

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF GUERRERO, MOLINA ET AL. V. VENEZUELA**  
**JUDGMENT OF JUNE 3, 2021**  
***(Merits, reparations and costs)***

In the *Case of Guerrero, Molina et al. v. Venezuela*.

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

Elizabeth Odio Benito, President  
L. Patricio Pazmiño Freire, Vice President  
Eduardo Vio Grossi, Judge  
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, 65, and 67 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure" or the "Rules of Procedure of the Court"), delivers this judgment, which is structured as follows:

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\* Judge Humberto Antonio Sierra Porto did not take part in the deliberation and signature of this judgment for reasons of *force majeure* that were accepted by the full Court.

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

1. *The case submitted to the Court.* On May 24, 2019, the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Inter-American Court of Human Rights the case of "Jimmy Guerrero, Ramón Molina Pérez, and relatives" versus the Bolivarian Republic of Venezuela (hereinafter also "the State" or "Venezuela"). As indicated by the Commission, the case is related to the alleged extrajudicial executions of Jimmy Rafael Guerrero Meléndez and his family member, Ramón Antonio Molina Pérez, committed on March 30, 2003, by officials of the Falcón State Police Armed Forces. The Commission determined that there is "sufficient and consistent evidence to establish State participation" in both deaths. In addition, it found that the two men "experienced situations of profound fear" before their death and that the body of Jimmy Guerrero—which was dragged behind a vehicle—was treated with cruelty. It also found that the State had failed to comply with its obligation to investigate the facts diligently and within a reasonable period of time, including regarding possible torture. It additionally concluded that the deaths of Jimmy Guerrero and Ramón Molina and the State's lack of response to it impacted the personal integrity of their relatives. Based on the foregoing, it found violations of the rights to life, personal integrity, judicial guarantees and judicial protection.

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

a) *Petition.* On March 10, 2008, the Comité de Familiares de Víctimas de los Sucesos de Febrero –Marzo de 1989 (Committee of Relatives of Victims of the Events of February-March 1989, COFAVIC) and Jean Carlos Guerrero and Carlos Ayala Corao filed the initial petition.<sup>1</sup>

b) *Admissibility Report.* On February 19, 2011, the Commission adopted Admissibility Report 11/4, admitting the petition.

c) *Report on the Merits.* On December 7, 2018, the Commission approved Report on the Merits 160/18 (hereinafter also "Report on the Merits"), in which it reached a series of conclusions<sup>2</sup> and made several recommendations to the State.

3. *Notification to the State.* The Report on the Merits was notified to the State via communication dated February 27, 2019. The Commission gave Venezuela two months to report on compliance with the recommendations, but it indicated the State "did not offer any response."

4. *Submission to the Court.* On May 24, 2019, the Commission submitted to the Court "all the facts and human rights violations" involved in the case. It did so, it indicated, "out of the need to obtain justice and reparation."<sup>3</sup> This Court notes with

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<sup>1</sup> Subsequently, the Center for Justice and International Law (CEJIL) was added as a petitioner.

<sup>2</sup> The Commission concluded the State was responsible for the violation of Articles 4(1) (right to life), 5(1) (right to humane treatment), 8(1) (right to judicial guarantees) and 25(1) (right to judicial protection) of the American Convention, in relation to Article 1(1) of the Convention (obligations to respect and guarantee rights). It also determined that Venezuela had violated Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

<sup>3</sup> The Commission appointed then-Commissioner Francisco Eguiguren Praeli and then-Executive

concern that more than 11 years have elapsed between the presentation of the initial petition before the Commission and the submission of this case to the Court.

5. *Requests of the Commission.* The Commission asked this Court to find and declare Venezuela internationally responsible for the violations set forth in Report 160/18 (*supra* footnote 2) and to order the State to carry out the measures of reparation included in that report (*infra* Chapter VIII).

## II PROCEEDINGS BEFORE THE COURT

6. *Notification to the State and to the representatives.* The submission of the case was notified to the representatives of the alleged victims and to the State on July 22 and 31, 2019, respectively.<sup>4</sup>

7. *Brief with motions, arguments and evidence.* On September 26, 2019, the representatives presented their brief with motions, arguments and evidence (hereinafter "motions and arguments brief"), in keeping with articles 25 and 40 of the Rules of Procedure. They substantially agreed with the Commission's arguments and additionally indicated that the State had committed acts of torture and violated several aspects of the right to personal liberty to the detriment of Jimmy Guerrero. In addition, they stated that all the human rights violations were committed in violation of the prohibition on discrimination arising from Article 1(1) of the Convention. They asked that Venezuela be ordered to adopt various measures of reparation and reimbursement of costs and expenses.

8. *Answering brief.* On March 9, 2020, the State submitted its brief answering the application and the Report on the Merits and the pleadings and motions brief (hereinafter "answering brief").<sup>5</sup> It recognized its international responsibility, in the terms indicated below (*infra* Chapter IV).

9. *Observations on acknowledgment of responsibility.* On June 22, 2020, the Commission and the representatives submitted their observations on the acknowledgment of responsibility, as indicated below (*infra* Chapter IV).<sup>6</sup>

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Secretary Paulo Abrão as its delegates before the Court. As legal advisers, it appointed Silvia Serrano Guzmán and Piero Vásquez Agüero, of the Executive Secretariat of the Commission.

<sup>4</sup> The representation of the alleged victims is exercised by the Committee of Relatives of Victims of the Events of February-March 1989 (COFAVIC) and the Center for Justice and International Law (CEJIL). Regarding the date of notification to the State, the record shows that on July 22, 2019, the Secretariat of the Court sent the respective documentation by postal mail (courier), but for reasons beyond the control of the Secretariat, it was not delivered to the State. Therefore, on July 31, 2019, the Secretariat sent the corresponding documents to Venezuela digitally.

<sup>5</sup> Before, on November 13, 2019, Venezuela had appointed Mr. Larry Devoe Márquez as its agent. It should also be noted that on February 3, 2020, the State communicated that its understanding was that the regulatory deadline for its reply ran from January 9, 2020, as that was the date on which it received all the relevant documents. Following instructions from the Court, in view of the State's communication and given certain problems in the Internet service of the Court toward the end of 2019, the aforementioned period would begin on January 9, 2020.

<sup>6</sup> Regarding the date on which the observations on the acknowledgment of responsibility were presented, the following clarification is necessary: According to Article 28 of the Rules of the Court, after presenting its answer on March 9, 2020, Venezuela had 21 days to submit the signed document and its attached documentation. However, that period was suspended on March 17, 2020, when the suspension of deadlines provided for in Order 1/20 of the Court took effect as a result of the COVID-19 pandemic, as is widely and publicly known. The suspension of deadlines was later extended through May 20, 2020. The State

10. *Final written procedure and oral evidence procedure.* In an order dated October 13, 2020, the President of the Court, in consultation with the full Court, decided that for reasons of procedural economy and in response to the situation caused by the COVID-19 pandemic (hereinafter also “the pandemic”), it was not necessary to convene a public hearing in this case. She determined that two alleged victims would testify orally via videoconference and that other persons would testify in writing. The videoconference evidence procedure took place of January 26, 2021.<sup>7</sup>

11. *Final written arguments and observations.* On March 9, 2021, the Commission and the State presented their final written observations and arguments, respectively. The following day, the representatives forwarded their final written arguments and attached documentation.<sup>8</sup>

12. The Court deliberated this judgment during virtual sessions between May 26 and June 3, 2021.<sup>9</sup>

### **III COMPETENCE**

13. Venezuela became a State Party to the American Convention on August 9, 1977 and recognized the contentious jurisdiction of the Court on June 24, 1981. On September 10, 2012, it denounced the American Convention. The denouncement became effective on September 10, 2013. Based on Article 78(2) of the Convention, the Court is competent to hear this case, insofar as the events analyzed originated prior to the moment in which the complaint may produce effects.

### **IV ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY**

#### **A) *Acknowledgment of responsibility by the State and observations of the Commission and the representatives***

14. In its response, the **State** recognized its international responsibility. It did so by expressing the following:

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presented the signed answering brief and the documentation attached thereto on June 2, 2020. On June 8, the answer and the attached documentation were forwarded to the Commission and the representatives, and they were given to June 22 to present their observations on the acknowledgment of responsibility.

<sup>7</sup> However, only the testimony from Jean Carlos Guerrero was received. Although it had also been arranged to receive Soleida Morillo’s statement, on December 23, 2020, the representatives reported that they could not guarantee secure access to the internet for her and asked that she be allowed to testify in writing. This was authorized by means of a communication from the Secretariat dated January 4, 2021. The Order of October 13, 2020, is available on the internet: [https://www.corteidh.or.cr/docs/asuntos/guerrermolina\\_13\\_10\\_20.pdf](https://www.corteidh.or.cr/docs/asuntos/guerrermolina_13_10_20.pdf)

<sup>8</sup> The final written observations of the Commission and the final written arguments of the State and the representatives, as well as the annexes to the latter, were forwarded to the parties and to the Commission. A deadline of March 19, 2021, was set for the State and the Commission to submit, if they deemed it appropriate, observations on the aforementioned annexes. However, they did not do so.

<sup>9</sup> Due to the exceptional circumstances brought about by the COVID-19 pandemic, this judgment was deliberated and approved during the one hundred and forty-second regular sessions, which was held remotely, using technological means, as provided for by the Rules of Procedure of the Court.

The Venezuelan State declares [...] that it recognizes its international responsibility in these proceedings for the violation of the right to life and personal integrity, established in articles 4(1), 5(1), 8(1), and 25(1) of the American Convention, in relation to the obligations established in its articles 1(1) and 2, to the detriment of Mr. Jimmy Guerrero, Mr. Ramón Molina, and their relatives, under the terms and conditions established in Report on the Merits 160/18 [...], with the exception of what is established in articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, considering that in this case it does not fall within the provisions of the aforementioned instrument.

15. It also indicated that "[i]n principle, and in general, [...] it] undertakes to comply with the corresponding comprehensive reparations [...], pursuant to the case law [of the] Court and the criteria that have been followed in cases similar in [...] Venezuela." It also referred to some specific measures: a) "as of the presentation of [the answer], it undertook to offer and provide health care measures to the victims," and b) it stated that it has already complied with the guarantee of non-repetition requested by the Commission by taking several actions: the establishment of "training spaces" for police officers and the "extension [of]" of "measures to ensure social control of and accountability for police actions."

16. The **representatives** indicated that the State's acknowledgment "is positive", but that "the need persists for the Court to rule on all the facts, violations and measures [of] reparation." In this regard, they indicated the acknowledgment "is not sufficiently clear," as it does not establish the facts that produced the rights violations or "what they consist of."<sup>10</sup>

17. The **Commission** "welcomed the declaration" of the State. It described it as a partial acknowledgment of responsibility, indicating that Venezuela "did not precisely identify the facts from which [it] derived"<sup>11</sup> and added that the dispute over Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter also the IACPPPT) persists. It concluded that the Court must determine the corresponding facts, establish their legal consequences, and order the respective measures of reparation.

## **B) Considerations of the Court**

18. The Court recalls that, pursuant to Articles 62 and 64 of the Rules of Procedure, and in exercise of its powers for the judicial protection of human rights, a matter of international public order, it is incumbent on it to ensure that acts of acknowledgment

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<sup>10</sup> They stated, regarding the facts, that the State did not refer to the context or to the "allegations against and detentions" of Jimmy Guerrero before his execution, nor to the investigations and judicial processes initiated at the domestic level. They also noted that the State indicated that "Jimmy Guerrero was killed immediately, after being struck several times by projectiles fired from a gun," a conclusion that the Report on the Merits did not reach. They noted, with regard to the law, that the State recognized the violation of Article 2 of the Convention, which neither the Commission nor the representatives had indicated. In addition, they argued that Venezuela did not address multiple human rights violations alleged in the pleadings and motions brief, namely: a) the illegal and arbitrary detention of Jimmy Guerrero; b) the failure to notify Jimmy Guerrero of the reasons for his detention; c) the failure to bring Jimmy Guerrero before a judge in a timely manner; d) the "threats and serious physical injuries at the hands of state agents that were not investigated and that, as a whole, amount to torture," and e) the failure to investigate the threats and harassment suffered by Jimmy Guerrero.

<sup>11</sup> In this regard, it noted that although the State had indicated that Jimmy Guerrero died immediately from a gunshot wound, such statement does not amount to acknowledgment of the "failure to comply with the duty of prevention." In addition, it indicated that Venezuela did not specify the facts from which its responsibility for the violations of the right to personal integrity—to the detriment of the next of kin of Mr. Guerrero and Mr. Molina—are derived, nor the facts giving rise to its responsibility for the violation of the rights to judicial guarantees and protection, which it recognized.

of responsibility are acceptable for the purposes that the inter-American system seeks to achieve.<sup>12</sup> Based on the foregoing, it will examine the scope of the acknowledgment of responsibility in this case, considering its terms and its effects regarding the facts of the case, the legal claims, and the measures of reparation.

### *B.1 Regarding the facts*

19. Venezuela recognized its responsibility with respect to multiple violations of rights recognized in the American Convention, "under the terms and conditions established in the Report on the Merits." It is the Court's understanding that, by accepting human rights violations described in the Report on the Merits, the State has also recognized the facts set forth in the report establishing these violations.

20. In this regard, it should be noted that, as part of its "legal analysis" in the Report on the Merits, the Commission took into account "two relevant contexts": a) at the "national level," the "State police violence and complaints of extrajudicial executions of people with Jimmy Guerrero's profile, characterized by a lack of investigation and the participation of police officers in their perpetration, or that are described as a 'settling of accounts' and with reference to criminal records;" and b) "the frequency of [this] issue in Falcón [State]." The Commission also made determinations of fact with respect to these contextual aspects. Given that the State acknowledged its responsibility "under the terms and conditions" indicated by the Commission, and since they include considerations on aspects of context, Venezuela must be understood to accept these contextual circumstances.

21. Therefore, this Court finds that the dispute over the facts of the case is resolved, including the contextual situation in which they occurred, without prejudice to the clarifications made below on two aspects.

22. First, it should be noted that the Report on the Merits in the section entitled "[d]eterminations of fact" states that "different versions arose" regarding the circumstances in which the deaths of Mr. Guerrero and Mr. Molina took place, namely: a) that the deaths resulted from a "clash between gangs," b) that they took place during a robbery at a liquor store, and c) that they were perpetrated by police officers. Additionally, in the section entitled "[a]nalysis of law," the Report on the Merits establishes, for various reasons described therein, that there is "sufficient and consistent evidence on the face of it to establish State participation in the death of Jimmy Guerrero and in the related death of [...] Ramón Molina, which are directly attributable to the Venezuelan State."

23. Venezuela, in recognizing its responsibility before the Court, did not refer explicitly to the three different versions of the facts. However, it made its acknowledgment "pursuant to the terms and conditions" of the Report on the Merits. Such terms include the conclusion, reached by the Commission, that the deaths of Mr. Guerrero and Mr. Molina are directly attributable to the State because of the participation of State agents in the facts. Venezuela should therefore be understood to have accepted this conclusion and, consequently, to have acknowledged as true the version of events according to which the deaths were perpetrated by police officers. This is also the version of events endorsed by the representatives.

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<sup>12</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment dated May 26, 2010. Series C No. 213, para. 17, and *Case of Vicky Hernández et al v. Honduras*. Merits, reparations and costs. Judgment of March 26, 2021. Series C No. 422, para. 16.



24. Therefore, the Court concludes that the deaths of Mr. Guerrero and Mr. Molina occurred as a result of the direct intervention of police officers. It will not take the other two versions into consideration (*supra* para. 22).

25. Second, the State held that "it is clear that Jimmy Guerrero was killed immediately, after being struck several times by projectiles fired from a gun." For this reason, it denied its responsibility for alleged acts of aggression that were, in its understanding, "supposedly" committed after Mr. Guerrero's death. For their part, as part of the factual framework of the case, the Commission and the representatives pointed to multiple statements describing the abuse of Mr. Guerrero's body following the first gunshot wound. In the Report on the Merits, the Commission found that it could not be determined that he had died at that time, so the State was required to investigate whether the abuse committed subsequently constituted acts of torture.<sup>13</sup> Thus, there is still a dispute as to whether acts of abuse were committed that violated Jimmy Guerrero's integrity of person on the day of his death that must be investigated as possible acts of torture.

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

26. Regarding the legal claims, given the terms of the acknowledgment of responsibility, the Court finds that any dispute over the international responsibility of Venezuela has ceased as regards the violations of the rights to life and personal integrity, recognized in articles 4(1) and 5(1) of the Convention, in relation to the obligations to respect and guarantee rights, set forth by Article 1(1) of the same treaty.

27. All disputes have also ceased regarding international State responsibility for the violation of the rights to judicial guarantees and judicial protection, recognized in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1), to the detriment of family members of the deceased, identified in the Report on the Merits. However, it should be noted that the arguments of the representatives regarding the violation of the duty to investigate are based on arguments additional to the ones set forth in the Report on the Merits (*infra* paras. 28 and 132 to 134), and that the representatives' arguments have not been directly accepted or disputed by the State.

28. On the other hand, it should be noted that the representatives alleged human rights violations to the detriment of Jimmy Guerrero that were not found in the Report on the Merits based on circumstances of deprivation of liberty, attacks, and harassment prior to the day he died.<sup>14</sup> Venezuela did not explicitly accept these violations. The violations involve the alleged non-observance of the prohibition of acts of torture, the duty to investigate them, and the right to personal liberty, in accordance with Articles

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<sup>13</sup> In their final written observations and final written arguments, the Commission and the representatives, respectively, offer different considerations based on the evidence produced during the process before the Court. The Commission stated that "although [...] it did not find in its Report on the Merits that torture had been committed, [...] based on the evidence provided during this proceeding, [...] it is possible that the Court may verify elements of torture to the detriment of [Jimmy Guerrero] during the attack that ended [his] life." For their part, the representatives asserted that "Jimmy Guerrero was intentionally dragged, beaten, and run over in the moments prior to his death," and that this constituted "torture." The possibility of examining these allegations is discussed below (*infra* para. 126).

<sup>14</sup> It should be clarified that although the aforementioned human rights violations indicated by the representatives were not included in the Report on the Merits, the factual circumstances based on which the representatives allege them were included in that decision of the Inter-American Commission, which considered them to be part of the factual framework of the case supporting the conclusions reached.

5(2) and 7(1), 7(2), 7(3), 7(4) and 7(5) of the American Convention, in relation to its Article 1(1), as well as articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. Nor has it done so with respect to the representatives' allegation that all the rights violations occurred in violation of the prohibition of discrimination that arises from Article 1(1) of the Convention.

29. On the other hand, a dispute remains regarding the alleged violation of articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture due to the lack of an informal investigation into the attacks on Jimmy Guerrero at the time of the attack that led to his death, in the terms set forth by the Commission.<sup>15</sup>

### B.3 Regarding the reparations

30. With regard to reparation for human rights violations, the Court notes that the State has indicated that, in general, it would comply with the corresponding measures. It also committed to providing "healthcare" to the victims. It also reported on the development of measures to prevent the repetition of the facts. The State's affirmations on specific measures of reparation do not cover all the requests for reparation made by the Commission and the representatives. Therefore, the dispute persists in this respect.

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

31. As in other cases,<sup>16</sup> the Court appreciates the State's acknowledgment of its international responsibility. It has full legal effects, pursuant to articles 62 and 64 of its Rules of Procedure. In accordance with the foregoing, the Court finds that the dispute in this case regarding most of the facts and the need to adopt measures of reparation has ceased. Likewise, the dispute over several of the alleged human rights violations has ceased, in accordance with the above clarifications.

32. On this occasion, the Court does not deem it necessary to conduct a detailed examination of the violation of the right to life, set forth in Article 4(1) of the Convention, to the detriment of Mr. Guerrero and Mr. Molina, nor the violation of the right to personal integrity, recognized in Article 5(1) of the Convention, to the detriment of their relatives. This is in view of the State's broad acknowledgment of international responsibility on these aspects of the case and because the respective rights claims made and recognized in this case have already been subjected to jurisprudential development by the Inter-American Court. The human rights violations indicated, then, are established based on

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<sup>15</sup> In the Report on the Merits and in the brief of requests and arguments, the Commission and the representatives alleged, respectively, violation of articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture in different ways: the former alleged a violation to the detriment of Jimmy Guerrero due to failure to launch an officious investigation of alleged acts of torture as regards the attacks he suffered at the time of the attack that led to his death. The latter, on the other hand, also argued that these articles were violated by the failure to investigate acts of torture, but added that this failure was in regards to the lack of investigation into acts that occurred in the days prior to the aforementioned attack. In addition, they argued that the aforementioned provisions were violated "in concordance" with Article 5 of the American Convention—which establishes the right to personal integrity—due to the commission of acts of torture against Jimmy Guerrero, as well as with regard to facts that occurred prior to the date on which Mr. Guerrero and Mr. Molina died. The State, for its part, denied responsibility for the violation of the aforementioned articles of the Inter-American Convention to Prevent and Punish Torture, arguing that Jimmy Guerrero died immediately after being shot by a firearm—that is, in reference to what the Commission found in the Report on the Merits, not as asserted by the representatives.

<sup>16</sup> Cf. *Case of Benavides Cevallos v. Ecuador. Merits, Reparations, and Costs*. Judgment of June 19, 1998. Series C No. 38, para. 57, and *Case of Vicky Hernández et al v. Honduras*, para. 23.

the State's acknowledgment of responsibility.<sup>17</sup> In this regard, it is established that Mr. Molina and Mr. Guerrero were the victims of extrajudicial execution or execution without trial at the hands of police officers and that, for the reasons that will be explained later (*infra* paras. 91 to 99), the violation of Mr. Guerrero's right to life also involved an act of discrimination against him.

33. The Court also notes that the State has not explicitly accepted all the alleged violations and has directly disputed some of them. The Court deems it necessary to issue this judgment to determine the facts that took place and the human rights violations committed.<sup>18</sup> Doing so will make it possible to settle the remaining disputes and resolve allegations that were not expressly accepted by the State. This will also contribute to making reparation to the victims, to avoiding a repetition of similar facts and, in short, to the purposes of the inter-American human rights jurisdiction.<sup>19</sup> The Court will also rule on the corresponding measures of reparation.

34. This Court will not rule on Article 2 of the American Convention, the alleged violation of which was recognized by Venezuela but not alleged by the Commission or by the representatives (*supra* para. 14). The State did not explain why it would be responsible for this violation, and the Court finds there are no grounds for examining it.

## V EVIDENCE

### A) ***Admissibility of the documentary evidence***

35. The Court received a variety of documents presented as evidence by the Commission and by the representatives together with their main briefs (*supra* paras. 4 and 7).<sup>20</sup> As in other cases, this Court admits those documents presented at the proper procedural moment (Article 57 of the Rules of Procedure) by the parties and the

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<sup>17</sup> It should be noted that in its Report on the Merits, the Commission concluded that the State failed to comply with not only the duty to respect the right to life, but also the duty to guarantee, in view of its failure to prevent the homicide despite the authorities being aware that Jimmy Guerrero was in danger. These assertions are included in the State's acknowledgment of responsibility. The Court also notes that in their pleadings regarding the violation of the right to life, the representatives made arguments regarding the failure to investigate the deaths of Mr. Guerrero and Mr. Molina. The aspects related to the investigation of the facts will be evaluated in relation to the rights to judicial guarantees and judicial protection (*infra* Chapter VII.5).

<sup>18</sup> Notwithstanding the foregoing, regarding the arguments presented by the representatives that were not explicitly recognized by the State but also not disputed, the Court recalls that Article 41(3) of the Rules of Procedure indicates that "The Court may consider those facts that have not been expressly denied [...] as accepted." This Court will therefore take this into account as an important element in examining the aforementioned arguments.

<sup>19</sup> Cf., in the same sense, *Case of Tiu Tojín v. Guatemala. Merits, Reparations, and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 26 and *Case of Mota Abarullo et al. v. Venezuela. Merits, Reparations, and Costs*. Judgment dated November 18, 2020. Series C No. 417, para. 24.

<sup>20</sup> The State did not submit documentary evidence with its answering brief. It requested the transfer of documentary evidence consigned in the processing of a contentious case previously decided by the Court. In the end, this documentary evidence was not incorporated into the process because the State did not specify which documents it was referring to, despite being asked to do so. The State's request was rejected in an Order of the President of the Court issued on October 13, 2020 (*supra* para. 10).

Commission, whose admissibility was neither contested nor opposed, and whose authenticity was not questioned.<sup>21</sup>

36. Furthermore, pursuant to the provisions of the Order of the President of the Court of October 13, 2020 (*supra* para. 10), the following expert statements are added to the body of evidence: a) Hugo Fruhling, given in the case of the *Landaeta Mejías Brothers et al. v. Venezuela*; b) Christof Heyns, given in the case of *Favela Nova Brasilia v. Brazil*;<sup>22</sup> c) Magaly Mercedes Vásquez González, given in the case of the *Barrios Family v. Venezuela*, and d) José Pablo Baraybar, given in the case of the *Landaeta Mejías Brothers et al. v. Venezuela*. The incorporation of the first document was requested by the Commission and that of the rest by the representatives.

37. Additionally, the Court observes that along with their final written arguments, the representatives submitted a publication of the Human Rights Council of the United Nations of September 15, 2020—that is, dated after the submission of the brief of requests and arguments. In addition, they sent receipts of monetary expenditures also made after the brief of requests and arguments. These documents are therefore evidence of supervening facts, pursuant to the terms of Article 57(2) of the Regulation, and are admitted.<sup>23</sup>

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

38. The Court deems it pertinent to admit the statement of Jean Carlos Guerrero Meléndez, given orally during the proceeding carried out by video conference (*supra* para. 10), as well as the statements made in writing before a notary public and in Spanish—the working language of the case—that were presented in a timely manner, to the extent that they conform to the purpose that was defined by the President in the Order whereby it was ordered to receive them (*supra* para. 10).<sup>24</sup>

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<sup>21</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140, and *Case of Vicky Hernández et al v. Honduras*, para. 25. Documentary evidence, in general and pursuant to Article 57(2) of the Rules of Procedure, may be presented with the application brief, the pleadings and motions brief, or the answering brief, as applicable, and evidence submitted outside these procedural opportunities cannot be admitted, except in the event of the exceptions stated in the aforementioned Article 57(2) of the Rules of Procedure (namely, *force majeure*, serious impediment) or it refers to an event which occurred after the procedural moments indicated.

<sup>22</sup> The statement given by Mr. Christof Heyns is in Portuguese. Therefore, operative paragraph 9 of the Order of the President of the Court of October 13, 2020 (*supra* para. 10), indicated that the representatives—who requested its incorporation—should send its Spanish translation. The representatives submitted the translation in a timely manner. The State and the Commission did not submit observations in this regard. The Court will take the Spanish version of Mr. Heyns's statement into consideration, using the translation provided by the representatives.

<sup>23</sup> As submitted by the representatives, these documents are: a) UN, Human Rights Council (HRC), Detailed Findings of the Independent International Fact-Finding Mission on the Bolivarian Republic of Venezuela, September 15, 2020; b) COFAVIC expense receipts; c) receipts of expenses of CEJIL, and d) receipts of payments for the preparation of affidavits, relating to the Victims' Fund of the Inter-American Court (*infra* paras. 195 and 196).

<sup>24</sup> The Court received, by the deadline set in the Order of the President of the Court of October 13, 2020 (*supra* para. 10), in Spanish and rendered before a notary public, the testimony—proposed by the representatives—of the victim Fraily Danaee Guerrero Chirinos and expert witnesses Ignacio Cano, José Luis Prieto Carrero, and Roberto Briceño León. Mr. Briceño León's statement included attached documentation, which will be taken into account only in relation to the expert statement and not as relevant documentary evidence regarding the facts of the case. It is additionally established that the written statement of the witness Karin García Carrasco—proposed by the State—was not forwarded to the Court. January 28, 2021, one day

39. The statements, proposed by the representatives—from the victims Yarelis Mercedes Guerrero Meléndez, Nieves Ramón Guerrero Pérez, Emilia Coromoto Meléndez, Franklin Felipe Guerrero Meléndez, Jiannibeth Stephanny Guerrero Colina and Soleida Morillo—and the statement from expert Rossana Ramirez, were not rendered before a notary public but were authenticated by two witnesses, an act that was not ordered by the Court or its Presidency. The **representatives** argued that because of difficulties with his personal documentation, Yarelis Guerrero, could not secure certification by a notary public, and that neither could the other attestors named due to mobility restrictions as a result of the pandemic. The representatives also argued that it was "impossible to carry out notarizations before a notary public in Venezuela." The **State** and the **Commission** did not contest the admissibility of these statements. In view of the reasons given by the representatives, the **Court** admits the aforementioned statements.<sup>25</sup>

40. Additionally, the statement of the expert Carmen Wurst, proposed by the representatives, was received on February 8, 2021, by the deadline set with the granting of an extension of the original deadline. It was not given before a notary public. The representatives explained that this was due to difficulties derived from the pandemic. The **State** and the **Commission** did not contest the admissibility of the statement. Taking into consideration the reasons cited by the representatives, the **Court** admits the expert testimony of Carmen Wurst.

41. It should also be noted that the statement given before a notary public by expert Philip Alston was received in English. However, the **representatives** sent a translation in Spanish. Neither the **State** nor the **Commission** made observations in this regard. The **Court** admits the expert statement of Philip Alston, and will take into account its version in Spanish.

42. Lastly, the late receipt of the written statement by the witness Pablo Fernández Blanco—which was not given before a notary public—should be noted. The statement was received by this Court on January 28, 2021, one day after the corresponding deadline. The **State**, which proposed the statement, indicated that, for personal reasons pertaining to the witness, it could not be forwarded within the period set for that purpose, and added that because of the pandemic, Mr. Fernández Blanco "[was] prevented from rendering his statement before a notary public." The **Commission** and the **representatives** did not make observations. Taking into account the reasons expressed by the State, the **Court** admits the statement of Mr. Fernández Blanco.

## VI FACTS

43. Hereinafter, the Court will establish the facts of the case. It will do so based on the factual framework submitted to the Court by the Commission. It will take into

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after the deadline for receiving the statement expired, the State indicated that it was withdrawing it. Venezuela reported that Mrs. García Carrasco, "was prevented from giving her statement for personal reasons."

<sup>25</sup> Cf., in the same sense, *Case of Olivares Muñoz et al. v. Venezuela. Merits, Reparations, and Costs*. Judgment of November 10, 2020. Series C No. 415, para. 41, and *Case of Mota Abarullo et al. v. Venezuela*, para. 31. The findings of the cited judgments, in which the Court determined to admit statements that, due to difficulties derived from the pandemic, were not given before a notary public, are also pertinent, as appropriate, to the determinations made in this judgment regarding expert witness Carmen Wurst and witness Fernández Blanco (*infra* paras. 40 and 42).

account the acceptance thereof by the State, in the terms set forth above (*supra* paras. 8, 14, 19 to 25, and 31), as well as the body of evidence and the fact that Venezuela did not explicitly dispute any assertions of fact made by the representatives.<sup>26</sup>

44. Next, the established facts will be presented in the following order: a) context; b) events prior to the deaths of Jimmy Guerrero and Ramón Molina; c) the deaths of Jimmy Guerrero and Ramón Molina, and d) investigations and legal proceedings.

### **A) Context**

45. As has been established, in view of the terms of its acknowledgment of international responsibility, the State accepted the Commission's descriptions of the context of the situation (*supra* paras. 14, 20 and 21). This context includes incidents of acts of police violence and reports of extrajudicial executions of people living in poverty, particularly young men.<sup>27</sup> The context also includes the failure to investigate such incidents. Hereinafter, the Court will delve into this context, with a focus on the time period during the facts of the case.<sup>28</sup>

#### A.1 Police violence in Venezuela and the State of Falcón

46. In its decision in the case of the *Landaeta Mejías Brothers et al. v. Venezuela*, the Court, based on having "clear and convincing evidence," concluded that "in Venezuela, at the time of the facts of this case, [whose central events took place in the second half of 1996,] there was an acute problem of police abuse in various states."<sup>29</sup>

47. This situation continued in subsequent years. In the same judgment cited, this Court took note of documents from 1999 and 2001, issued under the auspices of the United Nations, warning about complaints of "extrajudicial killings of minors by members of police forces," as well as "torture and excessive use of force by the police and other security forces."<sup>30</sup> According to statements given by expert witness Briceño León and data provided by him, violence and "police lethality" increased after 1999, in the context of an increase in homicides in Venezuela, which grew on a per-capita basis by 76% between 1999 and 2003.<sup>31</sup> Similarly, the Court has already taken into account State studies, conducted in 2006 by the Commission on Police Reform (CONAREPOL),

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<sup>26</sup> It should be recalled in this regard that Article 41(3) of the Rules of Procedure indicates that "The Court may consider those facts [...] that have not been expressly controverted as accepted."

<sup>27</sup> As has been stated (*supra* para. 20), the Commission described a context of complaints of extrajudicial executions carried out against persons "with the profile of Jimmy Guerrero." A reading of the Report on the Merits—in particular its paragraph 22—shows that the victims of police violence described by the Commission are characteristically young men belonging to vulnerable socio-economic sectors.

<sup>28</sup> For these purposes, the Court takes into account circumstances already noted by the Court on previous occasions; the observations of the Commission, accepted by Venezuela; the references to the context made by the representatives, which were not disputed by the State; and the details emerging from the evidence.

<sup>29</sup> *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. 55.

<sup>30</sup> *Case of the Landaeta Mejías Brothers et al. v. Venezuela*, para. 49.

<sup>31</sup> Expert witness Briceño León indicated that in 1999, there were 25 homicides for every 100,000 residents, a number that, by 2003, had risen to 44 (*Cf.* statement by expert Roberto Briceño León (evidence file, pgs. 11574 to 11586). The expert witness indicated that in 2002 and 2003, lawless actions by police forces increased along with the increase in homicides.

indicating the situation by that year had become one of excessive use of force by "policing bodies." The document indicated the "use of physical force" by these bodies, which maintained a "military component" that led to "abuse[s]" and "aggressive and inefficient operational patterns as methods of fighting crime," had "become a means of asserting authority" in a context of little oversight and a lack of action protocols.<sup>32</sup>

48. Accordingly, when deciding a case whose main events occurred in Falcón State, this Court indicated that, at the beginning of 2001, in Venezuela "extrajudicial killings and other abuses were committed in the State by the police, particularly by state and local police forces."<sup>33</sup> The Court has also considered allegations, made in 2003, about the "the proliferation in different states of death squads [*grupos de exterminio*] with ties to police organizations, whose *modus operandi* consisted in executions in feigned confrontations."<sup>34</sup>

49. According to statements made by the Venezuelan Ombudsperson, with respect to 2003, the *modus operandi* of these executions—although not the same in all cases—frequently includes simulating a confrontation; encountering the victim near or inside his residence, or during police operations; the presence of witnesses; using firearms, fired several times at the victim's body; tampering with the crime scene; moving the victim to a place other than that of the events; using a ski mask to hide the officer's identity, and using vehicles without license plates or taxis; and threatening or harassing relatives or witnesses who report the events.<sup>35</sup>

50. The victims of this type of police violence consisted mostly of young men living in poverty.<sup>36</sup> Expert witness Alston said that "being young makes the situation of poverty

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<sup>32</sup> *Case of Uzcátegui et al. v. Venezuela. Merits and Reparations*. Judgment of September 3, 2012. Series C No. 249, para. 36, and *Case of Díaz Loreto et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs*. Judgment dated November 19, 2019. Series C No. 392, para. 31. The document referred to is: National Commission on Police Reform, *Presentación Caracterización de los cuerpos de Policía*, Estudios. Caracas 2006, and *Características de la Policía Venezolana*, Caracas 2006.

<sup>33</sup> *Case of Uzcátegui et al. v. Venezuela*, para. 35. The Court made this assertion on the basis of State recognition, as well as other sources.

<sup>34</sup> *Case of the Landaeta Mejías Brothers et al. v. Venezuela*, para. 50.

<sup>35</sup> Bolivarian Republic of Venezuela. Citizen Power. Ombudsperson's Office. *Anuario 2003. Derechos Humanos en Venezuela* (evidence file, annex 3.J to the pleadings and motions brief, pgs. 2594 to 2773).

<sup>36</sup> In its Report on the Merits, the Commission indicated that the victims of extrajudicial executions committed by the police at the time of the facts of the case belonged to the most "humble" or "vulnerable" "sectors" in terms of their "socio-economic" status. It also indicated that the victims in Falcón State were young men. The State has accepted these pleadings of fact (*supra* paras. 8, 14, 20, 21, and 31). In a statement that was not disputed by the State, the representatives indicated that "the direct victims of the abuses and extrajudicial executions committed by police forces in Venezuela are mostly young men belonging to the most economically-vulnerable social sectors." In support of this claim, they cited a 2003 document issued by the Inter-American Commission, which indicates that "[one] of the most serious situations to have affected the right to life in recent years is the phenomenon of social cleansing," and that "murders are perpetrated by paramilitary groups in which members of different state police forces and of the National Guard are involved. Also, there are certain patterns to these murders determined by the characteristics of the victim and the *modus operandi* of the execution. As regards the first point, as a rule the murder victims are young people with a criminal record and of very limited means, who are blackmailed and ordered to pay large sums of money and are killed when they are unable to make the payments demanded from them. [...] It is also common for victims to be attributed bogus criminal records in advance to justify the attack. Furthermore, relatives and witnesses are also often harassed and intimidated so as not to report the attackers. The same is true of judges and public prosecutors." (Inter-American Commission on Human Rights, Report on the situation of human rights in Venezuela, OEA/Ser.L/V/II.118, October 24, 2003, paras. 321, 331, and 332 (evidence file, annex 4(E) to the requests and arguments brief, pgs. 9673 to 9686). The representatives provided an incomplete version of the

worse," increasing the likelihood of abuse at the hands of authorities.<sup>37</sup> Similarly, expert witness Briceño León indicated that "[i]n Venezuela, violence has been cruel to a particular segment of the population: young men living in poverty."<sup>38</sup> In his testimony, expert witness Alston made similar statements, pointing to the stigmatization suffered by people belonging to the aforementioned sector of the population as allegedly linked to criminal activities.

51. In this regard, the above-cited report of the Office of the Ombudsperson (*supra* para. 49) indicates that "99% of the victims [were] male," and that 77% were under the age of 28. The same document indicates that "most of the murders take place in low-income urban areas." He also noted that in 2003, the number of reports of "death by executions" had increased compared to the previous year, and that the Falcón State police were the second most reported in the country.<sup>39</sup> In 2003, the Ombudsperson expressed "great concern over the extreme increase in complaints of police abuse in [Falcón] State," and during that year and the following year, he requested a "thorough administrative review of the personnel assigned to the Police Armed Forces of [Falcón State]."<sup>40</sup>

#### A.2. Impunity for acts of police violence

52. Based on reports from United Nations entities from 1999 and 2001, the Court has already found that towards the end of the 1990s, State agencies in Venezuela had a delayed "reaction" to incidents of police violence, and there was an "absence of independent mechanisms" to investigate them.<sup>41</sup> This Court has also taken into account State information indicating that "from 2000 to 2007 there were 6,405 cases of human rights violations, murders, confrontations or revenge killings, regarding which charges have been filed in only 436."<sup>42</sup> According to data from the Attorney General's Office,

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document, but it can be viewed in its entirety on the internet: <http://www.cidh.org/countryrep/Venezuela2003sp/indice.htm>).

<sup>37</sup> In this regard, he indicated that "people living in poverty are more likely to receive greatly reduced educational opportunities and are exposed to high levels of unemployment. There are many examples of situations in which government authorities have treated young people without high levels of education as if they had nothing to contribute to society and could even be considered disposable" (expert statement by Philip Alston (evidence file, pgs. 11542 to 11567)).

<sup>38</sup> Expert statement of Roberto Briceño León.

<sup>39</sup> Bolivarian Republic of Venezuela. Citizen Power. Ombudsperson's Office. *Anuario 2003. Derechos Humanos en Venezuela*. The document indicates 40 complaints were received during 2003 against the Falcón State police for extrajudicial executions.

<sup>40</sup> *Diario La Mañana*, "Preocupada Defensoría del Pueblo por incremento de abusos policiales," Santa Ana de Coro, Wednesday, December 24, 2003, *Sucesos* (evidence file, proceeding before the Commission, pg. 148), and *El Nacional*, "Defensor del Pueblo en Falcón exigió intervención de cuerpos de seguridad" (evidence file, proceeding before the Commission, pg. 151).

<sup>41</sup> *Case of the Landaeta Mejías Brothers et al. v. Venezuela*, para. 55. The documents cited are the following: "UN, Economic and Social Council. Report of the Special Rapporteur, Ms. Asma Jahangir, submitted pursuant to Commission on Human Rights resolution 1998/68, Addendum, Country situations, January 6, 1999. E/CN.4/1999/39/Add.1. Available at: <http://daccess-ddsny.un.org/doc/UNDOC/GEN/G99/100/29/PDF/G9910029.pdf?OpenElement>. 258," and "UN, Human Rights Committee. *Human Rights Committee, Concluding observations by the Human Rights Committee: Venezuela*. 4/26/2001, of April 26, 2001. CCPR/CO/71/VEN. Available at: [www.acnur.org/biblioteca/pdf/1373.pdf?view=1](http://www.acnur.org/biblioteca/pdf/1373.pdf?view=1), para. 8".

<sup>42</sup> *Case of the Landaeta Mejías Brothers et al. v. Venezuela*, para. 53. The cited document, as indicated in footnote 57 of the cited judgment, is the "Annual Report of the Public Prosecutor of the Republic of 2007."



between 2001 and July 2003 there were at least 1,541 alleged executions, with 17 convictions handed down. The Ombudsperson's Office called this number "negligible" compared to the number of cases,<sup>43</sup> accounting for only 1.1% of possible executions.

### A.3 Conclusion on the context of the situation

53. In view of the foregoing, it is the Court's understanding that, in 2003, when the central facts of this case occurred, there was in Venezuela—and in Falcón State in particular—a situation of rising homicides and police violence, which had a disproportionate impact on young men living in poverty. At the same time, there was a high degree of impunity for such violence.

### **B) Facts of the case**

54. Jimmy Rafael Guerrero Meléndez was born on April 19, 1976. He was 26 years old at the time of his death. He worked as a taxi driver and street vendor in the city of Coro. Ramón Antonio Molina Pérez was born on January 1, 1954. At the time of his death, he was 49 years old. He was a driver for a company, and the breadwinner of his family. Ramón was very close to the Guerrero family, in particular to Mr. Nieves Ramón Guerrero Pérez, Jimmy's father, who was his first cousin. He was therefore considered an uncle.<sup>44</sup> The relatives of Jimmy Guerrero and Ramón Molina, also victims in this case, are listed below (infra para. 165).

### B.1. Facts prior to the deaths of Jimmy Guerrero and Ramón Antonio Molina

55. On multiple occasions, Jimmy Guerrero had reported to government entities and to the media incidents of harassment, detention, threats, and attacks on him and his family perpetrated by police officials. According to the statements from some of them, the background of these actions against Jimmy Guerrero was that, prior to them, police officials suspected that he could have been involved in criminal acts and that, based on this, in his father's words, "they blamed him for everything that happened."<sup>45</sup>

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<sup>43</sup> Bolivarian Republic of Venezuela. Citizen Power. Ombudsperson's Office. *Anuario 2003. Human Rights in Venezuela*

<sup>44</sup> Cf. Oral statement of Jean Carlos Guerrero before the Court.

<sup>45</sup> Jean Carlos Guerrero, in his oral statement before the Court, stated that his brother Jimmy Guerrero, "experienced a series of incidents harassment, police threats, persecution, extortion by the police, many arbitrary detentions [and] beatings [,] all of which he reported to the Public Prosecutor and the Ombudsperson's Office." In addition, he indicated that the threats "were not only against Jimmy but also against the family, in order to put pressure on Jimmy." He explained that "Jimmy was a young man, maybe a bit irreverent at times, and that resulted in the police [of Falcón State] harassing [him]." In the same vein, Nieves Guerrero, father of Jimmy Guerrero, stated that he had been in trouble since he was "young," that is, before the complaint he filed in August 2001 (infra para. 57). He added that his son "had been marked" and that "he was really persecuted by the police, they threatened him, always." He stated that Jimmy Guerrero "was even tortured, imprisoned and beaten horribly." He indicated that the threats Jimmy Guerrero received "were [very] harsh." (Written statement of Nieves Guerrero (evidence file, pgs. 11422 to 11427).) Emilia Coromoto Meléndez, Jimmy Guerrero's mother, also stated that her son had had "problems" since he was "younger," that he was threatened and harassed, and that he indicated that these incidents came at the hands of officials from "the police and the Bureau of Scientific, Criminal and Forensic Investigations." She also stated that on one occasion, the police told her that they were going to kill her son. (Written statement of Emilia Coromoto Meléndez de Guerrero (evidence file, pgs. 11432 to 11436).) Franklin Felipe Guerrero Meléndez, Jimmy Guerrero's brother, stated—like his parents—that Jimmy was harassed by the police and always accused of being involved in criminal acts (cf. written statement of Franklin Felipe Guerrero Meléndez (evidence file, pgs. 11441 to 11444)). Yarelis Mercedes Guerrero Meléndez, Jimmy Guerrero's sister, testified likewise (cf. written statement of Yarelis Mercedes Guerrero Meléndez (evidence file, pgs. 11455 to 11460)).

56. Thus, Jimmy Guerrero filed three complaints with prosecutors and two before the Ombudsperson's Office. He also gave a statement before the Ombudsperson's Office after his neighbor filed a complaint before that office over actions taken against him. The Ombudsperson's Office requested protective measures for Mr. Guerrero and an investigation into possible violations of his rights. These circumstances—along with the information indicated by the Commission or the parties on subsequent actions—are detailed below. It is noted that the Court has no information on any proceedings subsequent to the final ones indicated with respect to each complaint or presentation.

57. *First complaint.* - On August 16, 2001, Jimmy Guerrero filed a complaint of "police harassment" with the Falcón State Superior Prosecutor's Office (hereinafter "Superior Prosecutor's Office"). He indicated that on the night of August 13, 2001, "a guy on a motorcycle approached [him] and threatened to kill [him], warning [him] to always have someone with [him] because when [he] was found alone, [he] would be killed."<sup>46</sup> Documentation subsequently issued by the Ombudsperson's Office indicates that the threat came from a police officer.<sup>47</sup>

58. On August 19, 2002, the Superior Prosecutor's Office opened case No. 2202-02, for the crime of threats from individuals assumed to be police officers, referring it to the First Prosecutor of Falcón State (hereinafter "Prosecutor's Office 1"). On September 13, 2002, Prosecutor's Office 1 forwarded the file to the Second Prosecutor's Office of Falcón State (hereinafter "Prosecutor's Office 2"), since Prosecutor's Office 1 was investigating Jimmy Guerrero with regard to the same events.

59. *Second complaint.* - On September 27, 2002, Jimmy Guerrero reported new acts of "police harassment" to the Superior Prosecutor's Office. He said that police officers asked for him at his home that day. He was not there at the time, but his mother and sister were: Emilia Coromoto Meléndez and Yarelis Mercedes Guerrero Meléndez, respectively. According to what was reported by the representatives, Jimmy Guerrero's sister asked the officials to show the corresponding search warrant, but they did not.

60. The police officers, who said they had found a revolver in the house, detained Mrs. Emilia Coromoto Meléndez and Yarelis Mercedes Guerrero Meléndez. They were held for three days on the premises of the Bureau of Scientific, Criminal and Forensic Investigations (hereinafter "CICPC"). According to the representatives, "Yarelis Guerrero confessed to possessing a weapon after being subjected to severe psychological pressure." Jean Carlos Guerrero testified likewise before the Commission.<sup>48</sup>

61. On November 5, 2002, Prosecutor 1 received the complaint from the Superior Prosecutor's Office that was filed on September 27, 2002, by Jimmy Guerrero.<sup>49</sup>

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<sup>46</sup> Falcón State Second Prosecutor's Office, handwritten complaint of August 16, 2002 (evidence file, annex 3 to the Report on the Merits, pg. 1717).

<sup>47</sup> Cf. Ombudsperson's Office, Official Letter DP/DDEF No. 00766-03 of April 7, 2003 (evidence file, proceeding before the Commission, pgs. 160 to 163).

<sup>48</sup> Statement by Jean Carlos Guerrero of April 4, 2016, received by the Inter-American Commission in a public hearing (available on the internet: <https://www.oas.org/es/cidh/audiencias/advanced.aspx?lang=es>)

<sup>49</sup> Cf. Superior Prosecutor's Office, Official Letter No. FAL-SUP-1567, of October 14, 2002, addressed to the First Prosecutor of the Public Ministry of the Judicial District of Falcón State, received on November 5, 2002 (evidence file, proceeding before the Commission, pg. 173). The document refers to the remission of "additional materials" from a criminal case. The representatives indicated that the complaint of September 27,

62. *Third complaint.* - On October 28, 2002, Jimmy Guerrero filed a complaint with the Ombudsperson's Office. He indicated that he had been "detained" on October 23 and 25, first by CICPC personnel from Falcón State and then by a "group of cops from the Coro Police." He stated that the first time, he explained to the police officers that he had lost his identity document, and they "frisked" him, took photos of him, and released him. In the second incident, he said that on October 27, 2020, he was questioned regarding the robbery of a taxi driver, then released. He said that he would recognize the officials who detained him. He stated that "whenever [they] saw [him] on the street, [they] detained [him]."<sup>50</sup>

63. Also on October 28, 2002, the Ombudsperson's Office forwarded the complaint filed by Jimmy Guerrero to the Superior Prosecutor's Office. On the November 8, the Ombudsperson's Office asked Prosecutor's Office 2 to launch the investigation and attached a news article from the previous day, which stated that Jimmy Guerrero had reported "harassment by security agencies," with frequent "abuse[s] of authority" by the Armed Police Forces and the CICPC. In this regard, he stated that "they always arrested [him] without giving [him] any reason and he [was] detained for several days."<sup>51</sup> On November 11, 2002, Prosecutor's Office 2 responded that case 2202-02 had been opened over threats against Jimmy Guerrero and the investigative work was ongoing.<sup>52</sup>

64. *Fourth complaint.* - On November 4, 2002, Jimmy Guerrero filed a complaint with Prosecutor's Office 2. He stated that between November 2 and 3, he had been detained, "at the order of the inspector" of the Directorate of the State Police (hereinafter DIPE) without being informed of the reason. He also alleged that he was "frequently detained without reason."<sup>53</sup>

65. *Fifth complaint.* - On February 18, 2003, Jimmy Guerrero reported to the Ombudsperson's Office, giving an account of the events that occurred the day before. These facts had also been referred to the Ombudsperson's Office on February 17, 2003, in a presentation filed by E.L., a neighbor of Mr. Guerrero.<sup>54</sup> Also on February 17,

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2002, was forwarded through that official letter. This was not disputed. The representatives, however, referred to the "Sixth Prosecutor's Office," but the document indicates the addressee as described above.

<sup>50</sup> Ombudsperson's Office, statement by Jimmy Guerrero of October 28, 2002 (evidence file, annex 8 to the Report on the Merits, pg. 1727).

<sup>51</sup> Ombudsperson's Office, note DP/DDEF No. 02674.02, of November 8, 2002; forwarding of a copy of a news article entitled "*Denuncia acoso por parte de Organismos de Seguridad*," dated November 7, 2002 (evidence file, annex 17 to the Report on the Merits, pgs. 1746 to 1748).

<sup>52</sup> Prosecutor's Office 2, note FAL 2683-02 of November 11, 2002, addressed to the Ombudsperson's Office (evidence file, proceeding before the Commission, pg. 1306).

<sup>53</sup> Prosecutor's Office 2, complaint by Jimmy Guerrero of November 4, 2002 (evidence file, annex 7 to the Report on the Merits, pg. 1725).

<sup>54</sup> The filing made by E.L. indicates that on February 17, 2003, she and other people were at Mr. Guerrero's house when, at around 3:00 pm, "several cops" arrived. According to the filing, a policewoman pointed a gun at Mr. Guerrero, and then, without "saying anything," they "savagely beat him and hit him over the head," and then took him away in a car. The complaint also states that later "like ten cops" came back, entered the house "without asking or anything" and searched the residence. The neighbor said she asked the police "why they were doing a search if they did not have a warrant" and did not indicate that they answered her. (Ombudsperson's Office, statement by E.L. of February 17, 2003 (evidence file, annex 10 to the Report on the Merits, pg. 1731)). It should be noted that, in this judgment, with the exception of the mention of a deceased son of Ramón Molina (*infra* para. 70), initials are used for persons with regard to which there is no

personnel from the Ombudsman's Office went to police headquarters and confirmed Jimmy Guerrero's arrest.<sup>55</sup> According to the representatives, at the time of the arrest, the police officers had "vaguely" referred to a robbery.

66. In his statement of February 18, 2003, Jimmy Guerrero indicated as follows:

On Monday 17 [February 2003], at 3:15 pm, [...] without any warrant for my arrest, the [Armed Police Forces] arrived at my house, they entered my home [...] They did not show a search warrant or court order [...]. The police officers had a broomstick they used to hit me on the head and on the body in several places in front of the neighbors of the community. They put me in a vehicle and took me to the police station located on *calle dos* of the Cruz Verde neighborhood. They proceeded to beat me and put a cloth over my head so I could not identify the officers beating me. They kicked me in the right eye and tear gassed me and hit me in the head with their weapons. The officers took my house key and my ID card when they searched me and they did not give them back. I cannot identify them because they had me on the ground, saying in front of the neighbors that I was a very dangerous criminal [...].<sup>56</sup>

67. The following day, once Mr. Guerrero had recovered his freedom,<sup>57</sup> a forensic medical examination was conducted, which found the existence of: "traumatic swelling in the frontal region"; "right suborbital bruising"; "blunt-force thoracic trauma, complicated by intercostal neuritis" and "injuries caused by a blunt object," described as "minor." The medical examination also concluded there were no "aftereffects."<sup>58</sup>

68. On February 25, 2003, the Ombudsperson's Office asked the Superior Prosecutor's Office and the Prosecutor's Office 2 for protective measures for Jimmy Guerrero, as well as an investigation into what happened. Two days later, he forwarded the second copy of the forensic medical report to Mr. Guerrero. On March 11, 2003, the Ombudsperson's Office requested information from Prosecutor's Office 2 regarding the proceedings carried out in response to the request of February 25, 2003.<sup>59</sup>

69. *Sixth complaint.* - On March 6, 2003, Jimmy Guerrero made a filing before the Ombudsperson's Office. The filing said that the day before, he had noticed two police officers near his house, their intentions unknown, and that the officers hid, trying to prevent him from seeing them. He said the police officers "were circling around the vicinity" of his residence in the early hours of the morning. He also said that five or six days before his filing, the police had come to his house following a robbery that had

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record that they took part in the processing of the case internationally, before the Inter-American Commission or the Inter-American Court.

<sup>55</sup> Ombudsperson's Office, visit record of February 17, 2003 (evidence file, annex 11 to the Report on the Merits, pgs. 1733 and 1734).

<sup>56</sup> Ombudsperson's Office, statement by Jimmy Guerrero of February 18, 2003 (evidence file, annex 9 to the Report on the Merits, pg. 1729).

<sup>57</sup> The representatives indicated that Jimmy Guerrero was detained "from February 17 to 18, 2003."

<sup>58</sup> Ombudsperson's Office. Forensic doctor report regarding Jimmy Guerrero of February 19, 2003 (evidence file, annex 12 to the Report on the Merits, pg. 1736).

<sup>59</sup> Ombudsperson's Office, note DP/00363-03, of February 25, 2003, addressed to the Superior Prosecutor's Office, "Attention" to Prosecutor's Office 2 (evidence file, annex 13 to the Report on the Merits, pgs. 1738 and 1739); Ombudsperson's Office, note DP/DDEF 00388-03, of February 26, 2003, received by Prosecutor's Office 2 on February 27, 2003 (evidence file, annex 14 to the Report on the Merits, pg. 1741), and Ombudsperson's Office, note DP/DDEF 00502-03, of March 10, 2003, received by Prosecutor's Office 2 the following day (evidence file, annex 16 to the Report on the Merits, p. 1745).

happened nearby to ask about it. On March 11, 2003, Mr. Guerrero's filing was forwarded to the Prosecutor 2.<sup>60</sup>

### B.2 Deaths of Jimmy Guerrero and Ramón Molina

70. On the night of March 29, 2003, Jimmy Guerrero, his sister—Yarelis Guerrero—and a neighbor—J.L.—traveled from Coro to Punto Fijo to attend the wake of Jaime Rafael Molina, son of Ramón Molina. On the way, the vehicle in which they were traveling was stopped by a police patrol, who asked their destination and then allowed them to continue.<sup>61</sup>

71. Later, in the early morning hours of March 30, 2003, Jimmy Guerrero, Ramón Molina, and J.L. went to do some shopping.

72. Upon arriving at a liquor store, located in the Santa Irene neighborhood in the city of Punto Fijo, Falcón State,<sup>62</sup> Jimmy Guerrero—who was driving the car—got out. Mr. J.L. moved to the driver's seat, to replace Mr. Guerrero on the drive back. At that moment, a vehicle arrived at the scene, and at least two people<sup>63</sup> wearing police uniforms got out. One grabbed Jimmy Guerrero at the door of the liquor store and shot him; another went to the car where Mr. J.L. and Mr. Molina were sitting and fired a gun at them. Mr. J.L. tried to get out of the car and was injured, as was Mr. Molina. Mr. J.L. got close to Mr. Molina's body to "pretend to be dead," as he explained later. As he did so, Mr. J.L.—who had been shot in the arm—was able to see how Mr. Guerrero's body was kicked, as well as "two shots [...] and they dragged him away by his feet."<sup>64</sup>

73. An eyewitness who was at the liquor store described facts in line with the above account. He stated that after the attackers fled in the white vehicle in which they had arrived, escorted by a blue one, a third—"light brick" colored—came and ran over Mr. Guerrero's body. He said a person got out of that car, tied one of Mr. Guerrero's legs to the bumper with a rope, and took him away, dragging him behind the vehicle.<sup>65</sup>

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<sup>60</sup> Ombudsperson's Office, statement by Jimmy Guerrero of March 6, 2003 (evidence file, annex 15 to the Report on the Merits, pg. 1743), and Ombudsperson's Office, note DP/DDEF 00502-03 of March 10, 2003, received by Prosecutor's Office 2 the following day.

<sup>61</sup> Statement by Jean Carlos Guerrero of April 4, 2016, received by the Inter-American Commission during a public hearing.

<sup>62</sup> Cf., regarding the scene of the facts, Punto Fijo Criminal Review Court, Advance evidence control admission order of April 4, 2003 (evidence file, annex 30 to the Report on the Merits, pgs. 1794 and 1795).

<sup>63</sup> Regarding the number of people in the group that attacked Mr. Guerrero, Mr. Molina, and Mr. J.L., Mr. J.L. said he saw four people, while an eyewitness described two men (cf. Criminal Review Court of Punto Fijo, proceedings of April 5, 2003, statement of J.L. (Evidence file, annex 31 to the Report on the Merits, pgs. 1797 to 1800), and CICPC, transcript of interview with M.D. of April 2, 2003 (evidence file, annex 32 to the Report on the Merits, pgs. 1802 to 1806)).

<sup>64</sup> Cf. Criminal Review Court of Punto Fijo, proceedings of April 5, 2003, statement of J.L. A dispute has arisen regarding the possibility that Mr. Guerrero remained alive after being shot the first time. This will be addressed below (*infra* para. 126).

<sup>65</sup> CICPC, transcript of interview with M.D. of April 2, 2003. The witness described physically the individuals he identified as the attackers. In the Report on the Merits, the Commission stated that it "finds in the record other statements from witnesses that are consistent with what was indicated by the petitioners in relation to the place where Jimmy Guerrero's body was found, the identification of the car used to commit the murder, and the dragging of his body and that, in general, they noted the dynamic of the events in the above-mentioned terms."

74. After a time, Mr. J.L. got up and went to a filling station, where there were some people who called an ambulance. He was then taken to a hospital.<sup>66</sup>

75. Mr. Molina and Mr. Guerrero died of their wounds. The body of Ramón Molina was found in the vicinity of the liquor store, "at the intersection of *callejón* Buenos Aires [...] and *prolongación* Girardot"; Jimmy Guerrero's body was found about 300 meters from there, in the parking lot of the Santa Irene service station, located in the neighborhood of the same name.<sup>67</sup>

### B.3 Investigations and legal proceedings related to the deaths of Jimmy Guerrero and Ramón Molina

76. On March 30, 2003, the Sixth Prosecutor's Office of Falcón State (hereinafter Office 6) ordered the opening of the investigation. That day, inspections were conducted of the public roads, the service station, and the bodies. In addition, thanks to a "citizen report," a firearm was found under a car, in the vicinity of the crime scene.

77. On April 2, 2003, the Punto Fijo Criminal Review Court issued a search warrant for a property to locate firearms and a vehicle identified by witnesses. It was executed the following day: no weapons were found, but the vehicle was located and seized.

78. On April 1 and 2, 2003, Jean Carlos Guerrero Meléndez sent communications to the Superior Prosecutor's Office, the Second Prosecutor's Office and the Ombudsperson's Office, alleging that Jimmy Guerrero and Ramón Molina were extra-judicially executed by members of the Falcón State Police (hereinafter "the Police"). He claimed that his brother had previously received death threats from police officials.<sup>68</sup> He later asked for the "opening of an investigation" of a Commissioner, F.R., indicating that he was one of the people who, "on several occasions", had threatened to kill Jimmy Guerrero. He also accused O.R., a police "Commander."<sup>69</sup> Later, Jean Carlos Guerrero indicated that he and his family members had received threats, and several times he requested information and documentation from the authorities. This will be addressed below (*infra* para. 150 and 151).

79. In addition to the aforementioned circumstances, between the opening of the investigation and July 2007, as well as following that month, in which the prosecutor assigned to the case was changed (*infra* para. 80) other investigative actions were

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<sup>66</sup> Cf. Criminal Review Court of Punto Fijo, transcript of April 5, 2003, testimony of J.L.

<sup>67</sup> Cf. Corpse Removal Report of March 30, 2003 (evidence file, annex 18 to the Report on the Merits, pgs. 1750 to 1752). The autopsy concluded Jimmy Guerrero's death was caused by "a wound from a projectile fired by a firearm." His body displayed other injuries, including "extensive abrasions cause by dragging [...] with significant loss of skin" (Jimmy Guerrero, Autopsy Report of April 3, 2003 (evidence file, annex 20 to the Report on the Merits, pgs. 1759 to 1761). As for Ramón Molina, the autopsy report indicates "severe cardiac injury due to a wound caused by a projectile fired from a firearm" (Ramón Molina Autopsy Report of April 3, 2003 (evidence file, annex 21 to the Report on the Merits, pgs. 1762 to 1764)).

<sup>68</sup> Cf. Brief from Jean Carlos Guerrero addressed to the Office of the Superior Prosecutor's Office of the Falcón State Judicial District, entitled "Statement of motives," a copy of which was received on April 1, 2003 by the Ombudsperson's Office (evidence file, proceeding before the Commission, pg. 226), and Prosecutor's Office 2, document entitled "Hearing," of April 2, 2003 (evidence file, proceeding before the Commission, pg. 227).

<sup>69</sup> Cf. Communication from Jean Carlos Guerrero Meléndez addressed to the Falcón State Prosecutor dated May 13, 2003 (evidence file, annex 26 to the Report on the Merits, pgs. 1778 to 1784).

ordered that were not carried out or were carried out late. This will be described later on (*infra* paras. 147 to 149).

80. On July 18, 2007, the Attorney General reassigned the criminal case to the Seventeenth Prosecutor's Office of the Falcón State Public Prosecutor (hereinafter "Prosecutor's Office 17"). On November 4, 2008, it asked the CICPC to carry out a number of investigative procedures that, for the most part, had previously been requested by Prosecutor's Office 6.<sup>70</sup>

81. On April 5 and August 11, 2009, Prosecutor's Office 17 interviewed the owner of the liquor store near which the facts took place and interviewed J.L.<sup>71</sup>

82. On March 27, 2014, the Prosecutor's Office 17 asked the Police for the names, ranks, and assigned locations of the officials who were on duty on March 30, 2003, as well as a copy of the Armory Logbook.<sup>72</sup> In a report issued March 27, the Police indicated that, "due to the rainfall throughout 2010, most of the material [requested...] was a total loss."<sup>73</sup>

83. In the early months of 2016, Prosecutor's Office 17 sent several communications to different entities. It asked that the Forensic Unit on the Violation of Fundamental Rights of Lara State to set up a commission to carry out various procedures;<sup>74</sup> it asked with regard to the criminal case that the Police register all "9mm and 40 auto" firearms the police had and to whom they were assigned; and it communicated with the Chief of the Homicides Brigade of the CICPC of Falcón to ask them to provide all actions taken in the original case file "for the year 2003" related to the case.<sup>75</sup>

84. On April 1, 2016, Prosecutor's Office 17 requested the issuance of a warrant for the arrest of police officer F.R. That same day, the First Criminal Review Court issued the order.<sup>76</sup> On April 5, police officers went to the home of F.R. to execute the arrest warrant, but were informed that he was traveling.

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<sup>70</sup> Cf. Prosecutor's Office 17, Official Letter No. 11F17-591-2008 of November 4, 2008 (evidence file, proceeding before the Commission, pgs. 1184 and 1185), and, to verify that several measures had been ordered previously, Prosecutor's Office 6, Official Letter FAL-6-05-1.852 of November 30, 2005 (evidence file, proceeding before the Commission, pgs. 1163 and 1164).

<sup>71</sup> Prosecutor's Office 17, transcript of interviews of April 15 and August 11, 2009 (evidence file, proceedings before the Commission, pgs. 1197 and 1198 and 1208 to 1212, respectively).

<sup>72</sup> Prosecutor's Office 17, Official letters FAL17-399-2014 and FAL17-400-2014, both dated March 27, 2014 (evidence file, proceedings before the Commission, pgs. 1485 and 1486, respectively).

<sup>73</sup> State Police Corps, Legal Office, General Directorate, Report of March 27, 2014 (evidence file, annex 53 to the Report on the Merits, pgs. 1864 and 1865).

<sup>74</sup> Cf. Prosecutor's Office 17, Official Letter FAL17-169-2016 of February 2, 2016 (evidence file, annex 70 to the Report on the Merits, pg. 1903), and Prosecutor's Office 17, Official Letter FAL-17-169-2016 of March 11, 2016 (evidence file, annex 71 to the Report on the Merits, pg. 1905).

<sup>75</sup> Cf. Prosecutor's Office 17, Official Letters FAL17-192-2016 and FAL17-193-2016, both dated March 12, 2016 (evidence file, annexes 73 and 74 to the Report on the Merits, pgs. 1909 and 1911, respectively).

<sup>76</sup> Cf. Prosecutor's Office 17, Official letter FAL17-229-2016 of April 1, 2016 (evidence file, annex 81 to the Report on the Merits, pgs. 1926 to 1940), and State and Municipal First Criminal Review Court, Official Letter No. 2C-920-2016, warrant for the arrest of F.R. of April 1, 2016 (evidence file, annex 80 to the Report on the Merits, pg. 1924). The crimes indicated were "murder," to the detriment of Jimmy Guerrero and Ramón Molina, and "attempted murder," to the detriment of J.L.

85. On August 14, 2017 F.R. turned himself in to Police Coordination Center 02 of Punto Fijo and a court scheduled a hearing for the following day.<sup>77</sup> During the hearing, F.R.'s defense attorney asked that the case be dismissed, arguing that "there [was] no evidence for conviction." Mr. F.R. declined to testify. The intervening judge charged him with the crime of "murder committed with trivial motive," ordering his immediate release and that he appear before the court every 30 days.<sup>78</sup>

86. On September 12 or 16, 2017, Prosecutor's Office 17 asked that the case against F.R. be dropped because "there [was] not enough evidence to substantiate charges against any official."<sup>79</sup> Among its considerations, it held that:

[...] based on the investigation procedures obtained and compiled, it is very difficult [...] to determine and identify whether any official or individual participated and took part as a participant, in addition to the fact that due to the amount of time that has passed, it is impossible to conduct new forensic or ballistics tests, planimetry tests of the guns and the scene of the facts, the former due to the unexpected destruction of the location where the materials were being stored [...]

87. On September 25, 2017, the First State and Municipal Criminal Review Court ordered the dismissal of charges against F.R.<sup>80</sup> On the following October 11, it sent a copy of its decision to the Punto Fijo Judicial Archive and indicated that "[it] declares [the] Sentencing Order published on 09-25-2012 to be final."<sup>81</sup> There are no indications of any subsequent internal judicial actions.<sup>82</sup>

## VII MERITS

88. The case under examination in this judgment deals with the extrajudicial executions or executions without trial of Jimmy Guerrero and Ramón Molina, which, as the State has accepted, and has already been established (*supra* paras. 26 and 32), violated the right to life. It also addresses the State's alleged responsibility for the suffering of the persons in question just prior to their deaths. Additionally, it includes the police persecution or harassment that Mr. Guerrero experienced in various forms,

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<sup>77</sup> Police Coordination Center No. 02-COIN, Official Letter No. 1192 of August 14, 2017, addressed to the Second Judge of the Punto Fijo Criminal Review Court and Police Report of August 14, 2017 (evidence file, annex 6.A to the brief of requests and arguments pgs. 10943, and 10944 and 10945, respectively).

<sup>78</sup> Cf. Judicial Branch, State and Municipal First Criminal Review Court, main matter: IJII-P-2016-000045: Resolution and Release Order of August 15, 2017 (evidence file, annex 6.A to the brief of requests and arguments, pgs. 10948 to 10950 and 10951, respectively).

<sup>79</sup> Prosecutor's Office 17, request for dismissal (evidence file, annex 6.A to the pleadings and motions brief, pgs. 10961 to 10965). As regards the date, the brief indicates that it was drafted on September 12, 2017, but the date of receipt by the judicial body is illegible. The representatives stated that the request for dismissal was made on September 16, 2017, a claim that was not disputed.

<sup>80</sup> Cf. Judicial Branch, First State and Municipal Criminal Review Court, main matter: IJII-P-2016-000045, Resolution of September 25, 2017 (evidence file, annex 6.A to the requests and arguments brief, pgs. 10957 to 10960).

<sup>81</sup> Judicial Branch, First State and Municipal Criminal Review Court, main matter: IJII-P-2016-000045, Official Letter No. 2C.3201-2017, of October 11, 2017, (evidence file, annex 6.A to the requests and arguments brief, pg. 10966).

<sup>82</sup> According to the statements made by the representatives in their brief of requests and arguments, dated September 26, 2019, as of that date, "there was [no] investigation regarding [M.C. and S.C.], [nor] as regards [potential] masterminds."



including the physical assaults on and arrests of him and of some of his family members. It includes State responsibility—not disputed by Venezuela—for the lack of effective actions to determine the facts and the corresponding responsibilities, to the detriment of the rights to judicial guarantees and judicial protection. Lastly, it includes Venezuela's responsibility—already established (*supra* para. 32)—for the effects that the facts had on the personal integrity of the next of kin of Mr. Guerrero and Mr. Molina.

89. The Court will first establish some considerations on the State's obligation to respect and guarantee rights set forth in the Convention without discrimination. Then, second and third, it will examine the alleged violations of Jimmy Guerrero's rights to personal liberty and personal integrity, in view of the circumstances prior to his death. Fourth, it will set forth some considerations on Mr. Guerrero and Mr. Molina's right to personal integrity, in view of the circumstances that led to their deaths. It will later evaluate the rights to judicial guarantees and judicial protection, in relation to the investigation of the facts.<sup>83</sup>

### **VII.1 GENERAL CONSIDERATIONS ON THE OBLIGATION TO RESPECT AND GUARANTEE HUMAN RIGHTS WITHOUT DISCRIMINATION<sup>84</sup>**

90. This Court deems it advisable before presenting its evaluation of the different rights violations alleged to offer some general considerations on the arguments of the **representatives** regarding the discriminatory State conduct. They indicated that all the human rights violations that they alleged regarding the case "were inflicted with discrimination," given the "normalization [...] of the violence committed against vulnerable young men living in poverty." They therefore argued that the violations also entail violation of Article 1(1) of the Convention, regarding the "obligation to respect the human rights of the [alleged] victims without discrimination".

91. The **Court** notes that Article 1(1) of the American Convention requires States to respect the rights and freedoms it recognizes and "ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition." This is a general rule, the content of which extends to all the provisions of the treaty. Thus, as this Court has found, "whatever the origin or the form it takes, any conduct that could be considered discriminatory with regard to the exercise of any of the rights guaranteed in the Convention is *per se* incompatible with it."<sup>85</sup> Therefore, the State's

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<sup>83</sup> The Court will consider the rights violations alleged by the Commission and the representatives. In this regard, this Court has found repeatedly in its case law that as long as they are based on the factual framework presented by the Commission, the representatives may invoke rights other than the ones indicated by the Commission in its Report on the Merits (*cf. Case of the "Five Pensioners" v. Peru. Merits, Reparations, and Costs*. Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of Casa Nina v. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment dated November 24, 2020. Series C No. 419, para. 27). In this case, the Court notes that the State did not dispute the representatives' allegations of human rights violations that were not found in the Report on the Merits (*supra* paras. 27 and 28 and footnotes 15 and 17).

<sup>84</sup> Article 1(1) of the American Convention.

<sup>85</sup> *Cf. Proposed Amendments to the Naturalization Provision of the Constitution of Costa Rica*. Advisory Opinion OC-4/84 of January 19, 1984. Series A No. 4, para. 53, and *Case of Guachalá Chimbo et al. v. Ecuador. Merits, Reparations, and Costs*. Judgment of March 26, 2021. Series C No. 423, para. 68.

failure to comply with the obligations set forth in Article 1(1) as a result of any discriminatory treatment gives rise to State responsibility.<sup>86</sup>

92. The Court has found that injuries to rights based on the real or alleged membership of a person in a group with specific characteristics are discriminatory. In this sense, as this Court has stated, "discrimination based on one of the categories indicated for illustrative purposes in Article 1(1) of the Convention<sup>87</sup> warrants special or particular consideration" in that the respective wrongful act involved was committed based on the characteristics of the victims or on what the victims "represent or seem to represent and what distinguishes them from other people."<sup>88</sup> Thus, for example, the Court has found that violence against women due to their status as women is discriminatory,<sup>89</sup> and harm to a person's rights due to their gender identity, gender expression, or sexual orientation,<sup>90</sup> or based on racial profiling,<sup>91</sup> among other things, is discriminatory as well.

93. In this regard, poverty is a condition that is protected from discrimination under Article 1(1) of the American Convention. It is associated with "economic position" indicated explicitly in the provision, as well as with other categories of protection alluded to therein, such as "social origin" or "other social condition."<sup>92</sup> Likewise, age is also a

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<sup>86</sup> Cf. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03 of September 17, 2003. Series A No. 18, para. 85, and *Case of Vicky Hernández et al v. Honduras*, para. 64.

<sup>87</sup> The categories indicated in Article 1(1) are not an exhaustive list. When Article 1(1) refers to "other social condition," it alludes to categories comparable to the ones mentioned in its text. In this regard, the Court has found such categories to include: "(i) permanent characteristics of the individual that he or she cannot renounce without losing their identity; (ii) groups that are traditionally marginalized, excluded or subordinated, and (iii) criteria that are irrelevant for an equitable distribution of social benefits, rights and charges." (Cf. *Case of I.V. v. Bolivia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment dated November 30, 2016. Series C No. 329, para. 240, and *Gender identity and equal protection, and nondiscrimination for same-sex couples. State obligations in relation to change of name, gender identity, and rights deriving from a relationship between same-sex couples (interpretation and scope of Articles 1(1), 3, 7, 11(2), 13, 17, 18 and 24, in relation to Article 1, of the American Convention on Human Rights)*. Advisory Opinion OC-24/17 of November 24, 2017. Series A No. 24, paras. 66 and 67).

<sup>88</sup> *Case of Azul Rojas Marín et al. Peru. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of March 12, 2020. Series C No. 402, para. 89, and *Case of Vicky Hernández et al v. Honduras*, para. 66.

<sup>89</sup> Cf. *Case of Miguel Castro Castro Prison v. Peru. Merits, Reparations, and Costs*. Judgment of November 25, 2006. Series C No. 160, para. 303, and *Case of Guzmán Albarracín et al v. Ecuador. Merits, Reparations, and Costs*. Judgment of June 24, 2020. Series C No. 405, para. 113.

<sup>90</sup> Cf. *Case of Atala Riffo and girls v. Chile. Merits, Reparations, and Costs*. Judgment of February 24, 2012. Series C No. 239, paras. 91 and 93, and *Case of Flor Freire v. Ecuador. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 31, 2016. Series C No. 315, paras. 118 to 124, and *Case of Vicky Hernández et al v. Honduras*, para. 67. According to the second judgment cited, the conduct that affects a right may be discriminatory if it is linked to the perception that the victim belongs to a social group or sector regardless of whether this corresponds to reality or the victim's self-identification (the Court has already found likewise: cf. *Case of Perozo et al v. Venezuela. Preliminary Objections, Merits, Reparations and Costs*. Judgment of January 28, 2009. Series C No. 195, para. 380).

<sup>91</sup> *Case of Acosta Martínez et al. v. Argentina. Merits, Reparations, and Costs*. Judgment of August 31, 2020. Series C No. 410, paras. 100 and 101.

<sup>92</sup> Cf. *Case of the Employees of the Fireworks Factory of Santo Antonio de Jesus v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of July 15, 2020. Series C No. 407, para. 185.

“social condition,” and therefore a protected category under the provision in question.<sup>93</sup> Thus, the American Convention prohibits discrimination against young people. In this regard, the Court notes that the facts of the case, associated with a demonstrated context of police violence against young men living in poverty, show that the human rights violations committed against Jimmy Guerrero were based on the perception that he belonged to the population group defined by those characteristics.

94. It is also pertinent in this case to recall that this Court has found that “The use of stereotyped reasoning by law enforcement personnel may result in discriminatory—and therefore arbitrary—actions.”<sup>94</sup> Thus, when law enforcement base their actions on stereotypical “profiles” of people,<sup>95</sup> such as by suspecting someone of illegal behavior because they are young or poor, it can lead to discriminatory actions that violate the rights of the affected person.<sup>96</sup> This can also entail the direct violation of rights as well as a failure to guarantee them, including in the framework of judicial proceedings—for example, when a failure to act in response to human rights violations experienced by certain persons is the result of a normalization or naturalization of the discriminatory conditions or acts to which they are frequently subjected.<sup>97</sup>

95. He likewise explained that “police brutality greatly impacts the poor” due to “several factors,” including “the fact that law enforcement officials often use ‘poverty,’ ‘homelessness’ or ‘disadvantage’ as an indicator of criminality.” The expert added that

Multiple reports have documented [how] grave human rights violations, such as torture, extrajudicial executions and enforced disappearances, affect low-income groups and [those] living in poverty much more dramatically. People living in poverty are more likely to be the target of these violations given that they have less opportunity to defend themselves, less chance of obtaining support in such situations[. ...] This also decreases the likelihood that victims in poverty will file complaints and ensures that when they do, their allegations are much less likely to be taken seriously. [...] Additionally, although the police tend to be excessively active in applying the law to [the] poor, they are generally not very active in preventing and investigating violations of the right to security of people living in areas of great poverty.<sup>98</sup>

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<sup>93</sup> Cf. *Juridical Condition and Rights of Undocumented Migrants*. Advisory Opinion OC-18/03, para. 101, and *Case of Poblete Vilches et al. v. Chile. Merits, Reparations, and Costs*. Judgment of March 8, 2018. Series C No. 349, para. 122.

<sup>94</sup> *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and Reparations*. Judgment of September 1, 2020. Series C No. 411, para. 80.

<sup>95</sup> In this regard, “stereotypes” should be understood as “pre-conceptions of the attributes, conducts, roles or characteristics of individuals who belong to a specific group” (cf. *Case of Norín Catrimán et al. (Leaders, Members and Activist of the Mapuche Indigenous People) v. Chile. Merits, Reparations, and Costs*. Judgment of May 29, 2014. Series C No. 279, para. 223, and *Case of Fernández Prieto and Tumbeiro v. Argentina. Argentina*, para. 80).

<sup>96</sup> *Case of Fernández Prieto and Tumbeiro v. Argentina*, paras. 80 to 82.

<sup>97</sup> Cf. *Case of the Hacienda Brasil Verde Workers v. Brazil. Preliminary Objections, Merits, Reparations and Costs*. Judgment of October 20, 2016. Series C No. 318, para. 418. In the same sense, see *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, paras. 400 to 402, *Case of Guzmán Albarracín et al v. Ecuador*, paras. 188 to 195, and *Case of Vicky Hernández et al v. Honduras*, para. 114. Expert witness Alston explained that “[t]he opportunities victims of serious human rights violations have to access justice are severely limited by social impediments[. ...] These social barriers include stigma and discriminatory stereotypes against the poor” (Philip Alston’s expert statement).

<sup>98</sup> Expert statement of Philip Alston.

96. As has been mentioned, and has been accepted by the State (*supra* paras. 8, 14, 20, 21, and 45 to 53), this case is framed within a context of police violence against young men living in poverty, as well as high rates of impunity for it.

97. It is the Court's understanding that the acts committed against Jimmy Guerrero were linked to that context. In this framework, the series of police actions analyzed in this judgment involve facts lacking legal support, with respect to which, for this reason and because of the way in which they occurred, it is reasonable to assume that they were motivated by police officials' perception that Mr. Guerrero could pose some danger or deserved to be punished or abused. Thus, as has been stated (*supra* paras. 55 to 69), Mr. Guerrero was detained on multiple occasions by the police, who questioned him at different times about criminal acts. He was also threatened and attacked by police personnel. It therefore emerges from the circumstances of the case that police conduct against Jimmy Guerrero, which was detrimental to his rights, as specified below, was based on stereotypes resulting from assuming young men living in poverty were dangerous or likely to engage in illegal activity.

98. Regarding this, as this Court has already found, in view of the principle of non-discrimination, a State "cannot [n] allow its agents to engage in, or promote in society, practices that reproduce the stigma that [...] poor young people are predetermined to commit crime or necessarily linked to increased citizen insecurity." On the contrary: States have "the obligation to ensure protection for [...] young people impacted by poverty who are socially marginalized, and to specifically prevent them from being stigmatized by society as criminals."<sup>99</sup> The Court finds that this case reflects a breach of these duties, and that the facts that violated Jimmy Guerrero's rights were based on discrimination in which several factors—associated with poverty and age—converged in an intersectional manner,<sup>100</sup> comprising the victims' "social condition," in the terms of Article 1(1) of the Convention.

99. The specific considerations on discrimination against Mr. Guerrero will be set forth in the analysis of the injuries to his rights identified by the parties and the Commission. This Court does not find evidence giving rise to a need to address the failure to comply with the duty to not discriminate with respect to other victims of the case.

## **VII.2 RIGHT TO PERSONAL LIBERTY<sup>101</sup> WITH REGARD TO JIMMY GERRERO**

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<sup>99</sup> *Case of Servellón García et al. v. Honduras*. Judgment of September 21, 2006. Series C No. 152, paras. 112 and 116.

<sup>100</sup> *Cf.*, on the concept of intersectional discrimination as a confluence of different factors of vulnerability, risk, or sources of discrimination, *Case of Gonzales Lluy et al. v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of September 1, 2015. Series C No. 298, para. 290, *Case of Guzmán Albarracín et al v. Ecuador*, para. 142, and *Case of Guachalá Chimbo et al. v. Ecuador*, para. 91.

<sup>101</sup> Articles 7(1), 7(2), 7(3), 7(4), and 7(5) of the American Convention.

### **A) Arguments of the representatives<sup>102</sup>**

100. The **representatives** indicated that the detentions of Jimmy Guerrero on October 25-27, 2001; November 2-3, 2002; and February 17-18, 2003, violated his right to personal liberty, emphasizing that they took place "in a context of harassment and abuse by the police."

101. The representatives argued that the detentions were illegal: that contrary to requirements of the Venezuelan Constitution, there was no court order in any of these cases, nor was Mr. Guerrero committing a crime *in flagrante delicto*. They also said the detentions were arbitrary, as "there was not enough evidence that the [alleged] victim was involved in a criminal act, much less that his detention was necessary." Additionally, they argued that in all three cases, there was a failure to communicate the reasons for the detentions, and in one case there was a lack of immediate judicial oversight. Therefore, they argued that the State was responsible for failing to comply with articles 7(1), 7(2), 7(3), 7(4), and 7(5) of the Convention, in relation to Article 1(1).

### **B) Considerations of the Court**

102. The Court recalls that the essential content of Article 7 of the American Convention is the protection of the liberty of the individual from arbitrary or illegal interference by the State.<sup>103</sup> The Court has also found that "improper actions" of police officials "in their interaction with those they should protect represents one of the main threats to the right to personal liberty, which, when it is violated, results in a risk that other rights will be violated, such as to personal integrity and, in some cases, to life." In this regard, in order to address this threat, it is crucial for the State, through its agents, to observe its "duty to use procedures that are in keeping with the law and respect the fundamental rights of every individual subject to its jurisdiction."<sup>104</sup>

103. As has been noted on several occasions,

this article contains two types of very different regulations, one general and the other specific. The general rule can be found in the first paragraph: "[e]very person has the right to personal liberty and security." [T]he specific one is composed of a series of guarantees that protect the right not to be deprived of liberty unlawfully (Article 7(2)) or arbitrarily (Article 7(3)), to be informed of the reasons for the detention and of the charges against the person detained (Article 7(4)), to judicial control of the deprivation of liberty and to the reasonableness of the length of pre-trial detention (Article 7(5)), to contest the legality of the detention (Article 7(6)) and not to be detained for debt (Article 7(7)). Any violation of paragraphs 2 to 7 of Article 7 of the Convention will necessarily result in the violation of Article 7(1).<sup>105</sup>

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<sup>102</sup> The Commission and the State did not address the human rights violations alleged by the representatives regarding events that occurred before March 29 and 30, 2003. As part of the factual framework of the case, the Commission included facts prior to those dates in its Report on the Merits, but did not analyze them specifically (*supra* footnote 14). For its part, the State did not explicitly accept its responsibility for such facts, but neither did it dispute the arguments of the representatives in this regard (*supra* paras. 27, 28 and footnotes 15, 17, and 83).

<sup>103</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 7, 2003. Series C No. 99, para. 84, and *Case of Fernández Prieto and Tumbeiro v. Argentina. Argentina*, para. 65.

<sup>104</sup> Cf. *Servellón García et al. v. Honduras*, para. 86, and *Case of Fernández Prieto and Tumbeiro v. Argentina. Argentina*, para. 64.

<sup>105</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 21, 2007. Series C No. 170, para. 54, and *Case of Fernández Prieto and Tumbeiro v. Argentina. Argentina*, para. 65.

104. A deprivation of liberty is *illegal* when applicable domestic legal provisions are not observed, both materially and formally.<sup>106</sup> *Arbitrariness*, for its part, is not the same as violating the law. It is broader, since it includes elements of incorrectness, injustice, and unpredictability. Thus, deprivation of liberty is arbitrary when it is carried out for "reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality."<sup>107</sup> The use of preconceptions about a person or their behavior, or the use of stereotypical reasoning by security forces—for example, about the presumed dangerousness of certain social groups and whether a person belongs to them—can give rise to discriminatory actions that will therefore be manifestly unreasonable and arbitrary.<sup>108</sup>

105. In order to avoid illegal or arbitrary detentions, Article 7 of the Convention establishes a requirement in paragraphs 4 and 5 to *give notice of the reasons for the detention* and for *judicial control* of it. The first "refers to two guarantees for the person who is being detained: (i) oral or written notice of the reasons for the detention, and (ii) written notification of the charges."<sup>109</sup> Information on the reasons for the detention should be given when it is made.<sup>110</sup> The second, judicial control, is to constitute an effective safeguard against illegal or arbitrary detentions and must occur "without delay."<sup>111</sup>

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<sup>106</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 57, and *Case of Fernández Prieto and Tumbeiro v. Argentina*, para. 67.

<sup>107</sup> *Case of Gangaram Panday v. Suriname. Merits, Reparations, and Costs*. Judgment of January 21, 1994. Series C No. 16, para. 47, and *Case of Hernández v. Argentina. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 22, 2019. Series C No. 395, para. 102.

<sup>108</sup> Cf. *Case of Fernández Prieto and Tumbeiro v. Argentina*, paras. 79, 80, and 82. It should be clarified that, pursuant to paragraphs 16 and 87 of the decision cited, in the case of *Fernández Prieto and Tumbeiro v. Argentina*, it was determined that the arbitrariness of the deprivation of liberty was linked to the violation of the right to equal protection of the law, established by Article 24 of the American Convention, the violation of which had been explicitly accepted in that case by the Argentine State. The same happened in a previous case: *Acosta Martínez et al. v. Argentina* (paras. 15, 21, and 98 to 101). In its judgment, the Court found that the use of broad legal provisions in defining powers of detention could be linked to the discriminatory exercise of such powers. In contrast to the aforementioned cases, Article 24 of the Convention has not been invoked by the parties or the Commission in this case, *Guerrero, Molina et al. v. Venezuela*, and there are no elements to justify its examination.

<sup>109</sup> Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 26, 2010. Series C No. 220, para. 106; and *Case of Azul Rojas Marín et al. v. Peru*, para. 131.

<sup>110</sup> This "is a mechanism to avoid illegal or arbitrary detentions, from the very moment when a person is deprived of his or her liberty" (cf. *Case of Juan Humberto Sánchez v. Honduras*, para. 82; and *Case of Azul Rojas Marín et al. v. Peru*, para. 131). The Court has likewise found that "the agent who carries out the arrest must inform him in simple language, free of technical terms, about the essential legal grounds and facts on which the arrest is based. Article 7(4) of the Convention is not satisfied by the mere mention of the legal grounds" (*Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 71, and *Case of Azul Rojas Marín et al. v. Peru*, para. 131).

<sup>111</sup> This, while "bearing in mind that, under the rule of law, the judge is responsible for guaranteeing the rights of the detained person, authorizing the adoption of precautionary or coercive measures when strictly necessary and, in general, ensuring that the accused is treated in a manner in keeping with the presumption of innocence" (*Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 81).

106. It should also be borne in mind that the pertinent part of the Constitution of Venezuela adopted in 1999, in force at the time of the facts, states as follows in its article 44:

Personal liberty is inviolable, consequently: No one can be arrested or detained except by virtue of a court order, unless they are caught *in flagrante delicto*. In that case, they shall be brought before a judicial authority within 48 hours of the arrest. They shall remain free during a trial, except for reasons determined by law and assessed by the judge on a case-by-case basis.

107. In this case, Jimmy Guerrero was detained by police officers from October 25 to 27, 2002, from November 2 to 3, 2002, and from February 17 to 18, 2003.<sup>112</sup> The first time, he was questioned about the robbery of a taxi driver (*supra* para. 62). The second time, he was detained "on the order of the inspector" of the DIPE (*supra* para. 64). The third time, he was apprehended and assaulted when he was at his residence (*supra* paras. 65 to 66). This last time, while arresting him, the intervening officials, referred to a robbery (*supra* para. 65).

108. The facts show no record that on any of the three occasions the police officers acted based on a court order, nor that Mr. Guerrero was caught *in flagrante delicto*. Additionally, although on the first and third arrests, the State agents supposedly said that their actions were linked to a previous criminal offense, the circumstances described are not sufficient to consider it proven that there was adequate communication of the reasons for the arrest. Nor does it appear from the facts that Mr. Guerrero was brought before a judicial authority without delay on any of the three occasions. Therefore, the detentions did not meet the legality requirement, nor did they comply with the safeguards of notification of reasons and judicial control.

109. The arrests were also arbitrary. Firstly, because in addition to what has already been stated, they were carried out in an unpredictable way and, at least in the last case, using disproportionate physical force to make the arrest.<sup>113</sup> Secondly, the arrests were part of a broader series of acts committed by police officers, which, in turn, are consistent with a context of police violence against young men living in poverty (*supra* para. 53)<sup>114</sup>. Therefore, the Court finds that the police action in the three detentions under analysis was based on preconceptions about Jimmy Guerrero, meaning he was considered a criminal or dangerous individual without justification, based only on the impression that he was of a certain age and economic and social group. The three detentions were therefore discriminatory and arbitrary.

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<sup>112</sup> The facts (*supra* paras. 62, 59, and 60, respectively) also appear to indicate that Mr. Guerrero was detained by authorities on October 23, 2002, and that on September 27, 2002, his home was searched by police officers, and on that occasion, his mother and sister—Emilia Meléndez de Guerrero and Yarelis Guerrero—were detained and deprived of their freedom of movement for three days.

<sup>113</sup> In this regard, this Court recalls that it has indicated that "the arrest may become arbitrary if in its course facts attributable to the State, considered incompatible with the respect to the detained person's human rights, occur" (*Case of López Álvarez v. Honduras. Merits, Reparations, and Costs*. Judgment of February 1, 2006. Series C No. 141, para. 66, and *Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 28, 2018. Series C No. 371, para. 243)

<sup>114</sup> This series of acts included, among other things, threats against Jimmy Guerrero, entry into his home and, the arrest of two of his relatives. Mr. Guerrero also stated that whenever the police saw him on the street, they detained him. Without evaluating each of these acts one by one, the Court notes that they took place within the context described herein and contribute to the conclusion that the arrests suffered by Mr. Guerrero are linked to it.

110. Based on the foregoing, the Court concludes that the State violated the right to personal liberty of Mr. Jimmy Rafael Guerrero Meléndez, provided for in Article 7 of the American Convention, in its paragraphs 1, 2, 3, 4, and 5, in relation to the obligation to respect human rights without discrimination, which arises from Article 1(1) of the same treaty.

### **VII.3 RIGHT TO PERSONAL INTEGRITY<sup>115</sup> AND THE PROHIBITION OF ACTS OF TORTURE<sup>116</sup> REGARDING JIMMY GUERRERO**

#### **A) Arguments of the representatives<sup>117</sup>**

111. The **representatives** argued that, prior to the day of his death, Jimmy Guerrero was subjected to "a series of incidents, including threats and serious physical injuries [...], at the hands of State agents that, all together, amount to torture."<sup>118</sup> They argued that what Jimmy Guerrero experienced meets the requirements to be considered acts of torture, namely: a) intentionality; b) causing severe physical and mental suffering (they highlighted the "psychological impact" of the death threats, as well as the "vulnerability" of Jimmy Guerrero); and c) committed for a particular purpose or aim. The purpose of these acts, according to the representatives, was "to cause fear in the victim and punish him for his alleged involvement in criminal acts." They therefore argued that the State is responsible for the violation of the right to personal integrity, recognized in Article 5 of the American Convention, in "concordance with breach of the obligation set forth in [its] Article 1(1) [...] and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture."

#### **B) Considerations of the Court**

112. The Court has found that violations of the right to personal integrity can have different intensities and occur through different types of abuse, ranging from torture to other types of acts or treatment that can be cruel, inhuman, or degrading.<sup>119</sup>

113. It has also found that it must "determine" whether an act is torture with the "utmost rigor," as torture is "a particularly heinous attack" and has its own unique characteristics, as the person perpetrating it "intentionally inflicts severe pain or suffering on a powerless victim for a specific purpose, or uses methods designed to annul their personality or diminish their physical or mental capacity to achieve a specific purpose."<sup>120</sup> According to Article 5(2) of the Convention, its definition of "torture" should

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<sup>115</sup> Article 5(1) of the American Convention.

<sup>116</sup> Article 5(2) of the American Convention and articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

<sup>117</sup> As indicated (*supra* para. 28), the Commission and the State did not address the human rights violations alleged by the representatives regarding events that occurred before March 29 and 30, 2003.

<sup>118</sup> The representatives also said these facts were not investigated. Additionally, in the section of their requests and arguments brief setting forth these arguments, they alluded to Article 8 of the IACPPT, but omitted it from that section's conclusion presenting the violations alleged. Matters related to the investigation of the facts of the case and to Article 8 are dealt with later, in Chapter VII.5.

<sup>119</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, paras. 57 and 58, and *Case of Guzman Albarracin et al. v. Ecuador*, para. 148. Cf., in the same sense, the degrees of harm to personal integrity, *Case of Vicky Hernández et al. v. Honduras*, para. 86.

<sup>120</sup> *Case of Guzmán Albarracín et al v. Ecuador*, para. 152.



be understood as described and include any act of abuse that: i) is intentional; ii) causes severe physical or mental suffering, and iii) is committed with any objective or purpose.<sup>121</sup>

114. This violation of Article 5(2) will necessarily also entail violation of Article 5(1), which generally recognizes the right to personal integrity and establishes specific prohibitions for its protection.<sup>122</sup> Additionally, the general obligations derived from Article 5 of the Convention are, where pertinent, "reinforced by the specific obligations derived from the [IACPPT. Its] Articles 1 and 6 [...] reinforce the absolute prohibition of torture and the obligation of the States to prevent and to punish any act of torture or attempt to commit torture and other cruel, inhuman or degrading treatment within their jurisdiction."<sup>123</sup>

115. It is the Court's understanding that the facts of the case do not appear to indicate that the different circumstances reported or exposed by Mr. Guerrero between August 16, 2001, and March 6, 2003—consisting of threats, harassment, detentions, or searches—are in themselves likely to generate physical or mental suffering of the severity required to amount to torture. However, the attacks he suffered on February 17, 2003, do deserve to be analyzed in order to determine whether acts prohibited by Article 5(2) of the Convention were committed. The remaining facts in question and the facts prior to that date are therefore not irrelevant. What happened that day is part of a series of acts committed against Mr. Guerrero by police personnel. Given the particular circumstances of the case, the Court finds it reasonable to view such acts as contributing—as will be described below—to revealing the purpose of the attacks committed on February 17, 2003, as well as the severity of the mental suffering that they caused.

116. The Court notes that on February 17, 2003, Mr. Guerrero, was illegally and arbitrarily detained (*supra* paras. 65, 66, and 102 to 110), had a firearm pointed at him, and was beaten "savagely" with a rod about the head and on various parts of the body, in front of other people. Later, when he was taken from there by the police, they put a cloth over his head so he could not see and continued to beat him. They kicked him in the eye and threw tear gas at him. While attacking him, the police personnel told him that he was a "criminal" and a "dangerous" person.<sup>124</sup>

117. Regarding the severity of the attacks, although the medical examination found "mild" injuries and no aftereffects (*supra* para. 67), this, by itself, does not rule out the possibility of serious harm, consideration of which should not be limited to harm of a physical nature. In this regard, the facts indeed show that Mr. Guerrero suffered severe

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<sup>121</sup> Cf. *Case of Bueno Alves v. Argentina. Merits, Reparations, and Costs*. Judgment of May 11, 2007. Series C No. 164, para. 79, and *Case of Guzmán Albarracín et al v. Ecuador*, para. 148.

<sup>122</sup> 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.

<sup>123</sup> *Case of Azul Rojas Marín et al. v. Peru*, para. 143.

<sup>124</sup> According to the "Facts of the case" section (*supra* paras. 65 to 67), the description of these events given to domestic authorities by Mr. Guerrero is consistent with that of a witness and with medical examinations. Furthermore, it was not disputed by the State. Also, there is no record of an investigation being conducted into what happened to determine that such events did not occur, or that they occurred in a manner other than described. Therefore, the attacks suffered by Mr. Guerrero on February 17, 2003 are considered established in the terms indicated.

attacks that caused him intense pain and distress. The serious anxiety and fear caused by the attacks should also be taken into account. Not only was Jimmy Guerrero beaten (in front of his neighbors no less, which is humiliating), he had a potentially lethal weapon pointed at him and he was prevented from seeing while he was transported and attacked, all without knowing the reasons for his arrest or, therefore, his attackers' intentions. All this takes place within the context of a series of acts committed by police personnel against him and his family members (*supra* paras. 55 to 64), which included death threats. Therefore, it is reasonable to assume that Jimmy Guerrero experienced deep fear of losing his life.<sup>125</sup> His physical injuries were therefore accompanied by serious mental suffering, given the psychological impact caused by the way in which the attacks were committed and the context in which they took place.<sup>126</sup>

118. The *intentionality* of the abuse perpetrated against Mr. Guerrero is clear. The abuse also had a specific *purpose* or *aim*. In this regard, the incidents took place within a context of police violence against young men living in poverty. It was based on the prejudice that such people, because they belonged to a certain sector of society, were "dangerous." The events of February 17, 2003 took place within this context and were a manifestation of it, since the mistreatment to which Jimmy Guerrero was subjected was motivated by animosity and cruelty, upon considering him a risk to society. This is evident given that these attacks were preceded by several other incidents of police harassment and violation of Jimmy Guerrero's rights, confirmed by the fact that when attacking him, the police called him a "criminal" and "dangerous." The basis for the attack was therefore discriminatory, as the police officers sought to intimidate and punish Mr. Guerrero based on preconceptions related to his economic status and social condition.

119. The Court therefore concludes that Jimmy Guerrero was subjected to torture on February 17, 2003. To his detriment, the State violated Article 5 of the American Convention, in its paragraphs 1 and 2, in relation to its obligation to respect rights without discrimination, provided for in Article 1(1) of the same treaty, and Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

#### **VII.4 RIGHT TO PERSONAL INTEGRITY REGARDING JIMMY GUERRERO AND RAMÓN MOLINA**

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

120. The **Commission** indicated that Mr. Guerrero and Mr. Molina suffered a violation of their right to personal integrity due to profound fear during the violence that led to their deaths. Additionally, in its final written observations, it stated that "based on the evidence provided during this proceeding, it is possible [...to] verify elements of torture

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<sup>125</sup> Regarding this, it should be underscored that "the personal characteristics of an alleged victim of torture or cruel, inhuman, or degrading treatment must be taken into account when determining whether the right to humane treatment was violated, as those characteristics can change the individual's perception of reality, thereby increasing the suffering and feeling of humiliation. ... E]very individual experiences suffering in a different way and, thus, it will depend on the multiple factors that make each person unique. Thus, it would be unreasonable to excise past experiences from the way an individual feels suffering." (*Case of I.V. v. Bolivia*, para. 267).

<sup>126</sup> In this regard, the Court has found that "threats and the real danger that an individual may be subjected to serious physical injury can produce, in certain circumstances, moral anguish of such a degree that it can be considered mental torture" (*Case of Cantoral Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 102; and *Case of Azul Rojas Marín et al. v. Peru*, para. 160).

to the detriment of [Jimmy Guerrero] during the attack that ended [his] life, as a comprehensive analysis of the case allows for the conclusion that the violence during the attack that ended [his] life [...] was intended deliberately to cause him profound fear and suffering."<sup>127</sup>

121. The Commission found in its Report on the Merits that the State violated Article 5(1) of the Convention to the detriment of Jimmy Guerrero and Ramón Molina, in relation to Article 1(1) of the treaty.

122. The **representatives** asserted in their brief of final arguments that "Jimmy Guerrero was intentionally dragged, beaten, and run over in the moments prior to his death," and that this constituted "torture."<sup>128</sup> They asserted that Venezuela is therefore responsible for the violation of Article 5 of the Convention in relation to its Article 1(1) and articles 1 and 6 of the IACPPT.

123. The **State**, as indicated (*supra* paras. 8, 14, 26 and 31), recognized its international responsibility, in the terms of the Report on the Merits, regarding the right set forth in Article 5(1) of the Convention, in relation to Article 1(1) of the same treaty. It did not do so with respect to the IACPPT.

### **B) Considerations of the Court**

124. This Court has addressed circumstances regarding which it determined that, in addition to their right to life, persons who were extrajudicially executed saw their right to personal integrity violated due to the "profound fear in the face of the real and imminent danger that [the aggression] would culminate in their death."<sup>129</sup>

125. In the instant case, however, the manner in which the facts took place shows that the beginning of the attack on Mr. Guerrero and Mr. Molina was followed almost immediately by their initial gunshot wounds. In view of these particular circumstances, the fear that they likely experienced in those initial moments of the attack cannot be considered to be a harm that is separate from the murder itself.<sup>130</sup> Therefore, the State's responsibility for it is included in Venezuela's violation of the right to life of both victims, and it does not constitute a breach of the State's obligations regarding the right to personal integrity.

126. The Commission and the representatives also argued that the State is responsible for acts of torture with respect to Jimmy Guerrero because of the attacks on his body after he was shot the first time, which included kicking him and dragging him behind a car (*supra* paras. 72 and 73). Although this argument, expressed in the final written

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<sup>127</sup> Among the "evidence provided during this proceeding" the Commission pointed to the expert opinion given by forensic doctor José Luis Prieto Carrero before the Inter-American Court.

<sup>128</sup> The representatives based their assertion on the expert opinion of José Luis Prieto Carrero.

<sup>129</sup> *Cf. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objections, Merits, Reparations and Costs.* Judgment of July 10, 2007. Series C No. 167, para. 99.

<sup>130</sup> It should be noted that the circumstances of this case differ from others in which, for example, the victims were kidnapped before being executed, or where a longer time period elapsed with more varied circumstances between the beginning of the facts and their conclusion, include with regard to abuse after the fatal attacks (*cf. Case of Escué Zapata v. Colombia. Merits, Reparations, and Costs.* Judgment of July 4, 2007. Series C No. 165, paras. 69 to 72; *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, para. 99, and *Case of Vicky Hernández et al v. Honduras*, para. 102).

presentations before this Court, is supposed to be based on evidence produced before the Court, the Court does not have sufficient elements to examine it. The body of evidence contains various indications regarding where on his body Mr. Guerrero was shot the first time, one of which indicates his head.<sup>131</sup> There is therefore not enough evidence to conclude that he remained alive and with the capacity to experience suffering following the first gunshot wound. It is thus not possible for this international Court to determine whether acts of torture were committed against Mr. Guerrero. This does not absolve State authorities of their corresponding duties to investigate this possibility, a matter that is examined below (*infra* Chapter VII.5).

127. Without prejudice to the foregoing, the cruelty with which the police treated Mr. Guerrero's body is particularly serious and another manifestation of police violence against young men living in poverty. It also reflects the aggressors' certainty that they would face no consequences for their actions due to the high degree of impunity characterizing such attacks (*supra* paras. 52 and 53). The acts in question demonstrate that the police officers inflicted degrading treatment on Jimmy Guerrero's body by beating it and dragging it behind a car. The Court has already found that the way in which the bodies of deceased persons are treated may, depending on the circumstances of the case, amount to degrading treatment to the detriment of the deceased person and their relatives<sup>132</sup> and finds that this is the case here.

128. Venezuela is therefore responsible for the violation of the right to personal integrity of Jimmy Guerrero, set forth in Article 5(1) of the Convention, in relation to the obligation to respect rights without discrimination, established in Article 1(1) of the same treaty. The degrading treatment of Mr. Guerrero's body also constitutes part of the facts amounting to the violation of the personal integrity of his relatives, already established in this judgment (*supra* para. 32).

129. Venezuela is not responsible for the violation of the right to personal integrity, recognized in article 5(1), to the detriment of Ramón Antonio Molina Pérez. It is also not responsible for the violation of that right, pursuant to Article 5(2) of the Convention, to the detriment of Jimmy Rafael Guerrero Meléndez, nor for the breach of articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

## **VII.5 RIGHTS TO JUDICIAL GUARANTEES<sup>133</sup> AND JUDICIAL PROTECTION<sup>134</sup> REGARDING JIMMY GUERRERO AND HIS RELATIVES AND THOSE OF**

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<sup>131</sup> In this regard, expert witness Prieto Carrero, whose conclusions were highlighted by the representatives and the Commission, indicated based on review of the autopsy report that Jimmy Guerrero was first shot in the abdomen, and that he could have survived that injury for up to three minutes. On the other hand, in the domestic proceedings, an eyewitness testified that Mr. Guerrero was first shot in the head. (Cf. expert statement of José Luis Prieto Carrero (evidence file, pgs. 11587 to 11611) and CICPC, transcript of interview with M.D. of April 2, 2003.)

<sup>132</sup> Cf. *Case of Nadege Dorzema et al. v. Dominican Republic. Merits, Reparations, and Costs*. Judgment of October 24, 2012, Series C No. 251, para. 117, and *Case of Rodríguez Vera et al. (the Disappeared from the Palace of Justice) v. Colombia. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of November 14, 2014. Series C No. 287, para. 327.

<sup>133</sup> Article 8(1) of the American Convention.

<sup>134</sup> Article 25(1) of the American Convention. In relation to the rights to judicial guarantees and judicial protection, and to the obligation to investigate acts of torture, this section also examines Article 8 of the IACPPT, as well as articles 1 and 6 of the same treaty, as indicated (*supra* footnote 116).

## RAMÓN MOLINA

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

130. The Commission indicated that the logical lines of investigation into the deaths of Jimmy Guerrero and Ramón Molina were not followed. It stated that "obvious contextual elements" were not taken into consideration. It also argued that testimony from domestic investigations indicated the presence of personnel wearing police uniforms, but that this evidence did not trigger any kind of immediate investigation of this possibility. It noted that an arrest warrant was only issued in 2016, 13 years after the facts took place and after much of the evidence had already been lost or was impossible to collect.<sup>135</sup> In relation to the foregoing, it noted delays in evidence-gathering and loss of evidence, which it called "a form of cover-up." It observed that between 2003 and 2005, the authorities in charge of the investigation asked police for information multiple times, but they did not respond until 2015, when they indicated that the relevant documentation had been lost due to the rain. It also noted that, after 2007, it was not until 2016 that the investigation "regained significant procedural momentum," when much evidence "was already lost or was impossible to collect." Lastly, it indicated that the time taken in the proceedings entailed a violation of a reasonable period of time, given that as of the issuing of the Report on the Merits, the investigation had extended more than 15 years without resolving what happened, and considering the circumstances described above.

131. Therefore, the Commission concluded that the State was responsible for the violation of the rights to judicial guarantees and judicial protection established in Articles 8(1) and 25(1) of the American Convention, in regard to the obligations enshrined in Article 1(1) of the Convention, to the detriment of the relatives of Jimmy Guerrero and Ramón Molina. As indicated above (*supra* para. 29), the Commission also argued that the State failed to comply with the obligation to conduct an *ex officio* investigation into possible acts of torture, in accordance with Articles 1, 6 and 8 of the IACPPT regarding abuse of Jimmy Guerrero's body during the course of the attack that led to his death.

132. The **representatives** indicated with regard to the deaths of Mr. Guerrero and Mr. Molina that the State had not "taken the relevant actions" to identify the perpetrators and masterminds responsible for the facts, and that the only police officer investigated had his case dismissed in 2017. They held that the State did not act with due diligence and raised a series of obstacles, causing the facts to remain in impunity. They agreed in their substance with the Commission's arguments regarding the failure to follow the logical lines of investigation, delays in the evidence-gathering and loss of evidence, and the violation of a reasonable period of time. In this framework, they asserted the following:

- a) *Lack of independence.* - The authorities in charge of the investigation were not independent, since it was State agents who harassed Jimmy Guerrero—including the CICPC, which later became the lead investigative body.
- b) *Lack of impartiality.* - The requirement that the investigation be impartial was violated, because "given that there was evidence to indicate that members of the CIPCPC may have been involved in the facts, the officials involved in conducting the

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<sup>135</sup> It also noted that the information on the ballistics tests, the projectiles found, the trajectory of the shot, and the autopsy reports was isolated, without any coordinated or integrated analysis of it to test the possible hypotheses. It also noted that the agencies in charge of the investigation did not take statements from the members of the police forces implicated in the attack.

investigations could have had direct interests in the outcome of the investigative process." They added that, in addition, the "CICPC did not provide sufficient objective guarantees to dispel doubts arising from this lack of impartiality."

c) *Obstruction of the investigation.* - The CICPC and the Police "failed on more than one occasion to respond to requests from the Prosecutor's Office and the CICPC itself," obstructing the investigation. There were also "actions taken to intimidate witness [J.L.] and Jimmy Guerrero's next of kin."<sup>136</sup>

d) *Obstacles to the participation of family members.* - "To this day, the families of the victims in this case have not had full access to the judicial process or timely knowledge of what happened in the criminal process."<sup>137</sup>

133. The representatives also pointed to a failure to investigate other facts. They noted that the State did not launch investigations into the torture to which Jimmy Guerrero was subjected despite being aware of it. They pointed to both the failure to investigate the events prior to the attack that led to Mr. Guerrero's death and to his alleged torture during that deadly attack. They also said Venezuela had not investigated the acts of intimidation, threats, searches, and detentions that Jimmy Guerrero had reported prior to his death.

134. The representatives asked the Court to find the State responsible for violating Jimmy Guerrero's rights to judicial guarantees and judicial protection, as well as those of his family members and Ramón Molina. They concluded that Venezuela had violated articles 8 and 25 of the Convention, in relation to Article 1(1) of the Convention, as well as the obligations set forth in Articles 1, 6 and 8 of the IACPPT with regard to the investigation of acts of torture, as indicated (*supra* para. 133).

135. The **State** acknowledged its international responsibility with respect to Articles 8(1) and 25(1) of the American Convention, "in the terms" of the Report on the Merits. It did not accept its responsibility for the violation of Articles 1, 6 and 8 of the IACPPT (*supra* footnote 15).

## **B) Considerations of the Court**

136. The Court has repeatedly stated that:

Pursuant to the American Convention, the States Parties are obliged to provide effective judicial remedies to the victims of human rights violations (Article 25). Such remedies must be substantiated in accordance with the rules of due process of law (Article 8(1)), all in keeping with the general obligation of the States to ensure the free and full exercise of the rights recognized by the Convention to every person subject to their jurisdiction (Article 1(1)). The right to access to justice must ensure, within a reasonable time period, the right of the alleged victims or their relatives to know the truth

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<sup>136</sup> The representatives asserted that "following the death of Jimmy and Ramón, and because he sought justice, Franklin Guerrero was harassed by individuals presumed to be police officers, who warned him on several occasions not to continue with the inquiries he was making in Punto Fijo, the location of the facts. Likewise, Jean Carlos Guerrero, who took a public role in denouncing what happened, received death threats over the phone or while walking the streets of the city. In addition, Mr. [J.L.], a witness to the events who indicated the police's participation in them, was also threatened and pressured by members of the police, for which reason he was granted protective measures. However, these measures were not effective, so he had to take his own measures to protect himself, as a result of which to this day his whereabouts are unknown."

<sup>137</sup> Furthermore, the representatives argued that "[t]he dismissal of [police officer F.R.] should be considered fraudulent *res judicata*" since "there was never any real intention to investigate [his] responsibility." On the contrary, the process was not conducted independently and impartially, and was marred by multiple irregularities. The Court takes this argument into account for the measures of reparation ordered in this judgment (*infra* Chapter VIII).

about what happened and investigate it to prosecute and punish those eventually found responsible.<sup>138</sup> [...] For an investigation to be effective [...], it must be conducted with due diligence. In this regard, it must avoid omissions in gathering evidence and in following up on logical lines of investigation.<sup>139</sup>

137. Based on these general considerations and on other more specific ones set forth below, the Court will first evaluate the investigation of the facts that led to the deaths of Jimmy Guerrero and Ramón Molina. Second, it will address the arguments presented on the investigation of other facts. Third, it will offer its conclusion.

*B.1 Investigation of the events that led to the deaths of Jimmy Guerrero and Ramón Molina*

138. This Court notes that the Commission and the representatives have been consistent in their assertions regarding the failure to follow the logical lines of investigation, the delays in evidence-gathering, the loss of evidence, and the failure to investigate within a reasonable period of time. The State has acknowledged its responsibility for this with regard to the homicides of Mr. Guerrero and Mr. Molina, in the terms indicated by the Commission in its Report on the Merits. The pleadings of the parties and the Commission on these topics are consistent with each other and with the facts of the case. As they describe it (*supra* paras. 76 to 87), the proceedings took more than 14 years, during which evidence was lost (*supra* para. 82 and *infra* para. 149); evidence-gathering measures were requested multiple times that were not carried out or were carried out with serious delays (*supra* para. 79 and *infra* paras. 147 to 149);<sup>140</sup> and there were lengthy periods of inactivity.<sup>141</sup> The processes did not succeed in identifying the persons involved in the facts and their corresponding responsibilities.

139. Based on the foregoing, this Court finds that these aspects do not require further analysis and that the State is responsible for the lack of due diligence in the investigation of the facts that led to the deaths of Jimmy Guerrero and Ramón Molina, as well as investigative actions that took an unreasonable period time.

140. This Court will next analyze the arguments on the investigation of the aforementioned facts presented by the representatives that are additional to those of the Commission. It will take into account that the State did not dispute the representatives' claims. Following this, the arguments will be addressed regarding: a) lack of independence and impartiality of the CICPC; b) obstacles to the investigation and the participation of family members, and c) failure to investigate possible acts of torture committed against Jimmy Guerrero in the context of the attack that culminated in his death.

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<sup>138</sup> *Case of Mota Abarullo et al. v. Venezuela*, para. 120, and *Case of Vicky Hernández et al v. Honduras*, para. 103. See as well: *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment June 26, 1987. Series C No. 1, para. 91; and *Case of Bulacio v. Argentina. Merits, Reparations, and Costs*. Judgment of September 18, 2003. Series C No. 100, para. 114.

<sup>139</sup> *Case of the Serrano Cruz Brothers v. El Salvador. Merits, Reparations, and Costs*. Judgment of March 1, 2005. Series C No. 120, paras. 88 and 105, and *Case of Mota Abarullo et al. v. Venezuela*, para. 121. Likewise, see *Case of Vicky Hernández et al v. Honduras*, para. 106.

<sup>140</sup> The delay in carrying out these procedures is also linked to the obstruction of the proceedings described below (*infra* paras. 145 to 153).

<sup>141</sup> Especially of note is the period of more than four years between August 11, 2009 and March 27, 2014 (*supra* paras. 81 and 82), during which there were no substantive investigative activities or efforts to move the process forward.

### *B.1.1 Alleged lack of independence and impartiality*

141. The Court has indicated that the criteria of independence and impartiality extends to the non-judicial bodies in charge of the investigation prior to the proceedings in order to determine the circumstances of a death and the existence of sufficient evidence to launch criminal proceedings.<sup>142</sup>

142. Likewise, in a previous case involving Venezuela that also involved an extrajudicial execution by the police, this Court addressed circumstances with respect to which it deemed it pertinent to note, with regard to the requirement of "independence," that "several investigative procedures were performed by the same institution to which the police officers under investigation belonged", and that this "could have led to several irregularities found in the investigation process."<sup>143</sup>

143. This case is similar to that one. The facts show that, in several complaints filed by Jimmy Guerrero prior to his death, CICPC personnel were identified as responsible for acts against him. Although those responsible for the deaths of Mr. Guerrero and Mr. Molina have not been identified, it has been established that they were police personnel and, given the aforementioned background, it cannot be ruled out *a priori* that CICPC officials were involved. Thus, several investigative procedures were carried out by an organization whose personnel may have participated in the facts. The Court finds, therefore, that this could have led to irregularities in the investigation, which undermines the due diligence of the proceedings.<sup>144</sup>

144. Having established this, this Court finds it unnecessary to delve into an evaluation of the additional arguments made by the representatives on lack of impartiality.

### *B.1.2 Obstacles to the investigation and to the participation of family members*

145. The Court has found that "all the State authorities must cooperate, support and assist, within their sphere of competence, the proper investigation of the facts, in keeping with the obligations derived from Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) of this instrument."<sup>145</sup>

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<sup>142</sup> *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, para. 133, and *Case of the Nova Brasília favela v. Brazil. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of February 16, 2017. Series C No. 333, para. 185. In the same sense, in his statement included in this process as documentary evidence (*supra* para. 36), Christof Heyns stated that "the investigators and the investigation mechanism must be independent of undue influence and appear to be so as well. This independence must be institutional and formal, both in practice and in terms of perception, and must exist at all stages of the investigation. When an investigation involves State agents, it must be independent from any of the suspects, as well as from the units, institutions, or agencies to which [they] belong. Likewise, police executions must be investigated without any improper influence that may arise from the institutional hierarchy and from the chain of command of the police or other law enforcement agency" (expert statement by Christof Heyns given in the case *Favela Nova Brasília v. Brazil*, included as documentary evidence (evidence file, pgs. 11651 to 11661)).

<sup>143</sup> *Case of Uzcátegui et al. v. Venezuela*, para. 220. In the same regard, expert witness Prieto Carrero indicated that "[t]he international recommendations and protocols that currently apply to forensic sciences in the investigation of potentially illicit deaths [...] require [...] that the investigation be carried out by police agencies other than the ones that could be implicated in the death [under investigation]" (expert statement by José Luis Prieto Carrero).

<sup>144</sup> *Cf.*, in the same sense, *Case of Uzcátegui et al. v. Venezuela*, paras. 220 and 223.

<sup>145</sup> *Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala. Merits, Reparations, and Costs*. Judgment of November 20, 2012. Series C No. 253, para. 252. Also see *Case of the Río Negro Massacres v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 4, 2012. Series C No. 250, para. 210.



146. This Court has also indicated that "During the investigative process and judicial proceedings, the Court has asserted that victims of human rights violations, or their family members, must have ample opportunities to participate and be heard."<sup>146</sup> Furthermore, "the State, to ensure due process, must provide all necessary means to protect the legal operators, investigators, witnesses and next of kin of the victims from harassment and threats aimed at obstructing the proceeding and avoiding elucidation of the facts, as well as covering up those responsible for said facts."<sup>147</sup>

147. In this case, the Court—like the Commission<sup>148</sup>—notes that during the investigation, the CICPC requested documents at different points (in 2003, 2004, and 2005) to determine the crime's connection to the police. To do so, it repeatedly asked the police to send information and documentation, such as a copy of the "armory log book" and lists of officers on duty and their locations at the time of the events. Information was also requested by Prosecutor's Office 6, in 2004 and 2005, and Prosecutor's Office 17 in 2008 (*supra* para. 80) and 2014.<sup>149</sup> There was no response to these requests. In 2014, the police reported that in 2010, documents from 2003 had been damaged (*supra* para. 82)<sup>150</sup>.

148. In addition to this, on April 1, 2003, the CICPC ordered that certain procedures be carried out: "planimeter survey," ballistic and intraorganic trajectory, and on December 3, 2003, a ballistic comparison test was ordered. The second and third of

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<sup>146</sup> Cf. *Case of the Moiwana Community v. Suriname. Preliminary Objections, Merits, Reparations and Costs*. Judgment of June 15, 2005, Series C No. 124, para. 147, and *Case of Acosta et al. v. Nicaragua. Preliminary Objections, Merits, Reparations, and Costs*. Judgment of March 25, 2017. Series C No. 334, para. 153.

<sup>147</sup> *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations, and Costs*. Judgment dated November 25, 2003. Series C No. 101, para. 199, and *Case of Díaz Loreto et al. v. Venezuela*, para. 122.

<sup>148</sup> The Commission's Report on the Merits included a statement equivalent to the one made here in paragraph 47 as among the facts of the case. The assertion, therefore, as a matter of fact, has been accepted by the State (*supra* paras. 8, 14, 19 and 31). This does not include references to requests for information from 2005 and 2008, which are included among the evidence.

<sup>149</sup> Cf. CICPC, Official Letter No. 9700-175-9836 of May 26, 2003; Official Letter 9700-175-3381 of May 21, 2004; Official Letter 9700-175-3945 of May 27, 2004; Memorandum 05906 of August 17, 2004, and Memorandum 9700-175-31 of August 18, 2004 (evidence file, respectively: annex 47 to the Report on the Merits, pg. 1850; annex 48 to the Report on the Merits, pg. 1852; proceedings before the Commission, pg. 1147; annex 49 to the Report on the Merits, pg. 1854, and annex 60 to the Report on the Merits, pg. 1880). Prosecutor's Office 6 requested information (*cf.* Prosecutor's Office 6: Official Letter No. FAL-06-04-01.131 of July 22, 2004 and Official Letter FAL-6-04-01.194 of August 4, 2004 (evidence file, annexes 51 and 58 to the Report on the Merits, pgs. 1860 and 1876, respectively)). In February 2005, the CICPC sent several official letters to the police, and that November, Prosecutor's Office 6 reiterated to the CICPC the need to execute these investigative steps (*cf.* CICPC: Official Letter No. 9700-175-973 of February 1, 2005; Official Letter 9700-175-1084 of February 9, 2005; Official Letter 9700-175-1085 of February 9, 2005; Official Letter 9700-175-1140 of February 9, 2005 (evidence file: proceedings before the Commission, pgs. 972, 973 and 974, and annex 63 to the Report on the Merits, pg. 1887, respectively); and Prosecutor's Office 6, Official Letter FAL-6-05-1.852 of November 30, 2005). In March 2014 Prosecutor's Office 17 reiterated requests for information (*cf.* Prosecutor's Office 17, Official Letter FAL17-399-2014 and Official Letter FAL17-400-2014, both dated March 27, 2014).

<sup>150</sup> Later, on March 30, 2016, it informed Prosecutor's Office 17, in the same sense, that books with information on the weapons used by M.C., F.R., and S.C. in 2003 were damaged by rain (*cf.* Secretariat on Citizen Security, State Police Corps, Official Letter 0251 of March 30, 2016 (evidence file, proceedings before the Commission, pg. 1513)).

these measures were not carried out until May 2006,<sup>151</sup> and there is no record that the other was carried out at all, despite repeated requests.<sup>152</sup> Furthermore, in January 2005 Prosecutor's Office 6 ordered witnesses be located and other steps taken. This was requested from the CICPC again, "urgently," in November of that year,<sup>153</sup> as well as in 2008,<sup>154</sup> without it being done. Years later, at the beginning of 2016, Prosecutor's Office 17 ordered the establishment of a Commission to carry out various procedures, and by the middle of that year it was determined that it was no longer possible to conduct some of them.<sup>155</sup>

149. Based on the foregoing, it is clear that the authorities in charge of the investigation ordered—on multiple occasions over the course of nearly 13 years, from 2003 to 2016—a variety of evidence-producing procedures and reiterated requests for them to be carried out, for the most part unsuccessfully.<sup>156</sup> On the contrary, some documents were lost and it became impossible execute some evidence-producing measures. The Court finds that the lack of timely implementation of the requested actions or the excessive delay thereof by the Police and the CICPC—as applicable—constituted behavior amounting to the obstruction or hindering of the investigation.

150. Additionally, Jimmy Guerrero's family—his brother Jean Carlos—sent the authorities multiple requests to access information on various actions, of which there is no record of being granted.<sup>157</sup>

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<sup>151</sup> On May 1, 2006, the Division of Analysis and Reconstruction of Facts, Ballistic Trajectory Area, issued an expert opinion on the ballistic trajectory that concluded, with Ramón Molina and Jimmy Guerrero both, that "the shooter is facing the victim from the front, firing with the muzzle of the firearm pointed downward, aimed at the affected anatomical region." On May 31, the Ballistics Division of the Identification and Comparative Forensics Office sent the chief of the Punto Fijo subdelegation a ballistics comparison report concluding that two of the 40-calibre slugs analyzed (complete projectile and fragment) were fired by the same firearm and that the 9-millimeter projectile was fired by another weapon.

<sup>152</sup> On July 26 and August 4, 2004, Prosecutor's Office 6 asked the CICPC for the results of the ballistic comparison tests, as well as the "planimeter survey" and the ballistic and intraorganic trajectory tests, respectively (*cf.* Prosecutor's Office 6, Official Letter FAL-06-04-01.153 of July 26, 2004 (evidence file, annex 57 to the Report on the Merits, pg. 1874), and Official Letter FAL-06-04-01.194 of August 4, 2004). The CICPC sent the request to the police authorities on August 17, 2004, but on August 19 it informed Prosecutor's Office 6 that it had not received "any kind of response" (*cf.* CICPC: Memorandum of August 17, 2004, addressed to the "Chief [of the] Punto Fijo Sub-Delegation," and Official Letter 9700-175-6010, of August 19, 2004, addressed to Prosecutor's Office 6 (evidence file, annexes 59 and 61 to the Report on the Merits, pgs. 1878 and 1882, respectively)). On January 10, 2005, Prosecutor's Office 6 reiterated the request that several procedures be carried out, as requested in May and August 2004 (*cf.* Prosecutor's Office 6, Official Letter FAL-6-05-00036 of January 10, 2005 (evidence file, annex 62 to the Report on the Merits, pgs. 1884 and 1885)).

<sup>153</sup> *Cf.* Prosecutor's Office 6, Official Letter FAL-6-05-00036 of January 10, 2005, and Official Letter FAL-6-05-1,852 of November 30, 2005.

<sup>154</sup> On November 4, 2008, Prosecutor's Office 17 asked the CICPC to carry out various investigation procedures, most of which had also been requested by Prosecutor's Office 6 in previous years, including locating witnesses (*cf.* Prosecutor's Office 17, Official Letter 11F17-591-2008 of November 4, 2008).

<sup>155</sup> *Cf.* Forensics Unit: Investigation records of March 14 and April 7, 2016 (evidence file, annexes 75 and 76 to the Report on the Merits, pgs. 1913 and 1914, and 1916, respectively).

<sup>156</sup> As documentary evidence, the representatives, sent a table listing the requests for investigative proceedings requested by domestic authorities and those actually carried out. It shows that less than 10% of the requests received an effective response. In that same document, the representatives sorted these requests by type of measure requested. According to this classification, at least 70% of investigative measures ordered were not carried out. The State did not dispute this information. (*Cf.* "Table with requests for criminal proceedings" (evidence file, annex 7.A to the requests and arguments brief, pgs. 11089 to 11100)).

<sup>157</sup> *Cf.* briefs of Jean Carlos Guerrero of November 12, 2003, addressed to the Superior Prosecutor's Office, and February 6, 2007, addressed to the Control Judge of Punto Fijo; record of February 6, 2007,

151. In addition, on July 16, 2005, Jean Carlos Guerrero, and a group of other relatives of victims of alleged extrajudicial executions in Falcón State denounced to the media that he and his family had been threatened,<sup>158</sup> and the representatives indicated that "Franklin Guerrero [was] threatened and constantly harassed by individuals presumed to be police officers, who [...] detained [him] and subjected [him] to interrogation without justification, warning him on multiple occasions not to continue with his inquiries"<sup>159</sup> This was not disputed by the State. In his oral statement before the Court, Jean Carlos Guerrero indicated that following the death of his brother, when his relatives began "the process to file complaints," they were harassed with "police surveillance" of the family home and death threats. The witness indicated that these acts were brought to the attention of the Public Ministry, which "at one point" requested protection measures for Jean Carlos Guerrero. The measures were not implemented. Jean Carlos Guerrero also indicated that because of the threats against him, he left Venezuela.

152. The Court finds that the refusal of the authorities in charge of the proceedings to provide information to the family members of the victims of an illicit act, as well as the fact that they were subjected to threats, are obstacles to such persons' participation in the domestic proceedings, violating not only their rights within the framework of such proceedings, but endangering their effectiveness.

153. In view of everything stated in the preceding paragraphs, this Court finds that in this case, the conduct of State agencies amounted to an obstacle to the progress of the investigations and to the participation of the relatives in the process.

#### *B.1.3 Failure to investigate possible acts of torture against Jimmy Guerrero*

154. The Court has found that the obligation to guarantee the right to personal integrity entails a duty to investigate possible acts of torture or other cruel, inhuman, or degrading treatment, as set forth in articles 1, 6 and 8 of the IACPPT.<sup>160</sup> Pursuant to this provision, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, States must guarantee that their respective authorities will proceed *ex officio* and immediately to conduct an investigation and launch, whenever appropriate, the corresponding criminal process.<sup>161</sup>

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containing the request of March 22, 2006, and a handwritten note from Jean Carlos Guerrero to the Superior Prosecutor's Office of October 4, 2007 (evidence file, proceeding before the Commission, pgs. 401, 749, 750, and 1369, respectively)) On October 31, 2007, the Superior Prosecutor's Office approved the request, but there is no indication of actual delivery to the applicant (*cf.* Superior Prosecutor's Office, Official Letter FAL-SUP-1937 of October 31, 2007 (evidence file, proceedings before the Commission, pg. 1371)) Later, in 2016, Jean Carlos Guerrero made other requests (*cf.* Jean Carlos Guerrero's requests for copies and information of March 8, May 23, July 18, and November 14, 2016 (evidence file, proceedings before the Commission, pgs. 1487 and 1488, 1574, 1575 and 1581, respectively)).

<sup>158</sup> *Cf.* News item from newspaper *La Mañana* titled "*Familiares de ajusticiados en Falcón exigen pronunciamiento*," dated July 18, 2005 (evidence file, proceeding before the Commission, pg. 129). In their brief of requests and arguments, the representatives indicated that Jean Carlos Guerrero took part in the group that went to the media, comprised of relatives of alleged victims (of multiple different alleged acts of violence, not just those pertaining to this case).

<sup>159</sup> Additional observations on the Merits, presented before the Inter-American Commission (evidence file, proceedings before the Commission, pgs. 325 to 399).

<sup>160</sup> *Cf.* Case of Ximenes Lopes *v. Brazil*, Judgment of July 4, 2006. Series C No. 149, para. 147, and Case of Olivares Muñoz *et al. v. Venezuela*, para. 134.

<sup>161</sup> Case of Gutiérrez Soler *v. Colombia*. Judgment of September 12, 2005. Series C No. 132, para. 54, and Case of Olivares Muñoz *et al. v. Venezuela*, para. 134.

155. In this case, the Court has not been able to determine based on the evidence that Mr. Guerrero was subjected to torture during the attack that led to his murder. It has also indicated that this does not absolve the State of its duty to investigate domestically (*supra* para. 126)<sup>162</sup>.

156. It has already been established that the investigation carried out into what happened on March 30, 2003 violated the rights to judicial guarantees and judicial protection. The Court finds that the deficiencies that led to this conclusion are also relevant to the inquiry into possible acts of torture. However, there is no record of a separate investigation being opened into such potential acts. Therefore, the State's failure to observe its duty to investigate also amounts to a violation of articles 1, 6 and 8 of the IACPPT.

B.2 Investigation of the facts committed against Jimmy Guerrero prior to the circumstances of his death

157. It has been the Court's understanding that, when they are reported, incidents of "detention, threats, and harassment" must be investigated, and that failures to do so may entail a violation of the right of "access to justice," pursuant to articles 8(1) and 25(1) of the American Convention.<sup>163</sup> Additionally, this judgment has already reviewed what is pertinent to the obligation to investigate possible acts of torture (*supra* para. 154).

158. The facts (*supra* paras. 55 to 69) indicate that between August 2001 and March 2003, Jimmy Guerrero presented several filings and complaints. Thus, based on a complaint filed by Jimmy Guerrero on August 16, 2001, about a year later, case 2202-02 was opened, for the crime of "threats." Then, on September 27, 2002, Mr. Guerrero reported acts of "police harassment," and on the following November 5, the filing was forwarded to a prosecutor's office. Additionally, on October 28, 2002, the Ombudsperson's Office forwarded a complaint to the Superior Prosecutor's Office regarding the detentions of Mr. Guerrero. Later, the Ombudsperson's Office was informed in response that aforementioned case 2202-02 had been opened. On November 4, 2002, Jimmy Guerrero reported to Prosecutor's Office 2 that he had been detained for

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<sup>162</sup> In this same regard, the Court has on previous occasions analyzed the duty to investigate possible incidents of torture, even in circumstances in which it did not find acts of torture but where it noted they were possible. Toward this, in addition to the pertinent articles of the American Convention, it considered articles 1, 6 and 8 of the IACPPT and found they had been violated (*cf. Case of Gudiel Álvarez et al. (Diario Militar) v. Guatemala*, paras. 272 to 282, and *Case of Olivares Muñoz et al. v. Venezuela*, paras. 134 to 138).

<sup>163</sup> *Cf. Case of Uzcátegui et al. v. Venezuela*, paras. 237 to 239. In this regard, the Court takes into account the Brasilia Regulations Regarding Access to Justice for Vulnerable People (adopted by the Ibero-American Judicial Summit on March 6, 2008), which indicate, in paragraphs 10, 11, 15, and 25, the following. First, "victim" is defined as "any physical person that has suffered damages caused by a criminal offence, including physical or psychological injury, such as moral suffering and economic damages. The term 'victim' may also include, if applicable, the immediate family or the people in charge of the direct victim." Secondly, the Brasilia Regulations state that "Any victim of a crime with relevant limitations in avoiding or mitigating the damages derived from criminal offences or in their contact with the justice system or in facing the risks of suffering a new victimisation is considered to be in a vulnerable situation." Included among aspects that entail a condition of vulnerability is "poverty," regarding which the Brasilia Regulations indicate it is "a cause of social exclusion, in economic terms, and also in social and cultural terms. It is also a serious obstacle for the access to justice." Lastly, the text indicates States have a duty to promote "the necessary conditions [...] so that the judicial custody of the rights recognised by law is effective, adopting the measures that best adapt to each condition of vulnerability."

several days. Finally, on March 11, 2003, the Ombudsperson's Office forwarded a filing by Jimmy Guerrero to Prosecutor's Office 2 for possible acts of harassment.

159. It has also been established that on February 17, 2003, Mr. Guerrero was detained in violation of his right to personal liberty, as well as tortured (*supra* paras. 65 to 67, 102 to 110 and 112 to 119). On February 25, the Ombudsperson's Office asked the Superior Prosecutor's Office and Prosecutor's Office 2 to investigate what had happened (*supra* para. 68).

160. No information has been provided to the Court on potential progress in case 2202-02 or that would indicate that the threats, detentions or harassment reported by Mr. Guerrero and the deprivation of liberty and torture he suffered on February 17, 2003 have been investigated.

161. The Court notes that the failure to investigate all the aforementioned circumstances amounted to a violation of the rights to judicial guarantees and judicial protection, as well as, with regard to what happened on February 17, 2003, violation of articles 1, 6 and 8 of the IACPPT. These violations affected, first, the rights of Mr. Guerrero, since the State's failure to fulfill its duty to conduct an investigation began when he was alive, and it has also violated the rights of his relatives.<sup>164</sup> With regard to Jimmy Guerrero, the breach of the duty to investigate was linked to a context of impunity for acts of police violence and discrimination against their victims in access to justice.

### B.3 Conclusion

162. Therefore, the Court concludes that Venezuela violated the rights to judicial guarantees and judicial protection, in breach of articles 8(1) and 25(1) of the Convention in relation to Article 1(1) of the same treaty and articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Jimmy Guerrero, his relatives, and the relatives of Ramón Molina, as applicable and in accordance with the above. The Court notes that the facts of the case remain in impunity and that the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.<sup>165</sup>

## **VIII REPARATIONS**

163. Based on Article 63(1) of the Convention, and as it relates to Article 28 of the Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the duty to make adequate reparation and that this provision reflects a customary norm that constitutes one of the fundamental principles of

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<sup>164</sup> In their brief of requests and arguments, when alleging a failure to investigate the "threats and harassment suffered by Jimmy Guerrero prior to his death," the representatives mentioned "violation of the rights of access to justice and to judicial protection of the victims and their relatives." It is not clear if that reference to "the victims" refers to Ramón Molina, in addition to Jimmy Guerrero. In any case, the Court finds no basis to analyze these arguments on investigation of the facts, nor others related to the investigative and judicial activity, in relation to Ramón Molina.

<sup>165</sup> Cf. *Velásquez Rodríguez v. Honduras. Merits*, para. 174, and *Case of Valenzuela Ávila v. Guatemala. Merits, Reparations, and Costs*. Judgment of October 11, 2019. Series C No. 386, para. 142. Also see *Case of Vicky Hernández et al v. Honduras*, paras. 97 and 134.

contemporary international law on State responsibility.<sup>166</sup> This Court has considered it necessary to grant different measures of reparation in order to redress the harm comprehensively; thus, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, and guarantees of non-repetition have special relevance.<sup>167</sup> It has also established that the reparations must have a causal connection to the facts of the case, the violations declared and the damage proved, and the measures requested to repair it.<sup>168</sup>

164. Taking into account the violations of the American Convention and the Inter-American Convention to Prevent and Punish Torture 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,<sup>169</sup> the Court will examine the claims presented by the Commission and the representatives, together with the corresponding arguments of the State. Regarding Venezuela's stance, it should be noted that although it did not specifically address all the measures of reparation requested by the Commission and the representatives, in its answering brief, it indicated its "commitment," "[I]n principle and in general", to "comply with the corresponding comprehensive reparations" (*supra* paras. 8, 15, 30, and 31).<sup>170</sup> It should be clarified that in the following, the State's stance is only reviewed in relation to requests for measures of reparations regarding which it issued specific considerations additional to the above-cited general position.

#### **A) Injured party**

165. Under the terms of Article 63(1) of the Convention, this Court considers as injured party anyone who has been declared a victim of the violation of any right recognized therein. Therefore, it understands Jimmy Rafael Guerrero Meléndez and his family members to be the injured party: Nieves Ramón Guerrero Pérez (father), Emilia Coromoto Meléndez (mother), Franklin Felipe Guerrero Meléndez (brother), Yarelis Mercedes Guerrero Meléndez (sister), Jean Carlos Guerrero Meléndez (brother), María Guadalupe Guerrero (daughter), Francisco José Guerrero (son), Jimmy Eliécer Guerrero Colina (son), Jiannibeth Stephanny Guerrero Colina (daughter), Diliانا Colina (daughter), Fraily Danaee Guerrero Chirinos (niece), and Anny Jesenia Colina García (partner); as well as Ramón Antonio Molina Pérez and his family members: Soleida Morillo (wife), Alexander Ramón Molina Morillo (son), Yanna Kari Molina Morillo (daughter), Yazmín Molina Morillo (daughter), Endy Molina Morillo (son), and Ramón Molina Morillo (son).

#### **B) Obligation to investigate**

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<sup>166</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Guachalá Chimbo et al. v. Ecuador*, para. 222.

<sup>167</sup> Cf. *Case of the "Las Dos Erres" Massacre v. Guatemala, Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 226, and *Case of Vicky Hernández et al v. Honduras*, para. 145.

<sup>168</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations, and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Guachalá Chimbo et al. v. Ecuador*, para. 222.

<sup>169</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*, paras. 25 to 27, and *Case of Guachalá Chimbo et al. v. Ecuador*, para. 223.

<sup>170</sup> The Court understands Venezuela's commitment to include the duty to inform the Court in a timely manner on effective implementation of the reparation measures established in this judgment.

166. The **Commission** asked that the State be ordered to "continue the criminal investigation diligently, effectively and within a reasonable time, in order to fully clarify the facts, identify those responsible and impose appropriate penalties for the human rights violations committed." Likewise, it indicated that "the Venezuelan State must [...] adopt all possible remedies for the flaws that have arisen throughout the investigation."

167. The **representatives** asked the Court to order the State to "reopen the criminal investigation [...] and open an investigation into all the persons responsible for the executions of Jimmy Guerrero and Ramón Molina." They also asked that the State "initiate an investigation into the acts of torture suffered by Jimmy Guerrero prior to his death, as they have never been investigated." They indicated that "both this investigation and the investigation into the extrajudicial execution of the victims must take into consideration all the harassment, threats, and illegal and arbitrary detentions suffered by Jimmy Guerrero." They indicated that "the only police officer who was investigated" had his case "fraudulently dismissed," for which they asked that the State be ordered that "the investigations ordered [...] be conducted by an independent and impartial body."

168. The **Court** found that the State violated the rights to judicial guarantees and judicial protection for failing to comply with its obligation to investigate the facts of the case with due diligence (*supra* para. 162). In this regard, this Court notes that the definitive dismissal of the case issued in 2017 (*supra* paras. 86 and 87) was the result of an investigation that not only was not carried out with due diligence, but also was blocked by the authorities in charge of it. Added to this are facts such as in April 2016, when Prosecutor's Office 17 requested a warrant for the arrest of police officer F.R., it already had information indicating multiple investigative measures had been unsuccessful. Those measures were the same ones on which later, in September 2017, the same Prosecutor's Office 17 based the dismissal of the case,<sup>171</sup> with no record of additional substantive investigative measures being carried out in between those two dates. The lack of a diligent investigation and of substantive investigative actions following the request for the arrest warrant that would have had the capacity to complete the investigation or correct its deficiencies shows that F.R.'s involvement in the process and his arrest warrant were not acts that were effectively aimed at advancing toward determining his alleged criminal responsibility.

169. The Court therefore orders the State to conduct the pertinent investigations and criminal proceedings, within a reasonable time, to identify, prosecute, and, as appropriate, punish those responsible for the deaths of Jimmy Guerrero and Ramón Molina (*supra* paras. 70 to 75), as well as the torture (*supra* paras. 65 and 66) and potential torture (*supra*, para. 72 and 73) suffered by Mr. Guerrero, and of the acts of harassment, searches, threats and illegal and arbitrary detentions that he reported or described in filings before authorities (*supra* paras. 56 to 69).<sup>172</sup> Venezuela must carry out the foregoing in accordance with the provisions of domestic law, without prejudice to which it must take the actions necessary to ensure the case's dismissal (*supra* paras. 86, 87, and 168) does not pose an obstacle to the doing so. The State also must:

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<sup>171</sup> Cf. Prosecutor's Office 17, Official Letter FAL 17-229 -2016, of April 1, 2016, and request for dismissal issued by Prosecutor's Office 17.

<sup>172</sup> This order includes the facts related to the detention of Mr. Guerrero by authorities on October 23, 2002, as well as the facts of September 27, 2002, when his house was searched by police officers and his mother and sister were detained. Although the Court did not examine these circumstances separately, or their possible impact on the rights of the two women, it considered them as part of the police harassment of Jimmy Guerrero.

- a) Ensure that the different organs of the judicial system involved in the case have the human and material resources necessary to perform their duties in an appropriate, independent, and impartial manner, and that those who participate in the investigation, including victims, witnesses and agents of justice, have the necessary guarantees of safety;
- b) Act with due diligence, including by following up on logical lines of investigation and considering the context and background of the facts, and ensure that all State authorities are required to cooperate with collecting evidence and must therefore provide judicial, prosecutorial, and/or other corresponding authorities with all the information they request and refrain from acts that obstruct the investigative process; and
- c) Ensure the relatives of Jimmy Guerrero and Ramón Molina full access and capacity to act at all stages of the investigations, in accordance with domestic law and the provisions of the American Convention.<sup>173</sup>

170. The Court also found that there were obstacles to the investigations that resulted in the case's dismissal, in violation of the State's obligations under the American Convention (*supra* paras. 153 and 168). Therefore, as part of the obligation to investigate, it deems it appropriate to order the State—within a reasonable period of time and in accordance with domestic law—to carry out procedures pertinent to determining the possible disciplinary or administrative responsibilities of State officials, due to the circumstances described.

### **C) Measures of rehabilitation**

171. The **Commission** asked that the State be ordered to take "measures to provide the necessary physical and mental health care needed by the relatives of Jimmy Guerrero and Ramón Molina in accordance with their desires and in coordination with them." The **representatives**, for their part, stated that Venezuela should be ordered to "guarantee the victims adequate physical and psychological health treatment to overcome the impacts of these events, in their places of residence," "whether in Venezuela or in another country." The **State** "committed [...] to offering and providing healthcare to the victims in these proceedings."

172. The **Court** has found a violation of personal integrity suffered by the relatives of Jimmy Guerrero and Ramón Molina as a consequence of the facts of this case (*supra* para. 32). This Court therefore considers it pertinent to order a measure of reparation in the form of adequate care to address the psychological and/or psychiatric suffering of these persons, taking into account their specific needs and background.<sup>174</sup> Consequently, this Court orders the State to pay a sum of money so that the relatives of Jimmy Guerrero and Ramón Molina can cover the costs of the necessary treatments. The amount will be set in the section on compensation for pecuniary and non-pecuniary damage (*infra* para. 190).

### **D) Measures of satisfaction**

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<sup>173</sup> Cf., similarly, *Case of Gutiérrez and family v. Argentina. Merits, Reparations, and Costs*. Judgment of November 25, 2013. Series C No. 271, para. 154.

<sup>174</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, para. 42 and 45; and *Case of Guachalá Chimbo et al. v. Ecuador*, para. 234.



173. The **Commission** said the State must make full reparation for the human rights violations, both pecuniary and non-pecuniary, including through measures of satisfaction. The **representatives** asked that the following publications be ordered: a) “the official summary of the judgment issued by the Court in the two newspapers with the largest national circulation in Venezuela”; and b) “the judgment in its entirety[, so] that it is available for a period of at least one year, through a link on the homepages of the website of the Ministry of the People's Power for Internal Affairs, Justice and Peace, the Bureau of Scientific, Criminal and Forensic Investigations (CICPC), and the Police Armed Forces of Falcón State.” In addition, they argued the State should be ordered to grant the children of Jimmy Guerrero and Ramón Molina scholarships for secondary, trade, professional, technological, or university educations, as appropriate and in accordance with their current education levels.

174. As it has in other cases,<sup>175</sup> the **Court** orders the State to publish, within a period of six months, counting from the notification of this judgment, in a legible and appropriate font size, the following: a) the official summary of this judgment prepared by the Court, only once, in the two newspapers with the largest national circulation in Venezuela, and b) this judgment in its entirety, available for a period of one year, on the official websites of the Ministry of the People's Power for Internal Affairs, Justice, and Peace, the Bureau of Scientific, Criminal and Forensic Investigations (CICPC), and the Police Armed Forces of Falcón State. The State must inform this Court immediately when it has made each of the publications ordered, irrespective of the one-year time frame for presenting its first report established in the nineteenth operative paragraph of this judgment.

175. The Court also notes that, according to the statements of relatives of Jimmy Guerrero and Ramón Molina, they were an important source of economic support for their families.<sup>176</sup> Therefore, the Court orders the State to grant scholarships for the children of both in the form of a monthly stipend that fully covers all the education-related expenses of the beneficiaries in public educational institutions in Venezuela, pursuant to the provisions of the next paragraph.

176. The scholarships shall not be conditioned on receiving certain grades or depend on maintaining certain academic performance, and they must be awarded to the beneficiaries in consideration of their status as victims of the violations declared in this judgment. These scholarships shall be awarded in State institutions in Venezuela from the moment they are requested of the State by each of the beneficiaries, and they are to cover the education of these beneficiaries until the completion of secondary and/or further schooling, including trade school or university studies. They must cover all expenses incurred to complete this education, including academic or educational materials and living expenses. The victims or their legal representatives have six months—counting from the notification of this judgment—to inform the State of their intention to receive these scholarships and, as applicable, 24 months from the date of the completion of secondary school to inform the State of the wish to receive

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<sup>175</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Guachalá Chimbo et al. v. Ecuador*, para. 236.

<sup>176</sup> Cf. Oral statement by Jean Carlos Guerrero Meléndez and written statements by Nieves Ramón Guerrero Pérez, Emilia Coromoto Meléndez, Franklin Felipe Guerrero Meléndez, and Jiannibeth Stephannie Guerrero Colina (evidence file, pgs. 11448 to 11451), Yarelis Mercedes Guerrero Meléndez, Fraily Danaee Guerrero Chirinos (evidence file, pgs. 11465 to 11469), and Soleida Morillo (evidence file, pgs. 11471 to 11474).

scholarships for further studies, as well as regarding the degree that they may decide to pursue in trade school or through university studies.

**E) Measures of non-repetition**

177. When submitting the case to the Court, the **Commission** asked that Venezuela be ordered to "Establish measures of non-repetition that include:"

(i) training programs on international human rights standards in general, especially for the police of the state of Falcón and for justice officials; (ii) measures to ensure effective accountability in the criminal, disciplinary, and administrative jurisdiction, in cases of presumed abuse of power by State agents responsible for public security, and (iii) legislative, administrative, and other types of measures to ensure investigation with due diligence and in accordance with relevant international standards on cases of alleged extrajudicial execution.

178. The **representatives** said the State should: i) provide "training courses on human rights violations and the use of force to security agents and officials in charge of criminal investigations"; ii) "adopt regulations at the national level to guarantee full access to criminal records for civil parties duly accredited in the process"; iii) "[e]stablish domestic regulations on the right of victims to request and present independent expertise in any criminal investigation"; and iv) order the "collection and publication of official data on homicides and extrajudicial executions for establishing public policies".

179. The **State** reported that "it has already complied with the actions proposed by the Commission." It indicated that, "in recent years," it "has developed [...] various training spaces for police officers throughout the country, including the Falcón State police force, on human rights and, very specifically, on progressive and differentiated use of force." It reported that these spaces include: i) "level three national university training programs—university undergraduate—for police and police investigation services"; ii) "level four advanced specialized training programs—graduate degrees—for police and police and police investigation services"; iii) "ongoing training and retraining programs for all police forces"; and iv) "professional extension and improvement courses." Most of these training spaces are developed and supervised by the Universidad Nacional Experimental de la Seguridad (UNES), the academic institution of higher education specializing in citizen security services.

180. The **Court** first notes the requests of the Commission and the representatives for legislative or administrative measures to ensure accountability in the event of abuse of power, diligent investigations, and access to files and rights for victims in the framework of criminal investigations. In this regard, this Court notes that it has not been found that the human rights violations committed in the instant case were the result of legislative or administrative deficiencies or omissions. It therefore does not deem it appropriate to order such actions.

181. As regards the requests of the Commission and the representatives for education or training for officials, this Court appreciates the information provided by the State in this regard. However, in view of the circumstances of the case and its contextual situation, it finds that in order to avoid the repetition of the facts, the police personnel of Falcón State must receive adequate instruction on the appropriate use of force and respect for human rights. The Court therefore orders the State to implement measures additional to the current programs and courses within one year in order to provide permanent training and education for members of the Falcón State police forces on: i) proper use of force; ii) human rights and non-discrimination and, iii) protection of the rights of young people living in poverty. The Court will supervise this measure until it has sufficient information to conclude the State has adequately complied.

182. The Court also notes that expert witness Ignacio Cano indicated that the action of the criminal justice system is insufficient to reduce cases of abuse by security forces, and that it is important to adopt "another approach, including monitoring the array of cases where lethal force is used." He indicated that this requires "keeping a systematic record of cases." He added that this is useful to motivate the authorities to adopt preventive measures, as well as inspire the public opinion to demand them, and that, in addition, it puts "pressure" on security forces to, where applicable, explain the increase in abuses, which can have a deterrent effect.<sup>177</sup>

183. In view of the foregoing, as well as the context of police violence in which the human rights violations found in this judgment took place, the Court orders the State to publish, within one year and then annually, an official report with data on deaths caused by police in all the states of the country and the identities of the people who died in such circumstances, including name, age, sex or gender, place of residence, and social condition, among other things. This report must also contain information, updated annually, on the investigations carried out with respect to each incident resulting in the death of a civilian or member of the police forces. The documentation or information on which this public report is based must for its part be public and accessible to independent researchers. The Court will supervise this measure until it has sufficient information to conclude the State has adequately complied, and it may determine additional or supplementary measures during the supervision of compliance with this judgment in the event that the measure's objectives are not verified to its satisfaction.

#### **F) Other measures requested**

184. The **representatives** asked that a "public apology ceremony be held"; that the State be ordered to "build a sports field or a community kitchen named after Jimmy Guerrero Meléndez"; and "that a square in Falcón State be named after [...] Ramón Antonio Molina Pérez, in memory of the victim." They also asked that Venezuela be ordered "[to] establish a truth commission on extrajudicial executions to collect qualitative and quantitative information."

185. The **Court** finds that the issuance of this Judgment and the measures of satisfaction and guarantees of non-repetition ordered, together with the rest of the reparations provided for in this judgment, are sufficient and adequate to remedy the violations suffered by the victims. Therefore, it does not consider it necessary to order measures consisting of holding a public apology ceremony or naming sports facilities, a community kitchen, or a plaza after Ramón Molina or Jimmy Guerrero, nor does it order the establishment of a truth commission.

#### **G) Compensation**

186. The **Commission** requested that the pecuniary and non-pecuniary human rights violations be fully redressed by means of measures of financial compensation. The **representatives** asked that the Court "determine, in equity, the amount corresponding to pecuniary damages." Despite this, citing case law, they requested that the amounts of US\$65,000.00 for loss of earnings and US\$300.00 for funeral expenses be used as a

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<sup>177</sup> Cf. Expert testimony by Ignacio Cano (evidence file, pgs. 11569 to 11572). Likewise, the Court, regarding the measures of non-repetition ordered, takes note of the observations of the experts Briceño León and Alston regarding the current situation of actions by security forces that are disproportionately harmful to the human rights of persons living in poverty (*cfr.* expert statements by Roberto Briceño León and Philip Alston).

"guideline." Regarding non-pecuniary damages, they requested that the Court "grant US\$60,000.00, in equity," to Jimmy Guerrero and Ramón Molina; "US\$50,000.00 to the parents, brothers and children of Jimmy Guerrero, as well as to Soleida Morillo de Molina and her children; and US\$15,000.00 to Jimmy Guerrero's niece."

187. The **Court** has established that pecuniary damage involves "a loss of, or detriment to, the income of the victims, the expenses incurred as a result of the events and the pecuniary consequences that may have a cause-effect link with the events in the case."<sup>178</sup> It has likewise established that non-pecuniary damage "may include distress and suffering caused directly to the victims or their relatives, tampering with individual core values, and changes of a non pecuniary nature in the living conditions of the victims or their families."<sup>179</sup>

188. It is this Court's understanding that, given the nature of the facts and violations determined in this judgment, the victims have suffered pecuniary and non-pecuniary damage for which compensation must be provided. This notwithstanding, the representatives did not provide sufficient probative elements regarding the amounts of the pecuniary damage they allege.<sup>180</sup> The Court deems it appropriate to determine in equity, as compensation and in order to provide unified and complete reparations for the pecuniary and non-pecuniary damage, the following monetary amounts for each of the victims, as indicated below:

- a) Jimmy Rafael Guerrero Meléndez: US\$150,000.00 (one hundred and fifty thousand dollars of the United States of America);
- b) Ramón Antonio Molina Pérez: US\$130,000.00 (one hundred and thirty thousand dollars of the United States of America);
- c) Nieves Ramón Guerrero Pérez (father of Jimmy Guerrero): US\$15,000.00 (fifteen thousand dollars of the United States of America);
- d) Emilia Coromoto Meléndez (mother of Jimmy Guerrero): US\$15,000.00 (fifteen thousand dollars of the United States of America);
- e) Franklin Felipe Guerrero Meléndez (Jimmy Guerrero's brother): US\$10,000.00 (ten thousand dollars of the United States of America);
- f) Yarelis Mercedes Guerrero Meléndez (Jimmy Guerrero's sister): US\$10,000.00 (ten thousand dollars of the United States of America);
- g) Jean Carlos Guerrero Meléndez (Jimmy Guerrero's brother): US\$10,000.00 (ten thousand dollars of the United States of America);
- h) María Guadalupe Guerrero (Jimmy Guerrero's daughter): US\$10,000.00 (ten thousand dollars of the United States of America);
- i) Francisco José Guerrero (Jimmy Guerrero's son): US\$10,000.00 (ten thousand dollars of the United States of America);

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<sup>178</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Guachalá Chimbo et al. v. Ecuador*, para. 257.

<sup>179</sup> Cf. *Case of the "Street Children" (Villagrán-Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 84, and *Case of Guachalá Chimbo et al. v. Ecuador*, para. 261.

<sup>180</sup> The Court notes that the representatives request compensation be ordered for indirect damages and loss of earnings. However, they indicated that "due to the passage of time, the victims do not have expenses receipts." Although they indicated the amounts of US\$65,000.00 for loss of earnings and US\$300.00 for funeral expenses, the Court does not have enough elements to calculate pecuniary damages.

- j) Jimmy Eliécer Guerrero Colina (Jimmy Guerrero's son): US\$10,000.00 (ten thousand dollars of the United States of America);
- k) Jiannibeth Stephanny Colina (Jimmy Guerrero's daughter): US\$10,000.00 (ten thousand dollars of the United States of America);
- l) Dilia Colina (Jimmy Guerrero's daughter): US\$10,000.00 (ten thousand dollars of the United States of America);
- m) Fraily Danaee Guerrero Chirinos (Jimmy Guerrero's niece): US\$5,000.00 (five thousand dollars of the United States of America);
- n) Anny Jesenia Colina García (Jimmy Guerrero's partner): US\$15,000.00 (fifteen thousand dollars of the United States of America);
- o) Soleida Morillo (Ramón Molina's wife): US\$15,000.00 (fifteen thousand dollars of the United States of America);
- p) Alexander Ramón Molina Morillo (Ramón Molina's son): US\$10,000.00 (ten thousand dollars of the United States of America);
- q) Yanna Kari Molina Morillo (Ramón Molina's daughter): US\$10,000.00 (ten thousand dollars of the United States of America);
- r) Yazmin Molina Morillo (Ramón Molina's daughter): US\$10,000.00 (ten thousand dollars of the United States of America);
- s) Endy Molina Morillo (Ramón Molina's Son): US\$10,000.00 (ten thousand dollars of the United States of America); and,
- t) Ramon Molina Morillo (Ramón Molina's Son): US\$10,000.00 (ten thousand dollars of the United States of America).

189. Each of the amounts assigned with respect to Jimmy Guerrero and Ramón Molina must be distributed among their relatives declared victims in this judgment as follows: a) the amount assigned to Jimmy Guerrero will be divided equally between his children and his partner, such that his partner receives 50% and the other 50% is distributed equally between each of his five children identified in this judgment (*supra* paras. 165 and 188); a) the amount assigned to Ramón Molina will be distributed in the same way: that is, divided equally between his children and his wife, such that his wife receives 50% and the other 50% is distributed equally between each of his five children identified in this judgment (*supra* paras. 165 and 188). Anywhere else—in addition to those cases already indicated—where a beneficiary has died before the issuance of this judgment, the amount of compensation assigned to that person shall be distributed equally among their relatives declared victims in this judgment who are alive as of the date it is issued. Otherwise, it must be delivered to their heirs, in accordance with applicable domestic law. Should any beneficiary die after the date of issuance of this judgment and before collecting the compensation, the provisions of section J of this chapter on the manner of compliance shall apply (*infra* paras. 198 to 203).

190. This Court likewise establishes that the State must pay the sum of US\$6,000.00 (six thousand United States dollars) to each of the family members of Mr. Jimmy Guerrero and Mr. Ramón Molina declared victims in this judgment to cover the costs of the necessary psychiatric and/or psychological treatments (*supra* para. 172). This amount must be paid out by the State without any conditions or reporting obligations. The State must make the payment as soon as possible, and within a maximum of one year, counting from the notification of this judgment. If, due to causes attributable to the beneficiaries, it is not possible to pay the amount determined by the deadline indicated, the State will be exempted from making the payment. In the event that a beneficiary of this measure intended to cover treatment costs died before the issuance of this judgment, and should a beneficiary die after the issuance of this judgment but before collecting the amount indicated, the State shall be exempted from making the payment.

## **H) Costs and Expenses**

191. The **representatives** asked that the State be ordered to pay the costs incurred both at the national level—in the processing of the judicial proceedings—and at the international level—in the processing of the case before the Commission and the Court—in the amount of US \$99,908.46 for COFAVIC and US\$12,202 for CEJIL.

192. Costs and expenses form part of the concept of reparation, because the efforts made by the victims to obtain justice, both at the national and international level, entail disbursements that must be compensated when the State's international responsibility has been declared in a condemnatory judgment. Regarding the reimbursement of costs and expenses, it is for the Court to prudently assess their scope, which includes expenses incurred before the authorities of the domestic courts and those generated 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 may be based on the principle of equity, taking into account the expenses indicated by the parties, provided that their *quantum* is reasonable.<sup>181</sup>

193. The **Court** has found that as regards claims of financial expenditures, the representatives must describe the line items clearly and justify them.<sup>182</sup> In this case, the evidence submitted by the representatives and the corresponding arguments do not provide a complete justification of the amounts requested.<sup>183</sup> The Court decides, on deeming it reasonable, to establish, in equity, the payment of a total amount of US\$45,000.00 (forty-five thousand dollars of the United States of America) for costs and expenses. This amount must be distributed as follows: US\$35,000.00 (thirty-five thousand United States dollars) for COFAVIC and US\$10,000.00 (ten thousand United States dollars) for CEJIL. The State must deliver the corresponding monetary amounts to each of the indicated organizations within one year.

194. In the procedure to supervise compliance with this judgment, the Court may order reimbursement by the State to the victims or to their representatives of expenses reasonably and duly documented at each procedural stage.<sup>184</sup>

## **I) Victims' Legal Assistance Fund of the Inter-American Court and the Inter-American Commission**

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<sup>181</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment of August 27, 1998. Series C No. 39, para. 82, and *Case of Guachalá Chimbo et al. v. Ecuador*, para. 269.

<sup>182</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, para. 277, and *Case of Guachalá Chimbo et al. v. Ecuador*, para. 270.

<sup>183</sup> In this regard, in their brief of requests and arguments and attached documentation, the representatives argued that, from litigating the case domestically and internationally, COFAVIC had spent US\$91,002.43, plus US\$8,906.00 for expenses after the presentation of the aforementioned brief. However, in the documentation attached to their pleadings and motions brief, they referred to expenses for different line items—such as expenses for lawyers, transportation and per diem, travel to the Inter-American Commission, and administrative expenses—totaling less than US\$36,000.00. Furthermore, for example, the Court notes that the representatives did not specify how receipts for "Training in Falcón State" or the sums for "Flights, Caracas-Las Piedras" were related to the case. Additionally, with respect to the expenses incurred after the submission of the brief of requests and arguments, the representatives provided proof of salary payment issued by the organization.

<sup>184</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations, and Costs*. Judgment of September 1, 2010. Series C No. 217, para. 29, and *Case of Guachalá Chimbo et al. v. Ecuador*, para. 271.

195. It should be noted for the record in the instant case that on January 20, 2020, the President issued an Order, communicated to the parties and to the Commission, establishing that, "in accordance with the provisions of Article 31 of the Rules of Procedure of the Court" and articles 2, 3, and 5 of the Rules for the Operation of the Victims' Legal Assistance Fund, the request presented by the victims of this case through their representatives to avail themselves of the Victims' Legal Assistance Fund of the Inter-American Court was granted, meaning they were to receive financial support to "defray the costs incurred in the presentation of the testimony of [...] victims or experts, in an eventual public hearing or by affidavit."<sup>185</sup> In the Order of the President of the Court of October 13, 2020 (*supra* para. 10) it was determined that "financial assistance be allocated to cover the reasonable expenses of preparing and sending two statements in the form of affidavits, as indicated by the representatives."

196. Based on the expenses duly accredited by the representatives and the respective receipts provided, the Court orders the State to reimburse the fund the amount disbursed for the cost of the notarization of the testimony via affidavit of Fraily Guerrero, in the amount of US\$64.56 (sixty-four dollars of the United States of America and fifty-six cents). This sum must be reimbursed within six months of notification of this judgment.

197. Additionally, the **Commission** asked this Court order the State of Venezuela to reimburse the expenditures of the Victims' Legal Assistance Fund of the Inter-American Commission. The **Court** notes that the Commission did not specify the amount disbursed, nor did it present documentation to support it. It also did not indicate the legal basis and the procedure for this Court to order and supervise compliance with the reimbursement to the fund administered by the Commission. The Court therefore finds that it cannot grant the request, but rather the Commission must adjudicate the corresponding procedure in the sphere of its authorities.

#### **J) Method of compliance**

198. The State shall make the payments for compensation of pecuniary and non-pecuniary damage, as established in this judgment, directly to the persons and organizations indicated herein, within one year of notification of this judgment, or it may bring forward the full payment, pursuant to the following paragraphs.

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

200. As regards the currency used to pay the compensation and reimbursement of costs and expenses, the State shall comply with the monetary obligations by payment in United States dollars or, if this is not possible, in the equivalent in Venezuelan currency, using the highest and most beneficial rate for the victims allowed by its domestic law at the time of the payment to make the respective calculation. During the stage of monitoring compliance with the judgment, the Court may make a prudent readjustment of the equivalent of the respective sums in Venezuelan currency in order to avoid exchange variations substantially affecting their purchasing power.

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<sup>185</sup> Case of Guerrero *et al. v. Venezuela*. Order of the President of the Court of January 20, 2020, operative paragraph 2. Available at: [http://www.corteidh.or.cr/docs/asuntos/querrero\\_fv\\_2020.pdf](http://www.corteidh.or.cr/docs/asuntos/querrero_fv_2020.pdf).

201. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it is not possible to pay the amounts determined within the period indicated, the State shall deposit the amounts in their favor in an account or deposit certificate in a solvent Venezuelan financial institution, in United States dollars, and in the most favorable financial terms allowed by law and banking practice. If, after 10 years, the compensation has not been claimed, the amounts shall be returned to the State with the interest accrued.

202. The amounts allocated in this judgment as compensation and as reimbursement of costs and expenses must be delivered integrally to the persons and organizations indicated, as established in this judgment, without any reductions derived from possible charges or taxes.

203. If the State should fall in arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund of the Court, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Bolivarian Republic of Venezuela.

## **IX OPERATIVE PARAGRAPHS**

204. Therefore,

### **THE COURT,**

Unanimously,

### **DECIDES,**

1. To accept the acknowledgment of international responsibility made by the State, pursuant to paragraphs 18 to 34 of this judgment.

### **AND DECLARES,**

2. The State is responsible for the violation of the right to personal liberty, set forth in Article 7 of the American Convention on Human Rights, in its subparagraphs 1, 2, 3, 4, and 5, in relation to the obligation to respect rights without discrimination, which arises from Article 1(1) of the same treaty, to the detriment of Jimmy Rafael Guerrero Meléndez, in the terms of paragraphs 91 to 99 and 102 to 110 of this judgment.

3. The State is responsible for the violation of the right to personal integrity, established in Article 5 of the American Convention on Human Rights, in its subparagraphs 1 and 2, in relation to the obligation to respect rights without discrimination, which arises from Article 1(1) of the same treaty, and with the obligations established in articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, as well as the violation of the same Article 5(1), in relation to the obligation to respect rights without discrimination, which arises from Article 1(1), to the detriment of Jimmy Rafael Guerrero Meléndez, based on the facts of February 17 and March 30, 2003, respectively, in the terms of paragraphs 91 to 99, 112 to 119 and 127 and 128 of this judgment.

4. The State is responsible for the violation of the right to life, recognized in Article 4(1) of the American Convention on Human Rights, in relation to the obligations to



respect and guarantee the rights without discrimination arising from its Article 1(1), to the detriment of Jimmy Rafael Guerrero Meléndez, in the terms of paragraphs 32 and 91 to 99 of this judgment.

5. The State is responsible for the violation of the right to life, recognized in Article 4(1) of the American Convention on Human Rights, in relation to the obligation to respect the rights that arises from Article 1(1), to the detriment of Ramón Antonio Molina Pérez, in the terms of paragraph 32 of this judgment.

6. 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) and articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Jimmy Rafael Guerrero Meléndez and his relatives and the relatives of Ramón Antonio Molina Pérez, in the terms of paragraphs 91 to 99 and 136 to 162 of this judgment.

7. The State is responsible for the violation of the right to personal integrity, established in Article 5(1) of the American Convention on Human Rights, in relation to its Article 1(1), to the detriment of the next of kin of Jimmy Rafael Guerrero Meléndez and Ramón Antonio Molina Pérez, in the terms of paragraphs 32, 127 and 128 of this judgment.

8. The State is not responsible for the violation of the right to personal integrity, recognized in Article 5 of the American Convention, to the detriment of Ramón Antonio Molina Pérez, nor is it responsible, in relation to the events of March 30, 2003, for the violation of subparagraph 2 of that article, nor of articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Jimmy Rafael Guerrero Meléndez, in the terms of paragraphs 125, 126 and 129 of this judgment.

**AND ORDERS:**

9. This judgment constitutes, per se, a form of reparation.

10. The State shall carry out the corresponding investigations and criminal proceedings to investigate the facts of the case, in the terms of paragraph 169 of this judgment.

11. The State shall carry out the pertinent procedures to determine the possible disciplinary or administrative responsibilities for the facts of the case, in the terms of paragraph 170 of this judgment.

12. The State shall pay the sums ordered to provide psychological and/or psychiatric treatment to the family members of Jimmy Rafael Guerrero Meléndez and Ramón Antonio Molina Pérez declared victims in this judgment, in the terms of its paragraphs 172 and 190.

13. The State shall make the publications ordered in paragraph 174 of this judgment within six months of its notification.

14. The State shall award scholarships to the children of Jimmy Rafael Guerrero Meléndez and Ramón Antonio Molina Pérez, declared victims in this judgment, in accordance with the provisions of paragraphs 175 and 176 thereof.

15. The State shall carry out actions to train and raise awareness among the police officers of Falcón State, in the terms of paragraph 181 of this judgment.

16. The State shall publish, annually, an official report with the data on to the deaths caused by the police in all states of the country. This report must also contain information, updated annually, on the investigations carried out with respect to each incident resulting in the death of a civilian or member of the police forces, pursuant to the terms of paragraph 183 of this judgment.

17. The State shall pay the amounts established in paragraphs 188 and 193 of this judgment for pecuniary and non-pecuniary damages and costs and expenses, in the terms of paragraphs 189 and 198 to 203 of this judgment.

18. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights for the amount disbursed during the processing of this case, pursuant to paragraphs 196 and 203 of this judgment.

19. The State shall provide the Court with a report, within one year of notification of the judgment, on the measures taken to comply with it, without prejudice to the provisions of paragraph 174 of this judgment.

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

DONE, at San José, Costa Rica, on June 3, 2021, in the Spanish language

I/A Court HR. *Case of Guerrero, Molina et al. v. Venezuela*. Merits, Reparations, and costs. Judgment of June 3, 2021.

Elizabeth Odio Benito  
President

L. Patricio Pazmiño Freire  
Grossi

Eduardo Vio

Eduardo Ferrer Mac-Gregor Poisot  
Raúl Zaffaroni

Eugenio

Ricardo C. Pérez Manrique

Pablo Saavedra Alessandri  
Secretary

So ordered,

Elizabeth Odio Benito  
President

Pablo Saavedra Alessandri  
Secretary