

**REPORT No. 63/11**  
**CASE 12.221**  
**MERITS**  
**JORGE OMAR GUTIÉRREZ AND FAMILY**  
**ARGENTINA**  
March 31, 2011.

**I. SUMMARY**

1. On May 12, 1999, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," the "Commission" or "the IACHR") received a petition presented by the Center for Legal and Social Studies (CELS in its Spanish acronym) - which was broadened that same year by CELS, the Center for Justice and International Law (CEJIL in its Spanish acronym) and Nilda Maldonado and Francisco Gutiérrez (all hereinafter to be known as "the petitioners"). The petition alleged that the State of Argentina ("the State" or "the Argentine State") was internationally responsible for the death of Jorge Omar Gutiérrez (Argentine citizen, deputy commissioner with the Buenos Aires Police) at the hands of agents of the State. The complaint also refers to the alleged denial of judicial guarantees and a fair trial due to the failure to carry out a proper investigation and punish the State agents who supposedly took part in the facts.

2. From the start of their communications, the petitioners have held that the facts denounced comprise a violation of articles 4 (right to life), 8 (fair trial) and 25 (judicial protection) of the American Convention on Human Rights (hereinafter "the American Convention" or "the Convention") in concordance with Article 1(1) of the Convention, to the detriment of Jorge Omar Gutierrez and his relatives<sup>1</sup>.

3. In its Admissibility Report No. 1/03, the Commission decided that the allegations of the petitioners regarding the violation of the rights to life, fair trial, and judicial protection, guaranteed in articles 4, 8 and 25, in concordance with Article 1(1) of the American Convention, complied with the admissibility requirements provided for in articles 46 and 47(b) of the Convention.

4. With regard to the admitted complaints, the petitioners hold that the State is responsible for the conduct of its agents both in the death of Jorge Omar Gutiérrez and in the later denial of judicial protection and a fair trial to the detriment of his relatives. For its part, the State argued during the admissibility proceeding that the pleadings were groundless and the petitioners had not provided elements demonstrating the participation of State agents in Gutiérrez' murder, nor the domestic judicial system's failure to react to the crime. However, following the issuing of the report on admissibility, the Argentine State did not submit any comments with regard to the merits of the matter.<sup>2</sup>

5. In this report, the Commission concludes based on the allegations and information provided by the parties and the analysis of the records in the case file that the Argentine State is responsible for the violation of the right to life enshrined in Article 4 of the American Convention, with regard to Article 1(1) of the Convention, to the detriment of Jorge Omar Gutiérrez. Likewise, the Commission concludes that the State is responsible for the violation of the rights to humane

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<sup>1</sup> The relatives indicated by the petitioners as victims in this case are the widow of Deputy Commissioner Jorge Omar Gutiérrez - Nilda del Valle Maldonado - and their three children, Jorge Gabriel, David and Marlin Verónica Gutiérrez, as well as his brother, Francisco Virgilio Gutiérrez.

<sup>2</sup> The parties had expressed their willingness to reach a friendly settlement in this case. However in 2005, the petitioners indicated that this was no longer a possibility.

treatment, a fair trial and judicial protection, as enshrined in articles 5, 8 and 25 of the American Convention, to the detriment of the relatives of the victim - specifically, his widow, their children and his brother - with regard to Article 1(1) of the Convention.

## **II. PROCEEDING BEFORE THE COMMISSION FOLLOWING THE REPORT ON ADMISSIBILITY**

6. The Commission adopted the Admissibility Report No. 1/03 on February 20, 2003. The report was forwarded to the petitioners and the State on April 4, 2003. In those communications, the Commission made itself available to the parties for facilitating a friendly settlement and asked the petitioners to submit their observations on the merits within two months. The petitioners sent their comments on report No. 1/03 through communication received on July 17, 2003. That information was forwarded to the State in communication dated October 9, 2003.

7. On October 17, 2003, during the 118th regular period of sessions of the Commission, a hearing was held in which the State expressed its interest in opening dialog with the petitioners toward reaching a friendly settlement. Subsequently various work meetings were held between the parties; the first, on March 5, 2004, during the 119th regular session, the second on March 2, 2005, during the 122th regular session and, the third on October 19, 2005, during the 123th regular session of the Commission. In that latter meeting, the petitioners informed the Commission of their desire to terminate the friendly settlement process, because of the lack of progress made, specifically on the part of the Argentine State. This was reaffirmed in their communication dated October 13, 2005. At the request of the State, the Commission invited the parties to a work meeting which took place during the work visit to Argentina between December 3 and 8, 2006.

8. Following the closure of the friendly settlement the Commission asked the State, on January 27, 2007, to present its observations on the merits within two months. On March 7, 2007, the Commission awarded the State the deadline extension it requested, for a period of an additional month. The State submitted its response on May 23, 2007, which was forwarded to the petitioners on June 5, 2007. They in turn sent a response on July 5, 2007, which was forwarded to the State on August 1 of the same year. On October 11, 2007, during the 130th regular session of the Commission, another meeting was held between the parties.

9. On August 12, 2009, the petitioners sent additional information which was forwarded to the State on the 21st of the same month. The State sent its response on November 4, 2009, which was forwarded to the petitioners on the 23rd of the same month. The petitioners sent their response through communication dated December 23, 2009. This response was duly forwarded to the State for its information.

10. On March 19, 2010, a hearing was held, during the 138th regular session of the Commission, in which the petitioners and the relatives of Mr. Jorge Omar Gutiérrez, as well as representatives of the federal government participated.

11. Through communication dated August 24, 2010, the Commission requested specific information on the case from the petitioners. The petitioners responded to the request and it was forwarded to the State.

## **III. POSITION OF THE PARTIES**

### **A. Positions of the petitioners**

12. The petitioners maintain that Jorge Omar Gutiérrez, then Deputy Commissioner of the Police of the Province of Buenos Aires, was murdered on August 29, 1994, at the hands of agents of the State. They claim that his death was brought about to stop the investigations that the victim was carrying out in which high-ranking government officials were implicated in acts of corruption.

13. The petitioners reported that on August 29, 1994, at approximately 00:15 hours, Deputy Commissioner Gutiérrez left the Second Police Precinct of Avellaneda in Buenos Aires province. Approximately 15 minutes later, he boarded a train that would take him to the town of Quilmes, where he lived with his wife and three children.

14. The petitioners state that a security guard named Juan Carlos Rojas, who was off duty and on his way home, found the body of Deputy Commissioner Gutiérrez in one of the cars, and on arriving at the La Plata Terminal he reported the finding. They add that there is evidence to suggest that two members of the Argentine Federal Police who traveled on that stretch of railway were responsible for the homicide.<sup>3</sup>

15. They argue that the Argentine State has violated the rights of the victim and his family members by not conducting a serious investigation that would respect the right to due process leading to the identification and punishment of those responsible for the death of Deputy Commissioner Gutiérrez. They state that there was a cover-up and that those responsible remain in impunity because they have not been punished through judicial actions that should have included all possible lines of investigation.

16. They add that from August 1994 to date there has been no judicial ruling on the acts investigated that would indicate who killed Deputy Commissioner Jorge Omar Gutiérrez, who covered-up the crime, and for what reasons. The criminal case began on August 29, 1994, before Criminal and Correctional Court Number 5 of the City of Plata, but to date there has not been a definitive decision establishing what person or persons were responsible for the death of Deputy Commissioner Gutiérrez.

17. The petitioners say that in the court case, the family members of the victim were the main drivers of the investigation. There was virtually no action by the intervening officials in the case. They argue that the summons for the witnesses suggested by the family took too long and "in some cases, the delay resulted in the inability to provide the evidence, as in the case of former commissioner Piazza", who was the public prosecutor in the lower court and who was killed days before the date he was scheduled to testify.<sup>4</sup>

18. They say that the State is responsible both directly and indirectly for the violation of the right to life of Deputy Commissioner Gutiérrez, both because there are strong indications that those responsible for his death were State agents and because the State failed its duty to both prevent and investigate. As such, they note that when Gutiérrez was in charge of the investigation of serious crimes in which high-ranking public officials were implicated, the State failed to establish any measures to protect his life and physical integrity.

19. They argue that lack of prevention and of a serious investigation into the violation of the right to life of the Deputy Commissioner constitute an independent violation of the right to life,

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<sup>3</sup> Those two individuals were accused and recognized by witnesses as participants in the incident, and one of them was accused of being the one who fired the shot that killed Mr. Gutiérrez.

<sup>4</sup> Comments submitted by the petitioners through a communication received on August 4, 2003.

and although there are strong suspicions that fall on two people - agents of the Federal Police (of the surnames Santillán and Mostajo, respectively) - the first was acquitted in 1996. Regarding the second, although he had been identified from the outset by the witnesses, it took the court more than nine years to summon him to appear.<sup>5</sup>

20. They stated that during the procedure for the investigation of the death of Deputy Commissioner Gutiérrez, his family members had established themselves as individual victims and contributed actively to the judicial proceedings, providing information and requesting evidence-gathering measures.

21. As for the delay in the investigations and resolution of the case, the petitioners stated that from the standpoint of criminal law no questions of great legal complexity had been presented or debated in the case. The number of facts and subjects investigated did not justify the delay. They add that during the case there occurred no exceptional circumstances that established an emergency situation or an abnormal load of tasks for the prosecuting bodies.

22. They said that the criminal case should have investigated the death of a police officer found dead in the seat of the car of the train that was taking him home. As there were witnesses to the incident – found and supplied in the case by the family members - that identified those responsible for the act (in fact they identified one of them in a legal identification), it may be noted that there isn't any complexity in solving the case that would to date prevent the identification and punishment of those responsible.

23. They stated that when Dr. Marcela Garmendia's started as the head of the Second Transitional Court in November 1998, she ordered the case closed. She ordered the case reopened at the insistence of the relatives, and since then very few of the evidence-gathering measures requested by the family members of the victims have been ordered and executed.

24. Regarding the activity of the Office of Public Prosecutor of the Province of Buenos Aires, they stated that its participation had been minimal and had not even proposed any evidence-gathering measures be taken.

25. The petitioners stated that the court had neither ordered nor taken the investigative measures requested by the plaintiffs, despite having a Special Investigative Commission of the Police of the Province of Buenos Aires available.

26. The petitioners claim that in this case, the State's failure to provide effective remedies affects the family members of Deputy Commissioner Gutiérrez, making them indirect victims.

27. They add that during the visual inspection, the expert in gathering evidence who attended stated that the briefcase that was found at the feet of Gutiérrez's body was half closed, as if someone had looked through it and had hurried to close it. However, this fact was not taken into consideration in the lines of inquiry. Likewise, it was determined that a diary with a black leather cover, which had its contents removed, was found inside the briefcase, a fact which was also not taken into consideration in the investigation.

28. They state that the main witness was found thanks to the efforts of the family members of the victim. This witness, David Silva, had identified the perpetrators of the murder by their nicknames and their police function. In his testimony, he had identified them as the "toll

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<sup>5</sup> Comments submitted by the petitioners through a communication received on August 4, 2003.

collectors" for all the vendors on the train, he gave a detailed account of how the facts took place, and he identified Daniel Santillán as the one who had shot Deputy Commissioner Gutiérrez in the back of the head. They add that thanks to the testimony of David Silva, the experts had found the impact of the bullet in a pillar of a bridge over which the train regularly crossed.

29. They add that the other witness, Alejandra Chumbita, had been consistent with Silva in the description of the attackers and their status as police officers, as well as the sequence of the events that lead to the death of Jorge Omar Gutiérrez.

30. They state that the creation of an Investigative Commission for the case – the Investigative Commission of the Buenos Aires Police - had been done by the police department itself and thanks to the persistent demands of the family members of the victim, not as a measure ordered by the court.

31. They claim that, days before the detention of agent Santillán, the Superintendent of Railway Security had denied to the court the existence of an agent fitting the description. Likewise, after the arrest, police authorities had tried to protect him by presenting the judge hearing the case with two statements by children incriminating two other persons under 18 years old for the death of Gutiérrez. They add that during the trial, the children had changed their statements, saying that they had been tortured and forced to make the accusations by the deputy officers of the Superintendent of Railway Security. Regarding this, they state that Argentine Federal Police had not taken swift action to discipline those involved and that the criminal proceedings initiated against the suspected perpetrators of the torture had not yielded any results.

32. They state that the First Court of the Chamber of Criminal and Correctional Appeals of the La Plata Judicial District acquitted Officer Santillán, ruling that there were insurmountable doubts as to his responsibility for the facts.

33. They add that witness David Silva, after having testified in three occasions against Officer Santillán, had recanted his testimony during the trial. In the year following the oral trial, Silva had insisted on his accusation of Santillán as the perpetrator of Gutiérrez's murder before a Special Commission of the Chamber of Deputies, created to investigate suspected acts of corruption in the customs administration, the Special Investigative Commission on the Probable Commission of Illicit Activities Perpetrated through the National Customs Administration (hereinafter "Special Commission" or "Special Investigative Commission" or "Special Investigative Commission of the Chamber of Deputies"). He stated before that Commission that before the trial, he had been detained for three days, during which he had been subjected to torture and was forced to testify differently. The petitioners state that the detention, torture and threats that Mr. Silva was subjected to in order to get him to change his testimony were never investigated.

34. Moreover, they indicate another irregularity in the trial: That Mrs. Claudia Acuña, who had testified in favor of Officer Santillán, had recanted her testimony before the Special Commission, stating that her statement had been made under emotional duress because Santillán's father had threatened to take her granddaughter away. This threat was not investigated by the court either.

35. They state that two and a half months after the acquittal of Santillán, the Special Investigative Commission had detected serious irregularities in the investigation into the murder of Deputy Commissioner Gutiérrez, which prompted the president supervising the case to request that the Chief Justice of the Supreme Court of Justice of the Province of Buenos Aires consider re-opening the case.

36. During the procedure, the petitioners informed the Commission that in November 2005, the police protection located at the homes of Mr. Gutiérrez's widow and brother had been removed without consulting them, even though it was a measure accepted by the Argentine government as part of the friendly settlement process that was being followed at the time.

37. In their communication of July 5, 2007, the petitioners reiterated that the lack of progress by the intervening authorities in the investigation of the case and the failure of the measures adopted by the State to guarantee the protection of the witnesses, investigators, and most of all the family members of Jorge Omar Gutiérrez, had, among other issues, demonstrated the Argentine State's lack of willingness to arrive at a settlement, for which reason it was decided to terminate friendly settlement process. Regarding the acknowledgment of responsibility, which the government of the Province of Buenos Aires issued through Decree 3241/2006, the petitioners state that it was a partial recognition, as it leaves out the violation of the right to life of Jorge Omar Gutiérrez.

38. In communication dated August 10, 2009, the petitioners informed the Commission that criminal case No. 5-10888-2 under which the murder of Deputy Commissioner Jorge Omar Gutiérrez was being investigated, ran the risk of expiring on the 29th of that same month because the type of crime being investigated has a statute of limitations of 15 years, in which case the murder of Mr. Gutiérrez would go unpunished. They told the Commission that in 2006, the lead judge of the Second Court of Transition, who was in charge of the case, dismissed the only defendant, resulting in the closure of the investigation. The family filed an appeal and the prosecutor appealed, for which reason on November 12, 2008, the First Court of the Chamber of Appeals and Guarantees in Criminal Matters of La Plata decided to revoke the provisional dismissal to the benefit of Francisco Severo Mostajo because of the existence of "evidence for suspecting the participation of Mostajo in the incident." Later, the petitioners reported that the interruption of the statute of limitations had been achieved thanks to the action of the individual victims. They managed to get the Chamber of Appeals and Guarantees in Criminal Matters of the Province of Buenos Aires to order the judge in charge of the investigation to detain the only defendant in the case and to take a preliminary statement. They reported that, with the deadline to order preventative detention nearing, the judge ordered the release of the defendant for lack of merit.

39. They added that the criminal investigation was completely paralyzed, with no possibility of punishing those responsible for the death of Deputy Commissioner Gutiérrez because the criminal proceedings regarding the suspected masterminds had come up against the statute of limitations, and there had been virtually no investigative measures taken regarding one of the suspected perpetrators of the murder.

40. In their arguments during the merits stage, the petitioners maintain that the alleged acts are violations of articles 4, 8, and 25 with relation to 1(1) of the American Convention on Human Rights, due to the death of Jorge Omar Gutiérrez and the subsequent denial of justice to the detriment of his widow Nilda del Valle Maldonado, their children: Jorge Gabriel Gutiérrez, David Gutiérrez and Marlin Verónica Gutiérrez, and his brother Francisco Virgilio Gutiérrez, all immediate relatives of Deputy Commissioner Gutiérrez.

## B. Position of the State

41. In a meeting held between the parties on December 5, 2006, in Buenos Aires, Argentina, in the context of the Commission's working visit, the State reported the issuing of Decree No. 3241/2006 on December 4, 2006, by the executive branch of the Province of Buenos Aires. The decree acknowledged "the Provincial State's responsibility for the violation of the rights recognized in articles 8 and 25 of the American Convention on Human Rights" and committed to "taking all necessary measures, with full respect for the division of powers, to broaden the investigations linked to the murder of Deputy Commissioner Jorge Omar Gutiérrez, as well as to guarantee the personal safety of his relatives." The Provincial State also expressed its commitment to "continuing its participation at the open dialog table in the framework of the case's friendly settlement proceeding for the purpose of evaluating, along with the National State and the petitioners, the progress of the investigations in motion, as well as to take all necessary measures within its range of authority to get justice in this case and avoid the repetition of similar incidents." It committed itself to "provide adequate reparations for the victim's relatives."<sup>6</sup>

42. In OAS note 130, dated May 23, 2007, the State indicated that with Decree No. 3241/2006 of December 4, 2006, a fundamentally important step had been taken in the framework of the efforts made toward reaching a friendly settlement in the case. It therefore expressed that it was "the wrong time to rule on the eventual juridical merits of the case." Regarding the decree, the Commission was informed by representatives of the Argentine State during the hearing held on March 19, 2010, that after the decree was issued, other provincial government authorities objected to it and it was nullified. They also highlighted that the federal government never issued a decree or ruling acknowledging international responsibility in this case.

43. It should be noted that during the processing of admissibility and with regard to the petitioners' allegations on the violation of Deputy Commissioner Gutiérrez' right to life, the State argued that they were groundless. It did so by asserting that the arguments are nothing more than speculation on the motives behind the murder and the responsibility of State agents. At this point in the proceeding before the Commission, the State argued that the petitioners had not provided a single element of fact or law demonstrating the participation of State agents in the murder of Deputy Commissioner Gutiérrez, nor demonstrating the domestic judicial system's failure to react to the crime.

44. Following the issuing of the Admissibility Report No. 01/03 by the Commission, the Argentine State did not submit any arguments to the Commission with regard to the merits of the matter.

45. Finally, it should be noted that during the processing of this case, the Argentine State has indicated its willingness to reach a friendly settlement. However, on several occasions it has informed the Commission that it has not been able to move forward with the dialog or measures toward resolving the case. Thus during the hearing held on March 19, 2010, on the 138th regular period of sessions of the Commission, the Argentine State requested the Commission to make a pronouncement with regard to the merits of the case, adding that this request could not be interpreted as an acknowledgment of international responsibility.<sup>7</sup>

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<sup>6</sup> In OAS note 130, dated May 23, 2007, the Argentine government sent the Commission a copy of Decree No. 3241/2006 issued on December 4, 2006.

<sup>7</sup> Written record of the public hearing held on March 19, 2010, during the Commission's 138th regular period of sessions.

#### IV. ANALYSIS OF MERITS

##### A. Initial considerations of fact

###### Regarding the death of Deputy Commissioner Jorge Omar Gutiérrez and the judicial inquiry

46. Jorge Omar Gutiérrez provided his services as Deputy Commissioner of the Buenos Aires Police in Avellaneda Precinct Number 2, Avellaneda Province, Argentina. Jorge Omar Gutiérrez economically supported his wife, Nilda del Valle Maldonado, and their three children, Jorge Gabriel, David and Marlin Verónica Gutiérrez. In addition to providing his services to the Buenos Aires Police, in his free time he worked as a security guard at a meat market in the city of Berazategui in order to obtain extra income to help cover his family's daily expenses.

47. Prior to his death, Jorge Omar Gutiérrez was investigating a case of corruption in which important businessmen and high-level government officials were involved. The case in question came to be known later as the "case of the parallel customs house."<sup>8</sup>

48. On August 29, 1994, Deputy Commissioner Gutiérrez, 42 years old at the time, was murdered with a shot to the back of his head as he was traveling on a train toward the area of Quilmes, where he lived with his wife and three children.<sup>9</sup>

49. A security guard by the name of Juan Carlos Rojas found Deputy Commissioner Gutiérrez' lifeless body in one of the cars. He stated that Gutiérrez' briefcase was partly opened, as if it had been searched.<sup>10</sup> On arriving to the La Plata Terminal, he reported the incident to an officer with the Railroad Security Supervision Division of the Argentine Federal Police, who in turn reported it to the head of the La Plata Station, Second Division, Commissioner Jorge Luis Piazza, who notified Criminal and Correctional Court No. 5 of the City of La Plata.

50. According to information from the petitioners, the judge Federico Guillermo Atencio, who was in charge of that court, went to the scene of the murder and ordered a forensic examination by the personnel of the Special Technical Investigation Service of the Province of Buenos Aires. Experts in trace evidence, crime scene layout, ballistics and photography arrived. After carrying out the forensic examination, Judge Atencio ordered the collection of the body.

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<sup>8</sup> **Annex 1.** Several journalistic news items refer to the "case of the parallel customs house" and the officials' involvement in a defrauding of the treasury through customs evasion that was worth millions:

- Clarín Digital, *Public Prosecutor investigation into parallel customs house: More than 1,000 cases of smuggling*, June 22, 1997: <http://edant.clarin.com/diario/1997/06/22/t-01501d.htm>

- La Nación, *A severely critical ruling in the case of the parallel customs house*, October 12, 2000:

[http://www.lanacion.com.ar/nota.asp?nota\\_id=36650](http://www.lanacion.com.ar/nota.asp?nota_id=36650)

- Agencia de Noticias, *Ranking of incidents of corruption*, July 12, 2009: [http://www.agenciacna.com/2/nota\\_impresion\\_1.php?noticia\\_id=28670](http://www.agenciacna.com/2/nota_impresion_1.php?noticia_id=28670)

<sup>9</sup> **Annex 2.** In his statement given on October 4, 2000, before Transitional Court No. 2 of the La Plata Judicial District, Officer Ramón Norberto Segovia stated that at approximately 2340 hours on August 28, 1994, he took Deputy Commissioner Gutiérrez to the train station, where he had taken a train going toward La Plata. Copy of the statement provided by the petitioners in communication dated September 26, 2001.

<sup>10</sup> **Annex 3.** Statement given on October 17, 2000, by Officer José María Luis Saggio before the Transitional Court No. 2 of the La Plata Judicial District, as well as the statement given before that same court authority by Officer Luis Elio Lofeudo (**Annex 4**). Annexes provided by the petitioners in communication dated September 26, 2001.



51. On September 9, 1994, an administrative investigation was opened into the death of Jorge Omar Gutiérrez, and on September 13 of that same year, the General Director of Judicial Matters issued a resolution declaring that the death of Deputy Commissioner Gutiérrez had taken place *in itinere*.<sup>11</sup>

52. The case file indicates that during the investigations carried out following the death of Jorge Omar Gutiérrez, two witnesses were found - David Ramón Silva and Alejandra Noemí Chumbita - who were present when Mr. Gutiérrez was murdered. They both stated that agents of the Argentine Federal Police were responsible for the death.

53. In his statement given on September 22, 1994, before Judge Atencio, who was head of Criminal and Correctional Court No. 5 of the City of La Plata, David Ramón Silva, a vendor on board of the train, stated that he knew Mr. Gutiérrez by sight and the murderers by their nicknames, Chiquito and Colorado. He stated that he knew they were police officers because they charged a "toll" to all the vendors on the train and added that on the day of the incident, as he was walking through the train,

[h]e looks up and sees two individuals who he knows are police officers, one known as Chiquito or Grandote, the other as Petizo. He knows both are deputy officers with the Federal Police because they carry out operations against the vendors, as the vendors are not authorized to conduct sales. It catches his attention given that at that time there were no vendors [...] At the Avellaneda station he sees a person get on the train [...] he sees that Chiquito sits behind the man who had sat down [...] He sees that the one known as Chiquito points a gun at a spot below and behind the left ear of the person who had gotten on the train at Avellaneda [...] At that same instant he heard a sound similar to that of a fire cracker and had no doubt that what he had heard was a shot from the gun.<sup>12</sup>

54. For her part, the witness Alejandra Chumbita stated that:

I was seated in the same car as the deputy commissioner. Two individuals dressed like civilians enter. They go toward the next car and on the way confront the deputy commissioner. One of them stands to his side. They say something. The other walks a little bit further. He returns and fires the shot. That's where I left, running. But they chase me. They grab me by the arm. They ask for my documents and tell me: Everything's fine, we're the police. The one who has me by the arm shows me a badge and says: Don't tell anyone what you saw. That guy was a drunk [...].<sup>13</sup>

55. Officer Alejandro Daniel Santillán was arrested on September 23, 1994. During the police line-up held on the following day, both David Ramón Silva and Alejandra Noemí Chumbita recognized Mr. Alejandro Daniel Santillán - nickname Chiquito - as the perpetrator in the murder of Mr. Gutiérrez.<sup>14</sup> Later, two youngsters named Cristián Iván Molina y Rubén Darío Nefle gave spontaneous statements incriminating themselves in the death of Deputy Commissioner Jorge Omar

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<sup>11</sup> **Annex 5.** Copy of resolution 81974 dated September 13, 1994, issued by the General Directorship of Judicial Matters. Annex submitted by the State through note dated September 26, 2001.

<sup>12</sup> **Annex 6.** Statement of David Ramón Silva, September 22, 1994, before the Criminal and Correctional Court No. 5 of the City of La Plata, found in the case file "Santillán. Alejandro Daniel. Homicide." Annexes filed by the petitioners in communication dated October 6, 1999.

<sup>13</sup> **Annex 7.** Statement of Alejandra Noemí Chumbita de Domínguez, September 22, 1994, before the Criminal and Correctional Court No. 5 of the City of La Plata, found in the case file "Santillán. Alejandro Daniel. Homicide." Annexes filed by the petitioners in communication dated October 6, 1999.

<sup>14</sup> **Annex 8.** Copy of the entries into the record on the police line-ups held on September 24, 1994, in the case file "Santillán. Alejandro Daniel. Homicide." Annexes filed by the petitioners in communication dated October 6, 1999.

Gutiérrez. In this regard, the statement of former police officer Luis Elio Lofeudo should be highlighted:

During the following days - or if I remember correctly, the next day - the Federal Police arrested two minors and informed the media that they were the confessed perpetrators of the murder of the deputy commissioner [...] Later, Dr. Atencio took testimony from the minors that had been arrested by the Federal Police, and I learned that in reality those minors had confessed to the Federal Police due to the physical and psychological pressure applied to them by the police.<sup>15</sup>

56. On November 11 and 12, 1996, Officer Alejandro Daniel Santillán was brought to trial in an oral and public proceeding before the Criminal Chamber of the Province of Buenos Aires. On November 15 of that same year, the First Chamber of the Criminal Appeals Tribunal of La Plata acquitted him of involvement in the murder of Jorge Omar Gutiérrez. It did so in finding that the evidence invoked in the accusation had not been able to overcome reasonable doubt and ordered that he be set free immediately.<sup>16</sup> In the same resolution, the Appeals Tribunal indicated that it had been proven that Deputy Commissioner Gutiérrez had been killed by one or more individuals through a shot from a firearm, as well as that the case suffered from investigative failures.<sup>17</sup>

57. The legal representatives of the family of Deputy Commissioner Gutiérrez responded to the acquittal by filing for special remedies of unconstitutionality for the nullification and inapplicability of law or legal doctrine. The Appeals Tribunal did not admit those remedies. In response, a writ of complaint was filed and on April 22, 1997, the Supreme Court of Justice upheld the denial of the special remedies. As a consequence, the representatives of the family of Deputy Commissioner Gutiérrez filed for an extraordinary federal remedy, which was granted, elevating the proceedings to the National Justice Court. On November 12, 1998, the Court declared that the special remedy that had been granted had been done so improperly, and the acquittal of accused officer Alejandro Daniel Santillán was upheld.<sup>18</sup>

58. On February 20, 1997, the president of the Chamber of Deputies Special Investigative Commission on the Probable Commission of Illicit Activities Perpetrated through the National Customs Administration, Mario Das Neves, sent a letter to the President of the Supreme Court of Justice of the Province of Buenos Aires, Dr. Ernesto Víctor Ghione, denouncing possible irregularities in the case against Alejandro Daniel Santillán for the alleged homicide of Deputy Commissioner Gutiérrez and requesting that the case be reopened.<sup>19</sup>

59. Mr. Francisco Virgilio Gutiérrez brought the two young people Cristián Iván Molina and Rubén Darío Nefle before the Special Commission to present their testimony on the death of their brother, Jorge Omar Gutiérrez. On that occasion, and regarding the statements they gave during the trial, Molina and Nefle indicated that they were tortured by officers with the Railway Security Superintendence of the Argentine Federal Police to get them to give the statements that they did. They stated that they both were in a video store, ready to go dancing, when they were arrested for not

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<sup>15</sup> **Annex 4.** Statement given on September 26, 2000, by Mr. Luis Elio Lofeudo before the Transitional Court No. 2 of the La Plata Judicial District. Annexes submitted by the petitioners in communication dated September 26, 2001.

<sup>16</sup> **Annex 9.** Copy of the judgment of the First Chamber of the Criminal Appeals Tribunal of La Plata, November 15, 1996. Annex filed by the petitioners in communication dated October 6, 1999.

<sup>17</sup> Ibidem

<sup>18</sup> **Annex 10.** Copy of the report submitted by Dr. Marcela Inés Garmendia, Transitory Judge No. 2 of the La Plata Judicial District to the President of the Supreme Court of Justice of the Province of Buenos Aires, March 17, 2000.

<sup>19</sup> **Annex 11.** Copy of the official letter from the Special Commission, submitted as an annex to the initial petition.

carrying identification documents. While they were under arrest, the officers tried to get them to take responsibility for the death of Deputy Commissioner Gutiérrez.<sup>20</sup>

60. In this sense, Molina stated the following: “They were telling us what we had to say and hitting us; and when they weren’t hitting us, they threatened us constantly.” For his part, Nefle stated the following:

[...] As they asked us for documents and we didn’t have them, they took us in to check our records, but then they wanted us to take responsibility for the death of the brother of the boy [Francisco Virgilio Gutiérrez]. We didn’t have anything to do with it.

They hit us. They made me lift up my shirt and told me they would use the *picana* and stuff, and they hit me in the ribs [...]

61. When asked what the officers said to them, Nefle responded: “That we had to take responsibility for everything that they were telling us.”<sup>21</sup>

62. Before the same Special Investigative Commission, Mrs. Claudia Francisca Acuña, mother of the woman who at that time was the concubine of Officer Alejandro Daniel Santillán, stated that she had not told the truth to the Judge handling the investigation. In that sense, she indicated to the members of the Commission that

They threatened me that they were going to take away the baby [her granddaughter [...] the father [of Alejandro Daniel Santillán] and his brothers threatened me that they were going to take away the granddaughter [...] That day he came more or less at two in the morning [...] on] they day that they killed Gutiérrez’ brother. I had stated that it was 11:20 [...] I stated that and I repent.<sup>22</sup>

63. Mrs. Acuña added that her son, Adolfo Ricardo Salvador, was also threatened by Mr. Daniel Santillán and his father. She indicated that, “Dani’s father also told him ‘You have to say this and this, because if you don’t we’re going to knock you off.’”

64. Mrs. Acuña made similar statements on February 17, 1997, at the Fifth Precinct of the Federal Police, clarifying that during the oral trial of Alejandro Daniel Santillán for the murder of Deputy Commissioner Jorge Omar Gutiérrez, she had testified according to what Santillán’s parents had told her to do to their threats. She said those threats were repeated during the entire proceeding, up until the moment when Santillán was freed.<sup>23</sup>

65. It is recorded that on September 5, 2000, the “Santillán, Alejandro Daniel s/Homicide” case was ordered reopened at the request of one of Jorge Omar Gutiérrez’ family members. The case was reopened under Dr. Marcela Inés Garmendia with Transitional Court No. 2 of the Judicial Department of the City of La Plata to continue the investigation into the death of

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<sup>20</sup> **Annex 13.** Copy of the National Congress’ stenographic versions of the testimony given before the Special Investigative Commission of the Chamber of Deputies of the Congress of the Nation. Annex filed by the petitioners in communication dated October 6, 1999.

<sup>21</sup> **Annex 13.** Copy of the National Congress’ stenographic versions of the testimony given before the Special Investigative Commission of the Chamber of Deputies of the Congress of the Nation. Annex filed by the petitioners in communication dated October 6, 1999.

<sup>22</sup> **Annex 13.** Copy of the National Congress’ stenographic versions of the testimony of Mrs. Claudia Francisca Acuña. Annex filed by the petitioners in communication dated October 6, 1999.

<sup>23</sup> **Annex 14.** Copy the statement of Mrs. Claudia Francisca Acuña at the Fifth Precinct of the Federal Police. Annex filed by the petitioners in communication dated October 6, 1999.

Deputy Commissioner Gutiérrez in order to take other evidence-gathering measures and find the identity of the individual responsible for the crime.<sup>24</sup>

66. On September 26, 2000, former police officer Luis Elio Lofeudo testified before the Transitional Court No. 2 of the La Plata Department. In his testimony, he described the steps taken and the evidence gathering in which he participated toward the beginning of the investigation carried out into the death Jorge Omar Gutiérrez. He also stated that in November of 1996, after he had retired from the police force, he heard the news that Santillán had been acquitted. He added that "on hearing that news, I really felt very bad that I didn't testify during the oral trial, and that's why I got in touch with Gutiérrez' brother."<sup>25</sup> He also testified on the investigations and interviews that he carried out later together with Jorge Omar Gutiérrez' brother to gather evidence on Gutiérrez execution.<sup>26</sup>

67. On September 28, 2000, Judge Garmendia requested a copy of the final report of the Parallel Customs House Investigative Commission from National Deputy Mario Das Neves.<sup>27</sup> Also, on October 3 of that same year, she ordered the Tribunal Expert Witness Consultancy to turn over the log book of the 2nd Avellaneda Precinct so that a handwriting analyst could do a close examination to establish if there had been any falsifications. On the 18th of that month, the expert examination was submitted to the Judge. It indicated the following:

page no. 16, lines 14 and 21 of the log book in question has been falsified through re-writing with the same writing instrument used in neighboring entries. The re-writing converted the "00" in line 14 into "55" and the number of minutes in line 21 to "00," though the original number in that line could not be determined.<sup>28</sup>

68. On October 5, 2000, Officer Alejandro Darío Benavidez testified before the Transitional Court No. 2 of the Department of La Plata. He stated that he was involved in the investigation into the death of Deputy Commissioner Gutiérrez from the start, and that one of his primary duties was to question the people traveling on the trains during the time that Jorge Omar Gutiérrez had died. He added that on several occasions he received calls from a woman who said she had witnessed the homicide, and that one time she told him that "I am very afraid, you're killing each other, police officers are killing each other." When Officer Benavides asked what she was talking about she answered that, "Yes, they were police officers. I saw them, they went up to the one they killed and they laughed with him and the one behind him shot him." She said she hid so that they would not see her, but one of them grabbed her arm and showed her a badge, and the other showed her a green card that said "police." Officer Benavidez stated that he had reported these calls in a timely fashion to his superiors and had attempted but failed to locate the witness. He stated that a different operational group had located her. Finally, he indicated in his testimony that he was later removed from the investigation without being told the reason.<sup>29</sup>

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<sup>24</sup> **Annex 15.** Resolution issued on September 5, 2000, by Transitional Court No. 2 of the La Plata Judicial District. Annexes to the pleadings on the merits submitted by the petitioners in writing on July 16, 2003.

<sup>25</sup> **Annex 4.** Statement given on September 26, 2000, by Mr. Luis Elio Lofeudo before the Transitional Court No. 2 of the La Plata Judicial District. Annexes submitted by the petitioners in communication dated September 26, 2001.

<sup>26</sup> *Ibidem.*

<sup>27</sup> **Annex 16.** Copy of the official letter submitted before the Commission as an annex by the petitioners through a July 16, 2003, brief.

<sup>28</sup> **Annex 17.** Copy of the official letter dated October 3, 2000, requesting the expert examination and a copy of the report, provided as an annex by the petitioners in a July 16, 2003, brief.

<sup>29</sup> **Annex 18.** Copy of Officer Benavides' testimony. Annex filed by the petitioners in communication dated October 6, 1999.

69. On October 6, 2000, Officer Marcelo Oscar García gave testimony before the Transitional Court No. 2 of the La Plata Department. He stated that from the start of the case he carried out a variety of investigative tasks, whose results he submitted to his superiors in a timely fashion. He added that his main role was to locate a witness, a vendor. He also said he knew Mostajo and knew that he lived in the same neighborhood as Santillán. He stated that it did not surprise him that Mostajo had participated in the incident under investigation (the murder of Deputy Commissioner Gutiérrez) as he was “not a normal person, bordering on criminal.” In addition, he stated that following the death of Jorge Omar Gutiérrez, he received a call in the Investigations Brigade from Santillán, who asked for information on the investigations being carried out on the death.<sup>30</sup>

70. On October 11, 2000, Officer Domingo Orlando Segura testified before Transitional Judge No. 2 of the Judicial Department of the City of La Plata. He stated that he was assigned to intervene in the investigation of the death of Deputy Commissioner Gutiérrez once the oral trial had concluded with Officer Santillán’s acquittal. He was placed in charge of an investigation commission, assigned to the Directorship of Highly Complex Investigations and Criminality. He was placed on that investigation at the request of the relatives of Deputy Commissioner Gutiérrez for having “participated previously and with success in an investigation that unraveled a large smuggling operation known publicly in the media as the famous “Parallel ‘Customs House.’” With regard to the investigation into the death of Deputy Commissioner Gutiérrez, he was able to confirm “a variety of irregularities in the investigation, as well as negligence and a lack of responsibility on the part of some public officials in the search for the truth.” He indicated that shortly after, his superior - High Commissioner Carlos Miniscarco - assigned him to another murder case, blocking him from continuing the investigation into the death of Jorge Omar Gutiérrez.<sup>31</sup>

71. On October 24, 2000, Mr. Roberto Arturo Rolando Freyre testified. He had been arrested by Blue Unit No. 7 and was located by Jorge Omar Gutiérrez’ relatives in their search for evidence. He stated the following before the Transitional Court No. 2 of the La Plata Department:

That what I can say with regard to this incident is who gave the order to kill Gutiérrez and for what motive. That the person who gave the order to commit this homicide was Carlos Miniscarpio or Miniscarco, who at that time was Inspector Commissioner of the Buenos Aires Provincial Police. The motive was that Gutiérrez was at that time Deputy Commissioner, and he was investigating him, that is, Miniscarpio or Miniscarco, on the issue of drugs. At that time he was one of the most responsible out of a group that trafficked drugs and that was made up of seven or eight police officials, among them commissioners and deputy commissioners of the Provincial Police, as well as two from the Federal Police.

[...] I worked for Carlos Miniscarco until I was arrested. One of the ones who was in the group with me had participated in that job, that is, the Gutiérrez homicide. He was not the perpetrator, but he did accompany “Chiquito Santillán” [...]<sup>32</sup>

72. On November 10, 2000, Mr. Francisco Virgilio Gutiérrez, the brother of Deputy Commissioner Jorge Omar Gutiérrez and current mayor of Quilmes, Buenos Aires Province, testified

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<sup>30</sup> **Annex 19.** Copy of the testimony of Officer Marcelo Oscar García submitted before the Transitional Court No. 2 of the La Plata Judicial District. Annexes submitted by the petitioners in communication dated September 26, 2001.

<sup>31</sup> **Annex 20.** Copy of the testimony of Officer Domingo Orlando Segura before Transitional Judge No. 2 of the La Plata Judicial District.

<sup>32</sup> **Annex 21.** Copy of the testimony of Roberto Arturo Rolando Freyre presented on October 24, 2000, before the Transitional Court No. 2 of the La Plata Judicial District. Annexes submitted by the petitioners in communication dated September 26, 2001.

before the Transitional Court No. 2 of La Plata. In his testimony, he described in detail the searches, investigations, procedures and interviews that he and former police officer Luis Elio Lofeudo had been carrying out since the death of his brother in order to gather evidence and witnesses. They wanted to present them before the judge handling the case at that time, Dr. Atencio, in order to "obtain justice and find those responsible for my brother's homicide."<sup>33</sup> Among the interviews carried out, Mr. Francisco Virgilio Gutiérrez referred to the ones he did with the relatives of the woman who was Alejandro Daniel Santillán's concubine - Claudia Francisca Acuña and Adolfo Ricardo Salvador - following the testimony they gave before Judge Atencio.

73. On November 17, 2000, Adolfo Ricardo Salvador, the brother of the woman who was Mr. Santillán's concubine at the time of the incidents, testified before that court that, "Chiquito Santillán arrives to my house and pounds on the building's wood wall and tells me you know that we had a problem [...] we had to get rid of a guy."

74. Later in his testimony, Adolfo Ricardo Salvador stated that several days later,

His [Santillán's] father, together with two others who I think were police officers took some papers and a shoe box from the house where Chiquito kept guns, revolvers and pistols [...] Chiquito's father tells me that if they ask me, I have to maintain the position that I had seen them arrive at 23:30.<sup>34</sup>

75. In an official letter dated November 30, 2000, the Secretary of the No. 2 Transitory Court of the La Plata Judicial District asked the head of the Departmental Investigations Delegation of Lomas de Zamora, the head of the Second Station of Avellaneda and the head of the Seventh Station of La Plata for the file and/or documentation on Officer Severo Mostajo who had been identified by witnesses at the beginning of the judicial investigation as the man accompanying Alejandro Daniel Santillán at the moment Deputy Commissioner Jorge Omar Gutiérrez was murdered.<sup>35</sup> On December 1 of that year, Dr. Sonia Leila Aguilar, court prosecutor, and Mr. José Américo Ferreyra, Head Official of Transitional Court No. 2 of La Plata went to the Second Station of Avellaneda to request Mr. Mostajo's documentation. However, the personnel were not able to find it.<sup>36</sup>

76. On July 12 and September 17, 2001, Dr. Marcela Inés Garmendia asked the General Public Prosecutor to expedite the naming of Court Prosecutors of the Attorney General's Office of the Supreme Court of Buenos Aires in order to continue the investigation. This was because "according to testimony that I have received in the seat of the Court, it has emerged that high-level officials of the Buenos Aires and Federal Police could be involved in the case in question."<sup>37</sup>

77. Meanwhile, on the administrative front, it is recorded that in September 2001, the internal affairs office of the Buenos Aires police issued Resolution 104097, which indicated that "of the evidence collected following the issuing of the aforementioned administrative decision

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<sup>33</sup> **Annex 22.** Copy of the testimony of Mr. Francisco Virgilio Gutiérrez given November 10, 2000, before the Transitional Court No. 2 of the La Plata Judicial District. Annexes submitted by the petitioners in communication dated September 26, 2001.

<sup>34</sup> **Annex 23.** Copy of the testimony of Adolfo Ricardo Salvador given on November 17, 2000, before the Transitional Court No. 2 of the La Plata Judicial District. Annexes submitted by the petitioners in communication dated September 26, 2001.

<sup>35</sup> **Annex 24.** Copy official letter dated November 30, 2000, from the Secretary of the No. 2 Transitory Court of the La Plata Judicial District.

<sup>36</sup> **Annex 25.** Document prepared by the court functionaries on that step, December 1, 2000.

<sup>37</sup> **Annex 26.** Official letter sent to Transitional Court No. 2 of the La Plata Judicial District to the Attorney General dated September 17, 2001, repeating the request made initially on July 12 of that year.

[Resolution 81.974 dated September 13, 1994, that had established that the death of the deputy commissioner did not take place in the line of duty] and having reviewed the photocopies of the judicial proceeding initiated in which two subjects were tried for being the *prima facie* perpetrators of the crime of which the plaintiff was the victim because he did intelligence work," it ruled to overturn the September 13, 1994, resolution and declare the death of Jorge Omar Gutiérrez to have been in the line of duty, giving his heirs the right to indemnity.<sup>38</sup>

78. On May 12, 2004, the Deputy Attorney General of the Supreme Court of Justice of Buenos Aires provided a report to the President of that Supreme Court about an investigation carried out by Magistrate Federico Guillermo Atencio, who was originally in charge of the investigation into the death of Jorge Omar Gutiérrez with the No. 5 Criminal and Correctional Court of La Plata. In his report, he deems it proven that during the preliminary investigation there were investigative failures whose result was that the investigation was not completed and that the results achieved during the first stage should not have been accepted. Rather, they should have moved Judge Atencio to deepen the investigation on the pending points. Thus, the Deputy Attorney General suggested to the president of the Supreme Court that Dr. Federico Guillermo Atencio be punished with a warning.<sup>39</sup>

79. On December 4, 2006, the Executive Branch of the Province of Buenos Aires issued Decree No. 3241/2006. The decree recognized "the Provincial State's responsibility for the violation of the rights recognized in articles 8 and 25 of the American Convention on Human Rights" and committed to "taking all necessary measures, with full respect for the division of powers, to broaden the investigations linked to the murder of Deputy Commissioner Jorge Omar Gutiérrez, as well as to guarantee the personal safety of his relatives." The Provincial State also expressed its commitment to "continuing its participation at the open dialog table in the framework of the case's friendly settlement proceeding for the purpose of evaluating, along with the National State and the petitioners, the progress of the investigations in motion, as well as to take all necessary measures within its range of authority to get justice in this case and avoid the repetition of similar incidents." It committed itself to "provide adequate reparations for the victim's relatives."<sup>40</sup>

80. On December 28, 2006, Judge Garmendia ruled to stay the case provisionally "for not being able to establish the participation of other perpetrators, accomplices or accessories to the incident under investigation, in which Jorge Omar Gutiérrez lost his life."<sup>41</sup>

81. On August 29, 2008, a tribute was held in the entryway to the 2nd Avellaneda Station at which the street running in front of the building was named "Comisario Mayor Jorge Omar Gutiérrez." The relatives of Jorge Omar Gutiérrez were present at the event.<sup>42</sup>

82. The relatives of Deputy Commissioner Gutiérrez and the Prosecutor submitted requests for appeal, in response to which the Criminal Appeals and Guarantees Tribunal overturned

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<sup>38</sup> **Annex 27.** Copy of Resolution 104097 of the Secretariat of Government Security of the Province of Buenos Aires. Submitted by the State as an annex to note SG 419, dated September 26, 2001.

<sup>39</sup> **Annex 28.** Report from the Deputy Attorney General of the Supreme Court of Justice of Buenos Aires dated May 12, 2004. E-mail from the petitioners received on September 2, 2010, including an attached copy of the proceeding carried out over the death of Jorge Omar Gutiérrez

<sup>40</sup> **Annex 29.** In OAS note 130, dated May 23, 2007, the Argentine government sent the Commission a copy of Decree No. 3241/2006 issued on December 4, 2006.

<sup>41</sup> **Annex 30.** Resolution dated December 28, 2006, of Transitional Judge No. 2 of the Judicial Department of the City of La Plata. E-mail from the petitioners received on September 2, 2010, including an attached copy of the proceeding carried out over the death of Jorge Omar Gutiérrez.

<sup>42</sup> **Annex 31.** Video sent by the petitioners showing images from the tribute held on August 29, 2008.

the stay, giving merit to the testimony of the witnesses and indicating that there were indications allowing for suspicion of the involvement of Officer Francisco Severo Mostajo, nickname "Colorado." For this reason he ordered that prosecutory action be pursued in that direction. Judge Garmendia found that her involvement in the case could be biased, and through a resolution dated March 31, 2009, she recused herself. However on August 7, 2009, the recusal was denied.<sup>43</sup>

83. Through a communication dated October 27, 2009, the Deputy Secretary of Justice of the Province of Buenos Aires reported to the General Directorship of Human Rights of the Ministry of Foreign Relations, International Trade and Culture that the statute of limitations in the case known as "Santillán Alejandro Daniel s/homicide, vta Gutiérrez Jorge Omar" had expired on August 26, 2009, as that was the date on which a hearing was set for receiving preliminary testimony. Mr. Francisco Severo Mostajo's arrest was ordered "as a primary participant in the crime of aggravated murder with malice aforethought with Jorge Omar Gutiérrez." as the victim<sup>44</sup>

84. On December 30, 2009, Judge Garmendia ordered once more to provisionally dismiss Francisco Severo Mostajo for the crime of aggravated homicide with malice aforethought in capacity as a primary participant on the consideration that there was not enough evidence to attribute the death of Jorge Omar Gutiérrez to him.<sup>45</sup>

## **B. Analysis of Law**

### **Right to Life (Article 4 of the American Convention)**

85. Article 4.1 of the American Convention establishes that,

Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

86. In addition, Article 1(1) of the American Convention stipulates the following:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

87. With regard to the right to life, the Inter-American Commission has followed the progress toward making this right effective since the 70s.<sup>46</sup> The IACHR has also repeatedly expressed that governments have an obligation to maintain public order and protect the life and safety of their inhabitants. With regard to the right to life, the Commission has added that "although a reminder would seem unnecessary, it can never be suspended," and that governments cannot under any circumstances, use illegal or summary execution." This obligation is established both in the

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<sup>43</sup> **Annex 32.** Copy of the resolutions mentioned provided by the petitioners by e-mail on September 2, 2010.

<sup>44</sup> **Annex 33.** Report from the Deputy Secretary of Justice of the Province of Buenos Aires, October 27, 2009. E-mail from the petitioners received on September 2, 2010, including an attached copy of the proceeding carried out over the death of Jorge Omar Gutiérrez.

<sup>45</sup> **Annex 34.** Resolution dated December 30, 2009, of Transitional Judge No. 2 of the Judicial Department of the City of La Plata. Anex submitted by e-mail by the petitioners, received on September 2, 2010.

<sup>46</sup> See for example: IACHR, Annual Report 1970, OAS/Ser.L/V/II.25, Doc. 9 (Spanish) Rev., March 12, 1971, Original: Spanish; IACHR, Annual Report 1971, OAS/Ser.L/V/II.27, Doc. 11 rev., March 6, 1972, Original: Spanish; IACHR, Annual Report 1972, OAS/Ser.L/V/II.27, Doc. 41 rev. 2, March 13, 1973, Original: Spanish.



constitutions of the States and in those international instruments that protect the fundamental rights of human beings.<sup>47</sup>

88. For its part, the Inter-American Court has established the following:

The right to life plays a fundamental role in the American Convention as it is the essential for the exercise of the other rights. When the right to life is not respected, all the other rights are meaningless. States have the obligation to guarantee the creation of the conditions required in order to ensure that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it. Compliance with Article 4 of the American Convention, in relation to Article 1(1) thereof, requires not only that no person be deprived of their life arbitrarily (negative obligation), but also that States adopt all appropriate measures to protect and preserve the right to life (positive obligation), under their obligation to ensure the full and free exercise of the rights of all those subject to their jurisdiction.<sup>48</sup>

89. The Commission observes that according to what the Inter-American Court has established,

The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.<sup>49</sup>

90. It is consequently crucial to determine if the illicit act has involved the participation, support or tolerance of State agents, or if it has resulted from the State's failure to comply with its obligation to provide reasonable prevention of human rights violations and to investigate them seriously in order to punish those responsible and provide victims or their relatives with adequate reparations for the damage caused.

91. As the Court has indicated in its case law, States have the obligation to guarantee the creation of the conditions required in order to ensure that violations of this basic right do not occur and, in particular, the duty to prevent its agents from violating it. Compliance with Article 4, in relation to Article 1(1) of the American Convention, requires not only that no person be deprived of their life arbitrarily (negative obligation), but also that States adopt all appropriate measures to protect and preserve the right to life (positive obligation), under their obligation to ensure the full and free exercise of the rights of all those subject to their jurisdiction. This active protection of the right to life on the part of the State involves not only its legislators but also all State institutions whose duty is to provide security, whether they are police or armed forces.<sup>50</sup>

92. In this case, there are indications that agents of the State participated in the execution of Jorge Omar Gutiérrez. From an overview assessment of all those indications, it can be

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<sup>47</sup> See for example: IACHR, Annual Report 1980-1981, OAS/Ser.L/V/II.54, doc.9 rev.1, October 16, 1981, Original: Spanish, Chapter V, Illegal Executions.

<sup>48</sup> Inter-American Court, *Case of the 19 Merchants v. Colombia*, paragraph 153; and *Case of the "Street Children" (Villagrán-Morales et al.)*, paras. 144-145. Likewise, General Comment No. 6 (16th session, 1982) para. 3; *María Fanny Suárez de Guerrero v. Colombia*, Communication No. R.11/45 (February 5, 1979), U.N. Doc. Supp. N° 40 (A/37/40) in 137 (1982), page 137. Cited by the Inter-American Court in the *Case of Sánchez v. Honduras*, paragraph 110.

<sup>49</sup> Cf. Inter-American Court.. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 174.

<sup>50</sup> Inter-American Court, *Case of Myrna Mack Chang*, paras. 152 and 153; *Case of Bulacio*, para 111; *Case of Juan Humberto Sánchez*, para. paragraph 110; and *Case of the "Street Children" (Villagrán-Morales et al.)*, para. 144, cited in Inter-American Court *Case of the 19 Merchants v. Colombia*, Judgment of July 5, 2004, para. 153.

established that the evidence in both the criminal proceeding and the special investigation carried out by the Special Investigative Commission of the Chamber of Deputies - especially the testimonial evidence - confirms the involvement of agents of the State in the violation of the right to life through acts of collaboration or omission.

93. As this report establishes, there first of all exist several testimonies from individuals with a substantial level of consistency and uniformity on the main points of the facts. The witnesses Silva and Chumbita stated that they were present when Jorge Omar Gutiérrez was executed with a gunshot while he was on his way by train to Quilmes. Both witnesses stated that the individuals who executed Jorge Omar Gutiérrez were officers with the Argentine Federal Police and identified them.

94. It should be highlighted that the final report of the Special Investigative Commission makes reference to the relationship between the execution of Jorge Omar Gutiérrez and the “parallel customs house” case. It is likewise worth noting that the witnesses indicated that there were incidents of coercion or threats related to their testimony and that the two young people who confessed during the proceeding said they had been subject to torture.<sup>51</sup>

95. Effectively, it is noted that the testimony given before that Commission by the witnesses to the death of Jorge Omar Gutiérrez and the youths who confessed to the murder have as a common thread that they were threatened and even tortured by agents of the State in order that they give a particular testimony or change or retract testimony already given with regard to the facts in the criminal case. With regard to this, it is worth highlighting the testimony of David Ramón Silva before that Commission:

[...] I started selling and that’s where the Federal [Police Officer] arrested me. They took me to Constitución and started to hit me. They tortured me psychologically. They put a gun to my head... They told me to say that I had not seen Chiquito’s face, that I saw him from behind, when in reality I had seen his face. They threatened my family and they told me that they were going to throw me off the train... During the trial I didn’t say that they had tortured me because I was scared. I stated what they had told me to say. Even the day after the last reconstruction of the incident I was instigated to say that. They are still threatening me.”<sup>52</sup>

96. The State has not submitted any evidence discrediting the statements of the witnesses of the incident with regard to the participation of police officers in the execution of Jorge Omar Gutiérrez. In this sense, the Commission recalls that according to the case law of the Inter-American Court, failures or defects of an investigation that put at risk its ability to establish the cause of death or identify those responsible or the masterminds behind a crime imply a failure to

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<sup>51</sup> It is on the record that on December 12, 2000, the First Chamber of the Criminal and Correctional Tribunal ruled on the complaint filed by the First Departmental Chamber over three alleged crimes qualifying to public indictment i) for the possible irregularities in making witnesses David Ramón Silva and Wilson Barbosa Borges appear in court; ii) on the ways in which the police lineup was carried out for witnesses David Ramón Silva and Alejandra Chumbita; and iii) under Article 275 of the Penal Code with regard to witnesses Rubén Darío Nefle and Cristian Iván Molina. As far as the first two charges, the Tribunal ruled to provisionally stay the proceedings because the commission of the crime did not appear duly proven. It stated that David Ramón Silva and Wilson Barbosa Borges had stated the truth of the facts when they testified before Judge Atencio and that they had not suffered any kind of physical or psychological attacks. Also, the Tribunal ruled that there had not been any irregularities during the police line-ups and that the head of the Official Ombudsman’s Office was present. Additionally, with regard to alleged crime iii), on February 2, 2001, the Tribunal called Rubén Darío Nefle and Cristian Ivan Molina to give an informative statement with regard to the crime of false testimony. See: Copy of the judgment of the First Chamber of the Criminal and Correction Appeals Tribunal dated December 12, 2000, in the case of Santillán Alejandro D s/Homicide. Annexes submitted by the petitioners in communication dated September 26, 2001.

<sup>52</sup> **Annex 6.** Testimony of David Ramón Silva before the Chamber of Deputies of the Congress of the Nation Special Investigative Commission on the probable commission of Illicit Activities perpetrated or produced through the National Customs Administration Annex submitted by the petitioners in a broadening of their October 6, 1999, petition.

comply with the obligation to guarantee the right to life.<sup>53</sup> Although the State submitted pleadings rejecting responsibility during the admissibility stage, it has not offered any pleadings or specific, concrete evidence to contest the multiple indications of responsibility on the part of agents of the police. In addition, in Decree No. 3241/2006 dated December 4, 2006, the State acknowledged that it had not investigated the facts with due diligence, a duty that includes not only investigating the death of Deputy Commissioner Gutiérrez, but also investigating the cover-up that also links the police with the execution.

97. With regard to the right to life, the Inter-American Court has repeatedly indicated that it is a fundamental human right whose full enjoyment is a prerequisite to all other human rights.<sup>54</sup> In addition, the Court has said that this means that States have the obligation to guarantee the creation of the conditions necessary to prevent violations of this basic right, as well as the duty to prevent its agents or private parties from harming that right.<sup>55</sup> According to the Court, the goal and purpose of the Convention as an instrument for protecting human beings requires that the right to life be interpreted and applied in such away that its safeguards are practical and effective (*effet utile*).<sup>56</sup>

98. As far as compliance with the duty to guarantee, the case law of the bodies of the inter-American system indicate that it incorporates elements of prevention, protection and investigation. When these standards are not met, States can be held internationally responsible for the violation of the right to life.

99. According to the body of evidence on the record before the IACHR, coupled with the testimony given domestically, the indications of the participation of agents of the State, and the lack of a diligent investigation on the part of the State, the Commission determines that the Argentine State failed to comply with its obligation to respect and protect the life of Jorge Omar Gutiérrez, in violation of Article 4(1) of the American Convention, with regard to Article 1(1) of the Convention.

#### **Right to a fair trial and judicial protection (Articles 8 and 25 of the American Convention)**

100. The Inter-American Commission finds that the Argentine State failed to comply with its obligation to effectively and adequately investigate the homicide of Deputy Commissioner Jorge Omar Gutiérrez, in violation of articles 8, 25 and 1(1) of the American Convention.

101. Article 8 of the Convention establishes that,

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

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<sup>53</sup> Case of the "Mapiripán Massacre," para. 219 Case of the "Pueblo Bello Massacre," para. 144; Case of Baldeón García, para. 97; and Case of Montero Aranguren, para. 83.

<sup>54</sup> Inter-American Court. *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment dated July 4, 2007. Series C No. 166. para. 78; Inter-American Court, *Case of the "Street Children" (Villagrán-Morales et al.)*. Judgment dated November 19, 1999. Series C No. 63. para. 144.

<sup>55</sup> Inter-American Court, *Case of the "Street Children" (Villagrán-Morales et al.)*. Judgment dated November 19, 1999. Series C No. 63. para. 144.

<sup>56</sup> Inter-American Court. *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations and Costs. Judgment dated July 4, 2007. Series C No. 166. para. 79; Inter-American Court, *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147. para. 83.

102. Likewise, Article 25 of the Convention provides that,

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

103. For its part, Article 1(1) of the American Convention establishes that,

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

104. According to the provisions of Article 1(1) of the American Convention, States party to the inter-American human rights system have the obligation to investigate human rights violations and punish those responsible, as well as, where applicable, provide the victims of those violations or their relatives with indemnities. With regard to the above-described rules under the Convention, the Court has explained that,

[Article 25 with regard to Article 1(1)] obliges the State to guarantee everyone access to the administration of justice and, in particular, to a simple and prompt recourse in order that those responsible for violations of human rights may be judged and in order to obtain reparations for damages suffered. As this Court has said, "Article 25 is one of the basic pillars, not only of the American Convention but also of the rule of law itself in a democratic society, within the meaning of the Convention."<sup>57</sup>

105. In this sense, the content of Article 25 is closely related with Article 8(1), which enshrines the right of all individuals to be heard by an independent and impartial judge or tribunal within a reasonable time period and with all due guarantees. It confers on the victim the right for violations of rights protected under the American Convention to be effectively investigated by the authorities, for a judicial proceeding to be carried out against those responsible, for the pertinent punishment to be imposed, and for adequate reparations to be provided for the damage suffered.<sup>58</sup> Effectively, Article 8 of the American Convention establishes a series of requirements that must be observed during the different stages of the procedure in order for it to be understood as a legitimately fair trial.<sup>59</sup> That article comprises various rights and guarantees that emerge from a common value or right and that, as a whole, form a single right that is not specifically defined but whose unequivocal purpose is without a doubt to ensure everyone's right to a just process.<sup>60</sup>

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<sup>57</sup> Inter-American Court, *Case of the Mayagna (Sumo) Awas Tingni Community*. Judgment of August 31, 2001. Series C No. 79, para. 52; Inter-American Court, *Case of Ivcher Bronstein*. Judgment of February 6, 2001. Series C No. 74, para. 135.

<sup>58</sup> Inter-American Court, *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 205; Inter-American Court, *Case of Durand and Ugarte*. Judgment of August 16, 2000. Series C No. 68, para. 130.

<sup>59</sup> Inter-American Court., *Judicial Guarantees in States of Emergency* (arts. 27.2, 25 and 8 of the American Convention on Human Rights), *Advisory Opinion O-C 9/87* of October 8, 2010, Series A. N° 9, paragraph 27.

<sup>60</sup> European Court of Human Rights, *Case of Golder*, Judgment of February 21, 1975, Series A, No. 18, paragraph 28, with regard to Article 6 of the European Convention on Human Rights, which in its substance covers the same rights and guarantees as Article 8 of the American Convention.

106. Also, both articles 8 and 25 of the American Convention “are necessary conditions for the procedural institutions regulated by the Convention to be considered judicial guarantees.”<sup>61</sup> Article 25(1) of the American Convention incorporates the principle, recognized in international human rights law, of the effectiveness of procedural instruments or measures designed to guarantee those rights.<sup>62</sup> For a remedy to exist, the Convention requires it to be truly suitable for establishing whether a violation of the rights established in the Convention has taken place and for providing the necessary remedies.<sup>63</sup> In this sense, the Inter-American Court has concluded that, “A remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective.”<sup>64</sup>

107. In this regard, inter-American case law has established that whenever a crime is committed that can be pursued *ex-officio*, the State has the obligation to launch and move forward with a criminal proceeding.<sup>65</sup> In these cases, and in addition to making other methods of reparation possible, that criminal proceeding must constitute the most appropriate method for solving the crime, bringing those responsible to trial and establishing the corresponding criminal punishments.

108. Added to that, the Court has understood that the obligation to investigate cases of violations of a right that should be protected or guaranteed derives from the general obligation to guarantee human rights enshrined in the Convention, found in Article 1(1) of that document.<sup>66</sup> Thus in cases of extra-judicial executions, forced disappearances and other grave human rights violations, the Tribunal has found that carrying out a serious, impartial and effective *ex officio* investigation without delay is a fundamental and determining element for the protection of certain rights that are affected or quashed by these situations, such as the rights to personal liberty, personal safety and life.<sup>67</sup>

109. In this international legal framework, it should be noted that the State’s obligation to investigate and punish violations of human rights should be undertaken seriously by States. In this respect, the Court has indicated that:

In certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are

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<sup>61</sup> Inter-American Court, Advisory Opinion OC-9/87, paragraph 30.

<sup>62</sup> Inter-American Court, Advisory Opinion OC-9/87, paragraph 24.

<sup>63</sup> *Idem*, paragraph 24.

<sup>64</sup> *Ibidem*.

<sup>65</sup> Inter-American Court, *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147; Inter-American Court, *Case of the “Pueblo Bello Massacre.”* Judgment of January 31, 2006. Series C No. 140; Also see Report No. 52/97, Case 11.218, Arges Sequeira Mangas, Annual Report of the IACHR, 1997.

<sup>66</sup> *Cf. Case of the “Pueblo Bello Massacre” v. Colombia*. Merits, Reparations and Costs. Judgment of January 31, 2006. Series C No. 140, para. 142; *Case of Zambrano Vélez et al.*, *supra* footnote 17, para. 88, and *Case of La Cantuta*, *supra* footnote 16, para. 110.

<sup>67</sup> Inter-American Court. *Case of Heliodoro Portugal v. Panama*. Judgment dated August 12, 2008, paragraph 115.

aided in a sense by the government, thereby making the State responsible on the international plane.<sup>68</sup>

110. Now, States do not violate their obligation to investigate simply because a person has not been convicted in the case or because of a circumstance in which despite the efforts made, it is impossible to assign guilt for the facts. In order to establish convincingly and credibly that this result is not the product of a mere mechanical execution of certain procedural formalities, but rather that the State is effectively seeking the truth, the State should demonstrate that it has carried out an immediate and exhaustive investigation that is both serious and impartial.<sup>69</sup>

111. The obligation to investigate all incidents that imply a violation of the rights protected under the Convention and to apply the corresponding punishment to those responsible requires the State to investigate the case and bring to trial and punish those responsible, both the material perpetrators of the facts violating human rights and the masterminds behind those facts.<sup>70</sup> Neither have been duly investigated by the Argentine authorities in this case.

112. As a consequence, it is the State's duty to investigate human rights violations, process those responsible and prevent impunity, which has been defined as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention."<sup>71</sup> In this sense, the Inter-American Court has indicated 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 defenseless of victims and their relatives."<sup>72</sup>

113. The Court has indicated that,

Thus, the State that leaves human rights violations unpunished is also failing to comply with its obligation to ensure the free and full exercise of those rights to all persons subject to its jurisdiction.<sup>73</sup>

114. As the Court has established, the relatives of the alleged victims have the right to have what happened to them effectively investigated by State authorities, and the State has the obligation to do so; to bring those allegedly responsible for these illicit acts to trial; where applicable, to apply the corresponding punishment; and to provide reparations for the damages

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<sup>68</sup> Inter-American Court, Case of Velásquez Rodríguez. Judgment of July 29, 1988. Series C No. 4, para. 177.

<sup>69</sup> IACHR, Annual Report 1997, Report No. 55/97, Case 11.137 (Juan Carlos Abella et al), Argentina, para. 412. On that same subject, also see: IACHR, Annual Report 1997, Report No. 52/97, Case 11.218, (Arges Sequeira Mangas), Nicaragua, para. 96 and 97.

<sup>70</sup> For example, the Court has indicated that "the American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations." Inter-American Court. *Case of the Constitutional Court v. Peru*. Judgment of September 29, 1999. Series C N° 71, para. 123. Also see Inter-American Court, *Case of Myrna Mack Chang*. Judgment dated November 25, 2003. Series C No. 101, para. 275; *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003, Series C No. 99, para. 186; *Case of Blake, Reparations*, Judgment of January 22, 1999. Series C No. 48, para. 65.

<sup>71</sup> Inter-American Court, Case of the Gómez-Paquiyaui Brothers. Judgment of July 8, 2004. Series C No. 110, para. 148; Inter-American Court, Case of the 19 Merchants. Judgment dated July 5, 2004. Series C No. 109, para. 175; Inter-American Court, Case of Bámaca Velásquez. Reparations (art. 63(1) American Convention on Human Rights), Judgment of February 22, 2002. Series C No. 91, paragraph 64.

<sup>72</sup> Inter-American Court, Case of Loayza Tamayo, Reparations and Costs, November 27, 1998, Series C, No. 42, para. 169 to 170.

<sup>73</sup> Inter-American Court, Case of Trujillo Oroza. Reparations and Costs February 27, 2002. Series C No. 92, paragraph 101.

suffered by those relatives.<sup>74</sup>In this case, the victim's relatives have moved the proceeding forward by gathering evidence on the facts, carrying out interviews, and bringing witnesses forward for the case, all without results.

115. The investigations moved forward by the State's judicial branch showed indications of manipulation of evidence gathering, obstruction of justice and procedural delay, as well as a lack of due diligence in the investigation.<sup>75</sup> Thus for example, there have been accusations that the witnesses were threatened - and some of them tortured - by agents of the State so that in the oral hearing they would reject their earlier testimony in which they clearly identified two federal police officers as the perpetrators of the execution of Jorge Omar Gutiérrez. The State has not challenged these facts and neither has it submitted information on any inquiries it might have made into the acts of torture that were denounced.<sup>76</sup>

116. In this sense, the IACHR notes that in its final report, the Special Investigative Commission warned about irregularities that had been introduced into the criminal case. It therefore requested that the Supreme Court consider reopening the case. These deficiencies blocked the possibility that the process proceed in keeping with the principles of due diligence. A poor or incomplete investigation of the facts makes it difficult to establish responsibility and can lead to impunity. The Commission has not received significant information from the State on the leads that, following the dismissal of the two individuals identified by witnesses as material perpetrators of the death of Jorge Omar Gutiérrez, are being followed. It notes that as of right now, no individual has been punished, generating impunity.

117. According to the evidentiary elements recorded in the case file before the IACHR, the investigations carried out into the murder of Jorge Omar Gutiérrez have been characterized by negligence of judicial authorities in the gathering of the evidence, the misrouting of the proceeding, and especially in the delay in its conclusion and consequent trial of the alleged perpetrators and masterminds.

118. Regarding procedural guarantees, the Court has established that "for true guarantees of fair trial to exist in a proceeding, pursuant to the provisions of Article 8 of the Convention, it is

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<sup>74</sup> Cf. *Case of the 19 Merchants*, *supra* footnote 15, para. 187; *Case of Las Palmeras*, *supra* footnote 25, para. 65; and *Case of Durand y Ugarte*, *supra* footnote 25, para. 130.

<sup>75</sup> **Annex 36.** In a communication received on February 15, 2002, the petitioners alleged the following: Even when the judicial and police authorities had sufficient information to identify the alleged co-perpetrator of the murder of Jorge Omar Gutiérrez, who had been identified by witnesses as "Colorado" and who it was later learned was Officer Mostajo, and even when they had information allowing them to know his whereabouts, no results were achieved in that regard. Adolfo Ricardo Salvador, brother of Santillán's former mistress, provided concrete information, the physical description and nickname... no progress was made in the parallel investigation that had been started into the threats, injuries and other crimes committed by police personnel to the detriment of witnesses in the case. The testimony given before the Special Commission by the mother of Santillán's mistress, Claudia Acuña, indicating that she had been coerced into testifying in his favor during the oral trial had not been ratified in court because the case opened ex-officio had "disappeared." Effectively, case No. 13.451, "Santillán, Carlos Mario, s/threats" had begun before the National Criminal and Preliminary Investigation Court No. 33. However, this court had declared that it did not have jurisdiction, and afterwards no progress was made.

<sup>76</sup> With regard to the cover-up, it is worth noting the testimony submitted on October 4, 2000, by Officer Juan Eduardo Dávalos before the the Transitional Court No. 2 of the City of La Plata Judicial District. In the testimony, he stated that on chatting with Deputy Officer Segovia, who had established that he had brought Deputy Commissioner Gutiérrez to the train station, the Deputy Officer told him that he had not mentioned that another officer with the surname Chaves also accompanied him that night on patrol. He said he had not mentioned it "because otherwise it would complicate things." In his testimony, Officer Dávalos said he would be willing to confront Officer Segovia. **Annex 37.** Testimony of Juan Eduardo Dávalos dated October 4, 2000, and given before the the Transitional Court No. 2 of the City of La Plata Judicial District. Annexes submitted by the petitioners in communication dated September 26, 2001.

necessary to observe all the requirements that are designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof."<sup>77</sup>

119. In effect, the bodies of the inter-American system have understood that the duty to investigate with due diligence includes the obligation to carry out all necessary actions within a reasonable period of time.<sup>78</sup> Likewise, three basic standards have been established for determining reasonableness: a) complexity of the matter, b) procedural activity of the interested party and c) conduct of the judicial authorities.<sup>79</sup>

120. In a preliminary analysis of these elements, the Commission indicates that the analysis of reasonable time period of domestic proceedings is understood to cover, in principle, from the moment the authorities learn about the facts until a final judgment is issued. Particularly in criminal matters, the reasonable time period must include the entire proceeding, including the appeals court remedies that can later be applicable.<sup>80</sup>

121. As far as the complexity of this matter, the Commission considers that upon the news of the murder of Jorge Omar Gutiérrez, the State did not take quick and effective measures to gather evidence that would have permitted the identification of those responsible, even though it had been provided with information from relatives of the victims and witnesses at the scene of the crime. Additionally, the IACHR observes that the State has not offered specific, concrete information indicating that this case is characterized by a high level of complexity that has made a judicial resolution of the circumstances at hand difficult. Taking into consideration the number of facts and subjects being investigated, neither can it justify the delay on those grounds and based on the possibility of complications in the matter. In addition, it has not been asserted that in the criminal proceeding, there was any kind of situation that would imply an abnormal burden with regard to the workload of the judicial authorities.

122. The system's case law has established that 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 about what happened and punish those eventually found responsible.<sup>81</sup> Effectively, the Inter-American Court has established that the right to the truth is found within the right of the victim or his/her family members for the competent State bodies to resolve the facts that caused the violation and establish responsibility through the investigation and trial provided for in articles 8 and 25 of the Convention.<sup>82</sup>

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<sup>77</sup> Inter-American Court, Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 124.

<sup>78</sup> Inter-American Court, Case of the Serrano Cruz Brothers. Judgment of March 01, 2005. Series C No. 120. para. 65.

<sup>79</sup> Inter-American Court. Case of the Moiwana Community. Judgment of June 15, 2005. Series C No. 124. para. 160. Likewise, European Court of Human Rights. *Wimmer v. Germany*, no. 60534/00, § 23, 24 May 2005; *Panchenko v. Russia*, no. 45100/98, § 129, 8 February 2005, and *Todorov v. Bulgaria*, no. 39832/98, § 45, 18 January 2005.

<sup>80</sup> Inter-American Court, Case of the 19 Merchants. Judgment of July 5, 2004. Series C No. 109, para. 189; citing the Inter-American Court, Case of Juan Humberto Sánchez. Judgment of June 7, 2003. Series C No. 99, para. 120; Inter-American Court, Case of Hilaire, Constantine and Benjamin et al. Judgment of June 21, 2002. Series C No. 94; Inter-American Court, Case of Suárez Rosero. Judgment of November 12, 1997. Series C No. 35, para. 71.

<sup>81</sup> Inter-American Court, Case of the Miguel Castro Castro Prison, Judgment of November 25, 2006, para. 382.

<sup>82</sup> Inter-American Court. *Case of Barrios Altos*. Judgment of March 14, 2001. Series C No. 75, para. 48. *Case of Bámaca Vélasquez*. Judgment of November 25, 2000. Series C No. 70, para. 201. *Case of Blanco Romero et al.* Judgment of November 28, 2005. Series C No. 138, para. 62 and *Case of Almonacid Arellano et al.* Judgment of September 26, 2006. Series C No. 154, para. 148 and Case of Myrna Mack Chang, Judgment of November 25, 2003, paras. 217 and 218.



123. This right is based on the conviction that learning the truth is one of the most effective measures for preventing the recurrence of grave violations of human rights and of consolidating a democratic system under the rule of law. Furthermore, the State has the obligation to make all the information at its disposal available to the victims and their relatives, and it must use all measures within its power to collect that information. Therefore, the satisfaction of the right to truth demands the procedural determination of the most complete history possibly, which includes the establishment of all the individuals who participated in the violations and their corresponding responsibilities. That investigation must be carried out by the State as a juridical duty and not as a simple processing of private interests that depends on the procedural initiative of victims or their relatives or the submission of evidentiary elements by private parties.

124. The Commission emphasizes that, in light of the rights enshrined in the Convention, the enjoyment and effectiveness of the rights to a fair trial and judicial guarantees cannot be blocked by actions or omissions of the authorities in charge of meting out justice and protecting the population. States have the positive obligation to investigate violations of human rights, process those responsible and prevent impunity. The Commission considers that the flawed actions of State authorities have, taken jointly, resulted in a failure to identify and punish those responsible. The relatives of Deputy Commissioner Gutiérrez have therefore not seen their rights protected, and that lack of protection has resulted in a lack of access to truth and justice.

125. The Commission considers that the right to truth arises as a basic and indispensable consequence for all States party to the American Convention, given that a lack of knowledge on facts related to violations of human rights means, in practice, that the system for protection is not capable of guaranteeing the identification and eventual punishment of those responsible.

126. As can be ascertained from the information provided by both the petitioners and the State, almost 17 years have passed since the execution of Deputy Commissioner Jorge Omar Gutiérrez, and as of the date of the preparation of this report, the circumstances of his death are still not known with any certainty, nor has anyone been punished for the facts. According to the standards of the IACHR, this constitutes a situation of impunity.

127. As long as the judicial system remains inactive and acts as an accessory through its failure to carry out an adequate investigation, the facts will remain in impunity. The case law of the inter-American system has already established that a lack of punishment allows for the repetition of the violations being investigated. The act of bringing those responsible to trial and punishing them has a preventative function that blocks incidents of the same nature from happening again.<sup>83</sup>

128. Based on the foregoing, the Commission concludes that in this case, the competent authorities have not respected the right of the relatives of Jorge Omar Gutiérrez to judicial guarantees, nor has it granted an effective remedy for guaranteeing access to justice, determining the truth of the facts, or for identifying, bringing to trial and, where applicable, punishing those responsible, as well as providing reparations for the consequences of the violations. Therefore, the State is responsible for the violation of the rights to a fair trial and judicial protection enshrined in articles 8(1) and 25(1) of the American Convention, with regard to Article 1(1) of the Convention, to the detriment of the relatives of Jorge Omar Gutiérrez.

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<sup>83</sup> Inter-American Court, *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, paragraph 299; *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, paragraph 168; *Case of the "Pueblo Bello Massacre."* Judgment of January 31, 2006. Series C No. 140, paragraph 266; *Case of the "Mapiripán Massacre."* Judgment of September 15, 2005. Series C No. 134, paragraph 237; *Case of Paniagua Morales et al.*, Judgment of March 8, 1998, paragraph 173.

### Right to Humane Treatment (Article 5 of the American Convention)

129. Article 5(1) of the American Convention establishes that “Every person has the right to have his physical, mental, and moral integrity respected.”

130. The Commission highlights that although in the admissibility stage, the possible violation of Article 5 of the American Convention was not explicitly alleged, the facts have been present since the petition was first processed, in particular through the statements of the relatives of Jorge Omar Gutiérrez during the hearings and work meetings carried out before the Commission. In this sense, the State has had opportunity to submit its comments with regard to the facts and challenge them. However, it has not submitted any comments on the merits.

131. The Commission considers that the rights protected by Article 5 of the American Convention were violated with regard to the relatives of victim Deputy Commissioner Jorge Omar Gutiérrez: his widow, Nilda del Valle Maldonado; their three sons Jorge Gabriel, David and Marlin Verónica Gutiérrez; and his brother, Francisco Virgilio Gutiérrez.

132. The loss of a family member causes emotional pain and suffering to all members of the immediate family circle.<sup>84</sup> The execution of any individual is in and of itself a grave violation of fundamental rights. The Inter-American Court has indicated that “it is a characteristic of human nature” that a person who is subjected to serious acts of violence and abuse “experiences moral suffering.”<sup>85</sup> Consequently, “evidence is not needed to arrive at this conclusion.”<sup>86</sup>

133. According to the facts that have been described throughout this report, it is evident that the members of Jorge Omar Gutiérrez’ immediate family have experienced moral suffering, including feelings of insecurity, frustration and impotence<sup>87</sup> as a consequence of his execution. In this regard, the Commission recalls that in keeping with the case law of the Inter-American Court, “the relatives of victims of human rights violations can themselves be victims.”<sup>88</sup>

134. In this sense, the State is also responsible for having failed to seriously, impartially and effectively investigate the execution of the victim within a reasonable time period and in keeping with the principles of due process. With regard to this, the Court has established that the absence of effective remedies constitutes an additional source of suffering and anguish for the relatives of the victims,<sup>89</sup> who in this case, almost 17 years after the execution of their relative,

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<sup>84</sup> Case of Blake, Judgment of January 24, 1998 (Merits), Ser. C No. 36, paras. 112-16; more specifically, see Blake v. Honduras, Judgment of January 22, 1999 (Reparations), Opinion of Judge A. A. Cançado Trindade, paragraphs 43-45 (cites international case law on the rights of immediate family who have experienced suffering as a consequence of violations of the rights of a loved one, including siblings).

<sup>85</sup> Inter-American Court, Case of Aloeboetoe et al. Reparations (art. 63.1 American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, paragraph 52.

<sup>86</sup> Ibidem.

<sup>87</sup> Case of Bámaca Velásquez. Guatemala, Judgment of November 25, 2000. Series C No. 70. paragraph 160.

<sup>88</sup> Inter-American Court. Case of Juan Humberto Sánchez v. Honduras. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 101; Case of Bámaca Velásquez, para. 160; Case of Cantoral Benavides, para. 105; Case of the “Street Children” (Villagrán-Morales et al.), para. 175; and Case of Castillo Páez Zapata Reparations, (art. 63.1 American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 59.

<sup>89</sup> Inter-American Court, *Case of the Ituango Massacres*. Judgment of July 1, 2006. Series C No. 148, para. 261. Also see Inter-American Court, *Case of the “Mapiripán Massacre.”* Judgment of September 15, 2005. Series C No. 134, para. 145; Inter-American Court, *Case of the “Pueblo Bello Massacre.”* Judgment of January 31, 2006. Series C No. 140, para. 145; Inter-American Court, *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 94.

have sought justice but have not found it, according to what this report has established in the analysis on the violation of articles 8 and 25 of the American Convention.

135. The Commission remarks that the relatives of Deputy Commissioner Gutiérrez have pushed this investigation before the State that should be protecting their rights. The allegations and indications that went unchallenged with regard to the direct actions of the cover-up, as well as the lack of due diligence in investigating the facts of the case and punishing the perpetrators of the violations herein analyzed, contribute to prolonging the suffering of the relatives of Jorge Omar Gutiérrez caused by the violation of fundamental rights and constitute a duty of the State to provide an adequate judicial response.

136. In this case, the testimony of the relatives of Jorge Omar Gutiérrez, which is recorded in the judicial case and in the case file of the Commission, reveal the suffering and anguish that was caused to them through the violations committed by members of the Argentine State. Those violations have caused profound moral damage whose consequences clearly persist to the present day. It is worth highlighting that in the hearing held in IACHR headquarters on October 17, 2003, during the 118th regular period of sessions, Mrs. Nilda del Valle Maldonado, the widow of Jorge Omar Gutiérrez, stated, "I feel completely abandoned by justice... I want justice." Likewise, during the hearing held on March 19, 2010, the daughter of Jorge Omar Gutiérrez, Marlin, stated through her tears that, "I've now spent more years without my father than the years I enjoyed with him" and requested that her father's case be "an example of honesty, struggle and justice."<sup>90</sup>

137. In sum, the Commission considers that the aforementioned circumstances cause relatives suffering, anguish, frustration and impotence before State authorities,<sup>91</sup> for which reason they can be considered as victims of a violation of their right to humane treatment.<sup>92</sup> Consequently, and in keeping with the principle of *iura novit curia*, the Commission concludes that the State violated Article 5 of the American Convention, to the detriment of the immediate family of Jorge Omar Gutiérrez - his widow, their three children and his brother - in accordance with Article 1(1) of the Convention.

#### **Obligation to respect and ensure protected rights (Article 1(1) of the American Convention)**

138. In this case, the Argentine State has not complied with its obligations with regard to Article 1(1) of the American Convention to "respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms," given that it violated the rights established in articles 4, 5, 8 and 25 of the treaty.

139. The primary obligation of all States Party to the American Convention is to respect the protected rights and liberties of those subjects under their jurisdiction. As the Inter-American Court has indicated that "under international law a State is responsible for the acts of its agents undertaken in their official capacity and for their omissions, even when those agents act outside the sphere of their authority or violate internal law."<sup>93</sup> The Court has also established that, "In principle, all violations of rights recognized by the Convention that are carried out by an act of public administration or by individuals acting on behalf of official authorities are attributable to the State."

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<sup>90</sup> **Annex 38.** Audio of the hearings held in the framework of the hearings held for this case.

<sup>91</sup> Case of *Bámaca Velásquez*, para. 160; Case of *Cantoral Benavides*, para. 105; and Case of *Durand y Ugarte*, para. 128.

<sup>92</sup> Case of *Bámaca Velásquez*, para. 162; Eur Court HR, *Kurt v. Turkey*, párrs. 130-134.

<sup>93</sup> Inter-American Court, Case of *Velásquez Rodríguez*, paras. 170, 166.

140. The second obligation established in Article 1(1) is the obligation to ensure free and total exercise of the rights and liberties recognized in the Convention. In this sense, the States Party have the obligation to “organize the governmental apparatus and, in general, all the structures through which public power is exercised, so that they are capable of juridically ensuring the free and full enjoyment of human rights. As a consequence of this obligation, the States must prevent, investigate and punish any violation of the rights recognized by the Convention....”<sup>94</sup> The violation of a protected right also generates the obligation to take those measures necessary toward reparations.

141. When faced with allegations, the State has the obligation to resolve the facts and identify and punish those responsible. In the case analyzed in this report, these essential obligations were not fulfilled. For this reason, the Commission concludes that the State has violated Article 1(1) of the Convention because, as this report has established, it did not guarantee Jorge Omar Gutiérrez and his relatives’ exercise of their rights and guarantees.

142. It should be noted that regardless of the domestic jurisdictional structure, the Argentine State must ensure that the Province of Buenos Aires take measures toward complying with the rights established in the Convention, especially due diligence and investigation of the facts denounced by the family members of Deputy Commissioner Jorge Omar Gutiérrez.

143. In this sense, the final goal of safeguarding the human rights established in the American Convention in general - and the aforementioned provisions in particular - supersedes any reference to domestic jurisdictional structure or organization of the competent bodies of a federation. In this regard, it cannot be forgotten that because they are part of the State, the States of the federation are equally bound by the provisions of the international treaties ratified by the federal government.

## **V. CONCLUSIONS**

144. Based on the foregoing analysis, the Commission concludes that the Argentine State is responsible for the violation of the right to life enshrined in Article 4 of the American Convention, with regard to Article 1(1) of the Convention, to the detriment of Jorge Omar Gutiérrez. Likewise, the Commission concludes that the State is responsible for the violation of the rights to humane treatment, a fair trial and judicial protection, as enshrined in articles 5, 8 and 25 of the American Convention, to the detriment of the relatives of the victim - specifically, his widow, their children and his brother, - with regard to Article 1(1) of the Convention.

145. This report will also make pertinent recommendations to the Argentine State.

## **VI. RECOMMENDATIONS.**

146. Based on the analysis and conclusions found in this report, the Inter-American Commission finds that the Argentine State should:

1. Carry out a complete, impartial, effective and swift investigation of the facts with the goal of establishing the identities of the perpetrators and the masterminds, as well as all individuals who participated in the facts related to the execution of Jorge Omar Gutiérrez, and punishing them.

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<sup>94</sup> Idem, para. 166.

2. Carry out a full, impartial, effective and swift investigation into the individuals belonging to different State bodies who have been involved in the investigations and processes carried out with regard to the facts of this case in order to determine responsibility (administrative, disciplinary, criminal, or of any other kind that may apply) for the deficiencies in the investigation and processing of the facts, deficiencies which have resulted in impunity.

3. Provide adequate reparations to the relatives of Jorge Omar Gutiérrez for the violations of their human rights.