23/2003). Annex to the initial petition.

José Luis Figueroa, brother of Orangel Figueroa; Jenny Leomelia Reyes Guzmán, sister of Joel Reyes Nava; and Johamnata Martínez Coralis, wife of Pedro López Chaurán¹².

¹² Identified in the brief on the merits from the State, Section IV, September 20, 2013.

2. Injured alleged victims

18. The parties identified “approximately 27 inmates injured” as a result of the facts of November 10, 2003.¹³ The petitioner identified the following 31 people as alleged victims of injury: Ramón Zambrano, Jovanny Palomo, Carlos Durán, Richard Valle, 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 Borrome, Rafael Villa Hermosa, Efraín Cordero, Carlos Alberto Martínez, Pedro de Jesús Montes Aguantes, 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, Marco Antonio Ruíz Sucre, Angelo Barey Acevedo, Alexander Tejera Rodríguez, José Alberto González, and Wilmer José Brizuela Veras.¹⁴ There is evidence in the case file that the aforementioned persons—with the exception of Angelo Barey Acevedo, Alexander Tejera Rodríguez, José Alberto González y Wilmer José Brizuela Veras—were injured during the facts.¹⁵

B. Background: Events of October 2003

19. According to news items and testimony, the inmates of the Vista Hermosa Prison went on strike (also called “self-kidnapping”) on October 8-29, 2003, with support from their relatives.¹⁶ The spokesman for this strike was José Gregorio Bolívar, also known as “Goyo.”¹⁷ Other leaders of the strike included Pedro López Chaurán and Orlando Olivares, nicknamed “El Chileno.”¹⁸ A news item states that “all the witnesses say that the ones who were spokesmen or who signed the agreement [to end the strike] sealed their death sentences.” A photo of Goyo and Pedro Chaurán signing the agreement was included in the news item.¹⁹ Another news item stated that strikes and subsequent retaliation—including, among others, transfers far from relatives—tended to happen periodically in the prison.²⁰

20. The case file indicates that entry of the National Guard into the prison was not exceptional. For example, the inmates knew the members of the National Guard who were implicated in the facts,²¹ and one of the strike’s demands was that the captain in charge at the prison be removed.²² There is also information on episodes of violence against the inmates perpetrated by the National Guard prior to the facts. According to one inmate, “a few days before, they [conducted a search] and they beat us up, you had to keep your mouth shut because if you opened it at all they’d give you five more licks.”²³

¹³ Brief on the merits from the State, September 20, 2013.

¹⁴ Petitioners’ “Additional comments on the merits of the admissibility report,” June 10, 2013.

¹⁵ In its brief on the merits, the State makes reference to “Forensic medical exam” and/or “Medical legal report” records for 26 of these inmates, although the details of their findings are not available. The brief also includes the testimony of Carlos Durán, who states that on the day of the facts, “a [National Guard member] named Nilson Cuenca beat me with a *peinilla* and a blunt object.”

¹⁶ Annex 8. *La Nación*, “Nunca imaginamos que lo iban a matar” (12/23/2003). Annex to the initial petition.

¹⁷ Annex 9, Decision of the Criminal Court of Appeals of Ciudad Bolívar (3/6/04). Annex to the initial petition.

“Goyo” was also the spokesperson for the minimum security area. See Annex 10. Statement of Alcides Rafael Alcazar (3/2/04); Annex 11. Statement of Devis Romero Lascano (3/16/04). Annex to the initial petition.

¹⁸ Annex 12. Without date or issue number. Office of the Public Prosecutor orders protection for witnesses: The spokesmen for the protest in the Vista Hermosa Prison that ended in October were murdered weeks later. Coincidence?; Annex 13. *El Universal*, “Versiones encontradas de un cruento episodio” (5/12/2004). Annex to the initial petition.

¹⁹ Annex 8. *La Nación*, “Nunca imaginamos que lo iban a matar” (12/23/2003). Annex to the initial petition. The news item states that the points of the agreement included respect for human rights during searches; respectful treatment of relatives on visits; improved hygiene and food; no retaliation against the inmates who went on strike; faster proceedings; review for the inmates who had requested benefits; and the removal of National Guard Captain Campos Lozada and prison Director Rosario del Valle Campos.

²⁰ Annex 8. *La Nación*, “Nunca imaginamos que lo iban a matar” (12/23/2003); Annex 14. Testimony of Alexander Rodríguez (3/16/04). Annex to the initial petition.

²¹ See *infra* section III.C. Also see Annex 14. Testimony of Alexander Rodríguez (3/16/04). Annex to the initial petition (“The [National Guard] and the Police let guns into the prison if you pay them. Also drugs, drug sales is the only means of support”).

²² Annex 8. *La Nación*, “Nunca imaginamos que lo iban a matar” (12/23/2003); also see Annex 15. Statement of Luis Enrique Figueira Lizcano (3/2/04). Annex to the initial petition. (“A captain who they had been removed for our benefit because of a strike we did had left, and when the massacre happened he was the one giving orders in the facility”).

²³ Annex 16. Statement of Andi Bermúdez Sifontes (3/16/04). Annex to the initial petition.

21. The State indicated that on the day of the facts, the prison was being visited by an external evaluation council “there to assess its shortcomings and resolve [the prison’s] issues.”²⁴ In this regard, the summary of the judicial case file provided by the State indicates the existence of a “Report of the Intervention of the Vista Hermosa Judicial Prison, dated 11-6-2003, prepared by T.S.P. Alfredo Veloz” and others.²⁵ The report’s contents are unknown.

C. The facts of November 10, 2003

22. Preliminarily, the Commission observes that the State did not offer a definitive version of the circumstances in which the deaths and injuries of the alleged victims on November 10, 2003, took place. However, as indicated in the section on the positions of the parties, the State indicated that the actions of the National Guard can be characterized as extrajudicial executions, and the pleading of absence of international responsibility is not based on the justification of said actions but on the argument that domestic investigations remain ongoing. The implications of this will be discussed in the analysis of law.

23. On this point, the IACtHR notes that the statements found in the case file offer approximately three versions: 1) the version of the inmates and the media, that there was no fight on the day of the facts but rather a plan agreed upon with the National Guard whose goal was the death of the deceased alleged victims and approximately 27 injured alleged victims; 2) the version of the National Guard members, that the alleged fight among the inmates that day left a number of them injured and dead, with the soldiers entering the penitentiary only after the situation had calmed; 3) the version of the Public Ministry and the Intervention Director, that in response to the fight, the National Guard intervened, causing injuries and deaths.

24. As noted, the IACtHR understands that the State accepts the version of the Public Ministry as true (that the four men accused are the ones responsible), but it underscores the lack of a final court judgment assigning criminal responsibilities. Thus, in the IACtHR’s understanding, legal determinations aside, in terms of the facts, the State recognizes that on the day of the facts, the National Guard intervened in the Vista Hermosa Prison and “as a result of this procedure,” seven victims died and approximately 27 more were injured.

25. The IACtHR has a variety of evidence—including forensic reports, interviews, judicial rulings, and news items, as well as publicly-known information—the relevant parts of which will be described below.

1. The version of the inmates who witnessed the facts

26. According to inmate witnesses, at approximately 7:30 AM, the prison was calm after the morning’s roll call,²⁶ carried out by the National Guard. They stated that the cellblocks were not fighting among each other at that time.²⁷ They reported that suddenly, the National Guard entered the prison firing shotguns loaded with buckshot, pistols, and light automatic rifles, which left bullet holes in the bars and walls of the prison.²⁸ They took the inmates out of their cells to the prison’s internal yard²⁹ and ordered them to

²⁴ Brief on admissibility from the State, November 12, 2008; also see Annex 17. Statement of Arón Cirilo Palacios (3/16/04); Anexo 14. Statement of Alexander Rodríguez. Annex to the initial petition. (“The guard says we’re going to kill each other, the new director wants to fix the prison, the prison is a disaster [...] the only thing I can say is that bullet for bullet, there are crazy people in there and unfortunate things can happen”).

²⁵ Brief on the merits from the State, section IV.

²⁶ Annex 15. Statement of Luis Enrique Figueira; Annex 10. Statement of Alcides Alcazar; Annex 17. Statement of Arón Palacios. Annex to the initial petition. It should be noted that several inmates state they were waiting for the roll call. See Annex 11. Statement of Deivis Romero; Annex 18. Statement of Carlos Durán García (3/16/04). Annex to the initial petition.

²⁷ Annex 17. Statement of Arón Palacios; Annex 15. Statement of Luis Enrique Figueira; Annex 16. Statement of Andi Bermúdez. Annex to the initial petition (stating in particular that there was no fight between “el Vereco,” “Mato Mataguardia,” and “Goyo”). Also see Annex 11. Statement of Deivis Romero; Annex 10. Statement of Alcides Alcazar. Annex to the initial petition.

²⁸ Annex 15. Statement of Luis Enrique Figueira; Annex 10. Statement of Alcides Alcazar; Annex 18. Statement of Carlos Durán; Annex 14. Statement of Alexander Rodríguez; Annex 13. El Universal, “Versiones encontradas de un cruento episodio” (5/12/2004). Annex to the initial petition.

²⁹ Annex 15. Statement of Luis Enrique Figueira (stating, among other things, that “The National Guard members entered firing, the guards stopped people and took them out. They said we had guns”); Annexes 10, 16, 18, 14. Statements of Alcides Alcazar, Andi [continues ...]

face the wall or lie facedown and strip to perform searches,³⁰ and they started to strike them with clubs, pipes, *peinillas*, and *báculas*,³¹ "with whatever they had in their hands."³² One inmate, named "Santos de Jesús, "was hurt by the Guards and needed an operation because he was ruptured inside."³³ An inmate named Gervacio Echeverría stated, "I wasn't able to see when they killed the inmates. They put us in positions so we couldn't see [...] but the officials took them out or hid them and disappeared them to kill them..."³⁴ The inmates specifically reported the violent actions of a National Guard member named Franchi (referred to as "Franchelli" or "Apocalypse.")³⁵

27. They were unanimous that what happened was not a riot control operation. On that day, they said, "we had been told that the prison would be subject to intervention" following the strike.³⁶ One stated that "[the night before], I talked with my wife and told her that the prison was subject to intervention and they were going to transfer us. In the morning, my wife and the relatives of the other inmates were there" when the Veloz, the Intervention Director, entered the prison, followed by the National Guard, shooting.³⁷ They insisted that there were no problems between the inmates that morning,³⁸ that the prison was calm,³⁹ and that none of the inmates were armed that day.⁴⁰ They stated that the National Guard members "were in battle dress uniform, they entered firing,"⁴¹ and that they did not use riot control equipment or teargas: "they only used bullets."⁴²

28. News items agree that "before roll call, officials from the National Guard and prisons entered the prison. Witnesses say they were ordered to strip and beaten with *peinillas*, clubs, pipes, and all manner of objects. The leaders and spokesmen of the protest they led two weeks prior were then picked out."⁴³ Likewise, "there are worrying accounts according to which more than 50 members of the National Guard, in coordination with the prison guards, attacked the prison population, especially the inmates that led the 'self-kidnapping' on October 20 in which they demanded better living conditions and that resulted in the dismissal of the prison director and the commanding officer of the National Guard."⁴⁴

29. Several inmates said that on the day of the facts, "Goyo" Bolívar and "El Chileno," Orlando Olivares, were in the minimum-security area.⁴⁵ Regarding what happened to "Goyo," inmates stated that after he was beaten by a guard named "Julio,"⁴⁶ he was killed by a member of the National Guard with shots to the head; several stated that it was Captain Campos who fired the first two shots at his legs⁴⁷ and then shot him in

[... continuation]

Bermúdez, Carlos Durán, and Alexander Rodríguez; Annex 13. El Universal, "Versiones encontradas de un cruento episodio" (5/12/2004). Annex to the initial petition.

³⁰ Annex 10, 16, 11, 18, 14. Statements of Alcides Alcazar, Andi Bermúdez, Deivis Romero, Carlos Durán, and Alexander Rodríguez; Annex 13. El Universal, "Versiones encontradas de un cruento episodio" (5/12/2004). Annex to the initial petition.

³¹ Annex 15. Statement of Luis Enrique Figueira; Annex 10. Statement of Alcides Alcazar; Annex 16. Statement of Andi Bermúdez; Annex 13. El Universal, "Versiones encontradas de un cruento episodio" (5/12/2004). Annex to the initial petition.

³² Annex 16. Statement of Andi Bermúdez; also see Annex 15. Statement of Luis Enrique Figueira; Annex 13. El Universal, "Versiones encontradas de un cruento episodio" (5/12/2004). Annex to the initial petition.

³³ Annex 15. Statement of Luis Enrique Figueira. Annex to the initial petition.

³⁴ Brief on the merits from the State, section IV.

³⁵ Annex 14. Statement of Alexander Rodríguez; also see Annex 17. Statement of Arón Palacios; Annex 15. Statement of Luis Enrique Figueira; Annex 9. Decision of the Criminal Court of Appeals of Ciudad Bolívar (3/6/04). Annex to the initial petition.

³⁶ Annex 17. Statement of Arón Palacios; also see Annex 14. Statement of Alexander Rodríguez. Annex to the initial petition.

³⁷ Annex 14. Statement of Alexander Rodríguez. Annex to the initial petition.

³⁸ Annexes 11, 18, 16. Statements of Deivis Romero, Carlos Durán, and Andi Bermúdez. Annex to the initial petition.

³⁹ Annexes 11, 18, 16. Statements of Deivis Romero, Carlos Durán, and Andi Bermúdez. Annex to the initial petition.

⁴⁰ Annexes 11, 18, 16. Statements of Deivis Romero, Carlos Durán, and Andi Bermúdez. Annex to the initial petition.

⁴¹ Annex 16. Statement of Andi Bermúdez. Annex to the initial petition.

⁴² Annex 15. Statement of Luis Enrique Figueira; also see Annex 10. Statement of Alcides Alcazar. Annex to the initial petition.

⁴³ Annex 8. *La Nación*, "Nunca imaginamos que lo iban a matar" (12/23/2003). Annex to the initial petition.

⁴⁴ World Organization Against Torture. *Venezuela: Ola de violencia en el Internado Judicial de Ciudad Bolívar dejar 7 muertos* (12/1/2003). Available at: <http://fidh-omct.org/es/urgent-campaigns/urgent-interventions/venezuela/2003/12/d16608/>.

⁴⁵ Annex 10. Statement of Alcides Alcazar. Annex to the initial petition.

⁴⁶ Annex 15. Statement of Luis Enrique Figueira; Annex 10. Statement of Alcides Alcazar. Annex to the initial petition.

⁴⁷ It should be noted that this detail contradicts the results of the autopsy conducted on March 22, 2004, which did not find any injuries on the extremities. See *supra* para. 28.

the head, and others indicate that National Guard member Franchi also participated.⁴⁸ The theory of the Public Prosecutor in the case is that Captain Campos killed Goyo.⁴⁹ Several stated that Goyo "was asking for help,"⁵⁰ that he shouted "they're killing us, this is a massacre."⁵¹ One inmate stated that when they shot Olivares, "he was on his knees" and naked.⁵² Another said that "[the National Guard] said the deceased Chileno was the leader and was hiding guns [...] They shot him in the back [...]."⁵³

30. In another part of the prison, when taking the inmates out to the internal yard, National Guard members started "picking out" those they called "*delicios*, rats, stoolies, including Richard Núñez, El Vereco, [...] Mataguardia";⁵⁴ another stated that the National Guard "said they would single out all the ones who killed National Guard members, and then said they would kill those rats, that we were worthless."⁵⁵ The guard-killers (*Mataguardia*) "were individuals who were imprisoned who had killed members of the National Guard during a robbery. There were three of them: Javier Mataguardia, Mato Mataguardia, and Renzo Mataguardia; Renzo Mataguardia was the only one who survived."⁵⁶ One inmate said that "Mato Mataguardia" was the first one killed. "Lieutenant Puerta told him shut up you piece of shit and shot him in front of everyone [with] a nine millimeter."⁵⁷

31. Witnesses state that two police officers—"little Juan" and "Julio"—killed "El Vereco."⁵⁸ Another inmate added that "Julio approached [the chapel of the virgin], where the administrative areas are located and shot El Vereco twice in the head with a 38. [El Vereco] was naked because they had brought him from the yard."⁵⁹

32. The IACtHR does not have enough evidence to determine which of the seven alleged victims is "El Vereco."⁶⁰ Regarding the identities of the three "Mataguardias," there is evidence that Orangel José Figueroa was called "Mataguardia" because he had been imprisoned for the alleged homicide of a National Guard member in the street,⁶¹ but it is unclear which "Mataguardia" he might be.

33. The testimonies agree that National Guard member Belisario—nicknamed "Planetario"—killed Pedro López Chaurán.⁶² An inmate stated that Belisario "told Pedro Chaurán to stand up, took him to the wall, and shots were heard. Later, Belisario himself called the guards and said bring the stretcher because he had finished off that myth."⁶³

34. With regard to the death of Orangel Figueroa, only a statement extract is available stating that "... one of the police officers singled out an inmate from the group named Orangel. He shot him three times, and a lieutenant from the National Guard whose name I don't know told the police officer to bring him

⁴⁸ Annex 15, 10, 16, 11, 18. Statements of Luis Enrique Figueira, Alcides Alcazar, Andi Bermúdez, Deivis Romero and Carlos Durán; Annex 9. Decision of the Criminal Court of Appeals of Ciudad Bolívar (3/6/04). Annex to the initial petition.

⁴⁹ Annex 9. Decision of the Criminal Court of Appeals of Ciudad Bolívar (3/6/04). Pg. 3. Annex to the initial petition.

⁵⁰ Annex 11. Statement of Deivis Romero; also see Annex 10. Statement of Alcides Alcazar. Annex to the initial petition.

⁵¹ Annex 18. Statement of Carlos Durán. Annex to the initial petition.

⁵² Annex 10. Statement of Alcides Alcazar; also see Annex 17. Statement of Arón Palacios; Annex 9. Decision of the Criminal Court of Appeals of Ciudad Bolívar (3/6/04). Annex to the initial petition.

⁵³ Annex 17. Statement of Arón Palacios. Annex to the initial petition.

⁵⁴ Annex 16. Statement of Andi Bermúdez; Annex 11. Statement of Deivis Romero. Annex to the initial petition.

⁵⁵ Annex 11. Statement of Deivis Romero. Annex to initial petition.

⁵⁶ Annex 16. Statement of Andi Bermúdez. Annex to initial petition.

⁵⁷ Annex 16. Statement of Andi Bermúdez. Annex to initial petition.

⁵⁸ Annex 16. Statement of Andi Bermúdez. Annex to initial petition.

⁵⁹ Annex 18. Statement of Carlos Durán. Annex to initial petition.

⁶⁰ Based on the documentation found in the case file, the IACtHR considers it impossible to determine the identities of all the individuals referred to in the statements by their nicknames. It could be deduced that if Orangel Figueroa is "Mato" and Héctor Javier Muñoz is "Javier Mataguardia," then "El Vereco" would have to be Joel Reyes Nava. However, the IACtHR finds that there is not enough evidence to determine their identities with certainty.

⁶¹ World Organization Against Torture. *Venezuela: Ola de violencia en el Internado Judicial de Ciudad Bolívar dejar 7 muertos*. December 1, 2003. Available at: <http://fidh-omct.org/es/urgent-campaigns/urgent-interventions/venezuela/2003/12/d16608/>.

⁶² Some versions suggest that Pedro Chaurán had raped Belisario's wife or robbed his house. See, for example, Annex 16. Statement of Andi Bermúdez. Annex to initial petition.

⁶³ Annex 9. Decision of the Criminal Court of Appeals of Ciudad Bolívar (3/6/04); also see Annex 16. Statement of Andi Bermúdez. Annex to the initial petition.

over and shot him twice in the head and once in the back...."⁶⁴ Regarding the death of Richard Núñez, one testimony states: "They stopped Richard Núñez when he was leaving for transfer, he was under observation. The National Guard members stopped him and shot him right there next to us. We heard six shots, they shot him in the chest and in the face. He was shot by a member of the National Guard, there had been one named Belisario."⁶⁵

35. Regarding all these facts, the Public Prosecutor's theory of the case is that National Guard member Franchi killed Orlando Olivares; National Guard member Belisario killed Pedro Chaurán; Captain Campos killed "Goyo;" and National Guard member Puerta killed Orangel Figueroa.⁶⁶ The State reported that the investigation carried out so far "has found a group of members of the National Guard under the Second Company of Detachment No. 81 to be responsible," which was made up of the aforementioned officers plus "twenty-five soldiers." Likewise, "evidentiary elements have emerged indicating that [the four individuals charged] are criminally responsible."⁶⁷

36. A news item specified that "Marichales, who took the pictures of the dead inmates on November 10 in the prison, [said] [...] I thought it was strange that they were naked. I have seen what it's like when bodies from riots are transferred, and they are always dressed. I also noticed the number of marks from the *peinilla* and shotgun pellets on all the bodies, and that's what I tried to photograph. Pretty soon I thought this could not have been a gang conflict."⁶⁸ The mentioned photographs are not available.

37. That afternoon, transfers of the surviving inmates to other prisons began.⁶⁹ Several reported that the violence continued: "transfers began [...] to Puente Ayala and La Pica. They put us in the sun naked, where we were kicked and struck with *peinillas*. They put a rifle to my neck and were going to kill me but changed their mind, I don't know why, maybe it was God that stopped them."⁷⁰ Several inmates said they feared for their lives after the incidents, as they and their relatives had been threatened by the National Guard—specifically, by lieutenants Puerta and Franchi and Captain Campos. For this reason, they also expressed fear when giving their statements.⁷¹ One even stated, "My family had to leave Bolívar" because of the threats they received.⁷² They also stated that no forensic medical examinations were conducted until a week later.⁷³

38. Regarding the main perpetrators, the inmate witnesses stated that the person who gave orders that day was "a captain who had been removed after the [strike]. He had left, and when the massacre took place, he was the one giving orders in the facility."⁷⁴ The IAC^{HR} understands this to refer to Captain Campos. They further indicated that "lieutenants Puerta, Franchelli, and another who was there before the strike were involved in the massacre. Another person who was involved was [prison guard] Julio."⁷⁵ One inmate stated that "about 30 officials [participated...] captains, second lieutenants from the [National Guard] [gave orders during the search], the prison guards did whatever they wanted."⁷⁶

⁶⁴ Annex 9. Decision of the Criminal Court of Appeals of Ciudad Bolívar (3/6/04). Annex to the initial petition.

⁶⁵ Annex 11. Statement of Devis Romero. Annex to the initial petition.

⁶⁶ Annex 9. Decision of the Criminal Court of Appeals of Ciudad Bolívar (3/6/04). Pg. 3 Annex to the initial petition.

⁶⁷ Brief on the merits from the State.

⁶⁸ Annex 12. Without date or issue. Office of the Public Prosecutor orders protection for witnesses. Annex to the initial petition.

⁶⁹ Annex 10. Statement of Alcides Alcazar; Annex 15. Statement of Luis Enrique Figueira; Annex 11. Statement of Devis Romero. Annex to the initial petition.

⁷⁰ Annex 11. Statement of Devis Romero. Annex to initial petition.

⁷¹ Annex 10. Statement of Alcides Alcazar; Annex 15. Statement of Luis Enrique Figueira; Annex 17. Statement of Arón Palacios; Annex 18. Statement of Carlos Durán; Annex 9. Decision of the Criminal Court of Appeals of Ciudad Bolívar (3/6/04). Annex to the initial petition. In this regard, "a [National Guard member] told me I had three [options:] one, release from prison; two, that they put me in prison in a different [city]; or three, tell my relatives to buy me a grave site." Annex 16. Statement of Andi Bermúdez; also see Annex 19. Letter from the OVP to the Public Ministry (7/12/04). Annex L9 to the initial petition (reporting that 29 inmates who witnessed the facts and had been transferred to the Barcelona prison were transferred back to Vista Hermosa and "request help from our organization to lobby the competent authorities to ensure their physical safety").

⁷² Annex 18. Statement of Carlos Durán. Annex to initial petition.

⁷³ Annex 10. Statement of Alcides Alcazar; Annex 18. Statement of Carlos Durán. Annex to the initial petition.

⁷⁴ Annex 15. Statement of Luis Enrique Figueira. Annex to the initial petition.

⁷⁵ Annex 17. Statement of Arón Palacios. Annex to the initial petition.

⁷⁶ Annex 15. Statement of Luis Enrique Figueira. Annex to the initial petition.

39. Regarding the motives of the violence, several inmates and media outlets said it was retaliation against the prison population for the strike; that “the massacre was premeditated.”⁷⁷ The inmates stated that “those killed were normal inmates. Goyo was the spokesman during the strike.”⁷⁸

2. The version of the National Guard, the prison guards, and other prison employees

40. According to the National Guard members whose partial statements are included in the case file, they were in the detachment barracks next to the prison when at approximately 7:20 in the morning, they heard the sound of shots coming from the prison.⁷⁹ Captain Cárdenas Trillo soon informed them that the Director requested their intervention, so they got out the riot control equipment and headed for the prison.⁸⁰ They entered, but stayed to one side until the shooting stopped; then, they went on in and found the seven dead men and the wounded men. They proceeded to call the roll and search the cell blocks, confiscating a number of firearms.⁸¹ They stated that they did not see any soldiers fire any guns that were not riot control guns,⁸² and that they assume the dead were killed by other inmates during a fight over control of the inside of the prison.⁸³ According to the prison guards whose statements are included in the case file, they remained outside the prison on orders of the National Guard and did not witness the facts, nor did they have any knowledge of how the alleged victims died.⁸⁴

3. Version of Intervention Director Alfredo Veloz

41. Alfredo Veloz stated that the soldiers entered the prison before the shooting stopped: “When the National Guard entered, you could still hear shots inside the prison, and when they went further inside, the shooting increased. The National Guard entered with helmets, shotguns, riot control gear, [and] were also firing with their rifles. After [...] they entered, the shooting increased and lasted a little while longer [...] During what happened, only the National Guard was inside. I gave instructions to withdraw the guard and administrative staff from the administrative area, as the area was extremely unsafe at that time. Once the situation was contained, a roll call was conducted....”⁸⁵

D. DOMESTIC PROCEEDINGS

1. Investigation of the facts

42. The investigation began on the same day of the facts.⁸⁶ The evidence listed in the summary of the Public Prosecutor’s case file provided by the State includes the following evidence-gathering activities: approximately 145 interviews and 18 statements collected as evidence produced before trial; visual inspections; seven autopsies conducted on 11/11/2003; seven interviews with relatives of the deceased; two medical forensic examinations conducted on injured prison guards; a service order for the prison dated 11/10/2003; copy of the logbook, list of personnel stationed with Detachment No. 81 of the National Guard, and list of firearms assigned to them; expert examinations of firearms, bullets, and projectiles, and ballistics exams; forensic medical examinations of the injured inmates; requests to exhume the alleged victims and

⁷⁷ Annex 18. Statement of Carlos Durán. Annex to the initial petition.

⁷⁸ Annex 11. Statement of Deivis Romero; likewise, Annex 18. Statement of Carlos Durán. Also see Annex 17. Statement of Arón Palacios. Annex to the initial petition.

⁷⁹ Brief on the merits from the State, section IV, September 20, 2013 (see, for example, the statements of Luís Beltrán (second in command of Detachment No. 81), Salvador Franchi Rincones, Gustavo Puerta, Belisario)

⁸⁰ Brief on the merits from the State, section IV, (see, for example, the statements of Luís Beltrán, Gustavo Puerta, Belisario).

⁸¹ Brief on the merits from the State, section IV, (see, for example, the statements of Salvador Franchi Rincones, Gustavo Puerta).

⁸² Brief on the merits from the State, section IV, (see, for example, the statements of Luís Beltrán, Salvador Franchi Rincones, Gustavo Puerta).

⁸³ Brief on the merits from the State, section IV, (see, for example, the statements of Luís Beltrán, Salvador Franchi Rincones, Gustavo Puerta).

⁸⁴ Brief on the merits from the State, section IV.

⁸⁵ Brief on the merits from the State, September 20, 2013.

⁸⁶ Initial petition. Also see brief on the merits from the State (confirms the case was unsealed).

autopsies conducted on six of them, not including Pedro López Chaurán;⁸⁷ and briefs and resolutions on the processing of the case before the courts. The IACRH's case file contains seven complete statements collected as evidence produced before trial; 45 incomplete extracts of interview transcripts; and the complete results of four autopsies conducted following the exhumations.

43. The IACRH has news items exposing alleged irregularities in the investigation process, specifically regarding the pressure the National Guard put on the investigating bodies and the inmates and their relatives during the investigation.⁸⁸ The list of evidence found in the case file submitted by the State in 2013 indicated that no evidence had been requested or produced in the case since 2006.

2. Autopsies of the deceased individuals

44. The bodies of the five deceased individuals were exhumed and autopsies were conducted on March 22, 2004. The exhumation and autopsy of Richard Núñez revealed the cause of death to be "skull fracture resulting from a gunshot wound to the head." Specifically, the projectile "traced a trajectory from back to front, from right to left, and from below upward" and "there are [...] signs of hemorrhaging" in the cranial cavity. There were no signs of traumatic injury to the rest of the body.⁸⁹

45. The exhumation and autopsy of Orangel Figueroa revealed the cause of death to be "hypovolemic shock from a gunshot wound." No traumatic injuries were observed to the head or neck. The autopsy found "rib fractures on the right and left sides of the ribcage [that] could correspond to the trajectory of a projectile that entered and fractured the fourth rib on the left side and exited fracturing the eighth and tenth ribs on the right side." Likewise, "two entry holes were noted in the pelvic bone, caused by a projectile fired from a firearm." X-rays "observed a projectile (lead and jacketing) in the head of the left femur."⁹⁰

46. The exhumation and autopsy of José Gregorio Bolívar revealed the cause of death to be "skull fracture resulting from a gunshot wound to the head." Specifically, it was observed that the skull was fractured by a projectile, "with a trajectory from front to back, left to right, and up to down." Likewise, "the rear left hemithorax [...] shows loss of 4 cm of tissue, corresponding to the passage of multiple projectiles (pellets) [...]." Pellets were noted throughout the thorax, along with five broken ribs. "These fractures were not produced by projectiles, given the extensive loss of tissue [...] they must have been caused by blunt force trauma." The body showed no further signs of traumatic injury.⁹¹

47. The exhumation and autopsy of Héctor Muñoz reveals "three orifices caused by the passage of a projectile fired from a firearm" and concludes that the cause of death was "skull fracture resulting from gunshot wounds to the head." The trajectory was "from back to front, from right to left, and slightly downward." The body showed no further signs of traumatic injury.⁹²

48. The documentation on the exhumation of Joel Reyes is incomplete. It provides only a few photos of the body and the autopsy showing an entry wound in the skull of approximately 1.5 x 1 cm near the left eye and an exit wound of 4.3 x 3 cm near the right ear, presumably caused by a firearm.⁹³

⁸⁷ See also Annex 20. *Así Es La Noticia*. Fiscalía ordenó exhumación de cinco de los cadáveres de reos de Vista Hermosa (23-24/1/2004). Annex to the initial petition.

⁸⁸ Annex 21. No date or issue number (assumed to be from the beginning of 2004). Based on a news item from *Correo de Caroni*. "Testigos bajo amenaza: La defensora del pueblo del estado Bolívar asegura que funcionarios del Cicpc y la GN intimidan a familiares de presos de la cárcel de Vista Hermosa para que no declaren;" Annex 12. No date or issue number. "La Fiscalía ordena proteger a los testigos" ("Sources from the Office of the Public Prosecutor could not explain how the [...] head of the 8th Regional Command of the National Guard could have access to the autopsies and other evidence collected by CICPC officials, as the case file is in the investigation stage and only prosecutors and police investigators have access to it"). Annex to the initial petition.

⁸⁹ Annex 22. Autopsies of Richard Núñez, Orangel Figueroa, "Goyo" Bolívar, Héctor Muñoz, and Joel Reyes. Annex D1 of the initial petition.

⁹⁰ Idem.

⁹¹ Idem.

⁹² Idem.

⁹³ Idem.

49. There is no documentation for the autopsies of Orlando Olivares and Pedro Chaurán. The State indicated that the autopsies conducted on November 11, 2003, determined the cause of death for Pedro Chaurán to be “encephalitic head trauma caused by one bullet wound,” while Orlando Olivares’s cause of death was “hypervolemic shock caused by internal bleeding from firearm wounds and a stab wound.”⁹⁴ Regarding the exhumations and autopsies of these two bodies, a news article reported that “some of the shots were fired from very close range and others at point blank range, leaving powder burns. Also, according to the examination, the bodies were extremely beaten up. As with the first five exhumations, these two bodies showed fractures in their skulls and extremities, as well as dislocated jaws. These findings are not included in the first forensic report that was submitted.”⁹⁵ The article states that the results of subsequent autopsies do not coincide with those of the initial autopsies.⁹⁶ The State did not dispute this information.

3. Judicial proceedings

50. On March 28, 2004, the arraignment hearing was held for the four individuals accused, and pretrial detention was requested. The request was rejected by the supervising judge the following day.⁹⁷ The petitioner requested to intervene as a plaintiff on April 1, 2004.⁹⁸ The decision granting liberty was appealed, and the Appellate Court granted the appeal on June 3, 2004, ordering the four accused individuals be placed in pretrial detention. It also urged the Public Prosecutor to expand the investigation to consider the possible criminal responsibility of other National Guard members and police officers named in the statements.⁹⁹ Between June 2004 and April 2005, legal counsel for the defendants filed petitions to change jurisdiction and for *amparo*, both of which were rejected.¹⁰⁰ On May 20, 2005, precautionary measures in lieu of pretrial detention were granted.¹⁰¹ It should be noted that as part of these measures, the Public Prosecutor requested that the four accused individuals not be assigned to work in any prisons. The request was not granted.¹⁰²

51. A series of judicial actions are included in the case file from 2005 and 2006 that served to prolong the case’s investigation phase and postpone the “closing act” (the act to conclude the investigation phase and bring the case to trial). On one occasion, the Public Prosecutor asked for a deadline extension to continue collecting evidence—including ballistics evidence—and reconstruction of the facts.¹⁰³ In response to this situation, the petitioner asked the Court—in writing and during a hearing—to give the Public Ministry a reasonable period of time to present the “closing act.”¹⁰⁴ On June 19, 2006, the Court rejected this request based on Article 313 of the Organic Code of Criminal Procedure in light of the nature of the crime.¹⁰⁵

⁹⁴ Brief on the merits from the State, dated September 20, 2013, section IV.

⁹⁵ Annex 13. *El Universal*, “Proyectiles en cuerpos exhumados: Los resultados de la necropsia no coinciden con los de las autopsias primarias (5/12/2004). Annex to the initial petition.

⁹⁶ Idem.

⁹⁷ Annex 24. Order of unconditional release from the Criminal Supervisory Court of Ciudad Bolívar, 3/29/04. Annex to the initial petition.

⁹⁸ Annex 25. Supporting documentation of receipt of new matter of the Criminal Judicial Circuit of Ciudad Bolívar, 4/1/04 (receipt confirmed of the private criminal complaint filed by the attorneys of the Observatorio); Annex 26. Order of joinder of the Criminal Supervisory Court of Ciudad Bolívar, 4/5/04 (admitting the private prosecution and joining the case FP01-S-2004-000632); Annex 27. Brief of the private prosecution presented by the Observatorio. Annex to the initial petition.

⁹⁹ Annex 9. Decision of the Criminal Court of Appeals of Ciudad Bolívar (3/6/04). Annex to the initial petition.

¹⁰⁰ Brief on the merits from the State; Annex 28. Supporting documentation of receipt of a document from the Criminal Supervisory Court of Ciudad Bolívar, 11/10/04. Annex to the initial petition (brief from the Observatorio requesting pretrial detention in light of the decision issued on 10/7/04 by the Criminal Chamber of the Supreme Court of Justice against the accused); Annex 29. *Lo Último*, “Una victoria para la justicia: Resucitó el juicio sobre la Masacre de Vista Hermosa, y los cuatro militares presuntamente involucrados serán juzgados en prisión” (4/6/2005). Annex to the initial petition (“With the decision of the Supreme Court of Justice, the reconstruction of the facts that the [court] attempted in July of last year will be tried again, as it had been suspended for the joinders requested by the defense”).

¹⁰¹ Annex 30. Criminal Supervisory Court of Ciudad Bolívar, 5/20/05. Annex to the initial petition.

¹⁰² Idem.

¹⁰³ Annex 31. Minutes of the Oral Hearing before the Criminal Supervisory Court of Ciudad Bolívar, 5/11/05. Annex to the initial petition.

¹⁰⁴ Annex 32. Supporting documentation of receipt of a document from the Criminal Supervisory Court of Ciudad Bolívar, 3/28/06; Annex 33. Minutes recorded by the Criminal Supervisory Court of Ciudad Bolívar, 6/13/2006. Annex to the initial petition.

¹⁰⁵ Annex 34. Third Criminal Supervisory Court of Ciudad Bolívar, 6/19/2006; Annex 36. Third Criminal Supervisory Court of Ciudad Bolívar, 6/27/2006 (notification of the decision of 6/19/06). Annex to the initial petition.

52. The petitioner reported that the “closing act” was presented and the trial phase began “just after” notification of the admissibility report of the IACtHR.¹⁰⁶ Although there is no documentary evidence in this regard, the subsequent orders delaying the preliminary hearing make clear that the “closing act” must have been presented in order to have been able to convene this hearing. Other publicly available sources of information indicate that the “closing act” was presented in November 2012.¹⁰⁷ The petitioners stated that as of 2013, the preliminary hearing still had not been held, in violation of legal procedures. They stated that the hearing was repeatedly scheduled and then delayed due to the defense’s failure to appear.¹⁰⁸ However, the judge did not order the corresponding sanctions.¹⁰⁹ They also alleged that they observed the existence of a close relationship between the judge, the accused, and their lawyers in the courtroom, for which reason the petitioners understand the delay in carrying out the criminal trial to be deliberate.¹¹⁰

53. The petitioners alleged that the preliminary hearing was ultimately held on June 3, 2014, on a day that they could not attend the hearing. They indicated that that day, “the Court made a decision for the first time, dismissing the request by the *Observatorio* attorneys to intervene as plaintiffs in the case.”¹¹¹ The petitioner stated that it appealed this decision on June 10, 2014. No further information is available in this regard. The petitioner stated that as of March 2015, the trial of the individuals accused still had not been held. This is the latest information available in the case file.

E. Contextual information on the situation in the Vista Hermosa Prison after the facts

54. In June 2004, local media reported that Lieutenant Puerta and Captain Campos received promotions in the National Guard. The Committee of Vista Hermosa Relatives called the decision “a profanity and an insult to the relatives of the inmates who died during the incidents.”¹¹² According to publicly available information, in 2005, the prison was taken over by the inmates and remains under their control.¹¹³ Reports state that the National Guard continues to oversee the exterior parts of the prison but does not enter inside.

55. The situation in the Vista Hermosa Prison has been of great concern to the Commission in recent years. The IACtHR requested provisional measures from the Inter-American Court in 2010 in light of the situation of overcrowding, violence, and absence of effective State control within the prison. The measures were granted in 2011¹¹⁴ and remain in force. The resolution took the following specifically into account:

- a. Overcrowding in the prison, which in 2011 had capacity for 310 inmates but an actual population of approximately 930 inmates;
- b. That the situation in the Vista Hermosa Prison was characterized by “constant battles among the gangs in the prison who fought with firearms for territorial control of the prison,” with, among other conditions, “critical overcrowding;”
- c. Several incidents of violence in previous years, including at least two riots in 2010 and 2011 resulting in at least 10 deaths, as well as “numerous protests and hunger strikes by inmates and their relatives;”

¹⁰⁶ Additional brief of the representatives of October 2, 2013.

¹⁰⁷ *Correo del Caroni*, “La masacre de Vista Hermosa,” September 6, 2015. Available at: <http://www.correodelcaroni.com/index.php/mas/a-2/item/36646-la-masacre-de-vista-hermosa>

¹⁰⁸ See Annex 36. The preliminary hearing was ordered delayed three times by the First Instance State and Municipal Criminal Supervisory Court, on 5/21/13 (defense not properly notified; 7/12/13 (defense did not attend due to delayed flight from Caracas); and 8/29/13 (defense did not appear). Annex to the brief of the representatives of October 2, 2013.

¹⁰⁹ Brief of the representatives of October 2, 2013.

¹¹⁰ Idem.

¹¹¹ Additional brief of the representatives of March 9, 2015.

¹¹² Annex 37. *Correo del Caroni*, “Ascendidos 2 de los 4 imputados en masacre de Vista Hermosa” (6/30/2004). Annex to the initial petition.

¹¹³ See, for example, “On the Inside: Venezuela’s Most Dangerous Prison,” June 6, 2013. Available at: <http://time.com/3800088/on-the-inside-venezuelas-most-dangerous-prison/>.

¹¹⁴ I/A Ct. H.R. Order of May 15, 2011, Matter of Internado Judicial de Ciudad Bolívar “Cárcel de Vista Hermosa,” Provisional Measures regarding Venezuela.

- d. A variety of “conditions responsible for the inmates’ deaths and an environment of extreme violence inside the prison,” including “the lack of effective control of the prison,” “the trafficking of weapons, which the State has been unable to control,” “critical overcrowding,” the abysmal conditions of the physical infrastructure, health care services and food, and the lack of personnel who are ‘duly qualified to avoid the continuous outbreaks of violence.’”

IV. ANALYSIS OF LAW

A. Prior considerations

57. The Commission observes that at the merits stage, both the petitioners and the State referred to the inmates injured during the facts of this case. The IACtHR deems it admissible to analyze potential violations of the rights of these alleged direct victims at this stage, taking into account that the injuries they suffered are closely linked—both causally and temporally—to the subject of the case admitted: that is, the injuries took place in the same context as the deaths of the seven alleged victims listed in the admissibility report. The Commission particularly takes into consideration that the State did not raise any objection to including them as alleged victims, even recognizing there were “approximately 27 inmates injured” as a result of the facts of November 10, 2003.

B. Rights to life¹¹⁵ and personal integrity¹¹⁶ in conjunction with articles 1.1¹¹⁷ and 2¹¹⁸ of the Convention.

1. Presence of military forces in prison facilities

58. As the Commission and the Court have indicated repeatedly, States must limit the use of the Armed Forces to keep the peace as much as possible, as the training they receive is aimed at defeating an enemy, not protecting and supervising civilians.¹¹⁹ Therefore, “the possibility of assigning the Armed Forces tasks aimed at restricting the personal liberty of civilians, in addition to meeting the requirements of strict proportionality in the restriction of a right, must respond, in turn, to strict exceptional criteria and due diligence in the protection of treaty guarantees, bearing in mind [...] that the regime governing the armed forces [...] is not compatible with the functions of civilian authorities.”¹²⁰

59. Additionally, in order to fulfill the duty to guarantee the rights of people deprived of liberty, it is essential for penitentiary personal to be suitable and trained.¹²¹ In this regard, the IACtHR has found that:

States need to guarantee that penitentiaries are run and guarded by qualified, civilian staff, with civil servant status. That is, these functions must be entrusted to a security body independent of the military and police forces, and educated and trained in penitentiary issues. These 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.¹²²

60. Likewise, in the case of *Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, the Inter-American Court ordered as a measure of non-repetition that the Venezuelan State “implement a penitentiary security service of nonmilitary nature.”¹²³ So far, this change has not been made either in law or

¹¹⁵ Article 4.1 states, in relevant part: 1. “Every person has the right to have his life respected. [...] No one shall be arbitrarily deprived of his life.”

¹¹⁶ Article 5 states, in relevant part: “1. Every person has the right to have his physical, mental, and moral integrity respected; 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.”

¹¹⁷ Article 1.1 states, in relevant part: The States Parties [...] undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination [...].”

¹¹⁸ Article 2 states, in relevant part: “[...] States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.”

¹¹⁹ See I/A Ct. H.R. *Case of Cabrera García and Montiel Flores v. Mexico*. Judgment of November 26, 2010, para. 88; see also IACtHR. *Report on the Human Rights Situation in Mexico* (1998), paras. 399-409.

¹²⁰ I/A Ct. H.R. *Case of Cabrera García and Montiel Flores v. Mexico*. Judgment of November 26, 2010, para. 89.

¹²¹ IACtHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas* (2011), para. 171-175.

¹²² IACtHR, *Report on the Human Rights of Persons Deprived of Liberty in the Americas* (2011), para. 193. Likewise, regarding suitability of penitentiary personnel, the report noted that “custody [...] exercised by members of the police or armed forces trained under anti-democratic regimes or by instructors or higher-ranking officers educated under such regimes” is not adequate for guaranteeing respect for human rights. Id. at para. 176.

¹²³ I/A Ct. H.R. *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006, para. 144.

practice. In this case, the IACtHR has established that the National Guard entered the Vista Hermosa Prison regularly, especially to conduct searches. This is an indication that the National Guard performed regular custodial functions within the prison, and the case file provides no information to indicate the National Guard was properly trained to perform this function, which several inmates stated usually resulted in violence committed by the soldiers during the searches.

61. According to the proven facts, the National Guard entered the Vista Hermosa Prison on the day of the facts under the auspices of Article 8 of the Penitentiary Regimen Act, which provides as follows:

External security of the establishments may be entrusted to military bodies, which shall refrain from any intervention in the internal security system, except in cases where expressly requested by the director of the facility or the person acting in that capacity.

62. The Commission finds that this law does not make sufficiently clear the grounds on which the National Guard could be asked to enter a prison, as strict adherence to the primordial duty of protecting the human rights of persons deprived of liberty would require. Furthermore, it grants the director of the facility broad discretion to determine the relevance and necessity of entry into the prison, which, as noted, happened regularly at Vista Hermosa. According to the standards of the inter-American system, the entry of soldiers into a penitentiary should, where permitted, follow criteria of "strict exceptionality" and must be intended only to protect the fundamental rights of the inmates. The Commission finds that the law cited above does not establish safeguards for complying with this standard and creates conditions that make situations like the one in this case possible, as will be analyzed later on.

2. The State's special status as guarantor for individuals deprived of liberty

63. The settled case law of the inter-American system has established that the State assumes a special position as guarantor of the rights of persons deprived of liberty.¹²⁴ In consequence, "the State has the obligation to take the necessary measures to protect and ensure the right to life and to personal integrity of those deprived of liberty and to abstain, in any circumstances, from acting in a way that leads to a violation of their life and integrity."¹²⁵

64. The Court has established that this obligation includes "the adoption of measures that help maintain a climate of respect for human rights among persons deprived of liberty, avoid the presence of weapons within the establishments in the hands of the inmates, reduce overcrowding, establish the minimum detention conditions compatible with their dignity, and provide sufficient trained staff to ensure an adequate and effective control, custody and surveillance of the Penitentiary Center."¹²⁶

65. Along these lines, "whenever a person is deprived of liberty in a normal state of health and later emerges with health issues, the State must provide a satisfactory and convincing explanation for this situation¹²⁷ and address allegations of its responsibility with adequate evidence."¹²⁸ Thus, the absence of a satisfactory explanation leads to the presumption of State responsibility for the injuries suffered by a person who has been in the custody of State agents.¹²⁹ This is obviously also applicable to situations in which an individual dies while in State custody.

¹²⁴ See I/A Ct. H.R. *Case of Neira Alegría et al. v. Peru*. Merits. Judgment of January 19, 1995, para. 60; *Case of Díaz Peña v. Venezuela*. Judgment of June 26, 2012, para. 135.

¹²⁵ See, for example, I/A Ct. H.R. *Matter of Certain Penitentiary Centers of Venezuela. Central Occidental Region (Uribana Prison) regarding Venezuela*. Order of the Inter-American Court of February 13, 2013. Considering 7.

¹²⁶ Id.

¹²⁷ I/A Ct. H.R. *Case of Mendoza v. Argentina*. Judgment of May 14, 2013, para. 203 (citing *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003, para. 100; *Case of Fleury et al. v. Haiti*. Judgment of November 23, 2011, para. 77).

¹²⁸ Id. at para. 203 (citation omitted).

¹²⁹ I/A Ct. H.R. *Case of Mendoza v. Argentina*. Judgment of May 14, 2013, para. 203 (citing: *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala*. Merits, paras. 95 and 170; *Case of Fleury et al. v. Haiti*. Merits and Reparations, para. 77).

3. Analysis of the case

66. The Commission observes that in this case, the State is presumed responsible for the deaths of the seven inmates in the injuries of the 26 inmates in its custody, which has not been contradicted in this case because the State has not provided a “satisfactory explanation,” and has even stated that National Guard members caused the deaths of the seven deceased inmates in a way that “could perfectly be characterized as extralegal, arbitrary, or summary executions.” The Commission observes that the case file in this case does not properly clear up the specific way in which these deaths and injuries were caused, or the specific role of the soldiers and prison guards present at the prison that day. Without prejudice to the fact that this presumption that has not been credibly challenged by the State is sufficient to establish the State’s international responsibility, the Commission will now analyze the additional elements found in the case file that strengthen that conclusion.

67. The State must “supervise that [its] police forces, which are attributed the legitimate use of force, respect the right to life of those under their jurisdiction.”¹³⁰ In this regard, State security forces can only use lethal weapons when “strictly inevitable to protect a life” and when less extreme measures are ineffective.¹³¹ The use of force by security forces “must respect criteria of legitimate reasons, need, [...] and proportionality.”¹³² Likewise, “any use of force that is not strictly necessary owing to the behavior of the person detained constitutes an attack on human dignity.”¹³³

68. In the context of maintaining public order within prisons, the Court has established that the State must use force “in accordance with and in application of domestic legislation in ensuring public order, as long as this legislation and the actions taken when applying it are compatible, at the same time, to the applicable human rights protection norms.” In this sense, State power is not limitless.¹³⁴

69. In this case, the Commission observes that it does not have enough evidence to determine with certainty whether a riot took place within the prison on the morning of the facts. This lack of clarity is fundamentally the result of a lack of due diligence in the investigation of the facts, which will be examined in the next section. While the inmate witnesses from the prison are consistent in stating that the prison was quiet that morning during the search being conducted following the strike of the previous week, the Intervention Director and other authorities state that there were disturbances inside the prison that led to the request for the National Guard to enter the prison. In any case, the Commission observes that only the National Guard members said the deaths and injuries took place prior to their entry into the penitentiary. This version was not confirmed even by the Intervention Director. The Commission thus finds that, should it be proven that there was no riot in the prison that morning, any subsequent use of force by State agents against the prison inmates would be clearly arbitrary, as it would lack a legitimate purpose and be unnecessary.¹³⁵

70. Even accepting that the actions taken by State authorities on the day of the facts had the legitimate purpose of controlling a riot taking place within the prison to protect the lives of the inmates, the Commission nevertheless finds that multiple elements point to a disproportionate use of force. In this regard, the IACtHR highlights inmate statements indicating that the National Guard entered the facility firing light automatic rifles; that they indiscriminately beat the inmates in the yard; that one inmate “was ruptured inside” as a result of beating by the authorities, and needed an operation; and that the soldiers who entered the facility did not use riot control equipment or even less lethal means of controlling the situation within the prison. None of these elements were effectively challenged by the State through a diligent investigation demonstrating that the use of force was strictly proportional to the risks arising from the alleged riot.

¹³⁰ I/A Ct. H.R. *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006, para. 238.

¹³¹ Id. at Para. 239. Also see UN. *Basic Principles on the use of force and firearms by law enforcement officials*.

¹³² I/A Ct. H.R. *Case of Fleury et al. v. Haiti*. Judgment of November 23, 2011, para. 74.

¹³³ Id.

¹³⁴ I/A Ct. H.R. *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006, para. 240.

¹³⁵ In this sense, see id. at paras. 234-252.

71. Along with this, there is evidence both from the autopsies—which found that several inmates died from bullet wounds to the head with trajectories that went from the back to front—as well as the inmates who witnessed the facts and the Public Prosecutor and State itself that the deaths of the seven deceased inmates “could perfectly be characterized as extralegal executions” and were accompanied by severe beatings and mistreatment of the deceased individuals prior to their death, as well as the other inmates.

72. The Commission also highlights the allegations repeated throughout the narrative that the operation carried out the day of the facts was a retaliation against the leaders of an inmate strike. The Commission finds that the temporal coincidence of the conclusion of the strike and the fact that out of the entire penitentiary population—at least hundreds of inmates—three of those killed had led the strike, were enough for this theory to be taken seriously and be diligently investigated by the investigating authorities—which, based on the information available, did not happen. In this regard, taking into account the presumption against the State when a matter involves individuals in its custody and the use of lethal force, the Commission finds that the failure to clarify what happened is an additional element to take into account in assessing the arbitrariness of the actions of the National Guard members.

73. In conclusion, the Commission observes that the State has not provided a definitive explanation for the deaths and injuries of those in its custody that could rebut the presumption of international responsibility. In addition, there are multiple indications that, taken together and given the failure to properly clarify the facts, lead to the conclusion that the use of force was illegitimate, unnecessary, and disproportionate. Consequently, the Commission concludes that the Venezuelan State is responsible for the violation of the rights to life and personal integrity established in articles 4.1, 5.1, and 5.2 of the American Convention, in conjunction with the obligations established in articles 1.1 and 2 of the Convention, to the detriment of Orlando Edgardo Olivares Muñoz, Joel Rinaldi Reyes Nava, Orangel José Figueroa, Héctor Javier Muñoz Valerio, Pedro Ramón López Chaurán, José Gregorio Bolívar Corro, Richard Alexis Núñez Palma, 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 Borrome, 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.

C. Right to a fair trial¹³⁶ and judicial protection¹³⁷ in conjunction with Article 1(1) of the American Convention

1. Standards for due diligence, officiousness, and reasonable period of time

74. The Inter-American Court has established that “as a result of the protection granted by Articles 8 and 25 of the Convention, States are obliged to provide effective judicial remedies to the victims of human rights violations that must be substantiated according to the rules of due process of law.”¹³⁸

75. The case law of the inter-American system holds that once the State becomes aware of a human rights violation—particularly violations of the rights to life, humane treatment, and personal

¹³⁶ Article 8.1 establishes: 1. “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.”

¹³⁷ Article 25 establishes, in relevant part: 1. “Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.”

¹³⁸ I/A Ct. H.R. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Judgment of July 10, 2007, para. 124; *Case of the “La Rochela Massacre” v. Colombia*. Judgment of May 11, 2007, para. 145; *Case of Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006, para. 381; *Case of the Dismissed Congressional Employees (Aguado Alfaro et al.) v. Peru*. Judgment of November 24, 2006, para. 106.

liberty¹³⁹—it is required to initiate, *ex officio* and without delay, a serious, impartial, and effective investigation,¹⁴⁰ which must be conducted within a reasonable period of time.¹⁴¹ This implies the right of victims and their families to have State authorities initiate proceedings against the alleged perpetrators of these crimes; and, where applicable, apply the corresponding punishment, as well as provide reparations for the damages suffered.¹⁴²

76. The Court has found that the duty to investigate with due diligence means that inquiries must be made using all legal measures available and must be aimed at determining the truth.¹⁴³ Likewise, the Commission and the Court have found that in cases of human rights violations, the State can be found responsible if it fails to order and conduct the pertinent evidence collection in keeping with its due diligence duty, and that the investigation must be aimed at exploring all possible lines of investigation to enable the identification of the perpetrators of the violation.¹⁴⁴

77. In order to ensure due diligence through an exhaustive and impartial investigation of a death that took place under suspicious circumstances involving State agents, the Commission has emphasized the relevance of the standards contained in the Minnesota Protocol, which include: Identifying the victim; collecting and preserving evidence related to the death; identifying potential witnesses and securing their statements; determining the cause, manner, location, and time of death, as well as any pattern or practice that may have caused the death; distinguishing between natural death, suicide, and homicide; identifying and apprehending the person or persons involved in the death; and bringing the alleged perpetrators before a competent court as established by law.¹⁴⁵ According to those standards, “When necessary, and subject to the consent of the individual(s) concerned, investigators should take steps to protect an interviewee and others from ill-treatment or intimidation as a consequence of providing information.”¹⁴⁶

78. As a general principle regarding autopsies, the Minnesota Protocol also establishes that the job of clinical doctors is, among other things, to help ensure that the cause and circumstances of the death are revealed so they can present conclusions on the cause of death and the circumstances that contributed to it. Along these lines, the Protocol recognizes that there are few cases in which the cause of death can be determined by an autopsy alone without additional information on the death. Thus, the autopsy report must include a list of the injuries found and offer an interpretation of them. The Protocol underscores the particular importance in these types of autopsies of a photographic record, comprised of both photographs apt for documentation and independent review, and full-body X-rays.¹⁴⁷

79. Lastly, regarding the principle of a reasonable period of time established in Article 8.1 of the American Convention, the Inter-American Court has established that that it is necessary to take into account three elements to determine the reasonableness of the period in conducting proceedings: (a) the complexity of the matter; (b) the procedural activity of the party involved; and (c) the conduct of judicial authorities.¹⁴⁸ The Commission and the Court have also found it necessary to take into account the interest affected by the delay.¹⁴⁹

¹³⁹ I/A Ct. H.R. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Judgment of July 10, 2007, para. 100.

¹⁴⁰ I/A Ct. H.R. *Case of García Prieto et al.* Judgment of November 20, 2007, para. 101; *Case of the Gómez-Paquiyauri Brothers*. Judgment of July 8, 2004, para. 146; *Case of Cantoral Huamaní and García Santa Cruz*, Judgment of July 10, 2007, para. 130.

¹⁴¹ I/A Ct. H.R. *Case of Bulacio v. Argentina*. Judgment of September 18, 2003, para. 114; *Case of the “La Rochela Massacre”*. Judgment of May 11, 2007, para. 146; *Case of Miguel Castro Castro Prison*. Judgment of November 25, 2006, para. 382.

¹⁴² I/A Ct. H.R. *Case of García Prieto et al.* Judgment of November 20, 2007, para. 103; *Case of Bulacio v. Argentina*. Judgment of September 18, 2003, para. 114; and *Case of Miguel Castro Castro Prison*. Judgment of November 25, 2006, para. 382.

¹⁴³ See I/A Ct. H.R. *Case of García Prieto et al.* Judgment of November 20, 2007, para. 101.

¹⁴⁴ IACtHR. Report No. 25/09. Merits. Sebastião Camargo Filho (Brazil). March 19, 2009, para. 109; I/A Ct. H.R. *Case of the “Street Children” (Villagrán-Morales et al.)*. Judgment of November 19, 1999, para. 230; *Case of J. v. Peru*. Judgment of November 27, 2013, para. 344, citing I/A Ct. H.R. *Case of Juan Humberto Sánchez v. Honduras*. Judgment of June 7, 2003, para. 128.

¹⁴⁵ I/A Ct. H.R. *Caso Ortiz Hernández et al. v. Venezuela*. Judgment of August 22, 2017, para. 161.

¹⁴⁶ UN. *Minnesota protocol on the investigation of potentially unlawful death* (2016), para. 86.

¹⁴⁷ Id. at paras. 148-182 and 255, 264, 266.

¹⁴⁸ I/A Ct. H.R. *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006, para. 196; *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006, para. 289; *Case of Baldeón García v. Peru*. Judgment of April 6, 2006, para. 151.

¹⁴⁹ I/A Ct. H.R. *Case of Valle Jaramillo et al. v. Colombia*. Judgment of November 27, 2008, para. 155.

2. Analysis of the case

80. The Commission notes that the investigation began on the same day of the facts. From the investigative steps taken, the Public Prosecutor identified the four accused individuals. However, the Commission finds that the investigation as conducted thus far has not been exhaustive, in the sense that there is no indication that the accusations against other soldiers present in the prison that day, as well as prison guards implicated by testimony, were seriously investigated. Likewise, in light of evidence and reports of violations of personal integrity that day, there is no indication the State conducted any investigation to clarify the facts and, where applicable, establish the responsibility of the individuals involved.¹⁵⁰

81. The Commission observes that the autopsies conducted do not meet the standards set forth in the Minnesota Protocol. Specifically, the Commission underscores the lack of analysis of the context of the deaths—including determination of possible patterns in the injuries to the bodies, the caliber of the firearms that caused the injuries, the distance from which shots were fired, and the lack of color photographs and full-body x-rays—that could help clear up the circumstances of the deaths and identify the perpetrators. It is the IACtHR's understanding that ballistics examinations and tests are included in the Public Prosecutor's case file; however, it does not have access to them. In any case, the deficiencies in the autopsies are an obstacle to establishing the facts in light of other technical evidence that may have been gathered.

82. The Commission observes that the statements of the National Guard members (cited in the brief on the merits from the State), employ identical language and descriptions—for example, regarding the probable cause of death of the victims—which raise doubts as to whether these National Guard members may have been prepared together prior to giving statements to the Public Prosecutor. Likewise, the IACtHR observes that the allegations that the National Guard improperly had access to evidence collected by the CICPC and that the witnesses to the facts were threatened have not been properly clarified. The issue of witness intimidation appears in multiple places in the case file and was even raised by the Public Prosecutor itself as part of the basis for requesting pretrial detention for the accused. Likewise, as described above, no line of investigation was designed and exhaustively conducted into the various indications that the deaths and injuries could have been in retaliation for the strike that had taken place days prior.

83. Regarding the reasonable time period, the Commission finds that although the investigation began on the day of the facts, the preliminary hearing in the case was not held until June 3, 2014, and there is no information to indicate that the trial has yet taken place. Although the State argued that the delays in the trial were due to procedural actions taken by the accused and their defense attorneys, the IACtHR notes that these remedies were ruled on in 2005, and that no evidence has been requested or collected in the case since 2006. In this regard, it is not reasonable that the investigation phase concluded 2012. There is no information to indicate that the trial of the accused individuals has been carried out subsequent to that, for which reason the Commission concludes that the violation of the reasonable period of time in this case is manifest.

84. The State argued that the matter has a "reasonable level of complexity," and said that the difficulties securing cooperation from witnesses that remain in the custody of the State bodies presumably responsible for the facts, as well as securing their cooperation once they were freed or transferred made investigating and trying the case difficult. In this regard, the Commission notes that because the witnesses who stated they were threatened by the National Guard were in the custody of the State, the State had not only the opportunity but also the duty to take the measures necessary to protect their lives and personal safety in order to facilitate their cooperation with the investigation. This is also in accordance with the standards established in the Minnesota Protocol and by inter-American case law. The case file indicates that this did not take place.

85. Likewise, the Commission finds that this case may be complex because it deals with dozens of victims and took place in a prison where the State's control is limited—a situation that is also attributable

¹⁵⁰ In this sense, see I/A Ct. H.R. *Case of the Landaeta Mejías Brothers et al. v. Venezuela*. Judgment of August 27, 2014, para. 202.

to the State¹⁵¹ and which therefore does not excuse it from responsibility. However, because the investigation has been stalled since 2006, and there is no indication that during the course of the investigation, the State fully investigated the violations committed within the prison that day to the detriment of all the victims, and that six years since the official close of the investigation the trial still has not been completed, the Commission finds that the potential complexity of the matter is not enough to justify the delay, and therefore the reasonable time period standard has clearly been violated.

86. Based on these considerations, the Commission concludes that the State of Venezuela is responsible for the violations of the rights to fair trial and judicial protection enshrined in articles 8.1 and 25.1 of the American Convention in conjunction with the obligations established in Article 1.1 of the same instrument, to the detriment of the injured victims and the relatives of the deceased victims identified in this report.

D. Right to personal integrity of the relatives of the deceased victims in conjunction with Article 1(1) of the Convention.

87. The Commission and the Inter-American Court have found that the relatives of victims of certain human rights violations can themselves be considered victims.¹⁵² The Court has found that their psychological and moral integrity can be affected as a result of the particular situation suffered by victims, as well as by subsequent actions or omissions of domestic authorities in response to such acts.¹⁵³

88. In this case, the Commission has established that the Venezuelan State is internationally responsible for the deaths of the seven victims, and that the investigation of those deaths was not conducted with due diligence. Under such circumstances, the Court has found that:

the absence of a complete and effective investigation into the facts constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.¹⁵⁴

89. The Commission finds that the loss of loved ones in circumstances described in this report, as well as the lack of truth and justice, caused pain and suffering 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 Johannata Martínez Coralis, in violation of their right to psychological and moral integrity established in Article 5.1 of the American Convention, in conjunction with the obligations contained in Article 1.1 of the Convention.

V. CONCLUSIONS AND RECOMMENDATIONS

90. Based on the considerations of fact and of law, the Inter-American Commission concludes that the State is responsible for the violation of articles 4.1 (life); 5.1 and 5.2 (humane treatment); 8.1 (fair trial); and 25.1 (judicial protection) of the American Convention, in conjunction with the obligations established in articles 1.1 and 2 of the Convention.

¹⁵¹ See Order of the Inter-American Court of May 15, 2011. Provisional Measures regarding Venezuela. Matter of Internado Judicial de Ciudad Bolívar “Cárcel de Vista Hermosa.”

¹⁵² IACtHR. Report No. 11/10. Case 12,488. Merits. Members of the Barrios Family (Venezuela). March 16, 2010. 91; IACtHR. *Report on Terrorism and Human Rights* (2002), para. 227; I/A Ct. H.R. *Case of Cantoral Huamán and García Santa Cruz v. Peru*. Judgment of July 10, 2007, para. 112; *Case of Bueno Alves v. Argentina*. Judgment of May 11, 2007, para. 102.

¹⁵³ I/A Ct. H.R.. *Case of Cantoral Huamán and García Santa Cruz v. Peru*. Judgment of July 10, 2007, para. 112; *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006, para. 96.

¹⁵⁴ I/A Ct. H.R.. *Case of Valle Jaramillo v. Colombia*. Judgment of November 27, 2008, para. 102; *Case of the “La Rochela Massacre” v. Colombia*. Judgment of May 11, 2007, para. 195; *Case of Heliodoro Portugal v. Panama*. Ecuador, judgment of August 12, 2008, para. 146.

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF VENEZUELA,

1. Provide comprehensive reparations for the human rights violations declared in this report both for material and immaterial damage. The State must adopt the measures to provide economic compensation and satisfaction.

2. Provide the necessary measures of physical and mental health care for the rehabilitation of relatives of the deceased victims and the injured inmates, with their agreement and in coordination with them.

3. Continue the criminal investigation diligently, effectively and within a reasonable time in order to clarify the facts in a complete manner, identify all possible responsibility and impose the appropriate sanctions with respect to the human rights violations declared in the present report.

4. Order mechanisms of non-repetition, to include: (i) amendments of Article 8 of the Penitentiary Regimen Act to bring it into compliance with the standard set forth in this merits report; and (ii) the adoption of all measures necessary to ensure the guard personnel at detention centers are civilians and properly trained on penitentiary matters and on standards for the use of force pursuant to standards set forth in this merits report.