INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF MOTA ABARULLO *ET AL. V*. VENEZUELA

JUDGMENT OF NOVEMBER 18, 2020

(Merits, reparations and costs)

In the case of *Mota Abarullo et al. v. Venezuela*,

the Inter-American Court of Human Rights (hereinafter also "the Inter-American Court" or "the Court") composed of the following judges:

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

also present,

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter also "the American Convention" or "the Convention") and Articles 31, 32, 62, 65 and 67 of the Rules of Procedure of the Court (hereinafter also "the Rules of Procedure"), delivers this judgment structured as follows:

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I
INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE

1. *The case submitted to the Court.* On March 29, 2019, the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court the case of "José Gregorio Mota Abarullo and others (Deaths in the San Félix Prison)" against the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela"). The case relates to the alleged responsibility of the State for the deaths of José Gregorio Mota Abarullo, Gabriel de Jesús Yáñez Sánchez, Rafael Antonio Parra Herrera, Cristian Arnaldo Molina Córdova[1] and Johan José Correa as a result of a fire on June 30, 2005, in the cell in which they were deprived of liberty in the "Monseñor Juan José Bernal" Diagnosis and Treatment Center, a detention center for adolescents in conflict with the law attached to the National Children's Institute (INAM), located in San Félix, in the municipality of Caroní, in Ciudad Guyana, Bolivar State (hereinafter also "the Center" or "the INAM-San Félix"). The Commission determined that Venezuela had violated the rights to life and personal integrity of these individuals "in relation to the obligations with regard to children owing to non-compliance with the obligation of prevention and also the suffering caused." It alleged that the youths who died, and who were over 18 years of age at the time of the fire, had entered the Center when they were adolescents. It also identified "a series of elements that reveal[ed] the absence of a prison policy for the prevention of emergencies in the INAM-San Félix," which was reflected by "critical situations," particularly overcrowding and lack of infrastructure. In addition, it considered that the State could be attributed with the "negligence of the personnel of the Center and of the Fire Department in their actions to extinguish the fire." Furthermore, owing to the lack of an "effective remedy to clarify what happened" and to establish responsibilities, and taking into account the "impunity" in which the facts remain and the time that has elapsed since they occurred and since the indictment, in 2006, of those presumably responsible, the Commission determined that the rights to judicial guarantees and protection of the next of kin of those who died had been violated.

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

a) *Petition.* On October 12, 2007, the Commission received the initial petition lodged by the *Observatorio Venezolano de Prisiones* (OVP).

b) *Admissibility and Merits Reports.* On November 8, 2012, and October 5, 2018, respectively, the Commission adopted Admissibility Report No. 91/12 and Merits Report No. 118/18 (hereinafter "the Merits Report") in which it reached a series of conclusions[2] and made several recommendations to the State.

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[1] Regarding the name of Cristian Arnaldo Molina Córdova, it should be pointed out that the death certificate issued on July 1, 2005, referred to "Christian" Arnaldo Molina (*cf.* death certificate of July 1, 2005 (evidence file, f. 1215). However, in their pleadings and motions brief, the representatives have referred to "Cristian" Arnaldo Molina Córdova, and this is how the name appears in other documents, such as the summons to appear before the Eleventh Prosecutor of the Public Prosecution Service of the Second Circuit of the Criminal Judicial Circumscription of Bolivar State of August 5, 2005, and the exhumation record of January 25, 2006 (*cf.* summons dated August 5, 2005, and exhumation record of January 25, 2006 (evidence file, fs. 1527 to 1530 and 1731 to 1732, respectively)). For the purposes of this judgment, the Court will use the name "Cristian Arnaldo Molina Córdova."

[2] The Commission concluded that the State had violated the rights to life and to integrity of the five individuals who died (*supra* para. 1) pursuant to Articles 4(1), 5(1), 5(4), 5(5) and 5(6) of the Convention in relation to the obligations established in its Articles 1(1) and 19. It also determined that Venezuela had violated the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the Convention, in relation to the said Article 1(1), to the detriment of the following next of kin of those who died: Elvia Abarullo de Mota, Félix Enríquez Mota, Osmely Angelina Mota Abarullo, Myriam Josefina Herrera Sánchez, Jesús Juvenal Herrera Sánchez, Nelys Margarita Correa, Belkis Josefina Correa Ríos, Luis José Yáñez, Maritza del Valle Sánchez Ávila, María Cristina Córdova de Molina and Hugo Arnaldo Molina.

c) *Notification to the State.* The Merits Report was notified to the State on October 31, 2018, in a communication in which the Commission granted it two months to report on compliance with the recommendations. The Commission granted the State an extension of this time frame but, as it indicated, Venezuela failed to forward any information on compliance with the recommendations and or to request another extension.

3. *Submission to the Court.* On March 28, 2019, "given the need to obtain justice and reparation," the Commission submitted to the Court's jurisdiction "all the facts and human rights violations that [it had] establish[ed] in the Merits Report."[3]

4. *The Inter-American Commission's requests.* The Commission asked the Court to "conclude and declare" the international responsibility of the State for the violations indicated in its Merits Report (*supra* footnote 2). It also asked the Court to order measures of reparation and these are described and analyzed in Chapter VIII of this judgment. The Court notes with concern that more than 11 years elapsed between the lodging of the initial petition before the Commission and the submission of the case to the Court.

II
PROCEEDINGS BEFORE THE COURT

5. *Notification to the representatives and the State.* The Inter-American Court notified the Commission's submission of this case to the representatives of the presumed victims[4] (hereinafter also "the representatives"), and to the State on July 9, 2019.

6. *Brief with pleadings, motions and evidence.* On September 6, 2019, the representatives forwarded their brief with pleadings, motions and evidence (hereinafter, "pleadings and motions brief"), pursuant to Articles 25 and 40 of the Court's Rules of Procedure.[5] They asked the Court to declare that the State had violated the rights to life, personal integrity, judicial guarantees, judicial protection and "the rights of children deprived of liberty," pursuant to Articles 4, 5, 8, 25 and 19 of the Convention, respectively. They also indicated that Venezuela had violated the right to personal integrity of the next of kin of the deceased. They asked the Court to order various measures of reparation and the reimbursement of the costs and expenses of the proceedings as described below (*infra* Chapter VIII).

7. *Answering brief.* On December 16, 2019, the State presented its brief answering the submission of the case, the Merits Report, and the pleadings and motions brief (hereinafter "the answering brief") pursuant to Article 41 of the Rules of Procedure.[6] Venezuela acknowledged its international responsibility in the terms indicated below (*infra* paras. 13 and 14).

8. *Observations on the acknowledgement of responsibility*. On February 14 and 17, 2020, the

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[3] The Commission appointed then Commissioner Francisco José Eguiguren Praeli and then Executive Secretary Paulo Abrão as its delegates before the Court. It also appointed Silvia Serrano Guzmán, an Executive Secretariat lawyer at the time, and Analía Banfi, Executive Secretariat lawyer, as legal advisers.

[4] The *Observatorio Venezolano de Prisiones* (OVP) and the Cyrus R. Vance Center for International Justice represented the presumed victims in this case.

[5] On October 14, 2019, in response to a request by the Court's Secretariat, the representatives forwarded certain clarifications and documentation related to the documents attached to their pleadings and motions brief. That brief, together with its annexes, was forward to the State on October 16, 2019.

[6] On November 13, 2019, Venezuela appointed Larry Devoe Márquez as its Agent. On January 3, 2020, the State transmitted the documentary annexes to its answering brief, and the Inter-American Court received these on January 13, due to technical problems with its email. On January 15, 2020, the answering brief and its annexes were forward to the Commission and the representatives.

Inter-American Commission and the representatives, respectively, presented their observations on the State's acknowledgement of responsibility.

9. *Final written proceedings and oral evidence procedure.* In an order dated June 30, 2020,[7] under the provisions of Articles 15, 45 and 50(1) of the Rules of Procedure, the President, in consultation with the full Court, decided that, based on procedural economy, it was not necessary to call for a public hearing in this case.[8] Owing to some of the decisions taken in the order, the representatives appealed against it. On August 24, 2020, the Court issued an order in which it declared that the appeal was admissible and, partially modifying the President's order, decided to extend the time frame established for the presentation of written statements, and for two family members of the youths who died to provide their oral statements by videoconference. This took place on September 3, 2020.[9]

10. *Final written arguments and observations.* On October 7, 2020, the representatives, the State and the Commission forwarded their final written arguments and final written observations.

11. *Deliberation of the case.* The Court deliberated this judgment, in virtual sessions, from November 16 to 18, 2020.[10]

III
JURISDICTION

12. Venezuela became a State Party to the American Convention on August 9, 1977, and accepted the contentious jurisdiction of the Court on June 24, 1981. Subsequently, on September 10, 2012, the State denounced the American Convention. The denunciation took effect on September 10, 2013. According to Article 78(2) of the Convention, the Court has jurisdiction to hear this case, taking into account that the facts examined originated prior to the moment at which the denunciation of the Convention could produce effects.

IV
ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

A. The State's acknowledgement of responsibility and the observations of the Commission and the representatives

13. The ***State*** acknowledged its international responsibility in its answering brief, by indicating the following:

> The State […] acknowledges its international responsibility in these proceedings for the violation of [the] rights

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[7] Available at: http://www.corteidh.or.cr/docs/asuntos/motaabarulloyotros_30_06_20.pdf.

[8] It should be noted that, previously, on March 17, 2020, by Decision 1/20 (available at: http://www.corteidh.or.cr/docs/comunicados/cp_18_2020.pdf), the Court decided to suspend the calculation of all deadlines due to the health emergency caused by the COVID-19 pandemic. On April 16, 2020, the suspension was extended until May 20, 2020, by the Court's Decision 2/20 (available at: http://www.corteidh.or.cr/docs/comunicados/cp_28_2020.pdf).

[9] The Court's order of August 24, 2020, is available at: http://www.corteidh.or.cr/docs/asuntos/motaabarulloyotros_24_08_20.pdf. The family members who provided an oral statement by videoconference were Belkis Josefina Correa Ríos (Johan José Correa's sister) and Myriam Josefina Herrera Sánchez (Rafael Antonio Parra Herrera's grandmother).

[10] Owing to the exceptional circumstances caused by the Covid-19 pandemic, this judgment was deliberated and adopted during the 138th regular session which was held virtually using technological means as established in the Court's Rules of Procedure.

> to life and personal integrity established in Articles 4(1), 5(1), 5(4), 5(5) and 5(6) of the American Convention on Human Rights, in relation to the obligations established in its Articles 1(1) and 19, to the detriment of José Gregorio Mota Abarullo, Gabriel de Jesús Yáñez Sánchez, Rafael Antonio Parra Herrera, Cristi[a]n Arnaldo Molina Córdova and Johan José Correa, under the terms and conditions established in the Merits Report […].
>
> It also acknowledges its international responsibility in these proceedings for failing to provide an effective remedy to clarify what happened and to establish the corresponding responsibilities in violation of Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to the obligations established in its Article 1(1), also under the terms and conditions established in the said Merits Report.

14. Venezuela also indicated that "[i]n principle and in general […] it undertook to comply with the corresponding integral reparations," based on the Court's case law and criteria followed in similar cases. In addition, it referred to different types of measures of reparation: (a) it "under[took]," from the moment the answering brief was presented, to provide "health care to the victims" and, to this end, it "invite[d]" them to contact the state authorities; (b) it also "under[took] to facilitate, implement and continue the criminal proceedings that were underway to clarify what happened and to establish those responsible," and (c) it "advise[d]" that, since the facts of the case occurred, it "had been […] adopting a series of legislative, administrative and educational measures to ensure that events such as those that occurred in this case are never repeated." In this regard, it indicated different actions that are described below (*infra* Chapter VIII).

15. The ***Commission*** "welcomed" the acknowledgement of responsibility, understanding that "it makes a positive contribution" to the proceedings and to the "dignification of the victims." It noted that it covered "all the violations declared [in the Merits Report]" and that "it signified an acceptance of the facts of the case." In addition, it "welcome[d]" the measures of non-repetition that the State advised that it had adopted since 2006 (*infra*, Chapter VIII), although it understood that "to conclude that [the recommendations made in the Merits Report] had been complied with fully," it was necessary to evaluate the implementation and effectiveness of those measures. It noted that the State had not referred to "measures of financial compensation and satisfaction."

16. The ***representatives*** indicated that "[f]ull acknowledgement of international responsibility […] is important and has been long-awaited by the victims' families." They considered that, consequently, the facts of the case should be considered "incontrovertible." They asserted that, based on Article 41(3) of the Rules of Procedure, the Court should consider that the facts and "claims" indicated in the pleadings and motions brief had been "accepted," because the State had not expressly denied them.

17. Regarding the reparations, the representatives indicated that Venezuela had not ruled on those they had requested. However, they noted that the acknowledgement of responsibility complied with a measure of satisfaction they had requested consisting in the acknowledgement of international responsibility. They added that the investigation into the events had not been completed, that the measures of rehabilitation offered by the State were insufficient, and that the State's indication that it had adopted the necessary measures of non-repetition was not "credible." They indicated that there was a "lack of commitment" on the part of the State "to ensure the human rights of those deprived of liberty," and that there were "constant violations" of such rights. In this regard, they mentioned various situations, unrelated to this case, of overcrowding, lack of medical care, deaths and other occurrences.

B. Considerations of the Court

18. The Court recalls that, in accordance with Articles 62 and 64 of the Rules of Procedure, and in exercise of its powers in relation to the judicial protection of human rights, a matter of international public order, it is responsible for ensuring that acknowledgements of responsibility

are acceptable for the purposes of the inter-American system.[11] On this basis, it will examine the implications of the acknowledgement of responsibility in this specific case, considering its terms and its effects in relation to the facts of the case, the legal claims and the measures of reparation.

B.1. The facts

19. Venezuela acknowledged its international responsibility with regard to all the rights and violations indicated by the Commission, "under the terms and conditions established in the Merits Report." The Court understands that the State, by accepting all the human rights violations described in the Merits Report, has also acknowledged all the facts contained in that report which resulted in those violations.

B.2. The legal claims

20. Regarding the legal claims, in view of the terms of the acknowledgement of responsibility, the Court notes that the dispute has ceased in relation to Venezuela's international responsibility for the following violations: (a) the rights to life and personal integrity recognized in Articles 4(1), 5(1), 5(4), 5(5) and 5(6) of the American Convention on Human Rights, in relation to the obligations established in its Articles 1(1) and 19, to the detriment of the five deceased (*supra* para. 1), and (b) the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the Convention, in relation to its Article 1(1), to the detriment of the members of the deceased's families identified in the Merits Report (*supra* footnote 2), owing to the lack of "an effective remedy to clarify what happened and to establish the corresponding responsibilities."[12]

21. Hence, the acknowledgement of responsibility expressly covers all the violations of the provisions of the Convention alleged by the Commission and the representatives. However, in the case of Article 5(1) of the Convention, the State did not rule directly on the representatives' allegation – which the Commission did not make – that the right to personal integrity of the members of the deceased youths' families had been violated. Therefore, the Court understands that the violation of the personal integrity of the family members of the youths who died is not covered by the acknowledgement of responsibility and that it is necessary to examine this violation alleged by the representatives.

B.3. The reparations

22. Regarding the reparation of the human rights violations, the Court notes that the State indicated that it would comply with the corresponding measures. The State also undertook to provide "health care" to the victims and to expedite the investigation. In addition, it reported on the implementation of measures tending to avoid a repetition of the facts. However, the Commission and the representatives did not accept that the effectiveness of such measures had been proved and noted that the State had not referred to either the measures of satisfaction or the pecuniary measures they had requested. Moreover, the representatives understood that, to date, the investigation procedures had been insufficient as were the measures of rehabilitation offered by the State. Based on the foregoing, the Court will take the appropriate decisions with regard to the measures of reparation that have been requested.

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[11] *Cf. Case of Manuel Cepeda Vargas v. Colombia*. *Preliminary objections, merits, reparations and costs.* Judgment of May 26, 2010. Series C No. 213, para. 17, and *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and reparations.* Judgment of September 1, 2020. Series C No. 411, para. 19.

[12] This was determined by the Commission in paragraph 89 of the Merits Report, and has been accepted by the State according to the terms of its acknowledgement of responsibility (*supra* para. 13).

B.4. Assessment of the implications of the acknowledgement of responsibility

23. The Court, as in other cases,[13] appreciates the acknowledgement of international responsibility which makes a positive contribution to these proceedings, to the validity of the principles that inspire the Convention and to the satisfaction of the needs for reparation of the victims of human rights violations. Venezuela's acknowledgement of its international responsibility produces full legal effects pursuant to Articles 62 and 64 of the Rules of Procedure, and has a significant symbolic value in order to avoid the repetition of similar facts. The Court considers that the dispute in this case has ceased with regard to the facts and the need to adopt measures of reparation. The dispute has also ceased with regard to most of the alleged human rights violations, with the exception of the violation of the right to personal integrity of the family members of the five young men who died that has been alleged by the representatives and not expressly recognized by the State (*supra* paras. 13 and 21).

24. Without prejudice to the foregoing, the Court finds it necessary to deliver this judgment to determine the facts that occurred. This will contribute to the reparation of the victims, to avoiding a repetition of similar facts and, in sum, to satisfying the purposes of the inter-American human rights jurisdiction.[14]

25. Consequently, the Court considers it necessary to examine the implications of the State's international responsibility in relation to the fire that occurred in the INAM-San Félix on June 30, 2005, and the subsequent investigation actions. It is significant that this case will allow the Court to examine alleged human rights violations with regard to a juvenile detention center in which the violation of the rights of the child has been alleged in relation to individuals who, having entered the institution as juveniles, had turned 18 at the time of the central facts of the case. It is also pertinent to examine the arguments concerning the violation of the right to personal integrity of the family members of the deceased because, as indicated, this was not expressly recognized by the State (*supra* paras. 13, 21 and 23).

26. The Court will rule on the reparations corresponding to the human rights violations acknowledged by the State and determined in this judgment.

V
EVIDENCE

A. Admissibility of the documentary evidence

27. The Court received diverse documents presented as evidence by the Commission and the parties which, as in other cases, it admits in the understanding that they were presented at the

[13] *Cf. Case of Benavides Cevallos v. Ecuador. Merits, reparations and costs.* Judgment of June 19, 1998. Series C No. 38, para. 57, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 20.

[14] *Cf.*, similarly, *Case of Tiu Tojín v. Guatemala. Merits, reparations and costs.* Judgment of November 26, 2008. Series C No. 190, para. 26, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 21.

appropriate procedural moment (Article 57 of the Rules of Procedure)[15] and that their admissibility was not contested or challenged.[16]

28. Also, based on the order of the President of June 30, 2020 (*supra* para. 9), the written version of the expert opinion provided by Mario Coriolano in the case of *Pacheco Teruel et al. v. Honduras* heard by this Court is incorporated into the body of evidence, as documentary evidence.[17]

29. The representatives forwarded 20 documents when presenting their observations on the State's acknowledgement of responsibility (*supra* para. 8). Two of them refer to facts relating to the case that took place after the presentation of the pleadings and motions brief. Therefore, they are evidence of supervening facts in the terms of Article 57(2) of the Rules of Procedure and are admitted.[18] The other 18 documents had not been requested and were not presented at the corresponding procedural moment. Consequently, they are not admitted.[19]

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[15] In general and according to Article 57(2) of the Rules of Procedure, documentary evidence may be presented together with the brief submitting the case, the pleadings and motions brief, or the answering brief, as applicable, and evidence forwarded outside these procedural occasions is not admissible, save for the exceptions established in the said Article 57(2) of the Rules of Procedure (namely, *force majeure* or grave impediment) or if it refers to a supervening fact, that is, one that occurred following the said procedural moments (*cf. Case of the Barrios Family v. Venezuela. Merits, reparations and costs.* Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 23).

[16] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits.* Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 23.

[17] *Cf. Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs.* Judgment of April 27, 2012. Series C No. 241.

[18] These are: Record of postponement of oral public hearing, Itinerant Court of Law of Bolívar State of November 6, 2019 (annex 1), and Order deciding to issue an arrest warrant, Itinerant Court of Law of Bolívar State of November 6, 2019 (annex 3).

[19] These are: United Nations High Commissioner for Human Rights, Oral update on the human rights situation in the Bolivarian Republic of Venezuela, September 2019 (annex 2); Inter-American Commission on Human Rights, press release of February 4, 2020 (annex 4); Committee on the Rights of the Child, Concluding observations on the combined third to fifth periodic reports of the Bolivarian Republic of Venezuela, October 13, 2014 (annex 5); Office of the Ombudsman, "*Defensor del Pueblo: Debemos trabajar articuladamente como sistema para la protección de las y los adolescentes*" [We must work in a coordinated way as a system to protect adolescents], November 30, 2018 (annex 6); OVP, "*Cinco presos han muerto a inicio del 2020*" [Five prisoners have died at the start of 2020], January 10, 2020 (annex 7); OVP, "*Decapitan un preso en medio de un motín por hacinamiento*" [Prisoner beheaded in a riot due to overcrowding], September 9, 2019 (annex 8); OVP, "*Hambre y enfermedades acaban con la vida de seis presos en lo que va de octubre de 2019*" [Hunger and disease have ended the life of six prisoners to date in October], October 11, 2019 (annex 9); OVP, "*Humberto Prado: Iris Varela con sus prácticas solo agrava la crisis penitenciaria [Humberto Prado: Iris Varela's actions are merely aggravating the prison crisis]*, November 10, 2016 (annex 10); OVP, "*Palo y bollo es lo que han recibido presos de la* cárcel 26 de Julio" [Prisoners in the 26 de Julio Prison merely receive bread and beatings], July 12, 2019 (annex 11); OVP, "*Presos del Rodeo III: 'Nos están matando de hambre'*" [Prisoners in Rodeo III: "They are starving us], December 11, 2019 (annex 12); OVP, "*Una sola comida al día reciben los presos del Centro Penitenciario de Occidente*" [Prisoners in the Occidente Prison only fed once a day], November 13, 2013 (annex 13); "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, UN Doc. A/Res/60/147, adopted by the United Nations General Assembly on December 16, 2005 (annex 14); PROVEA, "*970 personas fueron víctimas de tratos y penas crueles, inhumanas y degradantes durante el 2018*" [970 individuals were victims of cruel, inhuman or degrading treatment or punishment during 2018] June 4, 2019 (annex 15); REDHNNA, "*Situación de los derechos a nivel de vida adecuado, salud y servicios de salud y protección ante la violencia que afecta a NNA, periodo 2012-2016*" [Situation of the rights to a decent life, health and health services, and protection from the violence that affects children and adolescents] (annex 16); Rousset Siri, Andrés Javier, "*El concepto de reparación integral en la jurisprudencia de la Corte Interamericana de Derechos Humanos*," in the *Revista Internacional de Derechos Humanos*, 2011 (annex 17); Silva García, Fernando, "*Aportaciones del sistema de reparaciones de la Corte Interamericana al Derecho Internacional de los Derechos Humanos* (annex 18); Transparencia Venezuela, "*Informe Es Legal pero Injusto, El Acceso a la información Pública es una condición necesaria para la democracia*" [Report is legal but unfair. Access to public information is a necessary condition for democracy], 2018 (annex 19), and *Una ventana a la libertad, Trabajo especial sobre la situación de los privados de libertad en las sedes de*

B. Admissibility of the testimonial and expert evidence

30. The Court finds it pertinent to admit the expert opinions provided by affidavit by Corina Giacomello and Juan E. Méndez, as well as the statements made in person by the victims Belkis Josefina Correa Ríos and Myriam Josefina Herrera Sánchez during the videoconference procedure (*supra* para. 9), insofar as these are in keeping with the purpose defined by the President in the order requiring them and the purpose of this case.

31. In the case of the statements of the victims Elvia Abarullo, Jesús Juvenal Herrera Sánchez, Luis José Yáñez and Maritza del Valle Sánchez Ávila, together with those of expert witnesses Magaly Mercedes Vásquez González and Marlon José Barreto Ríos, and witnesses Ovidio Antonio Peña Varela and Rossy Mariana Mendoza Rojas, the Court notes that these were not provided by affidavit. According to the parties this was due to difficulties arising from the Covid-19 pandemic.[20] In view of the reasons indicated by the parties, all the said written statements are admitted.[21]

VI
FACTS

32. In this chapter the Court will establish the facts of the case based on the factual framework submitted to is consideration by the Commission. It will take into account that the State has accepted this (*supra* paras. 13 and 19), and also that Venezuela has not disputed facts indicated by either the Commission or the representatives. This is without prejudice to any more precise information that may arise from the evidence.

33. The Court notes that the representatives alleged a contextual situation related to the "human rights situation" and "detention centers in Venezuela." These factual aspects of the context were not included in the Merits Report[22] and, therefore, do not form part of the factual framework of the case. Consequently, they will not be considered.

34. The facts of the case relate to the death of five individuals deprived of their liberty in the INAM-San Felíx as a result of a fire that occurred in their cell on June 30, 2005. They encompass the situation of this detention center as well as the actions of state authorities at the time of the fire and subsequently, including during the investigation and judicial proceedings. Accordingly, the Court will now describe the factual circumstances concerning: (a) the deceased victims and their family members; (b) the situation of the INAM-San Felíx at the time of the facts; (c) the events of June 30, 2005, and (d) the investigation and the judicial proceedings.

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reclusión de adolescentes en conflicto con la ley penal en Venezuela [A window to freedom. Special report on the situation of those deprived of liberty in detention centers for adolescents in conflict with the law], September 2018 (annex 20).

[20] On August 24, 2020, before forwarding the written statements, the representatives asked whether the statements of the victims and the opinion of expert witness Vásquez González could be presented without the intervention of a public notary, alleging problems derived from the pandemic. On the instructions of the Court's President, the representative's request received a favorable response on August 31, 2020. Additionally, on September 4, 2020, Venezuela forwarded the statements of Marlon José Barreto Ríos, Ovidio Peña Varela and Rossy Mariana Mendoza with no record that they had been notarized. It alleged that the notarial and public registry offices were not offering services given the "state of alert" decreed in response to the said pandemic.

[21] It is noted that, even though they were proposed by the representatives and, in the President's order of June 30, 2020, the Court ordered their reception in writing, it did not receive the statements of the victims Félix Enríquez Mota, Osmely Angelina Mota, María Cristina Córdova de Molina and Hugo Arnaldo Molina.

[22] Although the Commission included a section entitled "Context and background" in the Merits Report, this only referred to aspects relating to the INAM-San Félix and the victims in this case.

A. The deceased victims and their family members

35. The following five individuals were deprived of their liberty in the INAM-San Felíx in 2005: (a) José Gregorio Mota Abarullo, born on June 26, 1985; (b) Rafael Antonio Parra Herrera, born on December 2, 1986; (c) Johan José Correa, born on January 29, 1987; (d) Gabriel de Jesús Yáñez Sánchez, born on April 11, 1987, and (e) Cristian Arnaldo Molina Córdova, born on April 17, 1987. The five young men had entered the INAM-San Félix owing to offenses committed while they were under 18 years of age. On June 30, 2005, when the fire in their cell occurred, they were all 18, with the exception of José Mota, who was 20 years old.

36. The family members of each of the five young men are: (a) Elvia Abarullo de Mota, Félix Enríquez Mota and Osmely Angelina Mota Abarullo (José Mota's mother, father and sister, respectively); (b) Myriam Josefina Herrera Sánchez and Jesús Juvenal Herrera Sánchez (Rafael Parra's grandmother and uncle, respectively); (c) Nelys Margarita Correa, who, according to the representatives, died in July 2019, and Belkis Josefina Correa Ríos (Johan Correa's mother and sister, respectively); (d) Luis José Yáñez and Maritza del Valle Sánchez Ávila (Gabriel Yáñez's father and mother, respectively), and (e) María Cristina Córdova de Molina and Hugo Arnaldo Molina (Cristian Molina's mother and father, respectively).

B. The situation of the INAM-San Felíx at the time of the facts

37. The INAM-San Felíx is a juvenile detention center that, at the time of the facts and previously, also housed adults deprived of their liberty for criminal offenses committed when they were minors.[23]

38. In 2005, the INAM-San Felíx was experiencing a series of structural problems such as overcrowding, lack of sufficient custodial staff, and the absence of adequate security installations and measures. Not only were the Center's authorities aware of this situation, but it was also known to the judicial authorities.[24] Other shortcomings also existed such as insufficient control of the entry of prohibited substances and the failure to implement educational programs and programs addressed at the social rehabilitation of those deprived of their liberty. Furthermore, inmates were not separated into "those in pre-trial detention and those sentenced" (*infra* para. 42), or based on their age.

39. Regarding overcrowding, even though the Center had the capacity to accommodate 30 youths, it was reported that, throughout 2004 and 2005, it had an average population of from 75 to 90 and even, on one occasion, up to 105 inmates. In mid-2005, the Center housed approximately 50 youths, without having the necessary infrastructure.[25] Moreover, it was understaffed: there were two "guides"[26] on each shift, and this was insufficient to oversee the

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[23] *Cf.* Letter from J.A., Director of the INAM-San Félix, to H.A., Eighth Prosecutor, Public Prosecution Service, of February 17, 2004 (evidence file, f. 1532). It should be explained that, in this judgment, those persons who have not intervened in the processing of the case in the international sphere before the Inter-American Commission or the Inter-American Court have been indicated either by their initials or by a reference to the positions they hold.

[24] The body of evidence includes a note sent in 2004 to an enforcement judge, in which N.R., a guide at the Center, stated that the Center was overcrowded, "insufficiently staffed" and with inadequate infrastructure, indicating that this could jeopardize the integrity of those deprived of liberty (*cf.* letter from N.R. to R.M., temporary enforcement judge, of September 10, 2004 (evidence file, f, 1236)).

[25] Regarding this overcrowding, the situation in the cell of the youths who died in the fire at the time of the incident is illustrative of this: it housed seven individuals, two of whom were released shortly before the incident (*infra* paras. 44 and 49), but only had four beds (*cf.* Report of the Toxicology and Criminalistic Laboratory of the Bolívar State Delegation of July 1, 2005, under file H-043.797 (evidence file, fs. 1261 and 1262)).

[26] Regarding the designation "*guía*" [guide] used in relation to some of those who worked in the Center, this is used

institution's population. In addition, there were no permanent police or security personnel, which meant that searches were irregular and facilitated the possible introduction of prohibited substances into the center.[27]

40. Furthermore, the Center had no plan to respond to emergencies or fire prevention and protection measures. In this regard, an expert appraisal of August 2005 concluded that the building did not have "fire detection systems or alarms in any of the areas";[28] nor did it have fire extinguishers.[29] The premises did not have sufficient lighting and electricity installations. The only light in the dormitories came from the lamps in the corridors.[30]

41. Also, at the time of the facts, the educational programs of the INAM-San Felíx were suspended due to lack of materials. In the months before the fire, concerns had been raised about the failure to provide copies of the institution's regulations to the inmates, and about failure to comply with their individual plans. The president of the National Children's Institute (INAM) had warned that the facilities, their precarious conditions, and the absence of resources "did not permit the rehabilitation of juvenile offenders."[31] In July 2005, the National Council on the Rights of Children and Adolescents referred to "the lack[, in the INAM-San Félix,] of individual programs [and] plans and the failure to ensure the rights to: education, health, development, personal integrity, culture, recreation, and information, among others."[32] Added to this, reports had been received concerning mistreatment of the inmates.[33]

42. There was also information indicating that, in the INAM-San Felíx, at the time of the facts, the adult population was not held separately from those inmates who had not yet reached the age of 18.[34] According to statements by state authorities, "the precarious nature of [the INAM-

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on a list of its staff (cf. List of the staff of the INAM-San Felíx who were working on June 30, 2005 (evidence file, fs. 1361 and 1362)).

[27] See Record of interview with B.H. of July 8, 2005 (evidence file, fs. 1254 to 1256). It is on record that in a communication dated May 12, 2004, the Director of the Center at the time requested the assignment of feminine police personnel in order to search the mothers who were visiting the inmates (*cf.* Communication 294-04, of J.A., Director of the INAM-San Felíx, addressed to the Police Commissioner H.B., of the General Inspectorate, of May 12, 2004 (evidence file, f. 1264)). According to a communication of August 19, 2005, the request was still pending at that date (*cf.* letter of L.L., Commander of the National Guard to F.R., Prosecutor 11 of the Public Prosecution Service, of August 19, 2005 (evidence file, fs. 1266 to 1268)).

[28] Scientific, Criminal and Criminalistic Investigation Bureau (CICPC). Incidents Division. Technical Report No. 9700-038-293, of August 31, 2005 (evidence file, fs.1286 to 1304).

[29] *Cf.* Record of interview with B.H. of July 8, 2005.

[30] *Cf.* Scientific, Criminal and Criminalistic Investigation Bureau (CICPC). Incidents Division. Technical Report No. 9700-038-293, of August 31, 2005.

[31] National Assembly press release of February 17, 2004, entitled "*Informó [P]residenta de la institución. Jóvenes del INAM-San Felíx se quemaron ellos mismos*" [The president of the institution reported that the youths of the INAM-San Felíx set fire to themselves] (evidence file, fs. 1310 to 1312).

[32] Report of the National Council on the Rights of Children and Adolescents of July 2005 (evidence file, fs. 1270 to 1284).

[33] *Cf.* Record of interview with inmate C.M. of August 3, 2005 (evidence file, fs. 1569 to 1572); Record of appearance of the First Instance Enforcement Judge Y.V. on August 31, 2005 (evidence file, fs. 1564 to 1567), and Note DP/DDEBA-0562-05 from the Delegate Ombudsperson of the Ombudsman's Office M.P. to Prosecutor V.S. of July 8, 2005 (evidence file, fs.1573 to 1576).

[34] In this regard, it should be noted that, according to article 641 of the Organic Law for the Protection of Children and Adolescents (LOPNNA): "If the adolescent's birthday occurs during his confinement, he shall be transferred to an institution for adults, from whom he shall always be physically separated. Exceptionally, the judge may authorize that he remain in the juvenile detention center until he reaches twenty-one years of age, taking into account the recommendations

San Felíx] premises did not permit separating the minors from the young adults," a situation that "resulted in a series of constant confrontations [between the inmates]," which it was impossible to control.[35] The fact that disputes existed among inmates was well-known to the Center's staff and the judicial personnel associated with the Center. In addition, there was no separation between "those in pre-trial detention and those sentenced" because this had "not [been] provided for in the design of the establishment."[36]

43. In the practice, the transfer of a youth was only ordered when the Director of the Center requested this, in the understanding that he represented a danger for the physical integrity of the others.[37] The eventual transfer of the inmates of the INAM-San Felíx corresponded to the Vista Hermosa Prison in Ciudad Bolívar, notorious as one of the most dangerous in Venezuela.[38] That prison lacked the conditions to protect the rights of the young adults effectively. This situation acted as a kind of threat. Thus, it was indicated that "they were threatened that if they misbehaved the court would be informed so that it would order their transfer to Ciudad Bolívar."[39]

C. The events of June 30, 2005

44. On the morning of June 30, 2005, there were seven youths in cell 4 of the INAM-San Felíx: José Mota,[40] Rafael Parra, Johan Correa, Gabriel Yáñez, Cristian Molina and another two young men, C.Z. and J.L. Ten individuals were working in the Center that day: the guide N.R., who was acting as the warden of the Center (even though his rank was "Guide II"), another three guides, three social workers, a teacher, a guardian and a secretary.[41]

45. At lunchtime, a fight broke out between Rafael Parra, together with the other youths housed in cell 4, and C.A., nicknamed "the Boxer," from cell 2.

46. By 4 p.m., six staff had left the Center. Those who remained to look after the population of about 50 youths were the guides, N.R., F.G. and J.C., and the social worker B.H.[42]

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of the establishment's technical team, as well as the type of offense committed, and the circumstances of the act and the perpetrator."

35 National Assembly press release of February 17, 2004, entitled *"Informó [P]residenta de la institución. Jóvenes del INAM-San Felíx se quemaron ellos mismos."*

36 Record of inspection of the INAM-San Felíx of April 21, 2005 (evidence file, fs. 1240 to 1242).

37 In this regard, the First Instance Enforcement Judge who intervened in the cases of the youths who died in the fire indicated that she had taken into account the criteria of the Organic Law for the Protection of Children and Adolescents (LOPNNA), an absence of negative conduct reports, and compliance with the individual plan, concluding that, if the preceding aspects were favorable, "it was unfair to order the transfer to a prison in those conditions" (Statement by Y.B. of August 31, 2005 (evidence file, fs. 1319 to 1322)).

38 The indication that the Vista Hermosa Prison was "one of the most dangerous in Venezuela" was made in paragraph 29 of the Merits Report issued by the Commission, as one of the factual aspects of the case. This has not been disputed and, as indicated (*supra* para. 19), Venezuela has acknowledged the factual circumstances described in the Merits Report.

39 Statement by Y.B. of August 31, 2005.

40 It is placed on record as part of the factual background that, in April 2005, a measure of "supervised freedom" had been issued in favor of José Mota and that, following an appeal, he was apprehended on June 29, 2005, the day before the fire so that he could undergo psychiatric tests.

41 *Cf.* List of the INAM-San Felíx staff who were working on June 30, 2005. That day, contrary to others, there was no police support (*cf.* Statement by N.R. of July 29, 2005 (evidence file, fs. 1249 to 1252)).

42 *Cf.* List of INAM-San Felíx staff who were working on June 30, 2005. Despite the social worker's check-out time indicated on that document, B.H. remained after this. Later, she explained that she had stayed on "owing to the situation

47. In the afternoon, at around 4 p.m., the youths housed in cell 4 were in the television room receiving visits from their family members. The youths housed in dormitory 7 were also receiving visits in the dining room.[43]

48. When the visits ended, the youths from dormitory 7 refused to return to their cell and, according to guide J.C., "they ran off […] because they wanted to fight with the boys [from cell 4]." He explained that they "managed to control them and return them [to dormitory 7]."[44] Then, guide J.C. went to the television room and told the family members of the youths from dormitory 4 that the visit had to end. The family members expressed their concern regarding the situation and the guide told them to calm down and that everything was under control.

49. Just before 4.30 p.m., guide N.R. communicated with the other guides to advise them that he had received "release orders" for the youths C.Z. and J.L. When the family members of the youths housed in cell 4 were ending the visit, they noted that guide J.C. was letting the youths C.Z. and J.L. out. The latter shouted "boys, take care in the corridors because they're waiting from you, they're planning something." In this situation, the family members of the other five youths in cell 4 advised them not to fight because they risked being transferred to the prison in Ciudad Bolívar. Guide N.R. stated that "when [they] let [C.Z. and J.L.] out of the dormitory, the other inmates made a commotion," saying "the whores and hypocrites are leaving" while "kicking the bars." He added that he entered the Center to verify what was happening and having observed that the situation "had calmed down," he returned to the outside area.[45]

50. Later, the guides decided "to take [the inmates] out, dormitory by dormitory [for dinner] owing to the tense situation."[46] Thus, after returning the inmates of dormitory 4, at approximately 4.45 p.m., guides F.G. and J.C. went to take the youths from dormitory 2 to dinner. At that time, dormitory 2 housed 11 young men.

51. The inmates of dormitory 2 met the guides with pointed objects. Guide J.C. stated that the youths asked them for the keys "because they were going to kill the [young men] in [cell 4]," and tried to take the key from guide F.G., who, struggling, was able to avoid this and ran off.[47]

52. Some of the inmates of dormitory 2 approached dormitory 4, uttering threatening words and urging other inmates to join them. Despite this, guide F.G. was able to return the young men to dormitory 2. Then he, together with guide N.R., entered the dormitory in order to confiscate the weapons. While these guides were in dormitory 2, guide J.C. went out into the corridor and realized that there was a fire in dormitory 4 and the inmates were on fire. The youths housed in that cell had set fire to several mattresses near to the door as a defense

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that was occurring" among the inmates of cells 4 and 7 (Statement by B.H. of July 29, 2005 (evidence file, fs. 1389 to 1392)).

[43] Statement by J.C. of July 29, 2005 (evidence file, fs. 1370 to 1373). The family members of the young men in cell 4 who were present were: María Cristina Córdova de Molina, Belkis Josefina Correa Ríos, Elvia Abarullo de Mota, Osmely Angelina Mota Abarullo and Maritza del Valle Sánchez Ávila.

[44] Statement by J.C. of July 29, 2005.

[45] Statement by N.R. of July 29, 2005.

[46] Statement by F.G. of August 8, 2005 (evidence file, fs. 1326 to 1329).

[47] Statement by J.C. of July 29, 2005. One of the youths from cell 2 who was interviewed after the events indicated that they wanted to speak to guide N.R., "so [they] all ran outside and went on strike" (interview with L.C. of August 9, 2005 (evidence file, fs. 1402 and 1403)).

mechanism to prevent the inmates of cell 2 from entering.[48] The fire spread towards the interior of the dormitory, resulting in a considerable amount of smoke and ash.[49]

53. Guide J.C. stated that "about three minutes passed from the time the young men [in dormitory 4] began to call [him] until he reached the cell, at approximately [5 p.m.]"[50] However, C.M., an inmate who helped with the cleaning, stated that guide J.C. took "about five minutes" to help the presumed victims after hearing their cries.[51]

54. Guide J.C. argued that there had been no time to provide effective assistance to the victims. He stated that he had shouted and asked guides N.R. and F.G. for help and to bring the keys. He added that he had called inmate C.M. and they threw water on the mattresses and other belongings.[52] Guide N.R. stated that it took him around three minutes to go from cell 2 to cell 4 after he had been advised of the situation by guide J.C. He also indicated that "when [he] reached [dormitory 4, he] could not hear voices […] or noise, only the flames that were spreading throughout the dormitory and the smoke." According to this statement, the guides, and inmate C.M. tried to put out the fire with buckets of water.[53] Guide J.C. stated that they did not have fire extinguishers and that they "did what [they] could."[54] An inmate of cell 2 indicated that "the boys burned because, instead of opening the door, [guide J.C.] ran along the passage yelling that cell [4] was on fire."[55]

55. The youths C.Z. and J.L., together with the family members of the youths of cell 4 who had visited them that day were nearby, outside the Center, when the fire broke out. Osmely Mota questioned the account given by guide N.R. She asserted that N.R. was "sitting at the entrance playing chess, [when José Mota] and [Rafael] Parra started shouting 'N.R., it's a riot." She added that she and other family members were "surprised that [N.R.] did not hear them, as [they], who were outside, heard them." She indicated that it was only when the family members began to shout that N.R. "ran inside," and that when the family members started to see smoke they wanted to enter the building, but social worker B.H. closed the gate.[56]

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48 C.M. explained that, although guide F.G. had the keys to the cells, the inmates of cell 2 had taken a key from guide J.C., but it was the key to his car. Then, some inmates of cell 2, with this key, went to cell 4 and threatened to open the door. Consequently, the inmates of cell 4 set fire to a mattress. "Then they wanted to put out the fire because the walls started to catch fire […] and they threw other mattresses on top of those that were already ablaze" (Record of interview with inmate C.M. on August 3, 2005).

49 *Cf.* Scientific, Criminal and Criminalistic Investigation Bureau (CICPC). Incidents Division. Technical Report No. 9700-038-293, of August 31, 2005. The Technical Report "determined that the fire […] originated owing to the application of a source of external heat (naked flame) to combustible material in [cell 4], and the fire spread […] to the other areas, resulting in a large amount of smoke and ash." It also established that there was no evidence of the use of "any accelerant substance," and ruled out that the fire had been caused by "some type of electrical device, because there were no electrical installations in the cell." In this regard, cell 4 did not contain a power supply; however, the inmates had improvised a cable to have electricity in the cell. Apparently, the inmates of cell 4 set fire to the mattresses with devices they had obtain illegally from their visitors, taking advantage of the Center's lack of security (*cf.* Statement by N.R. of July 29, 2005, and Statement by F.G. of August 8, 2005). Social worker B.H. explained that "when the police are absent, visitors are not searched" (Record of interview with B.H. of July 8, 2005).

50 Statement by J.C. of July 29, 2005.

51 Record of interview with C.M. of August 3, 2005 (evidence file, fs. 1306 to 1308).

52 Statement by J.C. of July 29, 2005.

53 Statement by N.R. of July 29, 2005.

54 Record of reconstruction of the events on October 31, 2006 (evidence file, fs. 1417 to 1424).

55 Interview with C.L. of August 8, 2005 (evidence file, fs. 1411 and 1412).

56 Record of interview with Osmely Mota of July 8, 2005 (evidence file, fs. 1384 to 1387).

56. When social worker B.H. heard the shouts she called 171, the Bolívar Autonomous Emergency Service (hereinafter also "the 171 service"), reporting what was happening and that there were no police officers at the Center. She made three calls between 4.56 p.m. and 5.04 p.m. The 171 service arrived at 5.15 p.m.,[57] but without proper equipment; then the fire department arrived. The first fire-fighting unit that arrived did not bring the appropriate equipment to enter and fight the fire, so it was necessary to wait for a second unit, which came from Unare and arrived later.

57. Before the fire-fighters were able to go into action, inmate C.M. managed to open the bars of cell 4 and, with the help of paramedics who arrived from the 171 service, the guides removed José Mota and Gabriel Yáñez alive. Johan Correa, Rafael Parra and Cristian Molina had perished and were removed from the cell about half an hour later. When the fire-fighters arrived the fire was almost out.

58. Subsequently, the youths Mota and Yáñez were transferred to the Manuel Piar Clinic, which initially refused to admit them owing to the alleged absence of an agreement with the INAM. They died there shortly afterwards. The five victims died due to the severity of their injuries and from respiratory problems.[58] Consequently, their deaths were caused by a fire that neither the Center's authorities nor the external emergency services were able to avoid or extinguish. Those authorities and services failed to provide assistance that was able to save the lives of the five young men. Their bodies were transferred to the morgue of the Raúl Leoní Hospital where medical examinations and autopsies were performed.

D. Investigation procedures and judicial proceedings

59. The investigation began on the day of the events and, the following month, the National Council on the Rights of Children and Adolescents and the Permanent Commission on Family, Women and Youth of the National Assembly became involved.

60. Family members of the youths who had died reported to the authorities and to the media that what had occurred had been a reprisal for previous complaints, and even claimed that the fire was the result of a plan previously agreed by the staff of the Center.[59] Regarding those previous complaints, a judge indicated that, eight days before the fire, some of the youths from cell 4 had informed her of irregular conduct by staff of the INAM-San Felíx.[60]

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[57] *Cf.* Report on calls received by the 171 the Bolívar Autonomous Emergency Service (evidence file, fs. 1699 to 1702).

[58] The death certificates indicated that Rafael Parra Herrera, Gabriel Yáñez Sánchez and José Gregorio Mota Abarullo had died of "asphyxia due to suffocation" and "third-degree burns"; that Cristian Molina Córdova had died of "asphyxia due to suffocation" and "third-degree burns to 65% of his body," and that Johan Correa had died of "third-degree burns to 90% of his body" (*cf.* Death certificates (evidence file, fs. 1213, 1215, 1217, 1219 and 1221)). See also, Record of criminal investigation of June 30, 2005 (evidence file, f. 1426).

[59] According to a newspaper article, some family members indicated "that, there, they did everything so that the boys would die, because [the family members had] complained about widespread corruption there, and they [the staff] did nothing to save them" (Correo del Caroní, "F*iscalía imputa por homicidio intencional a ex director del INAM*" [Prosecutor accuses former director of INAM of intentional homicide], May 9, 2006. (evidence file, f. 1359)).

[60] On June 23, 2005, a judge stated that she had been called to the INAM-San Félix because "[C.Z.], Correa, Herrera and [J.L.]" insisted on speaking to her. She indicated that the young men reported to her "that on Friday [and] Saturday evenings, some [legal] representatives partied with the teacher who was on duty and then those parents took their sons home; that on one occasion they even took one of the inmates some bottles of hard liquor [and] that, once, the director came to conduct a search while drunk, accompanied by people [they] did not know." They had also denounced the practice of granting early releases to inmates in exchange for payments to teachers (*cf.* Statement by Y.B. of August 31, 2005).

61. During July and August 2005, various statements were received, including by the following: B.H., social worker of the INAM-San Felíx; C.Z and J.L., who had been deprived of liberty in cell 4 until the day of the fire; guides N.R., J. C., and F.G.; the inmates of the INAM-San Felíx, C.M. and J.M., and Judge Y.B.[61] On August 31, 2005, an expert appraisal was made of the causes of the fire.[62]

62. In December 2005, the Public Prosecution Service requested the exhumation of the bodies of the five young men. It made this request based on statements indicating that a man who worked in the morgue had said that the victims smelt of paint "thinner." Also, Rafael Parra's grandmother had said "that what happened had been an execution."[63] The new autopsies failed to provide any additional findings on the causes of death.[64]

63. In communications dated April 6, 2006, J.C., F.G. and N.R. were informed that they had been indicted in the case and that they had been appointed a public defender.[65] Previously, and following the fire, they had been suspended.

64. On August 25, 2006, a reconstruction of the events was conducted. However, according to the corresponding report, "it was not possible to conduct this fully," because the area in which the fire had occurred had been "totally altered." On October 31, 2006, this procedure was conducted for a second time.[66] Several months later, in May 2007, the Fire Department delivered a report on the events to the prosecutor concerned.

65. On September 29, 2008, the Forty-second Prosecutor appointed by the Public Prosecution Service, with nationwide competence, and the Eleventh Prosecutor of the Public Prosecution Service of the Second Circuit of the Judicial Circumscription of the State of Bolívar filed formal charges against J.C., F.G. and N.R. for culpable homicide and requested that the indictment be admitted and that the oral trial be initiated. The indictment indicated that, on June 30, 2005:

> There was an attempted disturbance between the adolescent inmates of cell number two (02) and the young adults of cell number four (04), which was brought under control by [the accused]. As a result of this attempt, and as a defense mechanism, [the victims of the fire] set light to several mattresses near the access door to cell [number 04], trying to prevent the adolescents from cell number 2 from entering cell number 4. On observing that the flames were out of control, the young adults shouted for help and assistance, and this call was heard from outside the premises by the detainees' family members who had been visiting them just before this, as well as by the staff working in the diagnostic center. It should be noted that [the accused] acted negligently by not responding to the request for help from [the victims]

See also: Statement by C.Z. of July 29, 2005 (evidence file, fs. 1337 to 1339) and Statement by J.L. of July 29, 2005 (evidence file, fs. 1341 and 1342). The judge declared that she and her team were investigating this when the facts occurred eight days later.

[61] *Cf.* Record of interview with B.H. of July 8, 2005; Statement by B.H. of July 29, 2005; Statement by C.Z. of July 29, 2005; Statement by J.L. of July 29, 2005; Statement by N.R.-of July 29, 2005; Record of interview with C.M. of August 3, 2005; Statement by F.G. of August 8, 2005; Record of interview with J.M. of August 12, 2005 (evidence file, fs. 1457), and Statement by Y.B. of August 31, 2005.

[62] Scientific, Criminal and Criminalistic Investigation Bureau (CICPC). Incidents Division. Technical Report No. 9700-038-293, of August 31, 2005.

[63] Cf. Exhumation request of December 5, 2005 (evidence file, fs. 1469 to 1471).

[64] The state authorities also interviewed those who assisted in the autopsies and they indicated that the corpses only smelled of "burnt meat" (*cf.* Statement by O.R. of August 31, 2005 (evidence file, f. 1479) and Statement by A.L. of August 31, 2005 (evidence file, f. 1481)).

[65] *Cf.* Notifications of April 6, 2006 (evidence file, fs. 1494 to 1496).

[66] *Cf.* Report on reconstruction of the events (evidence file, fs. 1488 to 1492).

and failing to open the door giving access to the cell where [the victims] were being held immediately.[67]

66. Between June 2010 and January 2015, the trial hearing was deferred at least seven times.[68] The representatives have indicated that, at September 2019, more than "14 years after the facts, the trial hearing had been adjourned on at least 60 occasions."

67. According to the representatives, the case is before the Fourth Itinerant Trial Court of Puerto Ordaz. On November 6, 2019, an arrest warrant was issued for J.C., F.G. and N.R., owing to "reiterated failure to appear at the trial hearings," including the one to be held on that date.[69] The representatives also indicated that "[d]ue to the inactivity of the Venezuelan Public Prosecution Service, a complaint was filed before the competent courts; however, this never obtained results."

VII
MERITS

68. The case hereby examined relates to the State's responsibility for harm to the personal integrity and life of José Gregorio Mota Abarullo, Gabriel de Jesús Yáñez Sánchez, Rafael Antonio Parra Herrera, Cristián Arnaldo Molina Córdova and Johan José Correa, as a result of a fire that occurred on June 30, 2005, in the cell in which they were housed in the INAM–San Félix, which resulted in their deaths. It has been alleged, and the State has acknowledged, that these circumstances resulted in the violation of the rights to personal integrity and life of these young men, in relation to the obligations to protect the rights of the child and to respect and to ensure the said rights. The case also includes the State's responsibility, accepted by Venezuela, owing to the lack of effective actions to clarify the facts and to determine the corresponding responsibilities to the detriment of the right to judicial guarantees and judicial protection of family members of the deceased. Furthermore, it includes the allegations regarding the violation of the right to personal integrity of these family members due to the aforementioned circumstances.

69. The Court will examine, first, the violation of the rights to personal integrity and to life, and also the rights of the child of the five youths who died. Second, it will examine the violations of the rights to judicial guarantees and judicial protection, in relation to the investigation of the facts and the criminal proceedings instituted in this case and, third, it will set forth its considerations on the violation of the right to personal integrity of family members of the deceased victims.

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67 Formal indictment and trial request of September 29, 2009 (evidence file, fs. 1502 to 1505).

68 *Cf.* Adjournment orders dated June 9, 2010 (evidence file, f. 1509) March 10, 2011 (evidence file, f. 1507); February 24, 2014 (evidence file, fs. 1511 and 1512), May 23, 2014 (evidence file, fs. 1513 and 1514) and August 5, 2014 (evidence file, fs. 1515 and 1516); "order summoning the parties to the oral and public trial" of October 10, 2014 (evidence file, f. 1517); record of trial adjournment of October 29,2014 (evidence file, f. 1518), and "order summoning the parties to the oral and public trial" of January 22, 2015 (evidence file, f. 1519). Nevertheless, in the Merits Report, the Inter-American Commission indicated in the section on the facts of the case that it had received information indicating adjournments of the trial hearing on no less than 32 occasions since 2008. Regarding the adjournments ordered in 2014 and 2015, there is evidence that three of them were due to non-appearance of defense counsel; one by default of the Public Prosecution Service and one "because the necessary steps were not taken."

69 *Cf.* Record of adjournment of oral public hearing, Itinerant Court of Law of Bolívar State, of November 6, 2019, and Order of the Itinerant Trial Court of Bolívar State requiring issue of an arrest warrant dated November 6, 2019 (merits file, fs. 393 and 395). In their final written arguments, the representatives indicated, in addition to the foregoing, that "the accused are fugitives from justice" and that they are unaware of their whereabouts.

VII.1
RIGHTS TO LIFE[70] AND PERSONAL INTEGRITY[71] AND RIGHTS OF THE CHILD[72] IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE THESE RIGHTS[73]

A. Arguments of the Commission and of the parties

70. The ***Commission*** indicated that the State had a special position of guarantor vis-a-vis persons deprived of liberty that should be assumed "with greater care and responsibility" in the case of children under 18 years of age. This included the obligation to comply with the necessary measures of care, protection and assistance to ensure their healthy development. It understood that this was relevant in the instant case because the five youths who died as adults had entered the Center before turning 18 years of age. It argued that, given the said position of special guarantor, "there is a presumption of State responsibility" for the five deaths and this has not been disproved. It also asserted that, faced with the fire, the competent authorities delayed or failed to act with due diligence to release the youths from the cell and extinguish the fire. It also considered that the fact that the first fire-fighters lacked adequate equipment constituted an omission attributable to the State.

71. In addition, the Commission indicated that the INAM-San Felíx had no policies to prevent emergency situations, was overcrowded, and lacked sufficient staff to provide the minimum security conditions. It argued that the Center lacked adequate infrastructure, especially in relation to the electrical installations, and that it was unable to separate those in pre-trial detention from those already sentenced, or the adults from the adolescents. Furthermore, it noted that "the Center's education program was inoperative at the date of the events, and also the failure to comply with the individual social rehabilitation plans."[74]

72. The Commission understood that the foregoing had contributed to a situation known to the authorities that had the potential to result in acts of violence. It noted that, also, on the day of the events, there were "clear indications" of an "imminent violence episode": a fight at midday, the aggression by the inmates of cell 7 against the youths in cell 4, the aggression against the youths C.Z. and J.L., and the concern expressed by the family members. In the Commission's opinion, the authorities failed to take adequate measures[75] in keeping with a violence-prevention policy.

73. Taking into account all the preceding elements, the Commission considered that Venezuela had failed to comply with its duty of prevention and was responsible for the violation of the rights to life and personal integrity of the deceased victims. Therefore, it determined the violation, to their detriment, of "Articles 4(1), 5(1), 5(4), 5(5) and 5(6) of the American Convention in relation to the obligations contained in Articles 1(1) and 19 of this instrument."

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70 Article 4(1) of the American Convention on Human Rights.

71 Articles 5(1), 5(4), 5(5) and 5(6) of the American Convention on Human Rights.

72 Article 19 of the American Convention on Human Rights.

73 Article 1(1) of the American Convention on Human Rights.

74 The Commission also referred to allegations made during the processing of the case before it regarding the presumed inexistence of special juvenile courts and the supposed failure of the ordinary courts of Bolívar State to give adequate consideration to the "domestic law for the protection of the child." It understood that these allegations, which were not disputed by the State, "constituted an additional violation of Article 5(5) of the Convention."

75 The Commission identified the prolongation of the official working hours of social worker B.H. and "the confinement of the inmates of cell […] 4 following visiting hours" as such measures.

74. The ***representatives*** argued that the State had violated both "negative" and "positive obligations" in relation to the right to life established in Article 4(1) of the Convention. They argued that "the authorities created a situation of real and imminent danger" because: (a) state agents confined the victims under lock and key and then failed to open the door in time; (b) the Center had insufficient staff; (c) due to this, the state officials were unable to contain the riot in time; (d) the Center did not have "minimum protection" against fire; (f) the INAM-San Félix had no "effective mechanisms to detect and extinguish fires, [and no] appropriate action protocol in case of an emergency." They asserted that "the result revealed the State's negligence," which entailed an "arbitrary deprivation of the victims' lives." They also argued that Venezuela had breached its obligations because neither "anticipatory nor preventive measures" had been implemented, and because the Center did not have basic protection against fire, or an escape plan in the case of events of this type. They added that the state officials "failed to prevent the entry of illegal items."[76]

75. The representatives also argued that Venezuela had violated the right to personal integrity, recognized in Article 5 of the Convention, due to the absence of policies to prevent critical situations and to the "failure to protect the physical integrity […] of the victims, causing burns and asphyxia." In addition to this, they argued that overcrowding was, in itself, a violation of personal integrity, and that the State should separate those in pre-trial detention from those who have been sentenced, as well as adults from adolescents. They alleged that the absence of this separation had given rise to a "conflictive climate" among the inmates.

76. Lastly, the representatives argued that Venezuela had failed to comply with Article 19 of the Convention regarding the right of the child to special measures of protection. They explained that, in their opinion, "Venezuela's obligation to prevent the events […] was a continuing and permanent obligation" that began "a long time before" the fire, when the victims were still adolescents. They added that once the latter had reached the age of 18, they remained "in a prison for juveniles," so that the State should have ensured them the protection due to juveniles.

77. The ***State,*** as indicated (*supra* paras. 13 and 20) acknowledged its responsibility for the violation of the rights to life and personal integrity established in Articles 4(1), 5(1), 5(4), 5(5) and 5(6) of the Convention, in relation to the obligations established in its Articles 1(1) and 19.

B. Considerations of the Court

78. In order to examine state responsibility in this case given its characteristics, the Court must begin by clarifying Venezuela's acknowledgement of the violation of Articles 5(5) and 19 of the American Convention in relation to the special nature of "juvenile" justice and the rights of the child, respectively. This is because the five young men who died entered the INAM-San Félix when they were juveniles and, when the fire that resulted in their death occurred, they had reached the age of 18.

79. The Court notes, as it has indicated in its case law that, in order to establish their meaning and scope, the said provisions should be understood taking into account, among other instruments, the Convention on the Rights of the Child, which this Court has considered included

[76] As part of the State's obligations to protect the right to life of persons deprived of liberty, the representatives also mentioned the establishment of an effective system of justice capable of investigating, applying sanctions, and determining measures of reparation. They indicated that the lack of an independent and impartial investigation into a violation of the right to life also constituted a violation of that right and that the State had failed to comply with this obligation.

among a "very comprehensive international *corpus iuris* for the protection of children and adolescents."[77]

80. Based on the standards emanating from that Convention, in particular from its Articles 37 and 40, unlawful conduct attributed to children should be addressed, as the Court has indicated, in a "differentiated and specific" way;[78] in other words, under a special system, distinct from that applicable to adults. Within this framework, pursuant to paragraph (b) of the said Article 37, the deprivation of liberty of a child should be used only as "a measure of last resort," and it should comply with the purpose of rehabilitation, and include an education that prepared the child for his or her return to society.[79]

81. The foregoing reveals that, insofar as the special system for children is relevant, it should be implemented in a way that allows the said goal to be reached. On this point, the Court has indicated that, "pursuant to the principle of specialization, a justice system should be established that is specialized at all stages of the proceedings and during the execution of the measures or punishments that are eventually applied to minors who have committed offenses and who can be held responsible under domestic law."[80] This is based on the fact that, as the Committee on the Rights of the Child has indicated, "[a] strictly punitive approach is not in accordance with the principles of child justice spelled out in article 40(1) of the Convention [on the Rights of the Child]. Weight should be given to the child's best interests as a primary consideration as well as to the need to promote the child's reintegration into society."[81]

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[77] *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 194, and *Case of Guzmán Albarracín et al. v. Ecuador. Merits, reparations and costs.* Judgment of June 24, 2020. Series C No. 405, para. 114. Similarly, *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 15, 2020. Series C No. 407, para. 178. The Convention on the Rights of the Child has been in force since September 2, 1990, and Venezuela ratified it on September 13 that year.

[78] *Juridical Status and Human Rights of the Child.* Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, para. 109.

[79] The Committee on the Rights of the Child has indicated that "[c]hildren should be provided with a physical environment and accommodation conducive to the reintegrative aims of residential placement. Due regard should be given to their needs for privacy, for sensory stimuli and for opportunities to associate with their peers and to participate in sports, physical exercise, arts and leisure-time activities[. …] Every child has the right to education suited to his or her needs and abilities, including with regard to undertaking exams, and designed to prepare him or her for return to society; in addition, every child should, when appropriate, receive vocational training in occupations likely to prepare him or her for future employment." It has also asserted that "[f]or the few situations where deprivation of liberty is justified as a last resort," States should "ensur[e] that its application is for older children only, is strictly time limited and is subject to regular review." (General comment No. 24 on children's rights in the child justice system. UN Doc. CRC/C/GC/24. September 18, 2019, paras. 95 and 6).

[80] *Cf. Case of Mendoza et al. v. Argentina. Preliminary objections, merits and reparations.* Judgment of May 14, 2013. Series C No. 260, para. 146.

[81] The Committee added that "[w]here serious offences are committed by children, measures proportionate to the circumstances of the offender and to the gravity of the offence may be considered, including considerations of the need for public safety and sanctions." (Committee on the Rights of the Child. General comment No. 24, para. 76. Also, in paragraph 71, the Committee recommended that States "introduce rules permitting the removal of children's criminal records when they reach the age of 18, automatically or, in exceptional cases, following independent review.")

82. The rule of the separation of children and adults in detention centers or prisons[82] should be understood and applied based on the foregoing.[83] The Committee on the Rights of the Child has recognized that: "t]he above rule does not mean that a child placed in a facility for children should be moved to a facility for adults immediately after he or she reaches the age of 18. The continuation of his or her stay in the facility for children should be possible if that is in his or her best interests and not contrary to the best interests of the children in the facility."[84]

83. Moreover, at the time of the facts, the laws of Venezuela established that a judge was able to authorize that those who reached the age of 18 could remain in the juvenile institution until they turned 21 and that, if they were transferred to a facility for adults, they should remain physically separated from the latter (*supra* footnote 34).

84. The foregoing, does not modify the State's obligations to adopt the pertinent actions in their detention centers and prisons to provide adequate protection to the inmates. In this regard, the Court has indicated that "to protect the life and personal integrity" of children deprived of liberty:

> There should be, as a minimum, a separation by age, nature of the offense committed, and between juveniles who are being processed and those whose situation has been decided; consequently, the inmates belonging to the different categories must be housed in different sectors of the facility. In keeping with the foregoing, `[t]he principal criterion for the separation of different categories of juveniles deprived of their liberty should be the provision of the type of care best suited to the particular needs of the individuals concerned and the

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82 The Court has examined circumstances in which the lack of separation "exposed the children to conditions highly prejudicial to their development and made them vulnerable to others who, as adults, could prey upon them" (*Case of the "Juvenile Re-education Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 175).

83 Thus, the Committee on the Rights of the Child has indicated that "[e]very child deprived of liberty is to be separated from adults, including in police cells. A child deprived of liberty is not to be placed in a centre or prison for adults, as there is abundant evidence that this compromises their health and basic safety and their future ability to remain free of crime and to reintegrate" (Committee on the Rights of the Child, General comment 24, para. 92). In keeping with the observations of the Committee, the Court has noted that, in the case of children deprived of liberty and, therefore, in state custody, the States' obligations include "providing them with health care and education, so as to ensure to them that their detention will not destroy their life plans" (*Case of the "Juvenile Re-education Institute" v. Paraguay*, para. 161). In the same paragraph of this judgment, the Court added that Rule 13 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty (adopted by General Assembly Resolution 45/113 of December 14, 1990) provides that "[j]uveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty." The Court has previously had the opportunity to note that: "[i]n keeping with the foregoing," the Beijing Rules provide that: "[j]uveniles in institutions shall receive care, protection and all necessary assistance – social, educational, vocational, psychological, medical and physical – that they may require because of their age, sex, and personality and in the interest of their wholesome development" (*Case of the "Juvenile Re-education Institute" v. Paraguay*, para. 163). That citation corresponds to Rule 26.2 of the United Nations' Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), adopted by United Nations General Assembly Resolution 40/33 of November 28, 1985. Similarly, Rule 26.1 states that: "[t]he objective of training and treatment of juveniles placed in institutions is to provide care, protection, education and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society." Section E (Rules 38 to 46) of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty also relates to "[e]ducation, vocational training and work," establishing standards for the exercise of the rights of juveniles deprived of liberty to education and training, as well as to work, "as a complement to the vocational training provided."

84 Committee on the Rights of the Child. General comment 24, para. 93. See also, Rule 29 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, which indicates that: "[in] all detention facilities juveniles should be separated from adults, unless they are members of the same family. Under controlled conditions, juveniles may be brought together with carefully selected adults as part of a special programme that has been shown to be beneficial for the juveniles concerned." Meanwhile, the Beijing Rules indicate that: "[j]uveniles in institutions shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults" (Rule 26.3). And, Rule 11 of the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), adopted on December 17, 2015 (General Assembly Resolution 70/175), indicates that: "[t]he different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus: […y]oung prisoners shall be kept separate from adults."

protection of their physical, mental and moral integrity and well-being.[85]

85. Based on the foregoing, the relevant obligations of the State with regard to the five deceased youths that started from the time they came into contact with the system of justice and their deprivation of liberty when they were juveniles, corresponded to those relating to the rights of the child, pursuant to Article 19 of the Convention. Accordingly, in order to comply with the socio-educational objective inherent in measures adopted in the case of children who have committed criminal offenses, even when such offenses entail the deprivation of liberty, it is necessary to extend the special juvenile regime to those who turn 18 while they are complying with those measures. Thus, the mere fact of turning 18 does not remove young people subject to deprivation of liberty in facilities for juveniles from the special protection that should be provided by the State.[86] In this regard, the Committee on the Rights of the Child has indicated that "[c]hild justice systems should […] extend protection to children who were below the age of 18 at the time of the commission of the offence but who turn 18 during the trial or sentencing process."[87]

86. It should be stressed that, although the victims in this case had reached the age of 18 when the fire in their cell occurred, their deprivation of liberty was a result of criminal offenses committed when they were juveniles. Consequently, the principle of specialty – Articles 5(5) and 19 of the American Convention and Articles 37(c), 40(1) and 40(3) of the Convention on the Rights of the Child – determine that the execution of the sentence must be regulated by the personal status at the date the offense was committed. The principle of specialty is applicable to the determination of the measures and sanctions and imposes differentiated conditions of execution during their implementation. Accordingly, the Court will examine the case in light of the special measures of protection that should be ensured to juveniles.

87. Bearing in mind the foregoing, the Court, first, will set out general considerations on State obligations in relation to the life and personal integrity of juveniles deprived of their liberty and, second, will analyze the international responsibility in this case.

B.1 General considerations on State obligations in relation to the life and personal integrity of juveniles deprived of their liberty

88. The Court recalls that anyone deprived of their liberty "has the right to live in detention conditions compatible with their dignity as human beings and the State must guarantee their rights to life and personal integrity."[88] The restriction of these rights "not only has no justification

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[85] *Matter of the Children Deprived of Liberty in the FEBEM "Tatuapé Complex" with regard to Brazil. Provisional Measures.* Order of the Inter-American Court of Human Rights of November 30, 2005, considering paragraph 16. The text transcribed corresponds to: United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, adopted by General Assembly Resolution 45/113 of December 14, 1990, Rule 28."

[86] Similarly, Article 3(3) of the Beijing Rules entitled "Extension of the Rules" indicates that "[e]fforts shall also be made to extend the principles embodied in the Rules to young adult offenders." Also, the Committee on the Rights of the Child has admitted the possibility that young adults many remain deprived of their liberty in juvenile institutions, insofar as this is not contrary to the best interests of the children (*supra* para. 82). Expert witness Méndez has explained that "several international human rights bodies have recognized the possibility – and often the need – for individuals who have recently turned 18 to continue to be considered and treated as juveniles."

[87] Committee on the Rights of the Child, General comment 24, para. 31. In paragraphs 32 and 35 of this document, the Committee "commends States […] that allow the application of the child justice system to persons aged 18 and older whether as a general rule or by way of exception," and "recommend[ed] that children who turn 18 before completing a diversion programme or non-custodial or custodial measure be permitted to complete the programme, measure or sentence, and not be sent to centres for adults."

[88] *Cf. Case of Bulacio v. Argentina. Merits, reparations and costs.* Judgment of September 18, 2003. Series C No. 100, paras. 126 and 138, and *Case of the "Juvenile Re-education Institute" v. Paraguay*, para. 151. Similarly, *Case of*

based on the deprivation of liberty, but is also prohibited by international law."[89] In addition, the Court has held that:

> […] the State has a special role to play as guarantor of the rights of those deprived of their liberty, because the prison authorities exercise heavy control or command over the persons in their custody,[90] and even more so in the case of children. This results in a special relationship of subordination between the person deprived of his liberty and the State, characterized by the particular rigor with which the State is able to regulate their rights and obligations and owing to the circumstances inherent in internment, in which the inmate is prevented from satisfying, on his own, certain basic needs that are essential if one is to live with dignity.[91]

89. This condition of the State as a guarantor signifies that it must ensure that those deprived of liberty have the "minimum conditions compatible with their dignity," and this is necessary to "protect and ensure" their life and integrity.[92] In this regard, the Court has already noted that it "has incorporated into its case law the principal standards concerning prison conditions and the obligation of prevention that the State must ensure for persons deprived of their liberty."[93]

Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of January 27, 2020. Series C No. 398, para. 150. The Court also recalls that Article 5(1) of the Convention establishes the right to both physical and mental and also moral integrity in general terms (*Cf. Case of Yvon Neptune v. Haiti, Merits, reparations and costs.* Judgment of May 6, 2008. Series C No. 180, para. 129, and *Case of Guzmán Albarracín et al. v. Ecuador*, para. 148.), and that this is "a fundamental right that the American Convention protects by specifically prohibiting, *inter alia*, torture and cruel, inhuman or degrading punishment or treatment, and the impossibility of suspending it during states of emergency" (*Case of the "Juvenile Re-education Institute" v. Paraguay*, para. 157, and *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of May 19, 2011. Series C No. 226, para. 40). Expert witness Méndez indicated that "[l]ike the right to life, the right to personal integrity is a basic and fundamental human right that permits the exercise of the other human rights. They both constitute the minimum rights essential for the exercise of any activity. Thus, it is coherent that, like the right to life, the duty to protect personal integrity entails both a positive and a negative obligation. States must avoid violating personal integrity while, at the same time, they must proactively protect this right by taking all appropriate measures to ensure it."

89 *Cf. Case of the "Juvenile Re-education Institute" v. Paraguay*, para. 155, and *Case of Wong Ho Wing v. Peru. Preliminary objection, merits, reparations and costs.* Judgment of June 30, 2015. Series C No. 297, para. 294.

90 *Cf. Case of the "Juvenile Re-education Institute" v. Paraguay*, para. 152, and *Case of López et al. v. Argentina. Preliminary objections, merits, reparations and costs.* Judgment of November 25, 2019. Series C No. 396, para. 90.

91 *Cf. Case of Mendoza et al. v. Argentina*, para. 188. The Court had indicated similar considerations in the *Case of the "Juvenile Re-education Institute" v. Paraguay*, para. 152.

92 *Cf. Case of the "Juvenile Re-education Institute" v. Paraguay*, para. 159, and *Case of Valenzuela Ávila v. Guatemala. Merits, reparations and costs.* Judgment of October 11, 2019. Series C No. 386, para. 203. Similarly, the Court has indicated that prison authorities exercise "total control" over those deprived of liberty, so that the "general obligations" of the State with regard to human rights "acquire a particular nuance that obliges the State to provide inmates with the minimum conditions compatible with their dignity while they remain in the [detention] centers in order to protect and ensure their rights to life and personal integrity" (*Matter of the Socio-educational Internment Unit with regard to Brazil. Provisional measures.* Order of the Inter-American Court of Human Rights of November 15, 2017, considering paragraph 81. Similarly: *Case of Neira Alegría et al. v. Peru. Merits.* Judgment of January 19, 1995. Series C No. 20, para. 60, and *Matter of the Urso Branco Prison with regard to Brazil. Provisional measures*. Order of the Inter-American Court of Human Rights of May 2, 2008, considering paragraph 19). In this regard, after describing various standards derived from international law, expert witness Méndez stated that "the State occupies a special position of guarantor of the right to life, a prerequisite for all the other human rights and, in the case of persons deprived of their liberty, this position is enhanced owing to their subjection to the State, its institutions and its agents." The Court also endorses the opinion given by Mario Coriolano in another case (*supra* para. 28), incorporating it into this case as documentary evidence, that it is a "misleading antithesis" to contrast prison security with the measures addressed an ensuring the rights of persons deprived of liberty; the two aspects should be integrated, because "security can only be ensured based on guaranteeing the decent treatment of detainees."

93 When indicating this, the Court referred to: "UN, S*tandard Minimum Rules for the Treatment of Prisoners.* Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of the Offender, held at Geneva in 1955, and approved by the Economic and Social Council by its Resolutions 663 C (XXIV) of July 31, 1957, and 2076 (LXII) of May 13, 1977; UN, *Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.* Adopted by the UN General Assembly in its Resolution 43/173, December 9, 1988; UN, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*. Adopted by the UN General Assembly in its Resolution 45/113 of December 14, 1990, See also: UN, Human Rights Committee, General comment No. 21. Article 10 (Humane Treatment of Persons

90. The foregoing requires that safety conditions be adequately guaranteed during the deprivation of liberty. Thus, the State must prevent situation that could lead, by act or omission, to the violation of the right to personal integrity or the right to life.[94]

91. The said position of guarantor also entails special procedures in the case of children. When children are deprived of liberty, the State must assume a special position of guarantor with greater care and responsibility and must take special measures based on the principle of the best interests of the child.[95] Previously, this Court had considered that "Articles 6 and 27 of the Convention on the Rights of the Child include in the right to life the obligation of the State to ensure 'to the greatest possible extent, the survival and development of the child.'"[96] The protection of the life of the child "requires the State to give special attention to his or her living conditions while deprived of liberty because that right is not extinguished or restricted by the detention or imprisonment."[97] This requires States to adopt effective measures to avoid violence, including riots or similar actions,[98] and also emergency situations (*infra* para. 98). Similarly, expert witness Méndez has explained that "in the case of children, the State's obligation of prevention acquires increased relevance because they constitute a vulnerable group."[99]

92. Based on the above, States have an obligation "to take immediate actions that ensure the physical, mental and moral integrity of inmates, as well as their right to life and the right to enjoy the minimum conditions for a decent life, especially in the case of children who require special attention from the State."[100]

93. Taking the foregoing into account, as well as other more specific factors described in the following section, the Court will assess the events that occurred in this case.

B.2 International responsibility in this case

B.2.1 Overcrowding

94. First, it should be emphasized that the Court has pointed out that overcrowding in itself

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Deprived of Their Liberty). Replaces general comment 9 concerning humane treatment of persons deprived of liberty. Adopted at the Forty-fourth session of the Human Rights Committee on April 10, 1992. A/47/40/(SUPP), and IACHR, *Principles and best practices on the protection of persons deprived of liberty in the Americas.* Approved during the 131st regular period of sessions held from March 3 to 14, 2008" (*Case of Pacheco Teruel et al. v. Honduras*, para. 67 and footnote 60).

94 *Cf., mutatis mutandis, Case of Bulacio v. Argentina*, para. 138, and *Case of Mendoza et al. v. Argentina*, para. 191.

95 *Cf. Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs.* Judgment of July 8, 2004. Series C No. 110, paras. 124, 163, 164 and 171, and *Case of Noguera et al. v. Paraguay. Merits, reparations and costs.* Judgment of March 9, 2020. Series C No. 401, para. 68.

96 *Cf. Case of the "Juvenile Re-education Institute" v. Paraguay*, para. 161.

97 *Cf. Case of the "Juvenile Re-education Institute" v. Paraguay*, para. 160, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs.* Judgment of August 27, 2014. Series C No. 281, para. 182.

98 *Cf.* Also, *Matter of the Children Deprived of Liberty in the FEBEM "Tatuapé Complex" with regard to Brazil,,* considering paragraph 12.

99 Expert opinion of Juan E. Méndez (evidence file, fs. 7612 to 7639).

100 *Matter of the Children Deprived of Liberty in the FEBEM "Tatuapé Complex" with regard to Brazil,* considering paragraph 18.

constitutes a violation of personal integrity[101] and impedes the normal performance of essential prison functions.[102] In addition, "it does not allow adolescents to live in dignity while they are deprived of liberty, [and this] has special relevance in light of the additional obligation established in Article 19 of the American Convention."[103]

95. Despite this, the facts reveal that the INAM–San Félix was overcrowded (*supra* para. 39), contrary to the right to personal integrity. Even though it could only house 30 inmates, throughout 2004 and 2005, it housed an average of between 75 and 90 and, at the time of the events, it had almost 50 inmates. This means that the facility was constantly overcrowded.[104]

B.2.2 Infrastructure, safety conditions and separation of inmates

96. Regarding the separation of inmates by categories, according to Articles 5(4) and 5(5) of the Convention, there should be a separation "between those in pre-trial detention and those sentenced and between juveniles [under 18 years of age] and adults, to ensure that those deprived of liberty are treated appropriately in keeping with their status."[105] In addition to the previous considerations on the separation between adolescents and adults (*supra* paras. 82 to 84), the Court has clarified that "the separation between those in pre-trial detention and those sentenced requires not only keeping them in different cells, but also that those cells are located in different sections within a specific detention center, or in different facilities if this is possible."[106].

97. In addition, States must take extra care based on the special characteristics of "total institutions"[107] for children and adolescents; in particular due to the greater risk of violent conflicts owing to their psychological developmental stage.

98. In this context, juvenile detention centers must be safe and, among other factors, this means that they must ensure the protection of the inmates against risk situations; that, if they

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101 *Cf. Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 150, and *Case of Pacheco Teruel et al. v. Honduras*, para. 67. Similarly, *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2019. Series C No. 395, para. 60.

102 *Cf. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 5, 2006. Series C No. 150, para. 20, and *Case of Pacheco Teruel et al. v. Honduras*, para. 67.

103 *Matter of the Socio-educational Internment Unit with regard to Brazil. Provisional measures*. Order of the Inter-American Court of Human Rights of November 15, 2017, considering paragraph 65.

104 According to the Latin American Institute for the Prevention of Crime and the Treatment of Offenders (ILANUD), "prison density" should be understood as the "numerical relationship" between the capacity of a prison or penitentiary system and the number of persons it houses, which results from the formula: "number of persons housed/number of places available x 100." According to ILANUD, under the standards of the European Committee on Crime Problems, it should be considered that there is "overcrowding" or "critical overpopulation" when that indicator is equal to or more than 120 (*cf.* ILANUD and Raoul Wallanberg Institute of Human Rights and Humanitarian Law. "*Cárcel y justicia penal en América Latina y el Caribe: cómo implementar el modelo de derechos y obligaciones de las Naciones Unidas.*" Coordinator, Elías Carranza. Siglo XXI Editores, 2009, p. 63). In the case of the INAM-San Félix, based on that formula, this indicator would be a minimum of 166.66.

105 *Case of Pacheco Teruel et al. v. Honduras*, para. 67.

106 *Case of Yvon Neptune v. Haiti*, para.147, and *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 380

107 The concept of "total institution" refers to "a place of residence or work where a large number of individuals in the same situation, isolated from society for a considerable period of time, share a formally managed daily routine in their confinement" (Goffman, Erving. "*Internados: Ensayos sobre la situación social de los enfermos mentales*," Amorrortu Editores, 1972, p. 13).

are closed facilities, the population should be as small as possible; that they should possess "facilities and services that meet all the requirements of health and human dignity," and that they should be designed so as "to minimize the risk of fire and to ensure safe evacuation from the premises."[108] In addition, it should be recalled that the Court has established that:

> In its role of guarantor, the State must draw up and implement a prison policy for the prevention of emergency situations that could endanger the fundamental rights of the inmates in custody.[109] In this regard, the State must incorporate into the design, structure, construction, improvement, maintenance and operation of detention centers, all the physical mechanisms that minimize the risk of emergency situations or fire and, should these situations occur, ensure that it can react with due diligence, guaranteeing the protection of the inmates or a safe evacuation of the premises. These mechanisms include effective systems of fire detection and extinction, alarms, and emergency protocols that ensure the safety of those deprived of liberty.[110]

99. Accordingly, States should not provide inmates with mattresses or other similar items that are not fireproof – especially those made of materials that are highly toxic when on fire, such as polyurethane – or allow them to have such items in their cells, sectors, or enclosed areas. In addition, they should take the necessary measures to ensure that guards always have the keys or devices that permit rapidly opening cells, sectors or enclosed areas immediately available and in verified working order. Furthermore, fire extinguishers and other firefighting devices must be kept in perfect operating conditions throughout the premises.

100. The facts that have been establishes reveal that the installations of the INAM-San Felíx were precarious and did not allow for the separation between juveniles and adults, or between those in pre-trial detention and those convicted (*supra* paras. 38, 40, 41 and 42).

101. These circumstances resulted in a risk situation owing to the resulting coexistence problems. There were frequent clashes among the inmates (*supra* para. 42). It is evident that the Center's authorities had no protocols or appropriate strategies for avoiding such conflicts. That situation was increased due to the Center's structural problems. It did not have plans for responding to emergencies or fire prevention measures. There were no fire alarms or extinguishers. The electrical installations and lighting were also defective (*supra* para. 40). In addition, the Center was insufficiently staffed and lacked adequate controls to prevent the entry of prohibited or dangerous materials (*supra* para. 39). In this regard, expert witness Giacomello concluded that "the INAM–San Félix met all the conditions to bring about a tragedy and none to comply with the rights of the adolescents and youths deprived of liberty."[111]

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[108] *Cf.* United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, Rules 28, 30, 31 and 32. The importance of these rules was emphasized by expert witness Giacomello. Regarding the mention of "closed" facilities, Rule 30 contrasts these with "open" facilities, which it explains "are those with no or minimal security measures."

[109] *Cf. Case of the "Juvenile Re-education Institute" v. Paraguay,* para. 178, and *Case of Pacheco Teruel et al. v. Honduras*, para. 68.

[110] *Cf. Case of Pacheco Teruel et al. v. Honduras*, para. 68. In this regard, Rule 32 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty indicates that: "[t]here should be an effective alarm system in case of fire, as well as formal and drilled procedures to ensure the safety of the juveniles. Detention facilities should not be located in areas where there are known health or other hazards or risks." In his opinion, which is included in the documentary evidence (*supra* para. 28), Mario Coriolano stated that, in the case of detention facilities, it was necessary "to prevent situations that gave rise to a risk of fire based on shortcomings […] such as defective electrical installations, the use of devices that overload the electrical system, and the provision of mattresses or bedding that is not fireproof, etc. Also, the building should allow the immediate evacuation of the inmates to a specific sector, eschewing the false dichotomy of opening cells to save lives and running the risk of escapes, or avoiding escapes, but risking the death of the inmates. The administration should establish a protocol that determines the *modus operandi* in case of fire and, lastly, the facilities should have staff trained to deal with situations of this type."

[111] Expert opinion of Corina Giacomello (evidence file, fs. 7471 to 7496).

B.2.3 Purpose of deprivation of liberty

102. Added to the foregoing, it should be recalled that sentences of deprivation of liberty should comply with the purpose established in Article 5(6) of the Convention in light of the provisions of the Convention on the Rights of the Child (*supra* para. 85). In this regard, in the case of *Mendoza et al. v. Argentina*, the Court recalled that Article 5(6) indicates that "[p]unishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners," and determined that the sentences imposed on children owing to the perpetration of offenses should be aimed at their social reintegration.[112] The Court has also indicated that "education, work and recreation are essential functions of a prison, and must be provided to all those deprived of liberty in order to promote the rehabilitation and social adjustment of inmates."[113] Children who are confined should be provided with programs and activities that permit their healthy development.[114]

103. Contrary to the foregoing, at the time of the events, those deprived of their liberty in the INAM–San Félix were not provided with educational programs, as these had been suspended. The State authorities acknowledged shortcomings in the "re-education" of the young people, and also, in general terms, in the guarantee of their rights (*supra* para. 41).

104. However, the violation of Article 5(6) of the Convention is not based on considering the foregoing in isolation. Compliance with the objective established in this provision presumes that the deprivation of liberty is carried out in satisfactory conditions that do not harm the rights of the inmates, and this is especially relevant in the case of children.[115] Thus, observance of Article 5(6) of the Convention relates to compliance with the other paragraphs of that article in the case

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112 *Cf. Case of Mendoza et al. v. Argentina*, para. 165. Similarly, expert witness Giacomello stressed as two "fundamental principles" of the criminal justice system for juveniles: (a) their recognition as "subjects of rights, who must be respected and treated in a way that promotes a sense of responsibility, value and dignity, and respect for others," and (b) that the system must have "policies and actions […] addressed not at punishment, but rather at the social rehabilitation and reintegration of the adolescents."

113 *Cf. Case of Pacheco Teruel et al. v. Honduras*, para. 67. Similarly, *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela,* para. 146.

114 Rule 4 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules) establishes that: "1. The purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism. Those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life. 2. To this end, prison administrations and other competent authorities should offer education, vocational training and work, as well as other forms of assistance that are appropriate and available, including those of a remedial, moral, spiritual, social and health- and sports-based nature. All such programmes, activities and services should be delivered in line with the individual treatment needs of prisoners." Meanwhile, Rule 12 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty indicates that, during the deprivation of liberty, "[j]uveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society."

115 The Court has considered that different circumstances may result in the violation of the purpose established by Article 5(6). Thus, in the *Case of the "Juvenile Re-education Institute" v. Paraguay*, the Court determined that this provision had been violated to the detriment of children, considering diverse factors such as the failure to take "the necessary positive and sufficient measures to ensure decent living conditions to all the inmates," the lack of "the special measures of protection that are required where children are concerned," and the restriction of "non-derogable rights that may not be violated or restricted." In addition, in the Case of *Pacheco Teruel v. Honduras,* the Court admitted the State's acknowledgement of responsibility with regard to the violation of Article 5(6) of the Convention because it had not allowed some inmates to carry out productive activities. The Court recalled this consideration in the Case of *López et al. v. Argentina*, in which it concluded that the transfers of detainees that, in the said case, had been "arbitrary, inappropriate, unnecessary and disproportionate," violated the said Article 5(6) in relation to the "essential aim [of] the reform and social readaptation of the prisoners," among other rights (*Cf. Case of the "Juvenile Re-education Institute" v. Paraguay*, para. 176; *Case of Pacheco Teruel et al. v. Honduras*, paras. 60 and 69, and *Case of López et al. v. Argentina*, paras. 94, 95, 160 and 162.)

of those who have been sentenced to deprivation of liberty. In this regard, the Court has indicated that confinement conditions that result in a deterioration of physical, mental or moral integrity may, based on the case and its gravity, be "contrary to the 'essential purpose' of sentences of deprivation of liberty, as established by paragraph 6 of Article [5 of the Convention]."[116] As indicated, the conditions that existed in the INAM–San Félix were not adequate.

105. In this regard, General comment 24 of the Committee on the Rights of the Child indicates that deprivation of liberty is only a measure of last resort.[117] A child who has been sentenced "should receive education, treatment and care aiming at his or her release, reintegration and ability to assume a constructive role in society."[118] The Court concludes that the conditions that existed in the INAM-San Felíx were not appropriate to achieve this objective and, consequently, were incompatible with the purpose established in Article 5(6) of the Convention.

B.2.4 The State's actions with regard to the fire on June 30, 2005

106. As can be appreciated, all the aforementioned circumstances resulted in a risk situation that materialized in the events of June 30, 2005 (*supra* paras. 44 to 58). In general, state authorities were aware of this situation. Moreover, that day, prior to the fire, there was evidence of a concrete situation of tensions, that the staff of the INAM–San Félix were well aware of: there was an altercation between the young men housed in cell 4 and a juvenile from cell 2; then, the inmates of dormitory 7 tried to fight with those of cell 4. Later, when two of the seven youths from that cell were leaving because they had been released, inmates of other dormitories became agitated and began shouting insults (*supra* paras. 45, 48 and 49). Lastly, the family members of the youths housed in cell 4 made one of the Center's guides aware of their concerns (*supra* para. 48).

107. Despite all this, the Center's staff, which by then was reduced to four persons (*supra* para. 46), failed to take action to prevent violent incidents. They merely took the inmates of each dormitory to dinner separately (*supra* para.50); but this was insufficient.

108. When, following the incidents in cell 2, the fire occurred in cell 4 with its occupants trapped inside (*supra* paras. 51 and 52), the Center's previously described shortcomings with regard to

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116 *Case of Lori Berenson Mejía v. Peru. Merits, reparations and costs.* Judgment of November 25, 2004. Series C No. 119, para. 101. Similarly, in the *Case of García Asto and Ramírez Rojas v. Peru.* Judgment of November 25, 2005. Series C No. 137, para. 223. On both occasions, the Court indicated that "[t]he judicial authorities should take into consideration these circumstances when applying or evaluating the punishments that have been established." In this regard, the Court finds it pertinent to stress that, as it has already indicated, "the protection of the life of the child or adolescent requires the State to pay special attention to the living conditions he or she will experience while deprived of liberty" (*Matter of the Socio-educational Internment Unit with regard to Brazil. Provisional measures*. Order of the Inter-American Court of Human Rights of February 25, 2011, considering paragraph 15). In this regard, Rule 12 of the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty indicates that "[t]he deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles." In this regard, notwithstanding other aspects, "the State must specifically eradicate the risk of attacks on the life and personal integrity of the inmates, both in their relations with each other and by state agents, and ensure that the disciplinary regime respects their human rights" (*Matter of the Socio-educational Internment Unit with regard to Brazil. Provisional measures*. Order of the Inter-American Court of Human Rights of April 26, 2012, considering paragraph 21). Similarly, *Matter of certain Venezuelan prisons. Provisional measures with regard to Venezuela*. Order of the Inter-American Court of Human Rights of July 6, 2011, considering paragraph 14).

117 Committee on the Rights of the Child, General comment 24, para. 73. In paragraph 19 of this General comment, the Committee also indicates that "[t]he child justice system should provide ample opportunities to apply social and educational measures, and to strictly limit the use of deprivation of liberty, from the moment of arrest, throughout the proceedings and in sentencing."

118 *Cf.*, similarly, Committee on the Rights of the Child, General comment 24, para. 81.

such emergency situations (*supra* paras. 100 and 101) became evident. First, the mattresses caught fire easily, as revealed by the way in which the fire occurred. Also, there was a lack of controls, because the fire was probably caused by the use of devices that should not have been able to enter the Center. Second, there were no extinguishers or any direct access to water near the cell, which meant that one of the guides and an inmate went to get water with buckets (*supra* para. 54). Lastly, the Center's staff were unable to open the door of the cell in a timely manner. When the door was opened, Johan Correa, Rafael Parra and Cristian Molina were already dead and even though the other two youths, José Mota and Gabriel Yáñez, were removed and tended to, the treatment was belated and they did not survive (*supra* paras. 57 and 58).

109. It should also be underlined that the Center did not receive suitable external assistance. Following the first phone call, the emergency service and the firefighters took more than 18 minutes to arrive (*supra* para. 56). Moreover, the first firefighting unit did not bring water or appropriate equipment to enter, so that a second unit arrived subsequently, but when it was no longer useful. Also, the youths Mota and Yáñez were taken to a clinic that initially refused to admit them because it did not have an agreement with the INAM (*supra* para. 58). These circumstances also reveal a deficiency in the State's actions because they show that the State did not take the necessary measures to provide timely and effective assistance to the emergency situation.

110. The Court observes that, ultimately, despite its particular position of special guarantor for the population deprived of liberty in the INAM–San Félix, which included children and young adults, the State did not take the necessary measures to ensure that the five deceased victims in this case were housed in adequate conditions, and this entailed a failure to respect various aspects of their right to personal integrity. Also, despite knowing the risk it signified, and the duty to have a prison policy for preventing emergency situations, it kept the Center in conditions that made it possible for violent incidents and a fire to occur. On the day of the events, the authorities were aware of situations of tension and conflict among the inmates, but failed to take sufficient actions to prevent acts of violence. The state authorities failed to act with due diligence when faced with the fire that caused severe suffering that violated the right to personal integrity of the five youths housed in cell 4, or following their death; rather they acted negligently, and this did not allow timely assistance to be provided.

111. Before concluding its examination of the facts, the Court must place on record that it has noted that, during the internal judicial proceedings, the victims' family members stated that what happened to the victims was the result of an "execution" or a reprisal (*supra* para. 60). In this regard, the Court recalls that it is not a criminal court, and it is not incumbent on it to establish individual responsibilities,[119] a matter that is the role of the domestic authorities. In addition, it does not have evidence that would allow it to determine or reject these statements. Nevertheless, as can be seen from the preceding analysis, this is not necessary in order to determine the State's responsibility in this case. Moreover, neither is it necessary to examine the arguments concerning the inexistence of special juvenile courts (*supra* footnote 74); moreover, the factual framework does not include sufficient evidence to do this.

112. Lastly, the Court notes that the representatives argued that the State's failure to conduct an investigation and proceedings to determine individual responsibilities and apply the corresponding punishments also resulted in a violation of the right to life (*supra* footnote 75). This argument is based, substantially, on the same State conduct that forms the grounds for the allegations on violations of the rights to judicial guarantees and judicial protection, as well as

[119] *Cf. Case of Suárez Rosero v. Ecuador. Merits.* Judgment of November 12, 1997. Series C No. 35, para. 37, and *Case of Díaz Loreto et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of November 19, 2019. Series C No. 392, para. 69.

the corresponding acknowledgement of responsibility (*supra* paras. 13 and 20). The Court understands that it is in order to examine the pertinent arguments concerning the last two rights and it will do this in the next chapter of this judgment.

B.2.5 Conclusion

113. The Court, taking into consideration all the foregoing and the acknowledgement of responsibility made by Venezuela, concludes that the State violated the rights to life and personal integrity and the rights of the child of José Gregorio Mota Abarullo, Rafael Antonio Parra Herrera, Johan José Correa, Gabriel de Jesús Yáñez Sánchez and Cristian Arnaldo Molina Córdova, by failing to comply with Articles 4(1), 5(1), 5(4), 5(5), 5(6) and 19 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument.

VII.2
RIGHTS TO JUDICIAL GUARANTEES[120] AND JUDICIAL PROTECTION[121] IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE THESE RIGHTS

A. Arguments of the Commission and of the parties

114. The ***Commission*** established that "there had been a clear violation of the reasonable time, given that[, at the time the Merits Report was issued,] more than 13 years had passed since the death of the victims and 12 years since the alleged perpetrators were indicted in 2006." It argued that the information available revealed that "the domestic proceedings are ongoing, so that the events remain in a situation of impunity, without the completion of a trial and any determination of the appropriate punishment for the varying degrees of responsibility that may be determined in this case." It alleged that this included "the authorities who were present at the Center on the day of the events and those whose omissions may have contributed to the ongoing structural problems."

115. The Commission concluded that the State had failed to provide the members of the victims' families with an effective remedy to clarify what happened and to establish the corresponding responsibilities in violation of the rights established in Articles 8(1) and 25(1) of the American Convention in relation to Article 1(1) of this instrument.

116. The ***representatives*** made the following allegations with regard to the judicial guarantees: (i) the case has been severely delayed;[122] (ii) the criminal proceedings had been "stalled" for almost 14 years despite the procedural actions that the members of the presumed victims' families had tried to take and the fact that they had already provided all the evidence that they could to the judicial authorities; (iii) the judicial authorities had been "omissive," by "failing to comply with their obligation to undertake the criminal proceedings as the law required," and (iv) all this had caused harm to the family members of the victims. The representatives stressed that the "delay" in holding the "hearing to open the proceedings" was "unjustified and irrational" owing to the numerous adjournments. They considered that the "impunity" in which the case remained was "inexplicable," bearing in mind that the events occurred in a detention center under the control of state authorities and that three individuals

120 Article 8 of the American Convention on Human Rights

121 Article 25 of the American Convention on Human Rights.

122 The representatives understood that it was not necessary to determine the complexity of the case to assess whether the time that had passed was reasonable, They also argued that the "complexity of the investigations" was "minimal" because the case relates to very specific facts that took place on a single day in relation to a limited number of victims and in a place that was under the direct control of the Venezuelan State.

had been identified and charged with criminal responsibility.

117. They alleged that, more than two years after the investigations had been initiated, the Scientific, Criminal and Criminalistic Investigation Bureau (CICPC) had still not conducted the tests required by the prosecutor. They also argued that the procedure to reconstruct the events had been conducted more than a year after the investigation started and that, when it was performed, it was "useless," because the Center's authorities had altered the facility and it was not possible to determine the location of the cell in which the fire had occurred.

118. Consequently, the representatives concluded that the State had violated the rights to judicial guarantees and judicial protection established in Articles 8 and 25 of the American Convention.

119. The ***State*** acknowledged its international responsibility for failing to ensure an effective remedy to clarify what happened and to establish the corresponding responsibilities in violation of Articles 8(1) and 25(1) of the American Convention in relation to the obligations established in its Article 1(1) (*supra* paras. 13 and 20).

B. Considerations of the Court

120. According to the American Convention, States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25), which must be substantiated pursuant to the rules of due process of law (Article 8(1)), all under the general obligation of those States to ensure the free and full exercise of the rights recognized in the Convention to every person subject to their jurisdiction (Article 1(1)). The right of access to justice should ensure, within a reasonable time, the right of the presumed victims or their next of kin that everything necessary is done to know the truth of what happened, and the investigation, prosecution and punishment, as appropriate, of those eventually found responsible.[123]

121. The Court has also indicated that the obligation to investigate is one of means and not of results. However, it requires the investigating body to try and obtain the result sought; in other words, it must undertake all the necessary actions and inquiries to determine the truth, using all available legal means.[124] Thus, for an investigation to be effective in the terms of the Convention, it should be conducted with due diligence, avoiding omissions in the gathering of evidence and in following up on logical lines of inquiry.[125]

122. The Court has also established in its consistent case law that a prolonged delay in the proceedings may, of itself, constitute a violation of judicial guarantees.[126] The assessment of the reasonable time must be made in each specific case based on the total duration of the

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[123] *Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary objections.* Judgment of June 26, 1987. Series C No. 1, para. 91; *Case of Bulacio v. Argentina*, para. 114, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, para. 217.

[124] *Cf. Case of Velásquez Rodríguez v. Honduras. Merits,* para. 177, *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs.* Judgment of March 1, 2005. Series C No. 120, para. 83, and *Case of Noguera et al. v. Paraguay*, para. 81.

[125] *Cf. Case of the Serrano Cruz Sisters v. El Salvador*, paras. 88 and 105, and *Case of Noguera et al. v. Paraguay*, para. 82.

[126] *Cf. Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago*. *Merits, reparations and costs.* Judgment of June 21, 2002. Series C No. 94, para. 145; *Case of Noguera et al. v. Paraguay*, para. 83, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, para. 222.

proceedings, from the first procedural act until a final judgment is handed down, including any appeals that may eventually be filed.[127]

123. The facts reveal that the circumstances resulting in the death of the five youths housed in cell 4 of the INAM–San Félix have still not been clarified. According to the Court's information, the respective criminal proceedings have not concluded (*supra* para. 67). In addition, as previously indicated, the State has acknowledged its responsibility for the violation of the rights recognized in Articles 8(1) and 25 of the American Convention (*supra* paras. 13, 20 and 119).

124. Based on the facts and taking into account the arguments of the parties and the Commission, it can be concluded that the proceedings have not been conducted diligently and within a reasonable time.

125. In this regard, 15 years after the fire occurred the proceedings have still not concluded. Therefore, even though the Court does not have details of all the procedures that have been conducted, due diligence has not been respected. In particular, as the representatives have indicated, the reconstruction of the events was conducted belatedly, not only due to the time of more than a year that had passed since the events, but also because the Center's installations had been altered, which represented an obstacle to the effectiveness of the probative measure (*supra* para. 64).

126. Additionally, even though the prosecutors concerned filed an indictment and requested the opening of the oral trial on September 29, 2008, the trial hearing was adjourned on numerous occasions (*supra* paras. 65 and 66). The representatives have indicated that this happened at least 60 times. The Court considers that this has resulted in a manifest delay that is contrary of the victims' right of access to justice.[128] Taking this into account, together with the prolonged time that has passed since the events and the State's acknowledgement of responsibility, in this case the Court does not find it necessary to examine the time taken by the domestic proceedings. The preceding considerations are sufficient to conclude that those proceedings have not respected a reasonable time

127. Based on the above, the Court concludes that Venezuela is responsible for the violation of the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention, in relation to the obligations contained in Article 1(1) of this instrument, to the detriment of the family members of those who died: Elvia Abarullo de Mota, Félix Enríquez Mota, Osmely Angelina Mota Abarullo, Myriam Josefina Herrera Sánchez, Jesús Juvenal Herrera Sánchez, Nelys Margarita Correa, Belkis Josefina Correa Ríos, Luis José Yáñez, Maritza del Valle Sánchez Ávila, María Cristina Córdova de Molina and Hugo Arnaldo Molina.

VII.3
RIGHT TO PERSONAL INTEGRITY OF MEMBERS OF THE DECEASED VICTIMS' FAMILIES IN RELATION TO THE OBLIGATIONS TO RESPECT AND TO ENSURE THIS RIGHT

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[127] *Cf. Case of Suárez Rosero v. Ecuador*, para. 71, and *Case of the Workers of the Fireworks Factory of Santo Antônio de Jesus v. Brazil*, para. 223.

[128] Similarly, expert witness Vásquez González understood, with regard to the numerous adjournments of the trial hearing, that these, "as well as the duration of the proceedings, which have last 15 years without an end in sight, are absolutely unjustifiable."

A. Arguments of the parties[129]

128. The ***representatives*** alleged that Venezuela had violated the "integrity of the victims' family members by delaying the procedures for clarifying the tragic events and attributing criminal responsibility to those responsible."

129. The ***Commission*** and the ***State*** did not comment on this allegation.

B. Considerations of the Court

130. The Court has indicated that the family members of the victims of human rights violations may also, in turn, be victims. Based on the circumstances of the case, the Court has understood that the right to integrity of some family members has been violated owing to the suffering they have undergone as a result of the particular circumstances of the violations perpetrated against their loved ones and due to the subsequent actions of the state authorities with regard to the events.[130]

131. In some circumstances, the violation of the personal integrity of family members can be presumed, and this is so in the instant case. In this regard, the Court has considered "that the suffering or death of an individual, due to a fire, causes their closest family members a non-pecuniary harm inherent in human nature, which does not need to be proved."[131]

132. In addition, evidence provided during these proceedings proves the suffering experienced by the family members of the deceased youths. Thus, Elvia Abarullo, José Mota's mother, stated that she "ha[d] suffered greatly" due to the loss of her son and the inactivity of the authorities and that the memory of her son "is like a film that is repeated every day" and "much more," because she witnessed the events of June 30, 2005, as she was outside the INAM–San Félix. She stated that "[a]ll [her family members] suffer[ed] and remember the death of José Gregorio as if it was yesterday." Jesús Juvenal Herrera Sánchez, Rafael Parra's uncle, indicated that the death of his nephew had a significant impact on himself and his family. Miryam Josefina Herrera Sánchez, Rafael Parra's grandmother, stated that what had happened was "too sad." Maritza del Valle Sánchez Ávila, Gabriel Yáñez's mother, stated that every day she "remember[s]" her son and that the memories "continue creating a psychological trauma; […] at times [she] is unable to leave [her] house because [she] recalls the death of [her] son as if it was yesterday, and it frightens [her]." She indicated that her family members were impacted and that they continue to wait for justice. Luis José Yáñez, Gabriel Yáñez's father, stated that the death of his son resulted in "many changes" in his life and his family; that he has never been the same since Gabriel's death, and that he remembers him every day and wishes he were alive.

133. Therefore, the Court concludes that the State violated the right to personal integrity, recognized in Article 5(1) of the Convention in relation to its Article 1(1), to the detriment of Elvia Abarullo de Mota, Félix Enríquez Mota, Osmely Angelina Mota Abarullo, Myriam Josefina Herrera Sánchez, Jesús Juvenal Herrera Sánchez, Nelys Margarita Correa, Belkis Josefina Correa

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[129] The Commission did not determine a violation of Article 5 of the Convention to the detriment of family members of those who died in the fire of June 30, 2005. However, in its case law, this Court has repeatedly indicated that as long as this is based on the factual framework presented by the Commission, "the representatives may invoke rights other than those indicated by the Commission in its Merits Report" (cf. *Case of Godínez Cruz v. Honduras. Merits.* Judgment of January 20, 1989. Series C No. 5, para. 172, and *Case of Guzmán Albarracín et al. v. Ecuador*, footnote 82).

[130] *Cf. Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Guzmán Albarracín et al. v. Ecuador*, para. 207.

[131] *Cf. Case of Pacheco Teruel et al. v. Honduras*, para. 74.

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VIII
REPARATIONS

134. Based on the provisions of Article 63(1) of the Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the obligation to make adequate reparation and that this provisions reflects a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility.[132]

135. The reparation of the harm caused by the violation of an international obligations requires, whenever possible, full restitution *(restitutio in integrum)*, which consists in the re-establishment of the previous situation. If this is not possible, as in most cases of human rights violations, the Court will determine measures to ensure the violated rights and to redress the consequences of the violations.[133] Therefore, the Court has considered the need to grant diverse measures of reparation in order to redress the harm integrally so that, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, together with guarantees of non-repetition, have special relevance.[134] This Court has also established that the reparations should have a causal nexus with the facts of the case, the violations that have been declared, and the harm proved, as well as the measures requested to redress this. The Court must analyze the concurrence of these factors in order to rule duly and pursuant to law.[135]

136. Taking into account the violations of the American Convention declared in the preceding chapter, in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to make reparation,[136] the Court will analyze the claims presented by the Commission and the representatives and also the arguments of the State. Regarding Venezuela's position, it should be underscored that, even though it did not refer in detail to all the measures of reparation requested by the Commission and the representatives, in its answering brief it included a mention of its "undertaking," "in principle and in general" "to comply with the integral reparations corresponding to the instant case, pursuant to the respective case law developed by the Court and the criteria that has been followed in similar cases in the Bolivarian Republic of Venezuela" (*supra* para. 14).[137]

A. Injured party

137. Pursuant to Article 63(1) of the Convention, this Court considers that anyone who has been

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132 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 24, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 111.

133 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, para. 24; *Case of Valle Ambrosio et al. v. Argentina,* para. 56, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 112.

134 *Cf. Case of the Las Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 112.

135 *Cf. Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs.* Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 113.

136 *Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and costs*, paras. 25 to 27, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 114.

137 The Court understands that this undertaking made by Venezuela includes the obligation to duly report to the Court on the effective implementation of the measures of reparation established in this judgment.

declared a victim of the violation of any right recognized therein is an injured party. Consequently, the Court considers that José Gregorio Mota Abarullo, Rafael Antonio Parra Herrera, Johan José Correa, Gabriel de Jesús Yáñez Sánchez, Cristian Arnaldo Molina Córdova, Elvia Abarullo de Mota, Félix Enríquez Mota, Osmely Angelina Mota Abarullo, Myriam Josefina Herrera Sánchez, Jesús Juvenal Herrera Sánchez, Nelys Margarita Correa, Belkis Josefina Correa Ríos, Luis José Yáñez, Maritza del Valle Sánchez Ávila, María Cristina Córdova de Molina and Hugo Arnaldo Molina are the "injured party" and, in their capacity as victims of the violations declared in Chapter VII, they will be considered beneficiaries of the reparations that the Court orders. The Court recalls that, as previously indicated (*supra* para. 36), it has verified that, in addition to the first five persons named above, Nelys Margarita Correa died before the adoption of this judgment.

B. Obligation to investigate

138. The ***Commission*** asked that the State be ordered to "[c]ontinue the criminal investigation diligently, effectively and within a reasonable time in order to clarify the facts completely, identify all possible responsibilities and impose the appropriate sanctions with respect to the human rights violations declared in the [Merits Report]."

139. The ***representatives*** asked the Court to "order the State to adopt all necessary measures to investigate, within a reasonable time and effectively, objectively and impartially, the events that caused the death of the victims and, based on this, impose the corresponding sanctions on those responsible."

140. The ***State***, "undert[ook] to facilitate, implement and continue the criminal proceedings that are underway to clarify what happened and to establish any possible responsibilities as a result of the events that occurred in the instant case, within a reasonable time and with due diligence, taking into account the circumstances of the case."

141. The Court establishes that the State, within a reasonable time and pursuant to domestic law, must facilitate, continue and conclude, with due diligence, the investigations and/or judicial proceedings required to determine and, as appropriate, prosecute and punish those responsible for the death and injuries caused to those deprived of liberty in the INAM-San Felíx owing to the fire that occurred on June 30, 2005.

142. The Court also establishes that the State, within a reasonable time and pursuant to domestic law, must take the necessary steps to determine any possible administrative and/or disciplinary responsibilities in relation to the circumstances that led to the fire in cell 4 of the INAM–San Félix on June 30, 2005.

C. Measures of rehabilitation

143. The ***Commission*** asked the Court to order the State to "[p]rovide the necessary physical and mental health care for the rehabilitation of the family members of the deceased youths who so wish and in agreement with them."

144. The ***representatives*** indicated that Venezuela should be ordered "to provide the necessary physical and mental health care for the rehabilitation of the members of the victims' families." They asked that the State provide the "physical and mental care by mutual agreement with the beneficiaries, taking into account the particular needs of each of them, including the geographical location of each victim."

145. The ***State*** "undert[ook], following the presentation of the [answering brief], to offer and

provide health care to the victims." To this end, it "invite[d] the interested victims to contact the state authorities […] in order to implement the measures required to respond to the health problems resulting from this case."

146. The Court orders the State to provide, free of charge and on a priority basis, psychological and/or psychiatric treatment to the victims who require this. The treatment must include the provision of medication and, when applicable, transportation and other directly related and necessary expenses.[138] In addition, insofar as possible, the treatment should be provided in the centers nearest to the place of residence of the beneficiaries,[139] and for as long as necessary. When providing the treatment, the particular circumstances and needs of each victim must be taken into account, as agreed with them and following an individual evaluation.[140]

147. The beneficiaries have six months from notification of this judgment to confirm to the State that they wish to receive psychological and/or psychiatric care.[141] Then, the State will have six months from reception of this request to provide the treatment requested.

D. Measures of satisfaction

148. The ***Commission*** understood that the State should make full pecuniary and the non-pecuniary reparation for the human rights violations, including by measures of satisfaction.

149. The ***representatives*** asked the Court to order the following publications: (a) "the official summary of the judgment issued by the Court in the Venezuelan Official Gazette"; (b) "the official summary of the judgment issued by the Court in a national newspaper with widespread circulation throughout Venezuela," and (c) "the judgment, in its entirety, available for one year on an official website of the Public Prosecution Service and the Ministry of Peoples' Power for the Prison Service."

150. The ***State*** did not refer to the requests for measures of satisfaction.

151. The Court, as in other cases,[142] establishes that the State must publish the following, within six months of notification of this judgment, in an appropriate and legible font: (a) the official summary of this judgment prepared by the Court, once, in the Venezuelan Official Gazette; (b) the official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation throughout Venezuela," and (c) this judgment, in its entirety, available for one year on official websites of the Public Prosecution Service and the Ministry of Peoples' Power for the Prison Service. The State must advise the Court immediately when it has made each of the publications ordered, regardless of the one-year time frame for presenting its first report established in the twelfth operative paragraph of this judgment.

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

139 *Cf. Case of the Las Dos Erres Massacre v. Guatemala*, para. 270, and *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 12, 2020. Series C No. 402, para. 236.

140 *Cf. Case of the Las Dos Erres Massacre v. Guatemala*, para. 270, and *Case of Guzmán Albarracín et al. v. Ecuador*, para. 226.

141 *Cf. Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of August 31, 2010. Series C No. 216, para. 253, and *Case of Guzmán Albarracín et al. v. Ecuador*, para. 227.

142 *Cf. Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Acosta Martínez et al. v. Argentina. Merits, reparations and costs.* Judgment of August 31, 2020. Series C No. 410, para. 114.

E. Guarantees of non-repetition

152. The ***Commission*** asked, when submitting the case to the Court, that it order Venezuela to: "[p]rovide mechanisms of non-repetition including all necessary measures to eradicate the numerous risk factors identified in [the Merits Report] as regards infrastructure, effective control, response to emergency situations, elimination of overcrowding, separation, and strict compliance with resocialization programs for adolescents deprived of liberty in the INAM-San Félix."

153. Then, in its final written observations, it indicated that "it welcomed the measures that the State advised that it had adopted since 2006" (*infra* paras. 156 and 157). However, it understood that "these needed to be evaluated to establish that they are being implemented in practice and are effective." It assessed the measures indicated by the State "in light of the evidence in the case file and the available public information," and alleged the following: (a) in the instant case, the "structural factors form part of a more general situation faced by those deprived of liberty in Venezuela," several aspects of which are "critical,"[143] and (b) according to the expert evidence, some legislative instruments and institutions established by Venezuelan laws have not been implemented yet and some aspects of the said laws were prejudicial.[144]

154. The ***representatives*** understood that the State should "adopt, within a reasonable time, the necessary measures to ensure that detention centers and prison are adapted to the standards required by international human rights law, and to avoid a repetition of tragic events such as those that occurred in the instant case." Consequently, they asked that the Court order Venezuela to take different measures consisting of: (a) legislative reforms; (b) prevention policies with regard to emergency situations; (c) training programs for public officials; (d) actions to "neutralize or reduce the desocializing effects of confining adolescents," and (e) publication of official data.[145]

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[143] The Commission mentioned "overcrowding; excessive use of pre-trial detention; deplorable detention conditions; generalized violence; lack of effective control by the State, and corruption." It indicated that, in the absence of official data, it had learned about this situation from other sources and, in this regard, indicated that, "for example, the 2018 report of the Office of the United Nations High Commissioner for Human Rights on Venezuela described how children were detained incommunicado, "without access to their families or legal counsels for over four months." The Commission also underscored that non-governmental organizations had recorded deaths in prisons, and also cases of juveniles deprived of liberty with adults in police stations, disregard of judicial decisions ordering the police forces to release adolescents, and adolescents subjected to isolation regimes, military training and degrading treatment."

[144] The Commission emphasized that, according to the expert opinion of Ms. Vásquez González, "the regulations established in article 79 of the Organic Code of Criminal Procedure for detention centers for adolescents in conflict with the law have not yet been adopted." It also pointed out that this expert opinion indicated that, "for the past 20 years, the creation of appellate courts within the juvenile criminal justice system has been pending throughout the country" and that "[i]n the case of the Organic Law for the Protection of Children and Adolescents (LOPNNA)," "no administrative body had been appointed." It noted that the expert opinion also indicated that the LOPNNA had "increased the maximum prison sentence for juveniles from five to ten years." Based on the foregoing, the Commission considered that "the legislative reforms that the Venezuelan State had stressed as positive in its answering brief, in practice prioritized a punitive response to juveniles in conflict with the law."

[145] The details of what the representatives asked the Court to order the State are as follows: (A) "Reform of the Organic Prison Code, the Organic Code of Criminal Procedure and other laws relating to prison in order to align them with international standards for the protection of human rights and, in particular those that relate to children and adolescents." In their final written arguments, they indicated that they were requesting the reform of Title V of the LOPNNA. (B) "Adapt its legal framework for matters concerning prisons to the inter-American standards, as well as other international standards established in the following instruments, among others: (i) the Principles and best practices on the protection of persons deprived of liberty in the Americas; (ii) the Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules); (iii) the Basic Principles for the Treatment of Prisoners; (iv) the Tokyo Rules; (v) the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment; (vi) the United Nations Rules for the Protection of Juveniles Deprived of Their Liberty; (vii) the International Fire Code, and (viii) the Life Safety Code NFPA-101 of the United States National Fire Protection Association." (C) "Adopt prevention policies for prisons in order to reduce to a minimum emergency or risk situations in detention centers, including: (i) training for detention center staff on evacuation and first aid procedures during fires and other catastrophes; (ii) reparation and maintenance of electrical systems in

155. In their final written arguments, the representatives indicated that "the crisis of the prison system in Venezuela has not been overcome and the reality of the detention centers and prisons continues to be overcrowding, violence and death." In addition, they indicated that the information provided by the State was "false" (*infra* para. 156) regarding the adaptation of the prison infrastructure and the application, in all entities, of the "New Disciplinary Regime," as well as regarding the "Immediate Response Group for Adolescents in Custody."[146] They understood that the "initiatives" described by the State (*infra* para. 156), "in practice, do not translate into a prison system that respects the human rights of those deprived of liberty, in particular the rights of juveniles who have violated criminal law." Therefore, they insisted on the importance of the measures of non-repetition requested.[147]

156. The ***State*** advised that "since the events occurred," it had adopted "a series of legislative, administrative and educational measures, both in the Center that is the subject of these proceedings, and also in all the socio-educational programs of the juvenile criminal justice system, to ensure that incidents such as those that occurred would not be repeated."[148] In this regard, it emphasized the following:

a) The INAM was eliminated completely by the "Organic Law reforming the 2006 Organic Law for the Protection of Children and Adolescents,"[149] and the events of this case "were the catalyst for the closure" of the institution.

b) In 2011, the "Ministry of Peoples' Power for the Prison Service (MPPSP)" was created with the specific objective of changing the panorama and reality of Venezuelan detention centers and prisons." The 32 facilities for juveniles in conflict with the law, for which INAM had been responsible previously, were transferred to the supervision of the new entity.

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detention centers; (iii) implementation of early warning and detection systems, as well as systems for fire extinction and response to other dangers in detention centers; (iv) installation of appropriate equipment to respond to emergencies in detention centers." (D) "Implement programs to train public officials responsible for implementing safety measures in detention centers in order to ensure total compliance with the international standards of protection for persons deprived of liberty and their human rights, particularly in the case of juveniles deprived of liberty or in pre-trial detention." (E) "Implement actions that neutralize or reduce the desocializing effects of the confinement of juveniles, avoiding, insofar as possible, the violation of other rights such as to education and health, and permit the reinforcement of family and community ties." (F) "Publish official data on the situation of persons deprived of liberty."

146 The representatives indicated that they have heard of "complaints" indicating cruel, inhuman and degrading treatment and that the 'New Prison Regime' continually violates […] the human rights of those deprived of liberty who are obliged to perform military exercises, including singing songs in support of the government, denied benefits such as visits, and even subjected to isolation and not provided with food." They asserted that, "[a]dditionally, it has been reported that juveniles deprived of liberty are not separated from adults and that the deprivation of liberty is not used as a last resort."

147 Furthermore, in their final written arguments, they added requests that the Court order the State to: (i) "ensure that juveniles deprived of liberty are separated from adults"; (ii) "create a prison monitoring body that is largely civilian and independent in nature in juvenile detention centers," and (iii) "ensure that socio-educational programs are in keeping with the international standards; in particular, prohibiting military training and political indoctrination."

148 In its written arguments, the State reiterated its considerations in this regard and emphasized – referring to the observations of witness Rossy Mendoza – that "the significant progress made by the Venezuelan State in matters relating to prisons, recognized by international agencies, has currently been affected in general by the unlawful and arbitrary imposition of unilateral coercive measures that, evidently, have affected and hampered access to medicines, food items, and also the Venezuelan economy, and this has resulted in a reduction of the investment in the infrastructure of the country's prisons.

149 The State explained that even though, since 2000 with the entry into force of the Organic Law for the Protection of Children and Adolescents (LOPNNA), it had begun a process of "legal reform" to adapt the corresponding laws and institutions to the Convention on the Rights of the Child and the Constitution, in 2005 the INAM was still in existence and "both its legal framework and its models of attention and institutional practices contravened" those mandates.

c) Starting in July 2011, the MPPSP made a diagnosis of all facilities "and proceeded to totally transform the infrastructure throughout the country in order to provide satisfactory minimum detention conditions, pursuant to domestic law and international standards, for the human rights of adolescents."

d) Since 2013, various infrastructure projects have been carried out to improve conditions in the said 32 facilities. In addition, public policies have been created that result in "socio-educational programs," "promoting the instilling of positive values and the reorientation of actions towards incorporation into social life and liberating and productive work." Those programs incorporated possible "alternative measures to deprivation of liberty."[150]

e) "Currently, [the State] has 32 facilities with an appropriate infrastructure to house all juveniles in conflict with the law without any overcrowding. […] In those centers […] there are spaces for education, culture, sport, meals, health, work, family visits, and socio-productive activities, among others." "the New Disciplinary Regime is applicable [in all facilities], which means that the State has total control and there is no possession of any type of weapon, drug or prohibited object that could compromise safety." From 2011 to date, there have been "no acts of violence inside these facilities throughout the country."

f) In addition, the MPPSP has the necessary staff to provide internal security and monitor daily activities. External security services also exist, provided by the State's civil law enforcement agencies. "Both custodial and […] general administrative [staff] receive constant training and workshops on human rights and the treatment of juveniles in conflict with the law." "Furthermore, the Immediate Response Group for Adolescents in Custody, composed of officials […] who receive training in different areas such as security, treatment of juveniles that respects human rights, inspections and searches, and management of emergency situations (such as fires and earthquakes)." They are responsible for implementing the "New Prison Regime."

157. The State also noted that the Monseñor Juan José Bernal Juvenile Detention Center (also referred to in this judgment as the "INAM–San Félix") applies the "New Disciplinary Regime." It indicated that the Center has capacity to house 70 male juveniles and, currently, it has a population of 26, "classified by age and grouped by legal status," who are provided with education and health care. It added that the center has sports and cultural facilities and social areas that allow the application of "integral treatment," and it also has external spaces for agricultural activities. Venezuela indicated that the staff includes "21 custodial officials," and the State has "absolute control" of the facility, which prevents the entry of any prohibited object. The State advised that, since 2011, "this Center has not recorded any act of violence leading to injuries or deaths." It considered that the facility "exceeds international standards for deprivation of liberty."

158. The Court notes that the representatives and the Commission have referred to the presumed "crisis" of the Venezuela prison system, and to its supposed "critical situation," and have presented observations in this regard. Nevertheless, it is not incumbent on the Court, within the framework of its jurisdiction and its jurisdictional functions in this case, to make a general assessment of Venezuela's prison system which, in addition, has been modified starting

[150] The State indicated that MPPSP is implementing "various socio-educational programs," such as "the Family Reinforcement Program; educational programs on the issue of discipline; culture, sports, recreation, production, and spiritual and religious assistance," "A prison symphony orchestra program for adolescents in conflict with the law" and "Agricultural production and vocational training programs."

in 2006[151] following the events of this case. Added to this, and for the same reason, the Court understands that it is not appropriate to make an analysis, in abstract, of the legislation that was not applied and has had no impact on the case.[152]

159. In addition, the Court recalls that, in its judgment in the case of *Montero Aranguren et al. (Retén de Catia),* of July 5, 2006, it ordered Venezuela to take various measures to ensure the rights of persons deprived of liberty, including:

> a) "[W]ithin a reasonable time, adapt its domestic laws to the provisions of the American Convention so that[, among other aspects,] it implements a prison monitoring service of a civilian nature [and] ensures an efficient procedure or mechanism before a competent, impartial and independent authority for the verification and investigation of complaints of human rights violations filed by persons deprived of liberty";
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> b) "Adopt, within a reasonable time, the necessary measures to ensure that the conditions of its prisons conform to the relevant international standards," indicating that, in particular, the State must "ensure that every person deprived of liberty may live in conditions compatible with his human dignity, which include, *inter alia*: (a) a space that is sufficiently large to spend the night; (b) cells that are ventilated and with access to natural light; (c) access to clean toilets and showers with sufficient privacy; (d) adequate, opportune and sufficient food and health care, and (e) access to opportunities for education and work, and of any other type that are essential for the reform and social rehabilitation of the inmates," and
>
> c) "Design and implement a training program on human rights and international standards for persons deprived of liberty, for police and prison agents."[153]

160. The Court is supervising the foregoing measures in the context of the relevant procedure in that case[154] and, consequently and due to previous considerations (*supra* para. 158), it does not find it necessary or appropriate to order measures addressed at legal or institutional changes in the Venezuelan prison system in the instant case.

161. Notwithstanding the foregoing, specifically in relation to the facts of the case, the Court notes that although witness Peña Varela has stated that changes have been made in the Monseñor Juan José Bernal Detention Center in which the facts of the case occurred and has referred to the existence of a "policy" for emergencies, and even an "evacuation protocol," he has not provided details in this regard and the Court has no information on the existence of protocols that are also applicable in other detention centers.[155]

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[151] This determination does not imply any judgment by the Court as to the compatibility or incompatibility of this system with the pertinent international human rights norms.

[152] *Cf.,* similarly, *Case of Genie Lacayo v. Nicaragua. Preliminary objections*. Judgment of January 27, 1995. Series C No. 21, para. 50 and *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and reparations.* Judgment of September 1, 2020. Series C No. 411, para. 123. Additionally, the representatives presented some specific requests for measures of non-repetition with their final written arguments (*supra* footnote 147). Therefore, they are time-barred.

[153] *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*, paras. 144 to 146 and 149, and operative paragraphs 9, 10 and 11.

[154] *Cf. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela.* Orders of the Court on monitoring compliance with judgment of August 30, 2011, and November 20, 2015.

[155] The witness stated that, currently, the Monseñor Juan José Bernal Center: (a) has staff who are receiving training on emergencies, whether medical, natural, or due to riots or fire, among others; (b) has a policy for emergency situations; (c) has emergency exits; (d) is not overcrowded, because it has the capacity to house 62 inmates and has 42 (including

162. Therefore, the Court orders the State that, if it does not have a protocol for fires or emergencies in juvenile detention centers, it must adopt one within one year. This protocol must establish both the actions to be taken to address such situation in those facilities and also the assistance that external entities might have to provide for medical and/or other types of emergencies. The protocol should also establish that: (a) prisoners or inmates are not provided with or allowed to have mattresses or other similar items that are not fireproof, especially items made of materials that are extremely toxic when on fire, such as polyurethane, in their cells or sectors or closed accommodation areas; (b) guards always have keys or devices that permit the rapid opening of cells, sectors or closed areas immediately available and in verified working conditions, and (c) fire extinguishers and all other firefighting equipment are maintained in perfect operating conditions throughout all facilities. If the State already has such a protocol, it must advise the Court within the same time frame, as well as whether this protocol complies with the above conditions.

F. Other measures requested

163. The ***representatives*** asked that "a scholarship be awarded to the victims' family members who are enrolled in primary, secondary or higher education." In addition, they considered it appropriate that the Court order the State "to hold a public act to acknowledge international responsibility for the death of the victims." The ***State*** did not refer to these requests.

164. Regarding the first measure mentioned in the preceding paragraph, the Court notes that it has no causal nexus with the violations determined in this case, and therefore does not find it appropriate to order it. Regarding the request for the State to conduct a public act to acknowledge international responsibility, the Court notes that the representatives themselves, in their brief with final arguments, indicated that since Venezuela had acknowledged its responsibility, it had complied with this request. Consequently, the Court finds it unnecessary to order a public act to acknowledge responsibility.

G. Compensation

165. The ***Commission*** asked that full pecuniary and the non-pecuniary reparation be made for the human rights violations by the provision of financial compensation.

166. The ***representatives*** asked that the Court "order Venezuela to pay the victims' family members compensation […] to redress the pecuniary and non-pecuniary damage suffered due to the death of the victims." They asked the Court "to establish the amount based on the equity principle," in light of "the difficulty to provide an exact amount for the damage."[156]

167. The ***State*** did not refer to this request.

168. In its case law, the Court has indicated that pecuniary damage supposes the loss of, or detriment to, the victims' income, the expenses incurred as a result of the facts, and the

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those in pre-trial detention and those sentenced, juveniles and young adults, and (e) has a staff of 34 persons. He also indicated that, at least since July 26, 2011, no fire had been reported in the Center.

[156] Nevertheless, they understood that the compensation for pecuniary damage should take into account the loss of earnings of the victims and the consequential damage "which corresponds to the direct and consequent damage, such as medical and funeral expenses." Regarding the non-pecuniary damage, they indicated that this "corresponds to the suffering and affliction caused to the victims and their family members." Even though they asked the Court to establish amounts, "in equity," in their final written arguments the representatives indicated certain "indicative amounts."

consequences of a pecuniary nature that have a causal nexus with the facts of the case.[157] It has also developed the concept of non-pecuniary damage in its case law and established that this may include both the suffering and affliction caused to the direct victim and his close family, and also the impairment of values of great significance for the individual, as well as the changes of a non-pecuniary nature in the living conditions of the victims or their families.[158]

169. The Court notes that the representatives have not requested specific amounts and have not indicated specific elements for the assessment of the damage suffered. However, the Court understands that, given the nature of the facts and violations determined in this judgment, the victims have suffered pecuniary and non-pecuniary damage that should be compensated. Therefore, it determines, in equity, the following monetary amounts in favor of each of the victims as compensation to redress, jointly, both the pecuniary and the non-pecuniary damage:

a) José Gregorio Mota Abarullo: US$160,000.00 (one hundred and sixty thousand United States dollars);
b) Rafael Antonio Parra Herrera: US$160,000.00 (one hundred and sixty thousand United States dollars);
c) Johan José Correa: US$160,000.00 (one hundred and sixty thousand United States dollars);
d) Gabriel de Jesús Yáñez Sánchez: US$160,000.00 (one hundred and sixty thousand United States dollars);
e) Cristian Arnaldo Molina Córdova: US$160,000.00 (one hundred and sixty thousand United States dollars);
f) Elvia Abarullo de Mota (José Mota's mother): US$30,000.00 (thirty thousand United States dollars);
g) Félix Enríquez Mota (José Mota's father): US$30,000.00 (thirty thousand United States dollars);
h) Osmely Angelina Mota Abarullo (José Mota's sister): US$10,000.00 (ten thousand United States dollars);
i) Myriam Josefina Herrera Sánchez (Rafael Parra's grandmother): US$25,000.00 (twenty-five thousand United States dollars);
j) Jesús Juvenal Herrera Sánchez (Rafael Parra's uncle): US$5,000.00 (five thousand United States dollars);
k) Nelys Margarita Correa (Johan Correa's mother, deceased): US$30,000.00 (thirty thousand United States dollars);
l) Belkis Josefina Correa Ríos (Johan Correa's sister): US$10,000.00 (ten thousand United States dollars);
m) Luis José Yáñez (Gabriel Yáñez's father): US$30,000.00 (thirty thousand United States dollars);
n) Maritza del Valle Sánchez Ávila (Gabriel Yáñez's mother): US$30,000.00 (thirty thousand United States dollars);
o) María Cristina Córdova de Molina (Cristian Molina's mother): US$30,000.00 (thirty thousand United States dollars), and
p) Hugo Arnaldo Molina (Cristian Molina's father): US$30,000.00 (thirty thousand United States dollars).

170. The sums allocated to José Mota, Rafael Parra, Johan Correa, Gabriel Yáñez and Cristian Molina shall be shared among their respective family members who have been declared victims

[157] *Cf. Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 132.

[158] *Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and costs.* Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 137.

in this judgment, on the following basis: (a) the sums allocated to José Mota, Gabriel Yáñez and Cristian Molina shall be shared, in equal parts, between their respective parents; (b) the sum allocated to Rafael Parra shall be shared between his grandmother, Myriam Josefina Herrera Sánchez, and his uncle, Jesús Juvenal Herrera Sánchez, with 75% corresponding to the former and 25% to the latter; (c) the sum allocated to Johan Correa shall be delivered, in full, to his sister, Belkis Josefina Correa Ríos, because his mother, Nelys Margarita Correa, who is the other family member of Johan Correa declared a victim in this judgment is deceased. The sum allocated to Nelys Margarita Correa shall also be delivered to Belkis Josefina Correa Ríos. In any case other than those indicated, in which a beneficiary dies before this judgment is handed down, the compensation amount allocated to that person shall be shared, in equal parts, among their family members who have been declared victims in this judgment who are alive on the date of this judgment. If this is not possible, it shall be delivered to their heirs pursuant to the applicable domestic law. If any of the beneficiaries should die after the date that this judgment is delivered, and before collecting the compensation, the indications in section J of this chapter on the method of compliance (*infra* paras. 177 to 182) must be followed.

H. Costs and expenses

171. The ***representatives*** asked that the State be ordered to pay the costs originating at the national level during the processing of the judicial proceedings, and also at the international level during the processing of the case before the Commission and the Court. They asked the Court to "establish, in equity, the sum that the State should pay for this concept."

172. Costs and expenses form part of the concept of reparation because the activity deployed by the victims in order to obtain justice, at both the national and the international level, entails disbursements that should be compensated when the international responsibility of the State is declared in a judgment.[159] Regarding the reimbursement of the costs and expenses, it is for the Court to assess their *quantum* prudently, and this includes the expenses incurred before the authorities of the domestic jurisdiction, as well as those arising during the proceedings before the inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment can be made based on the principle of equity and taking into account the expenses indicated by the parties provided that the amount is reasonable.[160]

173. This Court notes that the representatives have not requested a specific sum for the reimbursement of costs and expenses, or fully and reasonably authenticated all the expenses incurred. The Court decides, in the understanding that this is reasonable, to establish, in equity, the payment of a total of US$20,000.00 (twenty thousand United States dollars) for costs and expenses. This amount must be shared in equal parts between the *Observatorio Venezolano de Prisiones* (OVP) and the Cyrus R. Vance Center for International Justice. The State must deliver the corresponding amount to these two organisations within six months.

174. During the procedure of monitoring compliance with this judgment, the Court may establish that the State must reimburse any reasonable and duly authenticated expenses incurred at that procedural stage to the victims or their representatives.[161]

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

160 *Cf. Case of Garrido and Baigorria v. Argentina*, para. 82, and *Case of Acosta Martínez et al. v. Argentina*, para. 145.

161 *Cf. Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs.* Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Acosta Martínez et al. v. Argentina*, para. 146.

I. Victims' Legal Assistance Fund

175. It should be recorded that, in this case, as shown by the order of the President of June 30, 2020 (*supra* para. 9), on March 6, 2020, "the parties and the Commission were advised that, pursuant to the provisions of Articles 31 of the Court's Rules of Procedure […] and 2, 3 and 5 of the Rules for the Operation of the Victims' Legal Assistance Fund, the request presented by the representatives to access the [Victims' Legal Assistance] Fund was admissible, and that financial support would be granted for the presentation of three statements."[162] In this order, the President determined:

> Taking into account that no public hearing will be held in this case, financial assistance will be allocated to cover the costs of three deponents, to be indicated by the representatives, for the expenses of notarizing and mailing written statements, provided that such expenses are reasonable. To this end, the representatives must forward to the Court both the justification of such expenses and the corresponding vouchers with the presentation of their final written arguments at the latest since this is the last procedural opportunity to do this.[163]

176. Despite the foregoing, the representatives did not forward expense vouchers either with their final written arguments or previously. Consequently, the Victims' Legal Assistance Fund was not used and the Court does not need to order the State to make any reimbursement.

J. Method of compliance

177. The State shall make the payment of the compensation for pecuniary and non-pecuniary damage and to reimburse costs and expenses established in this judgment directly to the persons and organisations indicated, within one year of notification of this judgment, in the terms of the following paragraphs.

178. If any of the beneficiaries should die before they receive the respective compensation, this shall be delivered directly to their heirs, pursuant to the applicable domestic law.

179. Regarding the currency for the payment of the compensation and to reimburse costs and expenses, the State must comply with its monetary obligations by payment in United States dollars or, if this is not possible, in Venezuelan currency using, to make the respective calculation, the highest and most beneficial rate for the victims permitted by domestic law in force at the time of payment. During the stage of monitoring compliance with the judgment, the Court may make a prudent adjustment of the equivalent of the amounts in Venezuelan currency in order to avoid fluctuations in the exchange rate substantially affecting the purchasing power of the said amounts.

180. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it should not be possible to pay the amounts established within the indicated time frame, the State shall deposit the said amounts in their favor in a deposit account or certificate in a solvent Venezuelan financial institution, in United States dollars, and in the most favorable conditions

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[162] *Case of Mota Abarullo et al. v. Venezuela.* Order of the President of the Court of June 30, 2020, having seen paragraph 5.

[163] *Case of Mota Abarullo et al. v. Venezuela.* Order of the President of the Court of June 30, 2020, considering paragraph 24. In addition the tenth and eleventh operative paragraphs of the order stated: "[t]o declare admissible the application of the Victims' Legal Assistance Fund of the Inter-American Court in the terms of considering paragraphs 23 to 26 of this order" and "[t]o require the representatives, at the latest with their final written arguments, which should be presented by the date indicated in the ninth operative paragraph, to forward the vouchers that duly authenticate the reasonable expenses incurred, in accordance with the provisions of considering paragraph 24 of this order. The expenses shall be reimbursed on reception of the corresponding vouchers." The said operative paragraphs were not modified by the order of the Court of August 24, 2020 (*supra* para. 9).

permitted by banking law and practice. If the corresponding compensation is not claimed, after ten years the amounts shall be returned to the State with the interest accrued.

181. The amounts allocated in this judgment as compensation and to reimburse costs and expenses shall be delivered to the persons and organisations indicated in full, as established in this judgment, without any deductions due to eventual taxes or charges.

182. If the State should incur in arrears, it shall pay interest on the amount owed corresponding to bank interest on arrears in the Bolivarian Republic of Venezuela.

IX
OPERATIVE PARAGRAPHS

183. Therefore,

THE COURT

DECIDES,

Unanimously:

1. To admit the acknowledgement of international responsibility made by the State, in the terms of paragraphs 18 to 26 of this judgment.

DECLARES,

Unanimously, that:

2. The State is responsible for the violation of the rights to life and personal integrity and the rights of the child contained in Articles 4(1), 5(1), 5(4), 5(5) and 5(6) and 19 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of José Gregorio Mota Abarullo, Rafael Antonio Parra Herrera, Johan José Correa, Gabriel de Jesús Yáñez Sánchez and Cristian Arnaldo Molina Córdoba, pursuant to paragraphs 78 to 110 and 113 of this judgment.

3. The State is responsible for the violation of the rights to judicial guarantees and judicial protection recognized in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Elvia Abarullo de Mota, Félix Enríquez Mota, Osmely Angelina Mota Abarullo, Myriam Josefina Herrera Sánchez, Jesús Juvenal Herrera Sánchez, Nelys Margarita Correa, Belkis Josefina Correa Ríos, Luis José Yáñez, Maritza del Valle Sánchez Ávila, María Cristina Córdova de Molina and Hugo Arnaldo Molina, pursuant to paragraphs 120 to 127 of this judgment.

4. The State is responsible for the violation of the right to personal integrity, recognized in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Elvia Abarullo de Mota, Félix Enríquez Mota, Osmely Angelina Mota Abarullo, Myriam Josefina Herrera Sánchez, Jesús Juvenal Herrera Sánchez, Nelys Margarita Correa, Belkis Josefina Correa Ríos, Luis José Yáñez, Maritza del Valle Sánchez Ávila, María Cristina Córdova de Molina and Hugo Arnaldo Molina, pursuant to paragraphs 130 to 133 of this judgment.

AND ESTABLISHES:

Unanimously, that:

5. This judgment is, *per se,* a form of reparation.

6. The State shall facilitate, continue and conclude the investigations and/or judicial proceedings necessary to determine and, as appropriate, prosecute and punish those responsible for the deaths and injuries caused to those deprived of liberty in the INAM-San Félix as a result of the fire that occurred on June 30, 2005, pursuant to paragraph 141 of this judgment.

7. The State shall take the necessary measures to determine, as appropriate, the corresponding administrative and/or disciplinary responsibilities, pursuant to paragraph 142 of this judgment.

8. The State shall provide psychological and/or psychiatric treatment to the family members of the deceased victims who require this, pursuant to paragraphs 146 and 147 of this judgment.

9. The State shall make the publications indicated in paragraph 151 of this judgment within six months of its notification.

10. The State shall implement a protocol for emergencies or fires in juvenile detention centers, if it does not already have one, or shall provide the pertinent information, pursuant to paragraph 162 of this judgment.

11. The State shall pay the amounts established in paragraphs 169 and 173 of this judgment for pecuniary and non-pecuniary damage and costs and expenses, pursuant to paragraphs 170 and 177 to 182 of this judgment.

12. The State shall provide the Court with a report on the measures adopted to comply with this judgment within one year of its notification, notwithstanding the provisions of paragraph 151 of this judgment.

13. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfillment of its obligations under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with its provisions.

DONE, at San José, Costa Rica, on November 18, 2020, in the Spanish language.

IACtHR. *Case of Mota Abarullo et al. v. Venezuela*. Merits, reparations and costs. Judgment of November 18, 2020.

Elizabeth Odio Benito
President

L. Patricio Pazmiño Freire | Eduardo Vio Grossi

Humberto Antonio Sierra Porto | Eduardo Ferrer Mac-Gregor Poisot

Eugenio Raúl Zaffaroni | Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri
Secretary

So ordered,

Elizabeth Odio Benito
President

Pablo Saavedra Alessandri
Secretary