

**INTER-AMERICAN COURT OF HUMAN RIGHTS**

**CASE OF THE BARRIOS FAMILY v. VENEZUELA**

**JUDGMENT OF NOVEMBER 24, 2011**  
*(Merits, reparations and costs)*

In the case of the *Barrios Family*,

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

Diego García-Sayán, President  
Leonardo A. Franco, Vice President  
Manuel E. Ventura Robles, Judge  
Margarette May Macaulay, Judge  
Rhadys Abreu Blondet, Judge  
Alberto Pérez Pérez, Judge, and  
Eduardo Vio Grossi, Judge;

also present,

Pablo Saavedra-Alessandri, Secretary, and  
Emilia Segares Rodríguez, Deputy Secretary,

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 41, 65 and 67 of the Rules of Procedure of the Court<sup>1</sup> (hereinafter “the Rules of Procedure”), issues this Judgment.

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<sup>1</sup> Rules of Procedure of the Court approved by the Court at its eighty-fifth regular session held from November 16 to 28, 2009, which, in accordance with its Article 78, entered into force on January 1, 2010.

## TABLE OF CONTENTS

Chapter	Contents	Paragraphs
<b>I.</b>	<b>INTRODUCTION OF THE CASE AND PURPOSE OF THE DISPUTE</b>	1
<b>II.</b>	<b>PROCEEDINGS BEFORE THE COURT</b>	7
<b>III.</b>	<b>COMPETENCE</b>	10
<b>IV.</b>	<b>PROVISIONAL MEASURES</b>	11
<b>V.</b>	<b>EVIDENCE</b>	12
	A. Documentary, testimonial and expert evidence	13
	B. Admission of the documentary evidence	15
	C. Admission of the statements of the alleged victims and the testimonial and expert evidence	19
<b>VI.</b>	<b>PRIOR CONSIDERATIONS</b>	<b>30</b>
	A. Discontinuance of two members of the family	30
	B. Facts alleged by the representatives – factual framework	32
<b>VII.</b>	<b>RIGHTS TO LIFE, PERSONAL INTEGRITY, PERSONAL LIBERTY, AND RIGHTS OF THE CHILD, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS</b>	<b>36</b>
	A. Introduction	36
	B. Context	38
	C. General considerations of the Court	45
	D. Obligation to respect rights	57
	1. Rights to life, personal integrity and personal liberty of Benito Antonio Barrios and Narciso Barrios	57
	2. Rights to personal integrity and personal liberty of Jesús Ravelo Gustavo Ravelo, Luisa del Carmen Barrios, Elbira Barrios, Jorge Antonio Barrios Ortuño, Rigoberto Barrios and Oscar José Barrios, and rights of the child of Jorge Antonio Barrios Ortuño, Rigoberto Barrios and Oscar José Barrios	69
	3. Rights to life and personal integrity, and rights of the child of Rigoberto Barrios	86
	E. Obligation to prevent violations and to guarantee rights	98
	1. Rights to life of Luis Alberto Barrios, Oscar José Barrios, Wilmer José Flores Barrios and Juan José Barrios, and to personal integrity of Néstor Caudi Barrios	98
<b>VIII.</b>	<b>RIGHTS TO PRIVACY AND PROPERTY</b>	<b>134</b>
	A. Arguments of the parties	134

B. Facts	137
C. Considerations of the Court	139
1. Interference in the family home	140
2. Right to private property	148
<b>IX.    RIGHTS TO FREEDOM OF MOVEMENT AND RESIDENCE, PROTECTION OF THE FAMILY, AND RIGHTS OF THE CHILD</b>	<b>152</b>
A. Arguments of the parties	152
B. Facts	156
C. Considerations of the Court	162
1. Freedom of movement and residence	162
2. Protection of the family	169
<b>X.    RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS</b>	<b>172</b>
A. General considerations of the Court	173
B. Arguments of the parties	182
C. Facts	192
1. Investigation of the death of Benito Antonio Barrios	192
2. Investigation of the searches, destruction and theft at the homes of Justina Barrios, Elbira Barrios, Brígida Oneyda Barrios, and Orismar Carolina Alzul García and Luis Alberto Barrios	199
3. Investigation of the death of Narciso Barrios and the threats Against Néstor Caudi Barrios	205
4. Investigation of the detention of Rigoberto Barrios and Jorge Antonio Barrios Ortuño	213
5. Investigation of the deprivation of liberty of Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios and Jorge Antonio Barrios Ortuño, and the threats and injuries they suffered	216
6. Investigation of the death of Luis Alberto Barrios	220
7. Investigation of the attempt on the life of Rigoberto Barrios and his subsequent death	224
D. General considerations of the Court regarding the investigations	233
E. Specific considerations of the Court regarding the investigations	241
1. Investigation of the death of Benito Antonio Barrios	241
2. Investigation of the searches, destruction and theft at the homes of Justina Barrios, Elbira Barrios, Brígida Oneyda Barrios, Orismar Carolina Alzul García and Luis Alberto Barrios	246
3. Investigation of the death of Narciso Barrios and the threats against Néstor Caudi Barrios	250
4. Investigation of the detention of Rigoberto Barrios and Jorge Antonio Barrios Ortuño	257
5. Investigation of the deprivation of liberty of Luisa del Carmen	

Barrios, Gustavo Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios and Jorge Antonio Barrios Ortuño, and the threats and injuries they suffered	261
6. Investigation of the death of Luis Alberto Barrios	264
7. Investigation of the attempt on the life of Rigoberto Barrios and his subsequent death	267
F. Considerations on reasonable time	273
G. Investigation of the deaths of Oscar José Barrios, Wilmer José Flores Barrios and Juan José Barrios, and the attempt on the life of Néstor Caudi Barrios	286
H. Right to the truth	290
I. General conclusion of the Court on judicial guarantees and protection	292
<b>XI. RIGHT TO PERSONAL INTEGRITY OF THE NEXT OF KIN IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS</b>	<b>294</b>
A. Arguments of the parties	294
B. Considerations of the Court	301
<b>Consideration of the facts previously analyzed</b>	<b>313</b>
<b>XII. REPARATIONS</b>	<b>315</b>
A. Injured party	318
B. Obligation to investigate the facts	319
C. Measures of integral reparation: restitution, rehabilitation and satisfaction, and guarantees of non-repetition	326
1. Rehabilitation	328
i. Medical and psychological treatment for the victims	328
2. Satisfaction	331
i. Publication of the judgment	331
ii. Public act in acknowledgement of international responsibility	333
iii. Scholarships	335
3. Guarantees of non-repetition	337
i. Training programs for officials	337
4. Other measures of reparation requested	344
i. Adaptation of domestic law concerning the lethal use of force	344
ii. Adaptation of the law on the protection of victims and witnesses	347
iii. Identification of the source of danger	349
iv. Creation of an accessible public record of detainees	352
v. Creation of a procedure for compiling statistics	354
D. Compensation	359
1. Pecuniary damage	359
2. Non-pecuniary damage	374
E. Costs and expenses	379
F. Reimbursement of expenses to the Victims' Legal Assistance Fund	384
G. Means of complying with the payments ordered	387
<b>XII. OPERATIVE PARAGRAPHS</b>	<b>393</b>

# I

## INTRODUCTION OF THE CASE AND THE PURPOSE OF THE DISPUTE

1. On July 26, 2010, pursuant to the provisions of Articles 51 and 61 of the American Convention and Article 35 of the Court's Rules of Procedure, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission" or "the Commission") submitted to the jurisdiction of the Court the case of the Barrios family against the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela"). The case originated from two petitions presented on March 16, 2004, and December 30, 2005, by Eloisa Barrios, Luis Aguilera, as Director of the Human Rights Commission for Justice and Peace of Aragua state, and the Center for Justice and International Law (hereinafter "Justice and Peace Commission" or "Aragua Commission" and "CEJIL," respectively). On February 25, 2005, the Commission adopted Report on Admissibility No. 23/05 regarding the petition of March 16, 2004,<sup>2</sup> and on January 17, 2009, Report on Admissibility No. 01/09 regarding the petition of December 30, 2005.<sup>3</sup> Subsequently, on January 7, 2010, the Commission joindered the processing of both cases, and on March 16, 2010, it approved Report on Merits No. 11/10 (hereinafter "the Merits Report") under Article 50 of the Convention. In this report, it made a series of recommendations to the State.<sup>4</sup> Venezuela was notified of the report on April 26, 2010, and granted two months to provide information on compliance with the recommendations. In view of the State's failure to present any information, the Commission decided to submit this case to the Court's jurisdiction. The Commission appointed Paulo Sérgio Pinheiro, Commissioner, and its Executive Secretary, Santiago A. Canton, as delegates, and its Deputy Executive Secretary, Elizabeth Abi-Mershed, and Silvia Serrano Guzmán, lawyer of the Executive Secretariat, as legal advisers.

2. As indicated by the Inter-American Commission, this case refers to the alleged international responsibility of the State for the "need to obtain justice of the Barrios family, which has [allegedly] been subjected to grave harassment by the Police of Aragua state [...]. As part of this persecution, five members of the Barrios family have lost their life and several of them have been detained and subjected to illegal and arbitrary searches of their homes, suffered threats against their life and personal integrity, and been forced to move from their place of residence." The Commission also indicated that the alleged human rights violations also affected children, and they remain in impunity. In addition, it underlined that the facts of this case "were part of a more general context of extrajudicial executions in Venezuela." It also stressed that "most of the incidents that violated the life and personal integrity of the [alleged] victims took place after the organs of the inter-American system had requested protection for the Barrios family by the mechanisms of precautionary measures or provisional measures." Nevertheless, it

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<sup>2</sup> In Report on Admissibility No. 23/05, the Commission declared petition No. 204/04 admissible with regard to the alleged violation of Articles 1, 4, 5, 8, 21, and 25 of the American Convention (file of the processing of the case before the Inter-American Commission, appendix I, folios 292 and 303).

<sup>3</sup> In Report on Admissibility No. 01/09, the Commission declared petition No. 1491/05 admissible with regard to the alleged violation of Articles 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 7(4), 7(5), 8(1), 19, 22(1) and 25(1) of the American Convention in relation to Article 1(1) of this instrument (file on the processing of the case before the Inter-American Commission, appendix I, folios 965 and 980).

<sup>4</sup> In Report on Merits No. 11/10, the Commission concluded that the State was responsible for the violation of Articles 4(1), 5(1), 5(2), 7(1), 7(2), 7(3), 7(4), 7(5), 8(1), 11, 19, 21, 22(1) and 25, to the detriment of the alleged victims indicated in the said Report (merits file, tome I, folios 5 to 87).

indicated that the State had not implemented effective measures of protection, so that “the Barrios family is still in the situation of risk and lack of protection that promoted the [alleged] human rights violations against them.”

3. Based on the foregoing, the Inter-American Commission asked the Court to declare the State responsible for the violation of the rights recognized in the following articles of the American Convention: 4 (Right to Life), 5 (Right to Personal Integrity), 7 (Right to Personal Liberty), 8 (Right to Judicial Guarantees), 11 (Right to privacy and family life), 19 (Rights of the Child), 21 (Right to Property), 22 (Freedom of Movement and Residence), and 25 (Right to Judicial Protection), in relation to the general obligation to respect and guarantee human rights established in Article 1(1) of the Convention, to the detriment of the members of the Barrios family indicated in the annex to the Merits Report.<sup>5</sup> In addition, the Inter-American Commission asked the Court to order the State to provide specific measures of reparation.

4. The submission of the case to the Court by the Commission was notified to the representatives and to the State on October 21, 2010. On December 25, 2010, the Justice and Peace Commission, CEJIL, and the Committee of Next of Kin of Victims of the Events of February-March 1989 (hereinafter “COFAVIC”), the organizations representing the alleged victims (hereinafter “the representatives”), submitted their brief with pleadings, motions, and evidence (hereinafter “pleadings and motions brief”) in the terms of Articles 25 and 40 of the Rules of Procedure. The representatives agreed, in general, with the violations alleged by the Inter-American Commission and added the alleged violation of the following articles of the American Convention: (a) 17 (Rights of the Family), to the detriment of all the members of the Barrios family; (b) 8, 13 and 25 (in their alleged dimension of the right to the truth), to the detriment of all the members of the Barrios family and of Venezuelan society; (c) 63(2) in relation to the failure to comply with the measures of protection in situations of extreme gravity and urgency, and (d) 44 owing to the alleged violation of the right to petition, to the detriment of the four alleged victims who were executed and who were beneficiaries of protective measures at the time of their death; all in relation to Article 1(1) of this instrument. In addition, they argued the alleged violation of Articles 6 and 8 of the Inter-American Convention to Prevent and Punish

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<sup>5</sup> The members of the Barrios family included in the annex to Report on Merits 11/10 are: Justina Barrios; Pablo Julián Solórzano Barrios; Beneraiz De La Rosa; Paul David Solórzano Barrios; Danilo David Solórzano De La Rosa; Eloisa Barrios; Beatriz Adriana Cabrera Barrios; Víctor Daniel Cabrera Barrios; Natali April Cabrera; Vicsady Daniela Cabrera; Luilmari Carolina Guzmán Barrios; Luiseidys Yulianny Guzmán Barrios; Elbira Barrios; Darelbis Carolina Barrios; Oscar José Barrios; Michael José Barrios Espinosa; Dinosca Alexandra Barrios Espinosa; Elvis Sarais Colorado Barrios; Larelvis del Carmen Escobar Colorado; Cirilo Antonio Colorado Barrios; Lorena del Valle Pugliese Barrios; Maritza Barrios; Rigoberto Barrios; Wilmer José Flores Barrios; Génesis Andreina Navarro Barrios; Víctor Tomás Navarro Barrios; Heilin Alejandra Navarro Barrios; Néstor Caudi Barrios; Caudelys Mayerlin Barrios; Benito Antonio Barrios; Dalila Ordalys Ortuño; Jorge Antonio Barrios Ortuño; Jorge José Barrios Rodríguez; Nairelyn Del Valle Barrios Rodríguez; Carlos Alberto Ortuño; Enyarismar Dalila Ortuño Espinosa; Brígida Oneyda Barrios; Marcos Antonio Díaz Barrios; Sandra Marivi Betancourt Barrios; Juner José Betancourt Barrios; Wilker Felipe Pimentel Barrios; Inés Josefina Barrios; Daniela Yotselín Ortiz Barrios; Edison Alexander Ortiz Barrios; Jhojan Ramón Perozo Barrios; Luis Alberto Barrios; Orismar Carolina Alzul García; Ronis David Barrios Alzul; Roniel Alberto Barrios Alzul; Luis Alberto Alzul; Lilia Ysabel Solórzano Barrios; Yorgelis Elisabeth Pérez Solórzano; Javier Enrique Pérez Solórzano; Lilian Gabriela Pérez Solórzano; Luis Gabriel Pérez Solórzano; Narciso Antonio Barrios; Juncelis Esmil Rangel Terán; Annarys Alexandra Barrios Rangel; Benito Antonio Barrios Rangel; Luisa del Carmen Barrios; Gustavo Ravelo; Lusiany Nazareth Ravelo Barrios; Juan José Barrios; Orianny Nazareth Pelae and Oriana Nazareth Pelae.

Torture (hereinafter also “the Convention against Torture”), to the detriment of two members of the Barrios family. Lastly, they asked the Court to order the State to adopt different measures of reparation and to pay the procedural costs and expenses, and indicated that the alleged victims wished to accede to the Victims’ Legal Assistance Fund of the Inter-American Court of Human Rights (hereinafter “Legal Assistance Fund”).

5. On March 24, 2011, the State submitted its brief answering the application and with observations on the pleadings and motions brief (hereinafter “answering brief”).<sup>6</sup> In this brief, Venezuela denied its international responsibility for the violation of the rights alleged by the Commission and the representatives and asked that the Court: (a) “declare Report No. 11/10 inadmissible,” together with the requests for reparations and costs included in it; (b) reject the pleadings, motions and evidence submitted to the Court by Eloisa Barrios and her next of kin and, consequently, not to condemn the State to make the reparations and pay the costs requested by the representatives, and (c) urge the Commission “to annul the assertions, conclusions, and recommendations contained in Report [on Merits] No. 11/10.” Lastly, the State appointed Germán Saltrón Negretti as its Agent.

6. After the presentation of the Merits Report, the Inter-American Commission informed the Court of the following alleged supervening facts concerning three of the alleged victims in this case, who were also beneficiaries of provisional measures: (a) on October 18, 2010, it reported the alleged murder of Wilmer José Flores, on September 1, 2010; (b) on January 13, 2011, it reported the alleged attack suffered by the Néstor Caudi Barrios on January 2, 2011, and (c) on May 30, 2011, it reported the alleged murder of Juan José Barrios on May 28, 2011. The representatives and the State were informed of these incidents in communications of November 1, 2010, January 24 and June 2, 2011, respectively, in which, on the instructions of the President of the Court (hereinafter also “the President”), the parties were advised that they could forward any observations they deemed pertinent.

## II PROCEEDINGS BEFORE THE COURT

7. Following the presentation of the main briefs (*supra* paras. 1, 4 and 5), among others forwarded by the parties, in an order of June 1, 2011, the President required that the statements of 17 alleged victims proposed by the representatives, and the opinions of four expert witnesses, two of them proposed by the representatives, one proposed by the State, and the other required *ex officio* by the President, be received by affidavit. The parties were able to make observations on all the affidavits. In addition, the President convened the parties to a public hearing to receive the testimony of an alleged victim proposed by the representatives, a witness proposed by the State,

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<sup>6</sup> In this brief, the State filed a preliminary objection that it referred to as “lack of impartiality” of some of the judges and of the Secretary of the Court. In this regard, the Acting President of the Inter-American Court, Judge Alberto Pérez Pérez, issued an order dated April 14, 2011, in which he decided, *inter alia*, that the alleged lack of impartiality in their functions of some of the Judges who are members of the Court, presented by the State of Venezuela as a preliminary objection, did not exist. In addition, he decided that it corresponded to the Court in plenary to continue hearing the entire case until its conclusion. *Cf. Case of the Barrios Family v. Venezuela*. Order of the acting President of the Inter-American Court of Human Rights of April 14, 2011.

and the opinions of two expert witnesses proposed by the representatives and the Commission, as well as the final oral arguments of the representatives and the State, and the final oral observations of the Commission on the merits, reparations, and costs. Finally, the President ordered the financial aid from the Legal Aid Fund a be assigned to cover the travel and lodging expenses necessary for one of the alleged victims and an expert witness indicated by the representatives to appear before the Court and give their testimony and expert witness report, respectively, during the public hearing to be celebrated in this case, as well as to cover the expenses of formalizing and sending the testimony given via affidavit, as determined by the alleged victims or their representatives. The President also ordered a case file on expenses to be opened in order to document each of the expenditures made in relation to the Legal Aid Fund<sup>7</sup>.

8. The public hearing was held on June 29 and 30, 2011, during the Court's ninety-first regular session.<sup>8</sup>

9. On August 1, 2011, the State, the representatives, and the Inter-American Commission submitted their respective final written arguments and observations. With these submissions, the parties sent, *inter alia*, documents requested by the judges of the Court during the public hearing, which were forwarded to the other parties so that they could make any observations they deemed pertinent. On August 26, 2011, on the instructions of the President, the Secretariat of the Court (hereinafter "the Secretariat") asked the State for observations on the expense file for the Legal Assistance Fund. The State did not forward any observations in this regard.

### III JURISDICTION

10. The Inter-American Court has jurisdiction to hear this case in the terms of Article 62(3) of the Convention, because Venezuela has been a State Party to the American Convention since August 9, 1977, and accepted the compulsory jurisdiction of the Court on June 24, 1981. In addition, the State ratified and deposited the instrument ratifying the Inter-American Convention to Prevent and Punish Torture on June 25, 1991, and August 26, 1991, respectively.

### IV PROVISIONAL MEASURES

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<sup>7</sup> Cf. *Case of the Barrios Family v. Venezuela. Convocation to a public hearing*. Order of the President of the Inter-American Court of Human Rights of June 1, 2011. Prior to this, in an order of April 15, 2011, the President of the Court had declared admissible the request submitted by the alleged victims, through their representatives, to accede to the Legal Assistance Fund and had approved that the necessary financial assistance be granted for the presentation of a maximum of three statements. Cf. *Case of the Barrios Family v. Venezuela. Victims' Legal Assistance Fund*. Order of the President of the Inter-American Court of Human Rights of April 15, 2011.

<sup>8</sup> There appeared at this hearing: (a) for the Inter-American Commission: Paulo Sérgio Pinheiro, Commissioner; Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, adviser; (b) for the representatives: Luis Manuel Aguilera Peñalver of the Human Rights Commission for Justice and Peace of Aragua state, Viviana Krsticevic, Ariela Peralta, Francisco Quintana and Annette Marie Martínez Orabona of CEJIL, and Liliana Ortega Mendoza and Willy Chang of COFAVIC, and (c) for the State: Germán Saltrón Negretti, State Agent for Human Rights and Norevy Cortez, lawyer, State Agent for Human Rights.

11. On September 23, 2004, in the context of the case that it was processing at that time, the Inter-American Commission asked the Court to order the State to adopt provisional measures to protect the life and personal integrity of Eloisa Barrios, Jorge Antonio Barrios Ortuño, Rigoberto Barrios, Oscar José Barrios, Inés Josefina Barrios, Pablo Julián Solórzano Barrios, Beatriz Barrios, Néstor Caudi Barrios, Orismar Carolina Alzul García and Juan José Barrios, alleged victims in the instant case. On September 24, 2004, the President of the Court at the time issued an order for urgent measures in which he required the State to take the necessary measures to protect the life and personal integrity of the said individuals.<sup>9</sup> The Court ratified this order on November 23, 2004.<sup>10</sup> In orders of the Court dated June 29 and September 22, 2005, *inter alia*, the provisional measures were expanded in favor of Maritza Barrios, Roni Barrios, Roniel Barrios, Luis Alberto Alzul, Orianny Nazareth Barrios, Oriana Nazareth Barrios, Víctor Daniel Cabrera Barrios, Beatriz Cabrera Barrios, Luilmari Guzmán Barrios, Luiseydis Guzmán Barrios, Wilmer José Flores Barrios, Génesis Andreina Barrios, Víctor Tomás Barrios, Heilin Alexandra Barrios, Elbira Barrios, Darelbis Carolina Barrios, Elvis Sarais Barrios, Cirilo Robert Barrios and Lorena Barrios, also alleged victims in this case.<sup>11</sup> In addition, the Court adopted other orders for provisional measures on February 4 and November 25, 2010, and February 21, 2011. The provisional measures ordered by the Court remain in force at the date of this judgment.

## V EVIDENCE

12. Based on the provisions of Articles 46, 47, 50, 57 and 58 of the Rules of Procedure, as well as on its case law concerning evidence and its assessment, the Court will examine and assess the documentary evidence submitted by the parties on different procedural occasions, as well as the statements of the victims and the testimony and the expert opinions provided by affidavit and during public hearing before the Court, together with the helpful evidence that was requested by the Court (*supra* para. 9). To this end, the Court will observe the principles of sound judicial discretion, within the corresponding legal framework.<sup>12</sup>

### *A. Documentary, testimonial and expert evidence*

13. The Court received various documents presented as evidence by the Inter-American Commission, the representatives and the State, together with their main briefs (*supra* paras. 1, 4

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<sup>9</sup> Cf. *Matter of Eloisa Barrios et al. Provisional measures with regard to Venezuela*. Order of the President of the Inter-American Court of Human Rights of September 24, 2004.

<sup>10</sup> Cf. *Case of Eloisa Barrios et al. Provisional measures with regard to Venezuela*. Order of the Inter-American Court of Human Rights of November 23, 2004.

<sup>11</sup> In addition, the provisional measures included Yelitza Lugo Pelaes, who the Commission had not indicated as an alleged victim in the instant case.

<sup>12</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 2001. Series C No. 37, para. 76, and *Case of Barbani Duarte et al. v. Uruguay. Merits, reparations and costs*. Judgment of October 13, 2011. Series C. No. 234, para. 16.

and 5). In addition, the Court received affidavits from the following alleged victims and expert witnesses:<sup>13</sup>

- 1) *Víctor Daniel Cabrera Barrios*, alleged victim proposed by the representatives, who testified on the alleged violations of which he had been the victim and those supposedly committed against his family, and the impact that the facts had had on his mother Eloisa Barrios, personally, and on her family life and her life project;
- 2) *Maritza Barrios*, alleged victim proposed by the representatives, who testified on the alleged circumstances surrounding the death of her brothers, her nephews and her sons, as well as on the alleged violations of which she was a victim and those allegedly committed against the rest of her family; the actions taken to obtain justice and the response of the State authorities; the supposed suffering that the alleged violations and their impunity had caused her family and, in particular, the alleged impact that the murder of her next of kin and the constant threats had caused to her personally, her family life and her life project;
- 3) *Elbira Barrios*, alleged victim proposed by the representatives, who testified on the alleged circumstances surrounding the death of her brothers, her nephews and her son Oscar José Barrios, as well as on the alleged violations of which she was a victim and those supposedly committed against her family; the actions taken to obtain justice and the response of the State authorities; the supposed suffering that the alleged violations and their impunity had caused her family and, in particular, the alleged impact that the murder of her next of kin and the constant threats had caused to her personally, her family life and her life project;
- 4) *Pablo Julián Solorzano Barrios*, alleged victim proposed by the representatives, who testified on the alleged circumstances surrounding the death of his brothers and nephews, and on the alleged impact of the murder of his next of kin and the constant threats on him personally, his family life and his life project;
- 5) *Brígida Oneyda Barrios*, alleged victim proposed by the representatives, who testified on the alleged circumstances surrounding the death of her brothers and nephews, as well as on the alleged violations of which she was a victim and those supposedly committed against the rest of her family; the alleged impact of the murder of her next of kin and the constant threats on her personally, her family life and her life project; and the alleged search of her home;
- 6) *Lilia Ysabel Solórzano Barrios*, alleged victim proposed by the representatives, who testified on the alleged circumstances surrounding the death of her brothers and nephews, and the alleged impact of the murder of her next of kin and the constant threats on her personally, her family life and her life project;

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<sup>13</sup> In their brief of June 6, 2011, the representatives informed the Court that they would desist from submitting the testimony of Justina Barrios, Inés Josefina Barrios, Darelbis Carolina Barrios, Jorge Antonio Barrios Ortuño, Gustavo Ravelo, Jesús Ravelo, Dalila Ordalyz Ortuño and Junclis Esmil Rangel Terán (merits file, tome III, folio 775).

7) *Luisa Del Carmen Barrios*, alleged victim proposed by the representatives, who testified on the alleged circumstances surrounding the death of her brothers and nephews, as well as on the alleged violations of which she was a victim and those supposedly committed against her family, and the alleged impact of the murder of her next of kin and the constant threats on her personally, her family life and her life project;

8) *Orismar Carolina Alzul García*, alleged victim proposed by the representatives, who testified on the alleged extrajudicial execution of her companion; the alleged illegal search of her home, and the suffering caused to her, her immediate family, and her life project;

9) *Carlos Alberto Ortuño*, alleged victim proposed by the representatives, who testified on the alleged execution of his father and the consequences of the latter's absence, and on the alleged impact of the murder of his next of kin and the constant threats on him personally, his family life and his life project;

10) *Susana Migdalia Valdez Labadi*, psychologist, expert witness proposed by the representatives, who gave her expert opinion on the presumed impact suffered by the members of the Barrios family owing to the alleged violations of their human rights and, in particular, the alleged execution of their closest next of kin, such as sons and brothers;

11) *José Pablo Baraybar*, member of the Peruvian Forensic Anthropology Team, expert witness proposed by the representatives, who gave his expert opinion on the international forensic standards for the investigation of extrajudicial executions, the measures required to guarantee the independence of the investigative bodies, and ways of strengthening the latter's institutional framework in order to address numerous human rights violations, among other aspects of the case;

12) *Gustavo Rosario*, Director of Technical Offices and Police Assistance of the Ministry of People's Power for Internal Relations and Justice, expert witness proposed by the State, who gave his expert opinion on the restructuring of the Venezuelan Police, and

13) *Roberto Briceño León*, researcher and university professor, expert witness required *ex officio*, who gave his expert opinion on the alleged problem of extrajudicial executions in different parts of Venezuela; the supposed pattern and *modus operandi* of this problem; the alleged incidence in Aragua state, and the supposed response to this situation of the Public Prosecution Service and the Judiciary.

14. Regarding the evidence given during the public hearing, the Court received the testimony of the following individuals:<sup>14</sup>

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<sup>14</sup> On June 16, 2011, the Commission advised that expert witness Manfred Nowak, convened to give his expert opinion during the hearing, could not attend it and asked to replace him (merits file, tome III, folio 819). The President of the Court considered the Commission's request inadmissible (merits file, tome III, folio 839).

1) *Eloisa Barrios*, alleged victim proposed by the representatives, who testified on the alleged circumstances surrounding the death of her brothers and nephews, as well as the alleged violations of which she was a victim and those supposedly committed against her family; the actions taken to obtain justice and the response of the State authorities; the alleged suffering that the alleged violations and their impunity has caused her family; in particular, the alleged impact that the murder of her next of kin and the constant threats have had on her personally, her family life, and her life project; and also on the alleged illegal detentions of her son Víctor Daniel Cabrera Barrios in June 2009;

2) *Néstor Castellano Molero*, First Prosecutor of the Public Prosecution Service before the Cassation and Constitutional Chambers of the Supreme Court of Justice, witness proposed by the State, who testified on the State's actions in relation to the judicial inquiries and proceedings in which the alleged victims in this case appeared as the aggrieved parties, and

3) *Magaly Mercedes Vázquez González*, lawyer, specialist in criminal science and criminology, expert witness proposed by the representatives, who gave her opinion on the law regulating criminal procedure in Venezuela at the time of the facts and the law currently in force in relation to the State's role as guarantor of the rights to life, personal integrity and personal liberty; due diligence in the criminal proceedings in the cases involving the Barrios family, particularly the alleged factual and legal obstacles encountered throughout the investigations; the Forensic Unit of the Public Prosecution Service, the competence of the Forensic and Scientific Crime Investigation Unit (hereinafter "Scientific Investigation Unit" or "Investigation Unit") to analyze the investigations, and the application of the witness protection law in Venezuela.

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

15. In this case, as in others, the Court accepts those documents forwarded by the parties at the appropriate procedural opportunity, as well as those relating to supervening facts forwarded by the representatives and by the Inter-American Commission, which were not contested or opposed, and the authenticity of which was not questioned.<sup>15</sup>

16. With regard to newspaper articles, this Court has considered that they can be assessed when they contain well-known public facts or declarations of State officials, or when they corroborate aspects related to the case.<sup>16</sup> The Court decided to admit the documents that are complete or that, at least, allow their source and publication date to be verified, and it will assess them, taking into account the body of evidence, the observations of the State, and the rules of sound judicial discretion.

17. Regarding the procedural occasion for the presentation of documentary evidence, pursuant to Article 57(2) of the Rules of Procedure, in general, it must be presented with the

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<sup>15</sup> Cf. *Case of Velásquez Rodríguez. Merits*. Judgment of July 29, 1988. Series C No. 1, para. 140, and *Case of Barbani Duarte et al.*, *supra* note 12, para. 21.

<sup>16</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 16, para. 146, and *Case of López Mendoza v. Venezuela. Merits, reparations and costs*. Judgment of September 1, 2011. Series C No. 233, para. 18.

application brief, the pleadings and motions brief, or the answering brief, as applicable. In the case of the representatives, Articles 28(1) and 40(2)(b) of the Rules of Procedure establish that the evidence must be presented with the pleadings and motions brief or, at the latest, within 21 days of the day on which the time granted for submitting this brief expired; and this period cannot be extended. However, in the instant case, the representatives submitted a list of 14 annexes with the pleadings and motions brief, 13 of which were not received by the Court on that occasion, or within the said non-extendible time frame, which expired on January 15, 2011; but rather with a delay of three days, on January 18, 2011.<sup>17</sup> The representatives did not refer to the fact that these annexes were submitted after the deadline; they merely justified the time-barred submission of annex 12 corresponding to the sworn statement of Eloísa Barrios concerning the Court's Legal Assistance Fund. In this regard, the Court considers that the documents submitted by the representatives outside the specified time frame cannot be admitted. Notwithstanding the foregoing, given that the said delay does not correspond to the actions of the alleged victims, in application of Article 58(a) of the Rules of Procedure, the Court admits as evidence in this case the powers of attorney granted by the victims, as well as the identification documents and birth certificates of the members of Barrios family included in annexes 1 and 13 to the pleadings and motions brief.

18. In addition, regarding the documents provided by the Commission, the representatives, and the State following the submission of the case and the transmittal of the pleadings and motions brief and the answering brief, the Court finds it appropriate to recall that Article 57(2) of the Rules of Procedure, which regulates the admission of evidence, establishes:

Exceptionally, and having heard the opinion of all those participating in the proceedings, the Court may admit evidence if the party that has offered it adequately explains that the evidence was not presented or offered at the procedural moments established in Articles 35(1), 36(1), 40(2) and 41(1) of these Rules of Procedure due to *force majeure* or serious impediment. Additionally, the Court may admit evidence that refers to an event which occurred after the procedural moments indicated.

19. On October 18, 2010, the Commission reported, as a supervening fact, "the [alleged] death of Wilmer José Flores Barrios," forwarding four newspaper articles about this incident. The State advised that "[r]egarding the incident that took place on September 1, 2010, in which [...] Wilmer José Flores Barrios was a victim, the Fourteenth Prosecutor ordered that an investigation be launched." In addition, on January 13, 2011, the Commission advised that, on January 2, 2011, Néstor Caudi Barrios had suffered an attempt on his life that had severely injured him and, on January 14, 2011, it forwarded certain documents "as documentary support that it ha[d] been able to obtain [...] concerning that incident." On January 14, 2011, the representatives forwarded a communication in which they referred to "the recent death of Néstor Caudi Barrios" and, subsequently, on June 6, 2011, they clarified that he had been the victim of an attempt on his life, but was still alive.<sup>18</sup> Lastly, on May 30, 2011, the Commission informed

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<sup>17</sup> The document received within the time frame was attachment 2, "Para-police Groups in Venezuela, COFAVIC, 2005."

<sup>18</sup> Brief of the representatives of June 6, 2011 (merits file, tome III, folios 772 and 773).

the Court that, on May 28, 2011, Juan José Barrios had been deprived of his life, forwarded two newspaper articles in this regard, and asked the Court to analyze this supervening fact.

20. The Court finds that, in principle, the facts reported following the submission of the case are related to the purpose of the case; in other words, the alleged threats, attacks, detentions, and deprivation of life of members of the Barrios family (*supra* para. 3). Consequently, the Court admits as evidence of supervening facts the documents provided by the Commission that have not been contested by the parties, in the terms of Article 57(2) of the Rules of Procedure.

21. Additionally, during the public hearing, the State handed over statistical information on the number of police agents involved and accused of crimes presumably committed in exercise of their functions, and sentenced and convicted with a final judgment. For their part, the representatives handed over copies of judicial case files obtained after presentation of the pleadings and motions brief.<sup>19</sup> The copies of these documents were forwarded to the other parties at that time and were not contested by them; thus the Court admits these documents under Article 57(2) of the Rules of Procedure.

22. Lastly, the parties submitted documents together with their final written arguments and observations, in response to the requests made by the Court's judges during the public hearing. The representatives also submitted receipts for costs and expenses incurred after the presentation of the pleadings and motions brief (*infra* para. 380). The Commission forwarded extracts from a report of the Office of the Venezuelan Ombudsman. For its part, the State forwarded updated documentation on the status of the domestic investigations, reports from the Public Prosecution Service and the Ombudsman's Office, a document related to the alleged situation of displacement of the members of the Barrios family, and the minutes of a special hearing held on July 27, 2011, on the measures of protection ordered in the domestic sphere. While the representatives and the Commission forwarded the documents related to the questions raised by the Court promptly, the State sent them on August 30, 2011; in other words, nine days after the non-extendible time frame established in Article 28(1) of the Rules of Procedure had expired. Nevertheless, the Court recalls that the updated information on the domestic proceedings and the presumed displacement of the alleged victims was provided by the State in response to a specific request for helpful evidence made by the Court during the public hearing. Consequently, the Court decides to admit them in application of Article 58(b) of the Rules of Procedure, and will assess the relevant parts of them, taking into consideration the body of evidence, the observations of the parties, and the rules of sound judicial discretion.

### ***C. Admission of the statements of the alleged victims and the testimonial and expert evidence***

23. Regarding the statements of the alleged victims and the witness, and the expert opinions provided during the public hearing and by affidavit, the Court finds them pertinent insofar as they comply with the purpose defined by the President in the order requiring them (*supra* para.

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<sup>19</sup> Acknowledgment of receipt of documents of June 30, 2011.

7). They will be assessed in the corresponding chapter, together with the other elements of the body of evidence, and taking into account the observations made by the parties.<sup>20</sup>

24. With regard to the testimony of the alleged victims, the State submitted observations on specific responses of Eloísa Barrios during her appearance before the Court. In addition, it commented on “the lack of interest in the petition lodged by the Barrios family,” because only nine of the 17 alleged victims initially proposed by the representatives had testified.

25. Pursuant to this Court’s case law, the statements given by the alleged victims cannot be assessed in isolation, but rather must be examined together with all the evidence in the proceedings, since they are useful insofar as they can provide further information on the alleged violations and their consequences.<sup>21</sup> The Court notes that the State’s observations refer to certain aspects of the testimony of Eloísa Barrios and to a supposed lack of interest of some members of the Barrios family, but do not contest the admissibility of the statements received. Based on the foregoing, the Court admits the said statements, although their probative value will be assessed taking into account the said observations and the rules of sound judicial discretion.<sup>22</sup>

26. Lastly, the State commented on certain expert opinions. Regarding the expert opinion of Mrs. Vázquez González, Venezuela disagreed with some of the statements made by the expert witness; asserted that, since she was unaware of “the entire case under investigation, [...] the legal analysis contained in [her] opinion is biased and partial,” and indicated that she had reached “contradictory conclusions.” With regard to expert witness Valdez Labadi, the State questioned the content of her opinion and argued that “it does not correspond to the purpose established for [her] expertise.” Regarding expert witness Baraybar, Venezuela contested his opinion, because “it d[id] not analyze the pertinent domestic law or the applicable action protocols established by the national coordination body for Venezuelan forensic science,” and indicated that “without having the documentation that he questioned [in his opinion], he proceeded to make assumptions,” incurring in contradictions. Lastly, the State contested some of the conclusions reached by expert witness Briceño León in his opinion.

27. The Inter-American Court notes that, in general, the observations of the State are based on: (a) its disagreement with the content of the opinions, contradicting them or providing its opinion on them; (b) the scope of the opinions of the expert witnesses in relation to the purpose of the opinion or the elements used to prepare it, and (c) the methodology used to prepare one of the opinions.

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<sup>20</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para. 43, and *Case of Barbani Duarte et al.*, *supra* note 12, para. 27.

<sup>21</sup> Cf. *Case of Loayza Tamayo*, *supra* note 20, para. 43 and *Case of López Mendoza*, *supra* note 16, para. 24.

<sup>22</sup> Regarding the supposed lack of interest of the Barrios family, the Court recalls that the representatives indicated that, “owing to the suffering and harassment the family has undergone, as well as the lack of protection [...] that has been evident in recent months, several next of kin proposed in [their] brief are unable to testify or have decided to desist from participating in this case.” Cf. *Case of the Barrios Family v. Venezuela*. Order of the Inter-American Court of Human Rights of June 27, 2011, considering paragraph 33.

28. The Court finds it pertinent to indicate that, in contrast to the witnesses, who must avoid giving personal opinions, the expert witnesses provide technical or personal opinions related to their special expertise or experience. In addition, the expert witnesses can refer both to specific points of the *litis*, and also to any other relevant point of the litigation, provided they respect the purpose for which they were convened and their conclusions are sufficiently founded.<sup>23</sup> In this regard, in relation to the observations on the contents of the expert opinions, the Court understands that they do not contest their admissibility, but rather are designed to contest the probative value of the opinions. The pertinent parts of these opinions will be considered in the corresponding chapters of this judgment.

29. In particular, with regard to the State's observations on the alleged biased and partial result of the expert opinion of Ms. Vázquez González, the expert witness stated during the public hearing that she “was able to review some of [the documents from the cases involving the Barrios family] related [...] basically to the final decisions in the different cases,” so that she answered the questions she was asked in that regard, based on the information she had. The Court will consider the content of this expert opinion to the extent that the expert witnessed referred to specific facts and situations of the investigations that she was aware of and that fell within her expertise; moreover, the expert opinion complied with the purpose for which it was requested (*supra* para. 14). Regarding the methodology of Mr. Baraybar’s opinion, without prejudice to taking into account the State’s observations, the Court notes that the said opinion includes an explanation of the procedure used. Expert witness Baraybar indicated that he had based his study on the documentation presented to the Court by Venezuela and compared the procedures used in the investigations into the alleged extrajudicial executions with the relevant international standards. The Court considers that the objection to the method used by the expert witness, which is sufficiently explained in his opinion, does not affect its admissibility. Lastly, regarding the State's argument that the expert opinion of Ms. Valdez Labadi does not correspond to the purpose established by the President, the Court will consider the State’s observation and reiterates that it only admits statements that are in keeping with the purpose opportunely defined (*supra* para. 14). Based on the foregoing, the Court admits the expert opinions indicated, to the extent that they are in keeping with the purpose required, and will assess them together with the rest of the body of evidence, taking into account the observations of the State, and the rules of sound judicial discretion.

## VI PRELIMINARY CONSIDERATIONS

### *A. Discontinuance of two members of the family*

30. On June 6, 2011, the representatives advised that Dalila Ordalyz Ortuño and Junclis Esmil Rangel Terán, widows of Benito Antonio Barrios and Narciso Barrios, respectively, had expressed their intention “not to continue with the proceedings before the [Inter-American] Court

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<sup>23</sup> Cf. *Case of Reverón Trujillo v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of June 30, 2009. Series C No. 197, para. 42, and *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220, para. 48.

owing to the apprehensions that this has caused them and the impact it could have on their children, especially after the attempt on the life of Nestor Caudi [Barrios] in January 2011.”

31. In this regard, the Court takes note of the discontinuance by the alleged victims for the said reasons. Consequently, based on the express intention of Mrs. Ordalyz Ortuño and Mrs. Rangel Terán, communicated by their representatives, the Court will not rule on the alleged violations to their detriment.

### ***B. Facts alleged by the representatives – factual framework***

32. It has been the Court’s consistent case law that the alleged victims, their next of kin, or their representatives in the litigations before this Court may invoke the violation of rights other than those included in the application, provided they do not allege facts that are not included in the application, because the latter establishes the factual framework for the proceedings. In addition, since a contentious case is, above all, a litigation between a State and a petitioner or presumed victim, the latter may refer to facts that explain, contextualize, clarify or reject those mentioned in the application, or respond to the State’s claims by means of their arguments and the evidence they provide, without impairing the procedural balance or the adversarial principle, because the State is given the procedural opportunities to respond to these arguments at all stages of the proceedings.<sup>24</sup>

33. This case is the first submitted under the Court’s new Rules of Procedure in which, in accordance with their Article 35, the Commission submitted the case without an application, but rather by presenting the report referred to in Article 50 of the Convention. According to Article 35(3) of the Rules of Procedure, the Commission must indicate which of the facts contained in that report are submitted to the consideration of Court. In its submission brief, the Commission indicated that “it submit[ted] to the Court’s jurisdiction all the facts [...] described in Report on Merits No. 11/10.” Thus, the Report on Merits constitutes the factual framework of the proceedings before the Court, so that it is not admissible to argue facts other than those described in it, without prejudice to indicating those that explain, clarify or reject the facts mentioned in the report.

34. The representatives indicated that, on June 19, 2004, police officials detained Gustavo Ravelo in the Camatagua police station and that his father “had to give money to the agent responsible for his custody to obtain his release.” In addition, they indicated that Victor Daniel Cabrera Barrios had been deprived of his liberty on several occasions in 2009, during which he had suffered ill-treatment, and received blows to his face and different parts of his body.

35. As regards their conformity with the factual framework presented in the Merits Report, the Commission did not refer to the above-mentioned facts described by the representatives. Also, in presenting these facts, the representatives did not argue that they were designed to

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<sup>24</sup> Cf. *Case of the “Five Pensioners” v. Peru. Merits, reparations and costs*. Judgment of February 28, 2003. Series C No. 98, para. 155, and *Case of López Mendoza*, *supra* note 16, para. 27.

“explain, clarify or reject” the facts mentioned in the Merits Report. The representatives merely noted, in relation to the alleged detention of Victor Daniel Cabrera Barrios, in a footnote, that “the Court was informed [of the said facts] in a brief of May 15, [2010],” in the proceedings on the provisional measures in force.<sup>25</sup> In this regard, according to the above-mentioned criteria, the Court will not consider the facts alleged by the representatives that are not part of the Commission’s Report on Merits, or that do not explain, clarify or reject the facts it has presented. Accordingly, the Court will not refer to the legal arguments submitted by the representatives based on the above facts.

## VII RIGHTS TO LIFE, PERSONAL INTEGRITY, PERSONAL LIBERTY, AND RIGHTS OF THE CHILD, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS

### *A. Introduction*

36. The instant case refers to alleged human rights violations against members of the Barrio family, most of whom resided in Guanayén, Aragua state, Venezuela. In 1998, the family consisted of Justina Barrios, her 12 children, their respective partners, and 22 grandchildren. Since then and to date, four sons and three grandsons of Justina Barrios have been shot and killed in incidents that occurred in 1998, 2003, 2004, 2005, 2009, 2010 and 2011. In addition, in 2003, the homes of some of them were searched and their personal property seized and destroyed; while other members of the family, including children, have been detained, assaulted, and threatened on numerous occasions in 2004 and 2005. Several members of the family have left Guanayén and moved elsewhere.

37. In order to examine the alleged international responsibility of the State of Venezuela for the violation of the rights to life,<sup>26</sup> personal integrity,<sup>27</sup> personal liberty,<sup>28</sup> and the rights of the

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<sup>25</sup> Brief with pleadings, motions and evidence (merits file, tome II, folio 317).

<sup>26</sup> Article 4(1) of the American Convention indicates that “[e]very 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.”

<sup>27</sup> The relevant part of Article 5 of the American Convention establishes that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

<sup>28</sup> The relevant part of Article 7 of the American Convention indicated that:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without

child,<sup>29</sup> in relation to the obligation to respect and to guarantee those rights,<sup>30</sup> the Court will make some preliminary considerations on the alleged context in which the facts occurred according to the Commission and the representatives. Then, it will summarize the arguments of the parties, establish the facts it considers proven, and make the pertinent considerations on: the obligation to respect the rights to life, and to personal integrity and liberty, and the rights of the child in relation to the deaths, detentions, assaults and threats against certain members of the Barrios family, as well as the State's obligation to prevent violations and to guarantee those rights, in relation to four deaths and one attempt on the life of members of the family who were beneficiaries of measures of protection ordered by the inter-American human rights system.

### ***B. Context***

38. The Inter-American Commission stated that “the facts of this case form part of a specific pattern of persecution against members of to family which, in turn, is part of a more general problem of extrajudicial executions by the regional police in Venezuela, with significant incidence in Aragua state.” Several of the “murders have been preceded by threats against and physical injuries to the victims and these acts have continued against other members of the family, especially those who witnessed the previous incidents or dared to denounce them.” Lastly, “the series of incidents reveals a pattern of concealment that begins with the perpetrators’ distortion of the events, continues with the lack of judicial elucidation, and includes the implementation of various types of threats and harassment designed to prevent the determination of the truth and the identification of those responsible. All of the above [...] has been tolerated by the different State authorities.

39. The representatives stated that, in Venezuela, there is a serious problem of the violation of fundamental rights by State agents, including illegal arrests, followed by extrajudicial executions, as well as arbitrary searches, which are carried out with excessive and indiscriminate use of force.” In turn, the “phenomenon of extrajudicial executions by police officials [...] is closely related to the widespread impunity that characterizes the administration of justice.” In addition, they indicated that: (a) the extrajudicial executions by State agents involve a specific *modus operandi*; (b) the victims are “generally young men, including a considerable number of minors, belonging to the poorest sectors of the population,” and (c) a “generalized situation of impunity” exists.

40. The State asserted that the deaths of the members of the Barrios family “are isolated incidents and there is no evidence to establish common grounds that connect them. To date, the only two cases in which officers have been charged because there was a confrontation with the

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prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

<sup>29</sup> Article 19 of the American Convention establishes that “[e]very minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the State.”

<sup>30</sup> Article 1(1) of the American Convention establishes that “[t]he States Parties to [t]his 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.”

police [are those] of Benito Antonio Barrios and Narciso Barrios. In the other four cases, there is no conclusive evidence determining that confrontations with police officers [occurred]; and, [in the case of] the last victim, Juan José Barrios, it was found that the perpetrator had no ties with police officials.” Furthermore, “it is unreasonable for the Inter-American Commission to assert that Venezuela has a State policy of extrajudicial executions [...], using the case of the Barrios family as an example; moreover, although it is unfortunately true that seven members of the family have died, it is no less true that the Venezuelan State has been conducting systematic investigations into each incident. Lastly, it asked the Court to “examine this case carefully, [because] it cannot be generalized to draw such absurd conclusions as that extrajudicial executions are a State policy in Venezuela.

41. The Commission and the representatives referred to two contexts in the instant case: (a) one of extrajudicial executions by police groups in Venezuela, and (b) another of persecution against the Barrios family. The Court observes that both the Commission’s Report on Merits, and the representatives’ pleadings and motions brief and final written arguments refer to reports by State agencies and non-governmental organizations, which the parties did not provide to the body of evidence in this case, in keeping with the provisions of Articles 35(1)(e) and 42(2)(b). To prove the alleged context, the Commission and the representatives submitted five reports of the Ombudsman’s Office for 2001, 2002, 2003, 2006 and 2008, the 2009 National Survey on Victimization and Perception of Public Safety, and a 2005 report by COFAVIC on para-police groups.

42. In this regard, the Court notes that the 2009 Survey on Victimization randomly interviewed 5,496 households in the country between September and October of 2006. One of its objectives was “to identify and to describe the public’s perception of vulnerability and public safety in relation to criminal activities and the social responses to crime.” However, the Survey does not refer to the phenomenon of extrajudicial executions alleged by the parties. Among other aspects, the COFAVIC report identifies the characteristics, the population affected, and the *modus operandi* of “para-police groups” in Venezuela, and also analyzes the actions of these groups in the states of Anzoátegui, Falcón, Portuguesa and Yaracuy.

43. In addition, in several of its annual reports from 2001 to 2008, the Ombudsman’s Office emphasized the existence of a *modus operandi* in which: (a) extrajudicial executions “were preceded by threats”; (b) “the victims were clearly determined”; (c) “the perpetrators possessed significant logistics (weapons, vehicles) and had a specific organization involving [...] active or retired municipal, regional or State police agents”;<sup>31</sup> (d) witnesses and next of kin of the victims were threatened or harassed,<sup>32</sup> and (e) very few of such cases are prosecuted.<sup>33</sup> Moreover, according to the reports of the Ombudsman’s Office, 392 extrajudicial executions were reported

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<sup>31</sup> Cf. Report of the Ombudsman’s Office, 2002 Annual Report (file of attachments to the representatives’ final written arguments, tome I, attachment 3, folio 7734). See also Report of the Ombudsman’s Office, 2006 Annual Report (file of attachments to the representatives’ final written arguments, tome II, attachment 6, folio 7889).

<sup>32</sup> Cf. Report of the Ombudsman’s Office, 2003 Annual Report (file of attachments to the representatives’ final written arguments, tome I, attachment 4, folio 7794), and Report of the Ombudsman’s Office, 2006 Annual Report, *supra* note 31, folio 7889.

<sup>33</sup> Cf. Report of the Ombudsman’s Office, 2003 Annual Report, *supra* note 32, folio 7802.

in Venezuela in 2002, 379 in 2003, 155 in 2006, and 134 in 2008.<sup>34</sup> In addition, the 2006 Annual Report of this office highlighted, among the factors that explain the reduction in the number of extrajudicial executions, “the unequivocal condemnation that has been expressed at the highest level with regard to this type of conduct [...]; the deterrent effect of the measures taken to punish law enforcement agents who commit abusive acts [...], and the increase in the training programs on human rights for the security agencies.”<sup>35</sup>

44. The Court observes that the evidence provided is insufficient to permit the Court to rule on the existence of the alleged context of extrajudicial executions in Venezuela or in Aragua state. Moreover, regarding the alleged context in relation to the Barrios family, the Court will examine this opportunely, after considering the facts of the case and the evidence available.

### *C. General considerations of the Court*

45. The Court has established that, according to Article 1(1) of the Convention, States are obliged to respect and guarantee the human rights established therein. The State’s international responsibility arises from acts or omissions of any of its powers or organs, irrespective of their hierarchy, that violate the American Convention.<sup>36</sup>

46. Regarding the obligation to respect rights, the Court has held that, pursuant to this article, the first obligation assumed by States Parties is “to respect the rights and freedoms” recognized in the Convention. Thus, the notion of restricting the exercise of the State’s power is necessarily included in the protection of human rights.<sup>37</sup>

47. Regarding the obligation to guarantee rights, the Court has established that it can be fulfilled in different ways, based on the specific right that the State must ensure and the particular needs for protection,<sup>38</sup> owing to either the personal circumstances or the specific situation involved.<sup>39</sup> This obligation entails the duty of the States to organize the entire government apparatus and, in general, all the structures through which public power is exercised, so that they are capable of legally ensuring the free and full enjoyment of human rights.<sup>40</sup> As part

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<sup>34</sup> File of attachments to the representatives’ final written arguments, tome I and II, attachments 4, 5 and 6, folios 7792, 7888 and 8100.

<sup>35</sup> Cf. Report of the Ombudsman’s Office, 2006 Annual Report, *supra* note 31, folio 7888.

<sup>36</sup> Cf. *Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary objection, merits, reparations and costs* Judgment of July 10, 2007. Series C No. 167, para. 79, and *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary objection, merits, reparations and costs.* Judgment of November 16, 2009. Series C No. 205, para. 234.

<sup>37</sup> Cf. The Word “Laws” in Article 30 of the American Convention on Human Rights, Advisory Opinion OC-6/86 of May 9, 1986. Series A No. 6, para. 21. Also, *Case of González et al. (“Cotton Field”), supra* note 36, para. 235.

<sup>38</sup> Cf. *Case of the “Mapiripán Massacre” v. Colombia. Merits, reparations and costs.* Judgment of September 15, 2005. Series C No. 134, paras. 111 and 113, and *Case of Gelmán v. Uruguay. Merits and reparations.* Judgment of February 24, 2011. Series C No. 221, para. 76.

<sup>39</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations and costs.* Judgment of January 31, 2006. Series C No. 140, para. 111, and *Case of Vera Vera et al. v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of May 19, 2011 Series C No. 224, para. 42.

<sup>40</sup> Cf. *Case of Velásquez Rodríguez, supra* note 15, para. 166, and *Case of Gelmán, supra* note 38, para. 189.

of this obligation, the State has a legal obligation 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>41</sup> The decisive factor is to determine whether “a specific violation [...] has occurred with the support or tolerance of the public authorities, or whether they have acted in such a way that the violation has been committed without any measures being taken to prevent it or to punish those responsible.”<sup>42</sup>

48. The Court has also indicated that the right to life plays a fundamental role in the American Convention, as it is the essential assumption for the exercise of all other rights. States have the obligation to guarantee the creation of the necessary conditions to ensure that violations of this inalienable right do not occur and, in particular, the obligation to prevent its agents from violating it. Compliance with Article 4, in relation to Article 1(1) of the American Convention, not only supposes that no one shall be deprived of his life arbitrarily (negative obligation), but also requires the States to adopt all appropriate measures to protect and preserve the right to life (positive obligation),<sup>43</sup> in accordance with the obligation to ensure the free and full exercise of the rights of all those subject to its jurisdiction.<sup>44</sup>

49. Based on the above, the States must, in particular, ensure that their security forces, which are entitled to the legitimate use of force, respect the right to life of those under its jurisdiction. In previous cases, the Court has had the opportunity to rule on the criteria for the legitimate use of force by members of State security forces. The facts of this case are analyzed in light of these criteria. In this regard, the use of force by State security forces: (a) must be exceptional and must be planned, and limited proportionately by the authorities. In this regard, coercive measures or force can only be used once all other means of control have been exhausted and have failed; (b) as a general rule, the use of firearms and lethal force against the individual must be prohibited, and the exceptional use must be established by law and be interpreted restrictively, so that it is only that which is “absolutely necessary” in relation to the force or threat to be prevented; (c) it must be limited by the principles of proportionality, necessity and humanity. Thus, excessive or disproportionate use of force by law enforcement officials that results in loss of life may amount to arbitrary deprivation of life, and (d) domestic law must establish standards for the use of lethal force and firearms by State agents that are sufficiently clear, as well as to ensure independent control of its legality. The obligation to open a serious, independent, impartial and effective investigation when security agents are known to have used firearms with lethal consequences constitutes a fundamental and determinant element for the protection of the right to life which has been annulled in such situations.<sup>45</sup>

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<sup>41</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 15, para. 174, and *Case of Torres Millacura et al. v. Argentina. Merits, reparations and costs*. Judgment of August 26, 2011. Series C No. 229, para. 98.

<sup>42</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 15, para. 173, and *Case of González et al. (“Cotton Field”)*, *supra* note 36, para. 236.

<sup>43</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Merits*. Judgment of November 19, 1999. Series C No. 63, para. 139, and *Case of Vera Vera et al.*, *supra* note 39, para. 41.

<sup>44</sup> Cf. *Case of the Pueblo Bello Massacre*, *supra* note 39, para. 120, and *Case of Xákmok Kásek Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of August 24, 2010 Series C No. 214, para. 187.

<sup>45</sup> Cf. *Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations and costs*. Judgment of July 4, 2007. Series C No. 166, paras. 81, 83, 84, 86 and 88. Also, cf. *Case of Montero Aranguren et al. (Retén de Catia) v.*

50. The American Convention also expressly recognizes the right to personal integrity, a legal right whose protection includes the main purpose of the absolute prohibition of torture and cruel, inhuman or degrading punishment or treatment.<sup>46</sup> In its case law, this Court has considered that the said prohibition belongs today to the domain of *ius cogens*.<sup>47</sup> The right to personal integrity cannot be suspended under any circumstance.<sup>48</sup>

51. Thus, an international juridical system has been established for the absolute prohibition of all forms of torture, both physical and mental; and, regarding the latter, it has been recognized that threats and the real danger that an individual may be subjected to serious physical injury can produce, in certain circumstances, moral anguish of such a degree that it can be considered “mental torture.”<sup>49</sup>

52. The Court has already established that “[t]he violation of the right to physical and mental integrity of the individual is a type of violation that has several levels ranging from torture to other types of humiliation or cruel, inhuman or degrading treatment, the physical and mental aftereffects of which vary in intensity according to endogenous and exogenous factors that must be established in each specific situation.”<sup>50</sup> In other words, the personal characteristics of an alleged victim of torture or cruel, inhuman or degrading treatment must be taken into account when determining whether their personal integrity has been violated and, consequently, the suffering and the sense of humiliation is increased when the individual is subjected to certain types of treatment.<sup>51</sup> In addition, the Court has indicated that any use of force that is not strictly necessary to ensure the appropriate behavior of a detainee constitutes an attack against human dignity in violation of Article 5 of the American Convention.<sup>52</sup>

53. Article 7 of the Convention embodies guarantees that represent limits to the exercise of authority by State agents. Those limits apply to the instruments of State control, one of which is detention. This measure must conform to the guarantees recognized in the Convention, provided

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*Venezuela. Preliminary objection, merits, reparations and costs.* Judgment of July 5, 2006. Series C No. 150, paras. 66, 67, 68 and 75.

<sup>46</sup> Cf. *Case of Ximenes Lopes v. Brazil. Merits, reparations and costs.* Judgment of July 4, 2006. Series C No. 149, para. 126, and *Case of Torres Millacura et al.*, *supra* note 41, para. 84.

<sup>47</sup> Cf. *Case of Cantoral Benavides v. Peru. Merits.* Judgment of August 18, 2000. Series C No. 69, para. 95, and *Case of Torres Millacura et al.*, *supra* note 41, para. 84.

<sup>48</sup> Cf. *Case of the “Children’s Rehabilitation Institute” v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 157, and *Case of Torres Millacura et al.*, *supra* note 41, para. 84.

<sup>49</sup> Cf. *Case of Cantoral Benavides*, *supra* note 47, para. 102, and *Case of Torres Millacura et al.*, *supra* note 41, para. 85.

<sup>50</sup> *Case of Loayza Tamayo*, *supra* note 20, para. 57, and *Case of Torres Millacura et al.* *supra* note 41, para. 86.

<sup>51</sup> Cf. *Case of Ximenes Lopes*, *supra* note 46, para. 127, and *Case of Torres Millacura et al.*, *supra* note 41, para. 86.

<sup>52</sup> Cf. *Case of Loayza Tamayo*, *supra* note 20, para. 57, and *Case of Cabrera García and Montiel Flores*, *supra* note 23, para. 133.

that its application is exceptional and respects the principles of the presumption of innocence, and of legality, necessity, and proportionality essential in a democratic society.<sup>53</sup>

54. In this regard, the Court has established that Article 7 of the Convention contains two very distinct types of regulations: one general, the other specific. The general one is contained in the first paragraph: “[e]very person has the right to personal liberty and security”; while the specific one is composed of a series of guarantees established in paragraphs 2 through 7. In particular, Article 7(2) of the Convention establishes that “[n]o one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the Constitution of the State Party concerned or by a law established pursuant thereto.” The legal exception must necessarily be accompanied by the prior definition principle, which obliges the States to establish, as specifically as possible and “beforehand,” the “reasons” and “conditions” for the deprivation of physical liberty. Furthermore, Article 7(3) of the American Convention establishes that “[n]o one shall be subject to arbitrary arrest or imprisonment.” This means that, together with the provisions concerning the legal exception, any deprivation of liberty that is not based on a concrete reason or motive may be arbitrary and, thus, violate Article 7(3) of the Convention.<sup>54</sup> In addition, Article 7(4) of the American Convention establishes that “[a]nyone who is detained shall be informed of the reasons for his detention.” Lastly, Article 7(5) of the Convention provides that the detention of an individual must be subject to immediate judicial review, as a way to prevent arbitrary and unlawful detentions.<sup>55</sup> Any violation of paragraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof.<sup>56</sup>

55. The Court has previously indicated that, under Article 19 of the American Convention, the State must assume a special position of guarantor with greater care and responsibility, and take special measures or provide particular attention to guarantee the principle of the best interests of the child.<sup>57</sup> The State also has the obligation to adopt all positive measures to ensure the full exercise of the rights of the child.<sup>58</sup> In this regard, it must pay special attention to the

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<sup>53</sup> Cf. *Case of the “Children’s Rehabilitation Institute”*, *supra* note 48, para. 228, and *Case of Torres Millacura et al.*, *supra* note 41, para. 71.

<sup>54</sup> Cf. *Case of García Asto and Ramírez Rojas v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 25, 2005. Series C No. 137, paras. 128 and 143, and *Case of Torres Millacura et al.*, *supra* note 41, para. 78.

<sup>55</sup> Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, para. 129, and *Case of Cabrera García and Montiel Flores*, *supra* note 23, para. 93.

<sup>56</sup> Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 54, and *Case of Torres Millacura et al.*, *supra* note 41, para. 72.

<sup>57</sup> Cf. *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17, paras. 56, 59 and 60; *Case of Servellón García v. Honduras. Merits, reparations and costs*. Judgment of September 21, 2006. Series C No. 152, para. 116, and *Case of Rosendo Cantú et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 31, 2010. Series C No. 216, para. 201.

<sup>58</sup> Cf. *Juridical Status and Human Rights of the Child*, *supra* note 57, para. 91, and *Case of Servellón García*, *supra* note 57, para. 114.

needs and the rights of children, based on their especially vulnerable situation.<sup>59</sup> The State's obligation to protect the best interests of children exists during any proceedings in which they are involved.<sup>60</sup> Moreover, the "measures of protection" mentioned in Article 19 of the American Convention include those relating to non-discrimination, the prohibition of torture, and the conditions that must be observed in cases of the deprivation of the liberty of children.<sup>61</sup> Lastly, the detention of minors must be exceptional and for the briefest period possible.<sup>62</sup>

56. The Court will now analyze the State's obligation to respect the rights to life, and to personal integrity and liberty, and the rights of the child, of certain members of the Barrios family. It will then examine the obligation to prevent the violation of those rights and to guarantee them.

#### ***D. Obligation to respect rights***

##### ***1. Rights to life, personal integrity and personal liberty of Benito Antonio Barrios and Narciso Barrios***

###### *i. Arguments of the parties*

57. With regard to the detention and death of Benito Antonio Barrios, the Commission observed that: (a) the testimony of his next of kin coincided and was consistent as regards the main elements of the incident; (b) the prosecutor concluded that his death was preceded by his arrest, and therefore, could not be characterized as a confrontation, and (c) the State has not clarified what happened or explained satisfactorily whether the use of force was legitimate, proportionate or necessary. The State failed to comply with its obligation to respect the rights to personal integrity, personal liberty and life of Benito Antonio Barrios. Venezuela also failed to comply with its obligation to guarantee those rights by not conducting a serious and diligent investigation to clarify what happened to the victim, determine the legality of the use of lethal force, and, as appropriate, impose the corresponding punishments. Based on the foregoing, the State violated the rights established in Articles 4(1), 5(1), 5(2) and 7(1) to 7(5) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Benito Antonio Barrios.

58. Regarding the murder of Narciso Barrios, the Commission stated that "he was extrajudicially executed by police officials of Aragua state," basing itself, among other elements, on how the incident occurred, which was consistent with an extrajudicial execution and failed to corroborate a confrontation. In addition, the State has provided no evidence to refute this

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<sup>59</sup> Cf. *Juridical Status and Human Rights of the Child*, *supra* note 57, paras. 60, 86 and 93; *Case of the Dos Erres Massacre v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 24, 2009. Series C No. 211, para. 184, and *Case of Rosendo Cantú et al.*, *supra* note 57, para. 201.

<sup>60</sup> Cf. Committee on the Rights of the Child. General comment No. 12: The right of the child to be heard, fifty-first session, 2009, U.N. Doc. CRC/C/GC/2009, 20 July 2009, para. 70. Also, *cf. Case of Rosendo Cantú et al.*, *supra* note 57, para. 201.

<sup>61</sup> Cf. *Case of the Gómez Paquiyauri Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, para. 168.

<sup>62</sup> Cf. *Case of Bulacio*, *supra* note 55, para. 135, and *Case of the Gómez Paquiyauri Brothers*, *supra* note 61, para. 169.

conclusion. The Commission considered that the State had failed to comply with the obligation to respect and ensure the right to life of Narciso Barrios and had violated Article 4(1) of the Convention, in relation to Article 1(1) thereof, to his detriment.

59. The representatives agreed with the Inter-American Commission as regards the detention and murder of Benito Antonio Barrios, and added that Article 43 of the Venezuelan Constitution establishes “the inviolability [of the right to life,] and the special obligation to protect individuals deprived of liberty or subjected in some way to the State’s authority.” In addition, they indicated that: (a) the detention constituted an act of abuse of authority, it was not ordered by the competent authority, and its purpose was not to bring the victim before to judge or other official authorized by law to decide whether it was lawful, and (b) Benito Antonio Barrios was in good health at the time of his arrest; therefore, Venezuela must provide a satisfactory and convincing explanation of what happened and disprove the allegations regarding its responsibility with valid probative elements.” They held that “in the absence of an investigation that refutes this assumption, [his] death [...] must be considered an extrajudicial execution.” Consequently, they asked the Court to declare the violation of Articles 4, 5 and 7 of the Convention, in relation to Article 1(1) thereof, to the detriment of Benito Antonio Barrios.

60. In addition, they indicated that the number of shots fired at Narciso Barrios was completely disproportionate, because he was unarmed. Moreover, they stated that “[i]t is not possible to determine a single element that would justify the actions of the State agents.” They also affirmed that Narciso Barrios experienced great suffering and fear prior to his death and, consequently, asked the Court to declare the violation of the rights to life and to personal integrity of Narciso Barrios, established in Articles 4 and 5 of the Convention, in relation to Article 1(1) thereof.

61. The State indicated that in the cases of Benito Antonio Barrios and Narciso Barrios it “had verified that there had been complicity among the agents of the Aragua state police and that they simulated a police confrontation.” In both cases, officials have been charged with the acts.

## *ii. Facts*

62. In the early morning hours of August 28, 1998, four Aragua state police officials removed Benito Antonio Barrios from his residence, beat him, and shot and wounded him.<sup>63</sup> His two sons, Jorge Antonio and Carlos Alberto Ortuño,<sup>64</sup> were in the house, witnessed the initial assault

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<sup>63</sup> Cf. Record of interview with Jorge Antonio Barrios Ortuño before the Technical Unit of the Judicial Police on January 27, 1999 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 2927); Affidavit made by Carlos Alberto Ortuño (merits file, tome III, folio 1053), and Record of interview with Jorge Antonio Barrios Ortuño by the Forensic and Scientific Crime Investigation Unit on January 5, 2006 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 2940). See also, Police record of the Barbaças Public Order and Security Force of August 28, 1998 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 2921) and Indictment of the Transitory Regime Prosecutor of April 17, 2007 (file of attachments to the answering brief, tome I, attachment 1, folio 4478).

<sup>64</sup> The Court observes that the Commission and the representatives refer to Carlos Alberto Ortuño with the last names “Barrios Ortuño” or “Ortuño Ortuño”; however, there are several official documents that refer to “Carlos Alberto Ortuño” in the file. Also, on his identity document forwarded with the affidavit his complete name appears as Carlos Alberto Ortuño; the Court will therefore use this form of his name in the judgment.

against their father and went to the house of their grandmother, Justina Barrios.<sup>65</sup> Upon learning of the events, Víctor Daniel Cabrera Barrios, Lilia Ysabel Solórzano Barrios and Darelbis Carolina Barrios, all of whom were at Justina Barrios' residence, went to the home of Benito Antonio Barrios and saw the police officials taking him away handcuffed, injured and bleeding.<sup>66</sup> Luis Alberto Barrios was present during the initial moments of the police operation; he fled the scene, and was wounded in the leg.<sup>67</sup> The police took Benito Antonio Barrios to the town's health clinic and, since there was no doctor on duty, they took him to the Barbacoas outpatients' clinic, where he was pronounced dead on arrival.<sup>68</sup> The police officials involved in the operation reported an "exchange of shots [...] where one of [the subjects] was injured."<sup>69</sup> The two shots that resulted in the death of Benito Antonio Barrios were fired "at point blank range, downwards, and towards the target (the victim)."<sup>70</sup> The prosecutor charged the four police officials with the intentional homicide of Benito Antonio Barrios.<sup>71</sup>

63. On December 11, 2003, at approximately 10.30 p.m., Narciso Barrios, accompanied by Nestor Caudi Barrios, attempted to oppose the arrest of the minor, Jorge Antonio Barrios Ortuño, who along with others, had been detained by police officials.<sup>72</sup> Narciso Barrios ran after the police who were taking Jorge Antonio Barrios away, and shouted at them for an explanation. When he tried to get in front of them, the police drew their weapons and fired at him several

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<sup>65</sup> Cf. Record of interview with Jorge Antonio Barrios Ortuño on January 27, 1999, *supra* note 63, folio 2927; Record of interview with Jorge Antonio Barrios Ortuño on January 5, 2006, *supra* note 63, folios 2940 and 2941, and Affidavit made by Carlos Alberto Ortuño, *supra* note 63, folio 1053.

<sup>66</sup> Cf. Record of interview with Víctor Daniel Cabrera Barrios by the Technical Unit of the Judicial Police on February 25, 1999 (file of attachments to the Commission's Report No. 11/10, tome I, attachment 1, folio 2931), and Records of interview with Lilia Solorzano Barrios and Darelbis Carolina Barrios by the Forensic and Scientific Crime Investigation Unit on August 17, 2006 (file of attachments to the Commission's Report No. 11/10, tome I, folios 3131, 3132, 3136 and 3137).

<sup>67</sup> Cf. Record of interview with Jorge Antonio Barrios Ortuño by the Forensic and Scientific Crime Investigation Unit on August 17, 2006 (file of attachments to the Commission's Report No. 11/10, tome I, attachment 1, folio 3133); Police record of the Technical Unit of the Judicial Police of August 28, 1998, *supra* note 63, folio 2921, and Police record of the Technical Unit of the Judicial Police of August 28, 1998 (file of attachments to the Commission's Report No. 11/10, tome I, attachment 1, folio 2910). See also, Record of interview with Eloisa Barrios by the Forensic and Scientific Crime Investigation Unit on August 17, 2006 (file of attachments to the Commission's Report No. 11/10, tome I, attachment 1, folio 3130).

<sup>68</sup> Cf. Police record of August 28, 1998, *supra* note 63, folio 2921. See also the prosecution's indictment brief of April 17, 2007, *supra* note 63, folio 4478.

<sup>69</sup> Cf. Police record of August 28, 1998, *supra* note 63, folio 2921.

<sup>70</sup> Cf. Analysis and reconstruction of the facts by the Forensic and Scientific Crime Investigation Unit on September 4, 1998 (file of attachments to the Commission's Report No. 11/10, tome I, attachment 1, folio 3147).

<sup>71</sup> Cf. The prosecution's indictment brief of April 17, 2007, *supra* note 63, folios 4477 to 4497.

<sup>72</sup> Cf. Record of interview with Teran Bennedani La Rosa by the Forensic and Scientific Crime Investigation Unit on June 9, 2004 (file of attachments to the answering brief, tome III, attachment 17, folio 6009); Record of interview with Pablo Julian Solórzano Barrios by the Forensic and Scientific Crime Investigation Unit on June 9, 2004 (file of attachments to the answering brief, tome III, attachment 17, folio 6013); Record of interview with Walter Rafael Pacheco Urrutia by the Forensic and Scientific Crime Investigation Unit on June 22, 2004 (file of attachments to the answering brief, tome III, attachment 17, folio 6015); Record of interview with Néstor Caudi Barrios by the Forensic and Scientific Crime Investigation Unit on May 27, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 5964 and 5965).

times; he died as a result of this action.<sup>73</sup> The three police agents involved in this incident stated that they fired at least 10 times to “protect [their] physical integrity and repel” Narciso Barrios and Nestor Caudi Barrios.<sup>74</sup> Furthermore, three people also stated that Narciso Barrios was armed at the time of the incident.<sup>75</sup> The prosecutor responsible for the investigation charged the three Aragua state police agents with the crime of “complicity to commit aggravated murder” and indicated that the accused “engaged in criminal conduct [by using a] weapon against an unarmed individual, thereby altering the circumstances of the incident and giving rise to the responsibility of the perpetrators, who were present at the scene of the crime at all times, which corroborated their intent, guilt and criminal responsibility.”<sup>76</sup>

### *iii. Considerations of the Court*

64. Based on the available evidence and the State’s declarations at the public hearing that “there was complicity between the officials of the Aragua State Police and simulation of a confrontation with the police,” the Court finds that there is no dispute about the fact that Benito Antonio Barrios and Narciso Barrios were deprived of their life by State agents, and that the former was detained by Aragua State police officials prior to his death.

65. In the case of Benito Antonio Barrios, from the evidence provided by the parties, and taking into consideration the State’s assertion that a confrontation was simulated, the Court considers that his arrest was not carried out *in flagrante delicto* and was not the result of a court order. Consequently, the Court concludes that Benito Antonio Barrios was arrested illegally by members of the Aragua Police, who deprived him of his life shortly afterwards. Thus, it is not necessary to determine whether the victim was taken promptly before the competent judicial authority or whether he was informed of the reason for his arrest. The arrest of Benito Antonio Barrios evidently constituted an illegal act; it was not ordered by a competent authority and its

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<sup>73</sup> Cf. Record of interview with Néstor Caudi Barrios on May 27, 2004, *supra* note 72, folios 5964 and 5965; Record of interview with Jorge Antonio Barrios Ortuño by the Forensic and Scientific Crime Investigation Unit on June 9, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 6006 and 6007); Result of autopsy of December 13, 2003 (file of attachments to the answering brief, tome III, attachment 17, folio 5971). See also, Criminal indictment brief of the Twentieth Prosecutor of Aragua state with competence for the protection of fundamental rights of March 6, 2005 (file of attachments to the answering brief, tome III, attachment 17, folio 5820).

<sup>74</sup> Cf. Record of interview with Marcos Antonio Moreno Dorta by the Twentieth Prosecutor of Aragua state on November 26, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 6052 a 6056); Record of interview with Leomar José Rovira Mendoza by the Twentieth Prosecutor of Aragua state on November 26, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 6057 to 6059); Record of interview with José Luis Riasco León by the Twentieth Prosecutor of Aragua state on November 26, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 6060 to 6062).

<sup>75</sup> Cf. Record of interview with Walter Rafael Pacheco Urrutia at the Barbacoas Police Station on December 12, 2003 (file of attachments to the answering brief, tome III, attachment 17, folio 5951); Record of interview with Antonio Maria Macallo Martínez at the Barbacoas Police Station on December 12, 2003 (file of attachments to the answering brief, tome III, attachment 17, folios 5953 and 5955), and Record of interview with Yonis Mauricio Villegas Aparicio at the Barbacoas Police Station on December 12, 2003 (file of attachments to the answering brief, tome III, attachment 17, folio 5958).

<sup>76</sup> Cf. Criminal indictment brief of March 6, 2005, *supra* note 73, folios 5848 and 5850.

purpose was not to bring him before to judge or other official authorized by law, so that it is unnecessary for the Court to rule on the alleged arbitrary nature of the measure.

66. In addition, Néstor Castellano Morelos, a witness before the Court proposed by the State, declared that he was “certain, as a party [...] in good faith to, and responsible for [...] the criminal prosecution, [that] it was the police officials who acted with excess when executing a police operation.” Moreover, those who witnessed the incident indicated that the police agents entered the home of Benito Antonio Barrios, beat him in front of his children, and took him away, handcuffed and injured, in a police car (*supra* para. 62). In addition, the forensic examination determined that he was shot from above, indicating the victim’s position of helplessness, which does not support the version of a confrontation reported by the police officials involved. In addition to having been assaulted by the police agents, it can be presumed that Benito Antonio Barrios felt anguish and feared for his life while he was in state custody and until his death.

67. Regarding the death of Narciso Barrios, the Court observes that the police officials involved in his death reported that it resulted from a confrontation, while three people testified before the Barbacoas Police Station that the victim was armed and that they “heard” shots being fired by Narciso Barrios. The Court observes that two of these deponents had been arrested by the police officials together with the youth Jorge Antonio Barrios moments before the death of Narciso Barrios, and made their statements before the Aragua state police, with no record of the presence of the Public Prosecution Service or a legal representative at the time. To the contrary, other witnesses, who testified before the Public Prosecution Service, stated that Narciso Barrios was unarmed when he was wounded. For its part, the Public Prosecution Service charged the three police officers with aggravated homicide and of accusing someone of being armed who did not carry a weapon, thus altering the scene of the crime (*supra* para. 63). In addition, the statements of the agents involved reveal that they fired at the victim at least 10 times (*supra* para. 63). However, even assuming that the victim was armed, a hypothesis rejected by the prosecution, the Court has no probative elements in this case, that would reveal a situation of imminent threat of death or injury justifying the use of force. Also, no evidence or arguments have been presented to the Court that the agents who took part in the events were complying with the requirement of “absolute necessity” in the use of force, or that they attempted another less lethal way of intervening.

68. Based on the above, the Court finds that the State violated Article 4(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Benito Antonio Barrios and Narciso Barrios. In addition, the attack on and illegal arrest of Benito Antonio Barrios constituted a violation of the right to personal integrity and personal liberty established, respectively, in Articles 5(1), 5(2), 7(1), and 7(2) of the American Convention, also in relation to Article 1(1) of that instrument, to his detriment.

**2. *Rights to personal integrity and personal liberty of Jesús Ravelo, Gustavo Ravelo, Luisa del Carmen Barrios, Elbira Barrios, Jorge Antonio Barrios, Rigoberto Barrios and Oscar José Barrios, and rights of the child of Jorge Antonio Barrios, Rigoberto Barrios and Oscar José Barrios***

*i. Arguments of the parties*

69. The Commission considered that the physical injuries inflicted on Jorge Antonio and Rigoberto Barrios on March 3, 2004, with no justification for the use of force, “constitute acts against their personal integrity and are, in themselves, evidence that their detention was arbitrary, because of both the methods utilized and the purpose pursued, all of which was in the context of police persecution of the family.” It stressed that the State had not provided information on the reasons for the detention or the treatment received by the victims. In addition, it argued that the purpose of the detention was to intimidate and threaten them, and to reduce their physical and psychological resistance, in relation to the complaint concerning the extrajudicial execution of Narciso Barrios filed two days earlier, which Jorge Antonio Barrios had witnessed. Lastly, it concluded that the State had failed to comply with its obligation to respect and guarantee the right to personal integrity and personal liberty and disregarded its obligation to provide special protection to children, violating the rights established in Articles 5(1), 5(2), 7(1), 7(2), 7(3), 7(4), 7(5) and 19 of the Convention, in relation to Article 1(1) thereof, to the detriment of Jorge Antonio Barrios Ortuño and Rigoberto Barrios.

70. In addition, with regard to the events of June 19, 2004, the Commission stated that, according to the information available, while Gustavo Ravelo, Jesús Ravelo, Luisa del Carmen Barrios, Elbira Barrios and the minors Oscar José Barrios and Jorge Antonio Barrios Ortuño were detained, the police used physical violence against the first three and the against the minors. Furthermore, the victims’ mental and moral integrity was affected by the verbal threats and insults and the shot fired by the police officers, which caused them profound fear because of the danger of being attacked or killed. Moreover, the Commission observed that the State did not provide any information on the reasons for the detention, or why the children Oscar José Barrios and Jorge Antonio Barrios Ortuño had been taken to a police station on that occasion. Thus, it considered that the State had failed to fulfill its obligation to respect and guarantee the rights to personal liberty and personal integrity of Jesús Ravelo, Gustavo Ravelo, Elbira Barrios, Luisa del Carmen Barrios, Oscar José Barrios and Jorge Antonio Barrios Ortuño. Consequently, the State violated the rights embodied in Articles 5, 7(1), 7(2) and 7(3) of the American Convention to the detriment of Jesús Ravelo, Gustavo Ravelo, Elbira Barrios and Luisa del Carmen Barrios, and the rights embodied in Articles 5(1), 7(1), 7(2), 7(3), 7(4), 7(5) and 19 of the Convention to the detriment of Oscar José Barrios and Jorge Antonio Barrios Ortuño, all in relation to Article 1(1) of the Convention.

71. The representatives asserted that the deprivations of liberty indicated by the Commission were not carried out in accordance with the requirements and conditions established in domestic law. Also, the State has not provided any documentary evidence with regard to these events and the arrests are not registered in the police records. Furthermore, international standards on the deprivation of liberty of children were not met with regard to the minors Oscar José Barrios and Jorge Antonio Barrios Ortuño; their parents were not informed of their detention, and they were not allowed to communicate with their families. Therefore, their deprivation of liberty was illegal. The representatives concluded that the State had violated Articles 5, 7 and 19 of the Convention, in relation to Article 1(1) thereof, to the detriment of Oscar José Barrios, Jorge Antonio Barrios Ortuño and Rigoberto Barrios, and Articles 5 and 7 of the Convention, in relation to Article 1(1) thereof, to the detriment of Luisa del Carmen Barrios, Elbira Barrios, Gustavo Ravelo and Jesús Ravelo. Lastly, they asserted that the detentions, attacks and threats

against Jorge Antonio and Rigoberto Barrios “should be analyzed in the context of vulnerability exacerbated by the illegality of their detention, because they were minors,” and that “the severity of these acts and the context of persecution against the family in which the acts occurred signify that the State is responsible for the violation of Articles 6 and 8 of the Convention against Torture to the detriment [of the two youths].”

72. The State did not submit specific arguments in this regard, but maintained that it had not violated the rights to personal integrity or to personal liberty of members of the Barrios family, and that it had not failed to comply with its international obligation to respect and ensure the rights protected in the American Convention.

*ii. Facts*

73. On March 3, 2004, at about 10.30 a.m., Jorge Antonio Barrios Ortuño and Rigoberto Barrios, 16 and 15 years of age, respectively, were detained by hooded police officers and taken, separately, in a beige car to a site near the Guárico River.<sup>77</sup> The police handcuffed the youths, made them get down on their knees, hit them on different parts of their bodies, and fired their weapons close to the youths’ ears while questioning them about an alleged theft of cattle from the “El Roble” farm, threatening to kill them if they reported the incident. Subsequently, the youths were driven to the Guanayén Police Station, where they were beaten again. Finally, they were transferred to the Barbacoas Police Station, where they remained detained and in solitary confinement until 9.30 a.m. on March 4, 2004. Rigoberto identified one of the police officers, and Jorge Antonio indicated that he could recognize his assailants because they had removed their hoods when they reached the river.<sup>78</sup>

74. On June 19, 2004, Elbira Barrios, Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo, together with the minors, Oscar José Barrios and Jorge Antonio Barrios Ortuño, were travelling by car through Guanayén when they were intercepted by two police officials in a patrol car.<sup>79</sup> Jesús Ravelo got out of the vehicle and was attacked, being kicked in the face, and on his legs and ribs.<sup>80</sup> Then, the other official ordered him to hand over all the money he was

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<sup>77</sup> Cf. Complaint filed by Rigoberto Barrios before the Forensic and Scientific Crime Investigation Unit on March 11, 2004 (file of attachments to the answering brief, tome I, attachment 4, folio 4801), and Record of interview with Jorge Antonio Barrios Ortuño by the Forensic and Scientific Crime Investigation Unit on March 11, 2004 (file of attachments to the answering brief, tome I, attachment 4, folio 4804).

<sup>78</sup> Cf. Complaint filed by Rigoberto Barrios on March 11, 2004, *supra* note 77, folio 4801 and 4802, and Record of interview with Jorge Antonio Barrios Ortuño on March 11, 2004, *supra* note 77, folio 4804 and 4805. See also, forensic examination of Rigoberto Barrios of March 5, 2004 (file of attachments to Commission’s Report No. 11/10, tome 1, attachment 4, folio 3409).

<sup>79</sup> Cf. Record of interview with Gustavo Ravelo by the Forensic and Scientific Crime Investigation Unit on February 23, 2005 (file of attachments to the Commission’s Report No. 11/10, attachment 6, folio 3439); Record of interview with Jesús Ravelo by the Forensic and Scientific Crime Investigation Unit on February 24, 2005 (file of attachments to the Commission’s Report No. 11/10, attachment 6, folio 3452). See also Complaint filed before the Public Prosecution Service on June 28, 2004 (file of attachments to the Commission’s Report No. 11/10, attachment 6, folio 3429).

<sup>80</sup> Cf. Record of interview with Gustavo Ravelo on February 23, 2005, *supra* note 79, folio 3439; Record of interview with Jesús Ravelo on February 24, 2005, *supra* note 79, folio 3452; Record of interview with Oscar Barrios by the Forensic and Scientific Crime Investigation Unit on February 22, 2005 (file of attachments to the

carrying and threatened him with a weapon. Gustavo Ravelo, Jesus Ravelo's son, protested about the way his father was being treated and, in reprisal, was insulted and pushed, falling to the ground.<sup>81</sup> Following this, Luisa del Carmen Barrios also protested about the way her husband and father-in-law were being treated and a police agent hit her. In addition, she was insulted and pushed, and one of the police agents fired his gun near them,<sup>82</sup> so that the bullet lodged in the back bumper of their vehicle.<sup>83</sup> The police agents insisted on taking the minors, Oscar José and Jorge Antonio Barrios Ortuño.<sup>84</sup> Subsequently, another police official, who identified himself as a sergeant, intervened and took the minors Oscar José Barrios and Jorge Antonio Barrios Ortuño in his vehicle, first to the Camatagua Police Station and then to the Barbacoas Police Station.<sup>85</sup> Jesús Ravelo, Gustavo Ravelo, Elbira Barrios and Luisa del Carmen Barrios were released.<sup>86</sup> During their detention, the minors Jorge Antonio and Oscar José Barrios were threatened with death and assaulted by the police officers,<sup>87</sup> they remained deprived of liberty until June 21, 2004.<sup>88</sup>

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Commission's Report No. 11/10, tome II, attachment 6, folio 3457), and Record of interview with Luisa del Carmen Barrios by the Forensic and Scientific Crime Investigation Unit on February 23, 2005 (file of attachments to the Commission's Report No. 11/10, tome II, attachment 6, folio 3448). See also, Complaint filed before the Public Prosecution Service on June 28, 2004, *supra* note 79, folio 3429 and Record of interview with Elbira Barrios by the Forensic and Scientific Crime Investigation Unit on February 22, 2005 (file of attachments to the Commission's Report No. 11/10, tome II, attachment 6, folio 3445).

<sup>81</sup> Cf. Record of interview with Gustavo Ravelo on February 23, 2005, *supra* note 79, folio 3439; Record of interview with Elbira Barrios on February 22, 2005, *supra* note 80, folio 3444; Record of interview with Luisa del Carmen Barrios On February 23, 2005, *supra* note 80, folio 3448, and Record of interview with Jesús Ravelo on February 24, 2005, *supra* note 79, folio 3452.

<sup>82</sup> Cf. Record of interview with Luisa del Carmen Barrios on February 23, 2005, *supra* note 80, folio 3448; Record of interview with Gustavo Ravelo On February 23, 2005, *supra* note 79, folio 3439; Record of interview with Jesús Ravelo on February 24, 2005, *supra* note 79, folio 3452, and Affidavit made by Luisa del Carmen Barrios (merits file, tome III, folio 900).

<sup>83</sup> Cf. Police technical inspection No. 288 of the Forensic and Scientific Crime Investigation Unit of February 24, 2005 (file of the proceedings before the Inter-American Commission, tome III, folio 2521).

<sup>84</sup> Cf. Record of interview with Elbira Barrios on February 22, 2005, *supra* note 80, folio 3443; Record of interview with Luisa del Carmen Barrios on February 23, 2005, *supra* note 80, folio 3448, and Record of interview with Jesús Ravelo on February 24, 2005, *supra* note 79, folio 3452.

<sup>85</sup> Cf. Complaint filed before the Public Prosecution Service on June 28, 2004, *supra* note 79, folio 3430; Record of interview with Elbira Barrios on February 22, 2005, *supra* note 80, folio 3444; Record of interview with Jesús Ravelo on February 24, 2005, *supra* note 79, folio 3452; Record of interview with Luisa del Carmen Barrios on February 23, 2005, *supra* note 80, folio 3448, and Record of interview with Gustavo Ravelo on February 23, 2005, *supra* note 79, folio 3439.

<sup>86</sup> Cf. Record of interview with Jesús Ravelo by the Twentieth Prosecutor of the Judicial Circuit of Aragua state on August 10, 2004 (file of attachments to the Commission's Report No. 11/10, tome II, attachment 6, folio 3471), and Complaint filed before the Public Prosecution Service on June 28, 2004.

<sup>87</sup> Cf. Record of interview with Oscar José Barrios by the Forensic and Scientific Crime Investigation Unit on February 22, 2005 (file of attachments to the Commission's Report No. 11/10, tome II, attachment 6, folio 3457) and Complaint filed before the Public Prosecution Service on June 28, 2004, *supra* note \*79, folio 3432.

<sup>88</sup> Cf. Record of interview with Luisa del Carmen Barrios on February 23, 2005, *supra* note 80, folio 3448; Record of interview with Oscar José Barrios on February 22, 2005, *supra* note 87, folio 3457; Record of interview with Elbira Barrios by the Twentieth Prosecutor of the Judicial Circuit of Aragua state on August 9, 2004 (file of attachments to the Commission's Report No. 11/10, tome II, attachment 6, folio 3461). See also Complaint filed before the Public Prosecution Service on June 28, 2004, *supra* note 79, folio 3432.

iii. *Considerations of the Court*

75. For the effects of Article 7 of the Convention, the Court has considered that any detention, whether for a short period or a “delay,” constitutes deprivation of the physical liberty of the individual and, therefore, any restriction of physical liberty must adhere strictly to the relevant provisions of the American Convention, as well as of domestic law provided this is compatible with the Convention.<sup>89</sup> Hence, this Court must verify the criteria for deprivation of liberty under Venezuelan law in order to establish whether the detention was in keeping with the Convention.

76. The 1999 Venezuelan Constitution establishes the right to personal liberty in the following provisions:<sup>90</sup>

Article 44 - Personal liberty is inviolable, consequently:

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

2. Anyone who has been arrested has the right to communicate immediately with members of their family, a lawyer or any other person of confidence and they, in turn, have the right to be informed of where the detainee is being held, to be notified immediately of the reasons for the arrest, and for a written record to be placed in the case file on the physical or mental condition of the detainee, either by them, or with the aid of experts. The competent authorities shall keep a public record of every arrest made, which includes the identity of the person arrested, the place, time and circumstances, and the officials who made the arrest. [...]

77. The Court notes that, during the first detention on March 3, 2004, the minors were arrested by hooded agents who kept them in custody, both outside an official place of detention and in two police stations. At these places, they were assaulted and threatened with death by police agents (*supra* para. 73). Regarding the deprivation of liberty that took place on June 19, 2004, which began on a Guanayén street, while the agents took the youths José Antonio Barrios Ortuño and Oscar José Barrios to the Barbaçoas Police Station, after a certain time the police allowed Gustavo and Jesús Ravelo, Luisa del Carmen Barrios and Elbira Barrios to continue on their way and they left (*supra* para. 74). In this regard, on the whole, the victims’ statements regarding these events before the Public Prosecution Service and Scientific Investigation Unit,

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<sup>89</sup> Cf. *Case of Torres Millacura et al.*, *supra* note 41, para. 76.

<sup>90</sup> Cf. Constitution of the Bolivarian Republic of Venezuela in force at the time of the facts, published in Special Official Gazette No. 5,453. Caracas, March 24, 2000. Available at: <http://www.tsj.gov.ve/legislacion/constitucion1999.htm>.

were consistent and congruent when describing the facts, the conduct of the police officers, the length of the detention, and the assaults and threats received.

78. Moreover, Venezuela has not denied that these detentions occurred, and has not presented information on their legality. The file of evidence provided by the State does not contain a court order or proof of *flagrante delicto*, or the reasons or justification for any of the detentions; in addition, it does not show that those involved were advised of the possible reasons for the said deprivations of liberty. Furthermore, there is no evidence that the detention and the subsequent release of the minors were registered officially, or that the youths were able to communicate with their parents or next of kin (*supra* para. 74). This fails to meet the requirements of article 44 of the Venezuelan Constitution on personal liberty (*supra* para. 76) and, therefore, means that the deprivations of liberty were illegal and contrary to the American Convention. In addition, in the case of the March 3, 2004, detention of the minors Jorge Antonio Barrios Ortuño and Rigoberto Barrios, given the specific circumstances indicated above (*supra* para. 73), the evident illegality in itself involved arbitrariness.

79. The foregoing allows the Court to conclude that the deprivations of liberty of Jesús Ravelo, Gustavo Ravelo, Luisa del Carmen Barrios, Elbira Barrios, Rigoberto Barrios, Jorge Antonio Barrios Ortuño and Oscar José Barrios were illegal and violated the right to personal liberty established in Articles 7(1), 7(2) and 7(4) of the American Convention, in relation to Article 1(1) of this instrument, to their detriment. In the case of the minors Rigoberto Barrios and Jorge Antonio Barrios Ortuño, the said deprivation of liberty (*supra* para. 73 and 78) was also arbitrary, in violation of Article 7(3) of the Convention in relation to Article 1(1) thereof, to their detriment. Nevertheless, although the representatives and the Commission referred to the lack of immediate judicial review of the detention of the youths, they have not submitted any arguments or evidence that would allow the Court to determine whether, in addition to the obligations established in article 44(1) of the Venezuelan Constitution, the police agents were obliged to notify or inform a competent judge of the detentions immediately. In this regard, the representatives referred to a law that was not in force at the time of the events so that, in the absence of factual data or more specific arguments, the Court will not examine these allegations.

80. However, the Court reiterates that the vulnerability of a person who is detained is exacerbated when the detention is illegal or arbitrary and the person is completely defenseless, which creates an evident risk that other rights may be violated, such as the right to physical integrity and to be treated with dignity.<sup>91</sup> In this case, the Court observes that the complaint filed by Rigoberto Barrios and the statement given by Jorge Antonio Barrios before the Scientific Investigation Unit were consistent in maintaining that, on March 3, 2004, they were both taken, separately, by hooded police officers to a site near the Guárico River, where they were questioned, beaten on different parts of the body, and threatened with death if they reported what had happened to them.<sup>92</sup> In addition, a forensic examination of Rigoberto Barrios established the existence of bruising to his shoulder and left side, in addition to minor injuries (*supra* para. 73).

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<sup>91</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.)*, *supra* note 43, para. 166, and *Case of Baldeón García v. Peru. Merits, reparations and costs*. Judgment of April 6, 2006. Series C No. 147, para. 119.

<sup>92</sup> Cf. Complaint filed by Rigoberto Barrios on March 11, 2004, *supra* note 77, folios 4801 and 4802, and Record of interview with Jorge Antonio Barrios Ortuño on March 11, 2004, *supra* note 77, folio 4804.

81. Additionally, on June 19, 2004, the minors Jorge Antonio Barrios Ortuño and Oscar José Barrios were again arrested and assaulted by police agents at the Barbacoas Police Station (*supra* para. 74). Oscar José Barrios stated that, during this detention, the police officers “threatened [him and Jorge Antonio Barrios Ortuño, and that one of them] told [him] that he had to kill [him], grabbed his unloaded weapon and placed it against [his] head.”<sup>93</sup> The State has not presented any arguments or information about these events.

82. This Court has held that the mere threat of a conduct prohibited by the provisions of Article 5 of the American Convention, when this is sufficiently real and imminent, may in itself be in conflict with the right to personal integrity. In addition, creating a threatening situation or threatening to kill an individual may constitute, at the very least, inhuman treatment in some circumstances.<sup>94</sup> In the instant case, when the above-mentioned incidents took place, two members of the Barrios family had already been deprived of life by police agents (*supra* paras. 62 and 63), so that the threats against the youth’s life with firearms, and the assault on them while they were deprived of liberty necessarily caused them to feel intense anguish and vulnerability, which constituted a violation of personal integrity.

83. Furthermore, the Court observes that, on June 19, 2004, the agents not only assaulted Jesús and Gustavo Ravelo and Luisa del Carmen Barrios, but they also threatened them with other acts of violence and one of them fired a shot near them (*supra* paras. 74). These attacks and threats represent conduct that violates the right to personal integrity and are prohibited by Article 5 of the Convention. Also, with regard to Elbira Barrios, Jesús Ravelo testified on two occasions, first that she had been “pushed” and, subsequently, that she had been “insulted” by the police officials.<sup>95</sup> Despite this, Elbira Barrios herself stated that “they only hit Jesus and Gustavo Ravelo.”<sup>96</sup> Consequently, the Court does not consider it proved that Elbira Barrios was physically or verbally assaulted by police officials on that occasion, but does have sufficient evidence to suppose that she felt afraid owing to the gunshot fired and other acts of violence that occurred while she was detained. From the information available, the Court concludes that the threat with a firearm and the assaults while they were detained, necessarily caused Jesús and Gustavo Ravelo, Luisa del Carmen and Elbira Barrios to feel anguish and vulnerability, which constitutes a violation of their right to personal integrity.

84. Based on the above, the Court considers that the said facts violated the right to personal integrity recognized in Article 5(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Gustavo Ravelo, Jesús Ravelo, Luisa del Carmen Barrios, Elbira Barrios, Rigoberto Barrios, Oscar José Barrios and Jorge Antonio Barrios Ortuño.

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<sup>93</sup> Cf. Record of interview with Oscar José Barrios on February 22, 2005, *supra* note 87, folio 3457.

<sup>94</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.)*, *supra* note 43, para. 165, and *Case of Valle Jaramillo et al. v. Colombia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 192, para. 108.

<sup>95</sup> Record of interview with Jesús Ravelo on February 24, 2005, *supra* note 79, folios 3452 and 3453, and Record of interview with Jesús Ravelo on August 10, 2004, *supra* note 86, folio 3470.

<sup>96</sup> Record of interview with Elbira Barrios on February 22, 2005, *supra* note 80, folio 3444.

85. Furthermore, the State's obligation to respect the rights to life and to integrity of all persons under its jurisdiction has special mechanisms in the case of minors, as revealed by the provisions on the protection of children established in the American Convention and in the Convention on the Rights of the Child, and becomes an obligation to "prevent situations that might lead, by act or omission, to the violation of those rights."<sup>97</sup> In this regard, the Court has indicated that, according to its case law and other international instruments, the detention of children "must be exceptional and for the shortest time possible" (*supra* para. 55). The Court observes that Rigoberto Barrios, Oscar José Barrios and Jorge Antonio Barrios Ortuño were minors at the time of the events, so that the detentions, assaults and threats of which they were victims were more serious and were even expressed in their most extreme form, since they were threatened with death.<sup>98</sup> Consequently, the Court finds that the State violated the right to special protection, based on their status as minors, of Rigoberto Barrios, Oscar José Barrios and Jorge Antonio Barrios Ortuño, established in Article 19 of the American Convention, in relation to Article 1(1) of this instrument.

### **3. *Rights to life and personal integrity, and rights of the child of Rigoberto Barrios***

#### *i. Arguments of the parties*

86. Regarding the attempt on the life of Rigoberto Barrios on January 9, 2005, the Commission indicated that "the characteristics of the incident, namely, forcing the friend of Rigoberto Barrios to withdraw with her head lowered, the number of bullet wounds, the abandonment of the injured victim at the scene of the incident and the death threats received previously, reveal that Rigoberto Barrios was physically injured in violation of his personal integrity with the evident intention of killing him and, in such a way that the danger to his life was evident." It also stressed that Rigoberto Barrios had already been detained and threatened with death by the police in 2004, and that "in the general context of persecution of the Barrios family, [...] those involved are officials of the Aragua state police." Based on the above, the Commission concluded the participation of State agents in the injuries caused to Rigoberto Barrios.

87. Regarding the obligation to guarantee rights, the Commission affirmed that the State was obliged to adopt special measures of protection owing to: (a) his condition as a child; (b) the existing risk to his life; (c) his situation, of which the State was aware, and (d) his status as a beneficiary of provisional measures of protection ordered by the Court. In addition, it stressed that the State failed to conduct a serious and diligent investigation of the facts in order to determine what happened and identify and punish those responsible. It emphasized that "the violation [of personal integrity resulted] not [only] from the serious injuries inflicted on January 9, 2005, but also from the physical and mental suffering which it is reasonable to infer that he experienced from that date until his death as the result of being shot, and the consequent fear of dying or being permanently injured." Based on the foregoing, the Commission concluded that Venezuela had failed to comply with its special obligation of respect and guarantee in relation to

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<sup>97</sup> Cf. *Case of Bulacio*, *supra* note 55, para. 138, and *Case of the Mapiripán Massacre*, *supra* note 38, para. 171.

<sup>98</sup> Cf. *Case of the Ituango Massacres v. Colombia*, *Preliminary objection, merits, reparations and costs*. Judgment of July 1, 2006 Series C No. 148, para. 162, and *Case of Valle Jaramillo et al.*, *supra* note 94, para. 109.

the rights to life and to personal integrity of Rigoberto Barrios, and also disregarded its special obligation of protection in relation to children, violating, respectively, the rights established in Articles 4(1), 5(1) and 19 of the Convention, in relation to Article 1(1) of this instrument, to his detriment.

88. Regarding the medical care provided until his death on January 20, 2005, the Commission had insufficient evidence to establish that medical malpractice occurred and that this caused the victim's death. It emphasized that a serious and diligent investigation should have been conducted, especially since a state entity was involved which was responsible for the victim, who in addition was a minor. However, no investigation was conducted. Consequently, it concluded that the State had failed to comply with its obligation to guarantee the right to life by failing to investigate seriously the complaint concerning possible medical negligence and, therefore, violated the rights established in Articles 4(1) and 19 of the American Convention, in relation to Article 1(1) of this instrument.

89. The representatives asserted that, since Rigoberto Barrios did not die on the day he was assaulted, and taking into account the violence used by the State officials, as well as the physical and mental trauma he endured, it is reasonable to infer that he suffered from the date of the incident until his death. In addition, before his death, Rigoberto Barrios identified one of his assailants as a police agent. He was 16 years old at the time of the incident; hence, the State also failed to comply with its special obligations of guarantee and protection required by his condition as a minor. Therefore, they asked the Court to declare that the State had violated Articles 4, 5 and 19 of the Convention, in relation to Article 1(1) thereof, to the detriment of Rigoberto Barrios. Lastly, they considered that the international responsibility for violation of the right to life contained in Article 4 of the Convention is aggravated because he was a beneficiary of the provisional measures ordered in this case.

90. They also affirmed that the State was responsible for violating the right to life, because the actions of the medical personnel were characterized by "serious medical negligence." On this basis, they concluded that Venezuela had not respected the right to life of Rigoberto Barrios established in Article 4 of the Convention, in relation to Article 1(1) thereof, owing to medical malpractice that contributed to his death.

91. Regarding the death of Rigoberto Barrios on January 20, 2005, the State indicated that "it was not possible to establish the participation of [any] police agent during the investigations." It also affirmed that it had not violated the rights to life or to personal integrity of members of the Barrios family.

## *ii. Facts*

92. At approximately 11 p.m. on January 9, 2005, Rigoberto Barrios, who was 16 years of age, was at the corner of a car repair shop accompanied by a girl when they were approached by two armed individuals<sup>99</sup> who identified themselves as "from the Government," asked Rigoberto

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<sup>99</sup> Cf. Record of interview with Rigoberto Barrios by the Twentieth Prosecutor of Aragua state with competence for the protection of fundamental rights on January 13, 2005 (file of attachments to the answering brief, tome I, attachment 3, folio 4609).

Barrios his name, and ordered his friend to walk away with her head lowered.<sup>100</sup> They then shot Rigoberto Barrios several times with a rifle and a revolver.<sup>101</sup> While some people were trying to help him, a police patrol car drove by without stopping.<sup>102</sup> The victim was taken to an outpatient center by some acquaintances,<sup>103</sup> and subsequently taken by ambulance to two different hospitals.<sup>104</sup> Rigoberto Barrios gave a statement about the facts on January 13, 2005, in the Maracay Central Hospital (hereinafter “the Maracay Hospital” or “the Hospital”) and identified one of his assailants as a police official from the Barbacoas Police Station.<sup>105</sup> His mother Maritza Barrios informed the Public Prosecution Service that he had been threatened on various occasions by a known police agent, and that another identified police officer had told her that her children would not celebrate Christmas.<sup>106</sup>

93. Rigoberto Barrios was admitted to the Maracay Central Hospital in the early hours of January 10, 2005, with numerous injuries.<sup>107</sup> Several tests, including an ultrasound, x-rays, and a tomography scan of the neck and skull were performed that same day<sup>108</sup> and, on January 12, a blood test was carried out.<sup>109</sup> He underwent surgery on January 15.<sup>110</sup> The post-operative diagnosis indicated “trauma raquimedular cervical.”<sup>111</sup> On January 19, it was recorded that

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<sup>100</sup> Cf. Record of interview with Genesis Carolina Martinez by the Twentieth Prosecutor of Aragua state with competence for the protection of fundamental rights on January 26, 2005 (file of attachments to the answering brief, tome I, attachment 3, folio 4584).

<sup>101</sup> Cf. Record of interview with Rigoberto Barrios of January 13, 2005, *supra* note 99, folio 4610, and Report of forensic autopsy performed on January 22, 2005 (file of attachments to the answering brief, tome I, attachment 3, folios 4621 and 4622).

<sup>102</sup> Cf. Record of interview with Genesis Carolina Martinez on January 26, 2005, *supra* note 100, folio 4584 and 4585.

<sup>103</sup> Cf. Record of interview with Jesús Eduardo Escobar Martinez by the Twentieth Prosecutor of Aragua state on January 26, 2005 (file of attachments to the answering brief, tome I, attachment 3, folio 4595),

<sup>104</sup> Cf. Record of interview with Maritza Barrios by the Twentieth Prosecutor of Aragua state with competence for the protection of fundamental rights on January 26, 2005 (file of attachments to the answering brief, tome I, attachment 3, folio 4599).

<sup>105</sup> Cf. Record of interview with Rigoberto Barrios of January 13, 2005, *supra* note 99, folios 4609 and 4610.

<sup>106</sup> Cf. Record of interview with Maritza Barrios on January 26, 2005, *supra* note 104, folio 4600.

<sup>107</sup> Cf. Medical record of January 10, 2005 (file of attachments to the answering brief, tome IV, attachment 20, folio 6523).

<sup>108</sup> Cf. Medical reports of January 10, 2005 (file of attachments to the answering brief, tome IV, attachment 20, folios 6529 to 6532).

<sup>109</sup> Cf. Medical reports of January 12, 2005 (file of attachments to the answering brief, tome IV, attachment 20, folios 6533 to 6536).

<sup>110</sup> Cf. Record of interview with Rodolfo Antonio Cordova Perez by the Forensic and Scientific Crime Investigation Unit on January 28, 2005 (file of attachments to the answering brief, tome IV, attachment 20, folio 6569), and Record of interview with Rodolfo Antonio Cordova Perez by the Twentieth Prosecutor with competence for the protection of fundamental rights on June 20, 2006 (file of attachments to the answering brief, tome IV, attachment 20, folio 6576).

<sup>111</sup> Cf. Report on surgery performed on January 15, 2005 (file of attachments to the answering brief, tome IV, attachment 20, folio 6539).

Rigoberto Barrios “had blood in his stools.”<sup>112</sup> Following a blood test, the doctor on duty ordered three blood transfusion procedures at 6 p.m., and these were performed at around 9 p.m.<sup>113</sup> Subsequently, Rigoberto suffered respiratory arrest and died between January 19 and 20, 2005.<sup>114</sup>

*iii. Considerations of the Court*

94. On March 3, 2004, Rigoberto Barrios, 15 years of age, was detained by police agents, assaulted and threatened with death, together with Jorge Antonio Ortuño. He denounced these facts on March 11, 2004, and physically identified the police agents responsible (*supra* para. 73). A few days after these facts were reported, on March 30, 2004, a local court ordered a measure of protection for him and others.<sup>115</sup> That decision was reaffirmed on May 13, 2004.<sup>116</sup> In addition, the Court recalls that Rigoberto Barrios was the beneficiary of precautionary measures granted by the Commission from June to November 2004 and, subsequently, of provisional measures granted by the Court as of November 23, 2004. In other words, the State was specifically aware that the life of Rigoberto Barrios was in danger and that police officials had threatened to kill him. Also, on December 3, 2004, the First Instance Review Court of the Ninth Criminal Judicial Circuit of Aragua state (hereinafter “the Criminal Court of First Instance”) ratified the previous measure of protection and ordered the “establishment of a permanent team of National Guard officers [...] at the homes of the beneficiaries.”<sup>117</sup> However, there is no evidence that this permanent team was established.

95. Five weeks later, on January 9, 2005, Rigoberto Barrios suffered an attempt against his life and he died on January 19 or 20, 2005. Before he died, he gave a statement to the Public Prosecution Service and identified one of his assailants as a member of the Police of Aragua state, who had been present at the Barbacoas Police Station where he had been assaulted and

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<sup>112</sup> Cf. Medical bulletin of the Maracay Central Hospital of January 19, 2005 (file of attachments to the answering brief, tome IV, folio 6548), and Record of interview with Rodolfo Antonio Cordova Perez on June 20, 2006, *supra* note 110, folio 6576.

<sup>113</sup> Cf. Record of interview with Rodolfo Antonio Cordova Perez on January 28, 2005, *supra* note 110, folios 6569 to 6571, and Record of interview with Rodolfo Antonio Cordova Perez on June 20, 2006, *supra* note 110, folio 6576.

<sup>114</sup> Cf. Record of interview with Rodolfo Antonio Cordova Perez on January 28, 2005, *supra* note 110, folio 6569; Record of interview with Rodolfo Antonio Cordova Perez on June 20, 2006, *supra* note 110, folio 6577, and Report on forensic autopsy performed on January 22, 2005, *supra* note 101, 4621, and Report of the Maracay Central Hospital of January 19, 2005 (file of attachments to the answering brief, tome I, attachment 6, folio 4611). Different dates of death can be observed on the documents in the case file.

<sup>115</sup> Cf. Decision of the First Instance Review Court of the Ninth Criminal Judicial Circuit of Aragua state of March 30, 2004 (file of attachments to the answering brief, tome III, attachment 17, folio 5865): the beneficiaries of the measure of protection authorized were Eloisa Barrios, Pablo Solorzano, Elbira Barrios, Inés Barrios, Beatriz Cabrera Barrios, Jorge Barrios, Rigoberto Barrios, Maritza Barrios and Juan José Barrios.

<sup>116</sup> Cf. Decision of the First Instance Review Court of the Ninth Criminal Judicial Circuit of Aragua state of May 13, 2004 (file of attachments to the answering brief, tome III, attachment 17, folio 5868). The beneficiaries of this decision were the same as those that benefited from the decision of March 30, 2004, *supra* note 115.

<sup>117</sup> Cf. Order of the First Instance Review Court of the Ninth Criminal Judicial Circuit of Aragua state of December 3, 2004 (file of attachments to the answering brief, tome VI, attachment 27, folios 7125).

threatened with death previously. His mother also testified that a police official had made death threats against her children in the past, and the girl who accompanied Rigoberto Barrios just before the attack stated that his assailants had identified themselves as “from the Government” (*supra* para. 92). Although there is still no official version of the incident, the body of evidence allows the Court to conclude that police officials participated in the attack that led to the death of Rigoberto Barrios, and that the victim suffered from the moment of the attempt on his life until his death as the result of being shot, as well as from the consequent fear of death or permanent injury.

96. Based on the above, the Court considers that the State violated the rights to personal integrity and to life derived from Articles 4(1) and 5(1) of the American Convention, read in conjunction with Article 1(1) of this instrument, to the detriment of Rigoberto Barrios. Moreover, given that the victim was a minor at the time of the attack that led to his death, and taking into account the State’s special obligation of protection (*supra* para. 55), the State violated Article 19 of the American Convention, in relation to Article 1(1) of thereof.

97. Regarding the medical malpractice alleged by the representatives, the Court observes that, as evidence, they provided a statement made by Maritza Barrios, Rigoberto’s mother, in which she affirmed that the attention provided by the Hospital was deficient.<sup>118</sup> In addition, the evidence on file reveals that, from the time he was admitted to the Hospital, Rigoberto Barrios received a series of treatments and that the doctor in charge of his case testified before the Prosecutor on two occasions. There is also a report on a criminal investigation into the care provided to the victim. The Commission stated that it had insufficient information to rule in this regard. The Court does not have sufficient evidence to determine the alleged negligence in the care received by Rigoberto Barrios.

***E. Obligation to prevent violations and to guarantee rights***

***1. Rights to life of Luis Alberto Barrios, Oscar José Barrios, Wilmer José Flores Barrios and Juan José Barrios, and to personal integrity of Néstor Caudi Barrios***

*i. Arguments of the parties*

98. The Commission indicated that, before his death on September 20, 2004, Luis Alberto Barrios had been subjected to acts of harassment and intimidation by security officials and was also the beneficiary of precautionary measures granted by the Commission, without the State having taken any measure in his favor. It stressed that the State should have protected him but failed to take reasonable measures of protection or to undertake a diligent investigation into what happened; instead, it closed the case.

99. Moreover, regarding the death threats proffered by the police against Nestor Caudi Barrios and Oscar José Barrios and the harassment of which they were victims from May 2004 to August 2005, even though they were still minors, the Commission considered that there is sufficient evidence to infer that the fear and anxiety they suffered seriously affected their mental and moral integrity.

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<sup>118</sup> Cf. Record of interview with Maritza Barrios on January 26, 2005, *supra* note 104, folio 3583.

100. Regarding the death of Oscar José Barrios, it underscored that the State had not provided information regarding this incident and has not made any observations on the information submitted by the petitioners in this regard. It found that this death could be considered part of the same context of persecution of the family, since the victim had been arrested and threatened by members of the police and was not provided with protection even though he was covered by provisional measures.

101. In addition, regarding Wilmer José Flores Barrios, Néstor Caudi Barrios and Juan José Barrios, the Commission indicated that they were threatened with death, and the latter even requested special protection in the context of the investigation into the extrajudicial execution of his brother Narciso Barrios. Nestor Caudi Barrios and Juan José Barrios had left Guanayén in search of a safe place. However, the attacks occurred precisely on the days they were visiting the area to which the State officials who had threatened them previously belonged. The State “has not taken concrete steps to deal with the source of general and specific risk from its own security agents. In this regard, even in 2010 and 2011, it was still possible that the threats made previously would be acted upon, particularly in the context in which the Barrios family had persisted in making public complaints and in their quest for justice.

102. Based on all the above, the Commission considered that there was sufficient evidence to allow it to infer the participation of State agents in the attempt on the life of Néstor Caudi Barrios, and in the death of Luis Alberto Barrios, Oscar Jose Barrios, Wilmer Jose Barrios and Juan José Barrios. In addition, it found that the State’s failure to comply with its obligation of protection had been proved. Consequently, the Commission concluded that Venezuela had failed to comply with the obligation to respect and ensure the right to life of Luis Alberto Barrios, Oscar Jose Barrios, Wilmer Jose Barrios and Juan José Barrios recognized in Article 4(1) of the American Convention, in relation to Article 1(1) of this instrument. In addition, the State had failed to comply with its obligation to respect and ensure the personal integrity of Néstor Caudi Barrios and Oscar Jose Barrios, and failed to fulfill its obligation to provide them with special protection owing to their condition as minors, so that it violated the rights embodied in Articles 5(1) and 19 of the Convention, in relation to Article 1(1) thereof, to their detriment.

103. The representatives agreed with the Commission in the case of Luis Alberto Barrios. In addition, they indicated that the State had failed to comply with its obligation to adopt measures of protection owing to the risk that existed to the life of Oscar Jose Barrios, Wilmer Jose Barrios and Juan José Barrios, as beneficiaries of provisional measures. They considered that, owing to the characteristics of their death, it was reasonable to presume the participation of State agents. In addition, they affirmed that the victims experienced great suffering and fear before they died, and therefore asked the Court to declare that the State had violated the rights established in Articles 4 and 5 of the Convention to their detriment, and to declare that the violation of the right to life contained in Article 4 of the Convention was aggravated because they were beneficiaries of the provisional measures ordered in this case.

104. In addition, they considered it reasonable to presume the participation of State agents in the attack suffered by Nestor Caudi Barrios in January 2011, and asked the Court to declare that Venezuela is responsible for the violation of Article 5 of the Convention, in relation to Article 1(1) thereof, to his detriment.

105. Furthermore, they stated that the threats suffered on different occasions by Néstor Caudi Barrios and Oscar José Barrios, while they were still minors, entailed the State's disregard of its special obligation of protection in relation to the right to personal integrity established in Articles 5 and 19 of the American Convention, in relation to Article 1(1) thereof.

106. Lastly, they argued that “[i]n this case, [several] individuals have died who were protected by measures ordered by the organs of the inter-American system.” The failure to comply with these measures “constitutes an autonomous violation of the State's obligations under the American Convention, and violates the procedural rights of Luis Alberto, Rigoberto, Oscar [José], Wilmer José Flores [and Juan José Barrios], as victims, to lodge petitions before the inter-American system,” established in Article 44 of the Convention, as well as “the right to have provisional protection” established in Article 63(2) of this instrument.

107. Venezuela referred to the difficulty of complying with the measures granted by the Court because only Eloisa Barrios appeared before the Review Court and the other beneficiaries refused to provide the address of their homes, making it impossible for the State “to fulfill its obligations.” Similarly, it indicated that the beneficiaries rejected the collaboration of the municipal police of Aragua state and refused to sign the records indicating their agreement that the State officials were providing the protection suggested by the Court. In addition, it emphasized that, at the domestic level, it was the State, through the Public Prosecution Service, that had requested measures of protection for the Barrios family, prior to the measures ordered by the Court that were established in March 2004, thus revealing its concern regarding the case.

108. Moreover, it affirmed that the investigation into the death of Luis Alberto Barrios “did not determine the participation of [any] police agent and the case has been closed by the prosecution.” In addition, the Fourteenth Prosecutor of the Public Prosecution Service was responsible for the investigation of the case of Oscar Jose Barrios and “is unable to affirm whether or not [any] police agent intervened.” The State also indicated that, in the case of Juan José Barrios, “the investigation procedure concluded by determining the criminal responsibility for the act of [two] individuals, [and one of the accused] has been captured. These individuals have no connection whatsoever with police officials. The motive for the murder was the failure of the deceased to pay for a cow.” Lastly, regarding the death of Wilmer José Flores Barrios and the attempt on the life of Néstor Caudi Barrios, it indicated that both cases are at the investigation stage.

## *ii. Facts*

109. On November 29, 2003, in a bar where some members of the Barrios family worked, an incident occurred between Narciso Barrios and a police agent that resulted in the apparent theft of the officer's service weapon.<sup>119</sup> That same night, a team of police agents searched the home of Luis Alberto Barrios and Orismar Carolina Alzul García.<sup>120</sup>

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<sup>119</sup> Cf. Note No. 035/07 of January 24, 2007, of the S.A.R.A. and Operations Division, with a copy of the logbook of the San Francisco de Cara Police Station of November 29, 2003 (file of attachments to the answering brief, tome II, attachment 10, folios 5193 and 5194); Record of interview with Freddy Gonzalez Oropeza by the Forensic and Scientific Crime Investigation Unit of November 30, 2003 (file of attachments to the answering brief,

110. On June 1, 2004, the representative of the Barrios family filed a complaint before the Fourteenth Prosecutor of the Public Prosecution Service (hereinafter “Fourteenth Prosecutor”), reporting that, on May 26, 2004, a police officer from the Scientific Investigation Unit, “in a menacing manner,” assured Néstor Caudi Barrios that he would remain detained “owing to his participation in the theft at [a] farm.”<sup>121</sup> In addition, on December 7, 2004, a complaint was filed before the Senior Prosecutor of the Public Prosecution Service (hereinafter “Senior Prosecutor”) that, on December 6, 2004, two uniformed police officers approached Néstor Caudi Barrios, one of them, “with a razor in his hand,” told him that “if he found him alone he would beat him, [and] assured him that neither he nor Oscar [José] Barrios would eat *hallacas* at Christmas.” As a result of this encounter, the lawyer asked the Public Prosecution Service for “the implementation of measures of protection, 24 hours a day, for the Barrios family, especially for [Néstor Caudi Barrios and Oscar José Barrios], because they could be killed by police agents.”<sup>122</sup> Lastly, on June 22, 2005, a complaint was filed before the Senior Prosecutor that, on June 18, 2005, Oscar José Barrios had been intercepted by five men in civilian clothing, who aimed their rifles at him, and that, in the early morning hours of June 19, 2005, “three hooded men in civilian clothing were prowling around the home of Elbira Barrios, looking for the youth Oscar José Barrios.”<sup>123</sup>

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tome II, attachment 10, folios 5293 and 5294); Record of interview with Freddy Gonzalez Oropeza by the Public Order and Security Unit of December 1, 2003 (file of attachments to the answering brief, tome II, attachment 10, folios 5307 and 5308); Record of interview with Wilmer José Bravo Teran before the Office of the Prosecutor General of the Republic on January 16, 2007 (file of attachments to the answering brief, tome II, attachment 10, folios 5187 and 5188); Record of interview with Alfredo Enrique Palacio before the Office of the Prosecutor General of the Republic on March 27, 2008 (file of attachments to the answering brief, tome II, attachment 10, folios 5223 and 5224); Police record of the Forensic and Scientific Crime Investigation Unit of November 30, 2003 (file of attachments to the answering brief, tome II, folio 5306); Record of interview with Pablo Julian Solórzano Barrios by the Public Order and Security Unit on December 1, 2003 (file of attachments to the answering brief, tome II, attachment 10, folios 5309 and 5310); Record of interview with José Gregorio Clavo Peña by the Public Order and Security Unit on December 1, 2003 (file of attachments to the answering brief, tome II, attachment 10, folios 5311 to 5313), and Record of interview with Brígida Oneyda Barrios by the Twentieth Prosecutor of the Public Prosecution Service on October 3, 2006 (file of attachments to the answering brief, tome II, attachment 10, folios 5162 and 5163).

<sup>120</sup> Cf. Complaint filed by Luis Alberto Barrios before the Fourteenth Prosecutor of the Public Prosecution Service on December 4, 2003 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 2, folios 3222); Complaint filed by Orismar Carolina Alzul García before the Fourteenth Prosecutor of the Public Prosecution Service on December 10, 2003 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 2, folio 3224); Record of criminal investigation of the Forensic and Scientific Crime Investigation Unit of February 21, 2005, interview with Orismar Carolina Alzul García (file of attachments to the answering brief, tome II, attachment 10, folio 5114); Record of interview with Brígida Oneyda Barrios by the Forensic and Scientific Crime Investigation Unit on February 28, 2005 (file of attachments to the answering brief, tome II, attachment 10, folio 5123), and Record of criminal investigation of February 21, 2005, *supra* note 119, folio 5120.

<sup>121</sup> Cf. Complaint filed before the Fourteenth Prosecutor of the Public Prosecution Service on June 1, 2004 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 5, folio 3414).

<sup>122</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on December 7, 2004 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 5, folio 3421).

<sup>123</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on June 22, 2005 (file of attachments to the answering brief, tome II, attachment 9, folio 5063).

111. During the night of September 20, 2004, Luis Alberto Barrios was at home with his companion Orismar Alzul Carolina Garcia, when they heard a noise on the roof. They went outside and, seeing nothing, they returned inside. Shortly afterwards the sounds were repeated and Luis Alberto Barrios went outside again; then several gun shots were heard.<sup>124</sup> His companion called for help and a relative told her that Luis Alberto Barrios had been murdered.<sup>125</sup> The autopsy indicated that the victim had seven bullet wounds.<sup>126</sup> Orismar Carolina Alzul García stated that, on the day of his death, Luis Alberto Barrios had told her that a police officer he knew had warned him, in the presence of his nephews, Jorge Antonio and Oscar José Barrios, “to continue behaving himself and not to be surprised if he received a surprise.”<sup>127</sup> Similarly, Elbira Barrios testified that Luis Alberto Barrios had been threatened several times by a police official from the Guanayén Police Station, who she identified.<sup>128</sup>

112. In the early hours of November 29, 2009, near to a social club in Guanayén, Oscar José Barrios was shot and wounded seven times, and this killed him.<sup>129</sup> During the incident, another individual also died from being shot.<sup>130</sup>

113. On September 1, 2010, Wilmer José Flores Barrios was shot several times by unidentified individuals, near the Guayabito River at the entrance to Guanayén. He was taken to the town’s health clinic and then by ambulance to the Camatagua Hospital, where he was pronounced dead on arrival.<sup>131</sup>

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<sup>124</sup> Cf. Affidavit made by Orismar Carolina Alzul García (merits file, tome III, folio 912), and Conclusive decision of the Twentieth Prosecutor of the Public Prosecution Service of Aragua state of May 25, 2006 (file of attachments to the answering brief, tome I, attachment 6, folio 4926).

<sup>125</sup> Cf. Record of interview with Orismar Carolina Alzul García by the Forensic and Scientific Crime Investigation Unit on September 21, 2004 (file of attachments to the answering brief, tome I, attachment 5, folio 4858); Affidavit made by Orismar Carolina Alzul García, *supra* note 124, folio 912. See also, Conclusive decision of the Twentieth Prosecutor of the Public Prosecution Service of May 25, 2006, *supra* note 124, folios 4926, 4927, 4930 and 4931.

<sup>126</sup> Cf. Autopsy protocol signed on September 5, 2005 (file of attachments to the answering brief, tome I, attachment 6, folio 4887).

<sup>127</sup> Cf. Record of interview with Orismar Carolina Alzul García on September 21, 2004, *supra* note 125, folio 4931, and Conclusive decision of the Twentieth Prosecutor of the Public Prosecution Service of May 25, 2006, *supra* note 124, folio 4926.

<sup>128</sup> Cf. Record of interview with Elbira Barrios on February 22, 2005, *supra* note 80, folio 3444, and Conclusive decision of the Twentieth Prosecutor of the Public Prosecution Service of May 25, 2006, *supra* note 124, folios 4939 and 4940.

<sup>129</sup> Cf. Police attestation of the Forensic and Scientific Crime Investigation Unit of November 29, 2009 (file of attachments to the answering brief, tome V, attachment 26, folios 7019 and 7020); Police technical inspection No. 1932 of the Forensic and Scientific Crime Investigation Unit of November 29, 2009 (file of attachments to the answering brief, tome V, attachment 26, folios 7027 and 7028), and Autopsy procedure performed on November 30, 2009 (file of attachments to the answering brief, tome V, attachment 26, folio 7045).

<sup>130</sup> Cf. Unnumbered police technical inspection of the Forensic and Scientific Crime Investigation Unit of November 29, 2009 (file of attachments to the answering brief, tome V, attachment 26, folio 7025).

<sup>131</sup> Cf. Memorandum of the Office of the Prosecutor General of the Republic of August 9, 2011 (merits file, tome V, folio 2422).

114. On January 2, 2011, at around 8 p.m., Néstor Caudi Barrios was the victim of an attempt on his life in the Las Casitas area of Guanayén.<sup>132</sup> As a result of the attack, Nestor Caudi Barrios “suffered motor disability [and required] several operations.”<sup>133</sup>

115. On May 28, 2011, Juan José Barrios was deprived of his life. His body was found in a lake behind a Guanayén housing development, with two bullet wounds, one in his shoulder and the other in his right leg.<sup>134</sup>

### *iii. Considerations of the Court*

116. Regarding the obligation to guarantee rights, the Court reiterates that the State has a legal obligation, “within reason, to prevent human rights violations and to use the means at its disposal to conduct a serious investigation of any violations that may be committed within its jurisdiction, in order to identify those responsible, to impose the appropriate punishment, and to ensure adequate reparation to the victim.”<sup>135</sup> The most important factor is to discover “whether a specific violation [...] has occurred with the support or the tolerance of the public authorities, or whether the latter have allowed the act to take place without taking measures to prevent it or to punish those responsible.”<sup>136</sup> This obligation requires the States take appropriate measures to protect and preserve the rights of all those under its jurisdiction (positive obligation), in keeping with its obligation to ensure the free and full exercise of those rights (*supra* para. 48).

117. Luis Alberto Barrios was a beneficiary of precautionary measures ordered by the Commission. In addition, Oscar José Barrios, Wilmer José Flores Barrios and Juan José Barrios were beneficiaries of provisional measures ordered by the Court.<sup>137</sup> Nevertheless, they were murdered on September 20, 2004, November 28, 2009, September 1, 2010, and May 28, 2011, respectively. Néstor Caudi Barrios was also to beneficiary of provisional measures<sup>138</sup> when he suffered an attempt on his life on January 2, 2011.

118. In addition, Luis Alberto Barrios was present at the onset of the police operation that resulted in the death of his brother, Benito Antonio Barrios, in 1998 (*supra* para. 62). His home was searched by the police in November 2003, and he testified about these events to the Scientific Investigation Unit (*infra* paras. 138 to 142). Furthermore, some of his family members

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<sup>132</sup> Cf. Memorandum on case No. 05F20-022-11 dated August 10, 2011 (merits file, tome VI, folio 2487).

<sup>133</sup> Cf. Report of the Ombudsman’s Office: Case of the Barrios Family, dated August 17, 2011 (merits file, tome VI, folio 2532).

<sup>134</sup> Cf. Report of the Ombudsman’s Office of August 17, 2011, *supra* note 133, folio 2542.

<sup>135</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 15, para. 174, and *Case of González et al.* (“Cotton Field”), *supra* note 36, para. 236.

<sup>136</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 15, para. 173, and *Case of González et al.* (“Cotton Field”), *supra* note 36, para. 236.

<sup>137</sup> Cf. *Case of Eloisa Barrios et al. Provisional measures*. Order of November 23, 2004, *supra* note 10, with regard to Oscar José Barrios, Néstor Caudi Barrios, Juan José Barrios, and *Case of Eloisa Barrios et al. Provisional measures with regard to Venezuela*. Order of the Inter-American Court of Human Rights of September 22, 2005, with regard to Wilmer José Flores Barrios.

<sup>138</sup> Cf. *Case of Eloisa Barrios et al. Provisional measures*. Order of November 23, 2004, *supra* note 10.

indicated that police officials, who they identified, had threatened him previously (*supra* para. 111).

119. On June 19, 2004, Oscar José Barrios was illegally detained, assaulted and threatened with death by police agents. A complaint concerning the incident was filed before the Public Prosecution Service on June 28, 2004, and Oscar José Barrios testified in the case on February 22, 2005 (*supra* para. 74). Subsequently, it was reported that, on June 18, 2005, Oscar José Barrios had been intercepted by five men in civilian dress, who aimed at him with their rifles (*supra* para. 110). At the time of this complaint, as well as in another complaint before the Senior Prosecutor on March 1, 2004,<sup>139</sup> measures of protection were requested owing to the risk he ran. In addition, his cousin Néstor Caudi Barrios reported a death threat to both youths on December 7, 2004 (*supra* para. 74).

120. Wilmer José Flores Barrios received a threat in 2004 when a police official warned his mother, Maritza Barrios, that something would happen to her children before Christmas.<sup>140</sup>

121. Néstor Caudi Barrios was an eyewitness to the murder of Narciso Barrios on December 11, 2003 (*supra* para. 63). The evidence available in the file does not allow the Court to verify the threats against Néstor Caudi Barrios prior to 2011, but indicates that death threats against him by police agents were reported on at least three occasions: June 1, 2004, December 7, 2004, and February 21, 2005.<sup>141</sup> In addition, on May 27, 2004, he testified before the Public Prosecution Service in the criminal proceedings regarding the murder of his uncle, Narciso Barrios.<sup>142</sup> On June 1 and August 10, 2004, he filed for protection before the Public Prosecution Service, and a judge granted his request on August 24 that year.<sup>143</sup> In addition, on December 7, 2004, he requested a special measure of protection.<sup>144</sup>

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<sup>139</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on March 1, 2004 (file of attachments to the Commission's Report No. 11/10, tome I, attachment 2, folio 3216). In this complaint, measures of protection were requested in favor of, among others, Juan José Barrios, Oscar José Barrios and Jorge Antonio Barrios Ortuño.

<sup>140</sup> Cf. Record of interview with Maritza Barrios on January 26, 2005, *supra* note 104, folio 4600.

<sup>141</sup> Cf. Complaint filed before the Fourteenth Prosecutor of the Public Prosecution Service on June 1, 2004, *supra* note 121, folio 3415; Complaint filed before the Senior Prosecutor of the Public Prosecution Service on December 7, 2004, *supra* note 122, folio 3421, and Record of interview with Néstor Caudi Barrios by the Forensic and Scientific Crime Investigation Unit on February 21, 2005 (file of attachments to the answering brief, tome IV, attachment 18, folio 6159 and 6160). In addition, the representatives alleged that Néstor Caudi Barrios was deprived of liberty for one day on March 19, 2005, by Guanayén police officials. In this regard, they stated that, during this time, his parents were not informed of his detention and he was prevented from communicating with his family. The Commission stated that no documentary proof was provided to authenticate this fact, so that it did not have sufficient elements to rule in that regard. The Court, for its part, observes that the representatives did not provide evidence of the alleged detention, so that the Court will not rule on it.

<sup>142</sup> Cf. Record of interview with Néstor Caudi Barrios on May 27, 2004, *supra* note 72, folio 5964.

<sup>143</sup> Cf. Note of the Senior Prosecutor of the Public Prosecution Service of August 20, 2004 (file of attachments to the answering brief, tome III, attachment 17, folio 5919). See also, Memorandum of the Victim's Attention Unit of September 23, 2004, addressed to the Twentieth Prosecutor of the Public Prosecution Service (file of attachments to the answering brief, tome III, attachment 17, folio 6031).

<sup>144</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on December 7, 2004, *supra* note 122, folio 3418.

122. Juan José Barrios requested the Public Prosecution Service to grant him measures of protection on March 1, 2004,<sup>145</sup> and these were ordered by the First Instance Criminal Court on March 30, 2004, and repeated on May 13 and December 3, 2004 (*supra* para. 94). In compliance with these measures, the National Guard carried out “*rondines*”<sup>146</sup> around his residence between May and December 2004. His family considered this procedure insufficient, and they informed the First Instance Criminal Court on December 2, 2004, that “even though National Guard Post No. 28 had been commissioned by this court to execute the measures of protection, it has not been possible to obtain their permanent presence, 24 hours a day, in the Las Casitas sector of Guanayén, where we live. We consider that this is the only way in which we can obtain effective protection of our physical integrity and guarantee the right to life.”<sup>147</sup> Some months later, on August 2, 2005, Juan José Barrios testified before the Public Prosecution Service that “a police officer [of the Scientific Investigation Unit] stopped [him] and told [him] that he was going to kill [him], in the same way he [had] killed [his] brothers [...]; with his hand he made to gesture as if he was going to [cut his head off]; the same gesture that was made to [his] brothers before killing them.”<sup>148</sup> In this regard, a criminal investigation was launched the day of the complaint and dismissed one month later on September 7, 2005.<sup>149</sup>

123. The Court does not have sufficient information to allow it to attribute the deprivation of life of Luis Alberto Barrios, Oscar José Barrios, Wilmer José Flores Barrios and Juan José Barrios, and the attempt against the life of Néstor Caudi Barrios, to acts of State agents. Moreover, in accordance with the Court’s case law, the treaty obligations of guarantee imposed on States by the Convention do not imply its unlimited responsibility for any act or deed of an individual, because the States’ obligation to adopt measures of prevention and of protection of individuals in their relations with each other are conditioned by their awareness of a situation of real and immediate danger to a specific individual or group of individuals and to the reasonable possibility of preventing or avoiding that risk. In other words, even though the legal consequence of an act or omission of an individual may be the violation of certain rights of another individual,

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<sup>145</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on March 1, 2004, *supra* note 139, folio 3216.

<sup>146</sup> The word “*rondines*” refers to “rounds” or protection visits to the homes of the beneficiaries carried out by police officials.

<sup>147</sup> Brief of Eloisa Barrios, Beatriz Barrios, Jorge Barrios and Rigoberto Barrios to the Criminal Review Court of First Instance of the Ninth Criminal Judicial Circuit of Aragua state of December 2, 2004 (file of attachments to the answering brief, tome VI, attachment 27, folio 7119). In addition, they stated that “[t]he (two) members of the National Guard have sporadically visited only the home of Elbira Barrios and Eloísa Barrios, [...] and this does not guarantee that the police officials attached to the Guanayén Police State will not threaten us again and, ultimately, kill another member of the family.”

<sup>148</sup> Record of interview with Juan José Barrios by the Twentieth Prosecutor of Aragua state with competence for the protection of fundamental rights on August 2, 2005 (file of attachments to the answering brief, tome II, attachment 8, folio 5011). In addition, Juan José Barrios stated that “the measure of protection has not been implemented for more than a month [and] no National Guard has come near his home.”

<sup>149</sup> Cf. Order to open an investigation of the Twentieth Prosecutor of Aragua state of August 2, 2005 (file of attachments to the answering brief, tome II, attachment 8, folio 5024), and Request to reject the complaint by the Twentieth Prosecutor of the Public Prosecution Service on September 7, 2005 (file of attachments to the answering brief, tome II, attachment 8, folios 5033 to 5039).

this cannot be automatically attributed to the State, because the specific circumstances of the case must be considered, together with the execution of the said obligation of guarantee.<sup>150</sup>

124. In this case, the State was fully aware of the danger to the said members of the Barrios family, as a result of the complaints and the measures of protection requested at the domestic level, as well as the precautionary and provisional measures ordered by the organs of the inter-American system. As beneficiaries of precautionary measures and provisional measures ordered by the Commission and by the Court, with the consequent risk to their life as a result of the threats and acts of violence committed against them and their families, the State's obligation of diligence to prevent the violation of their rights became more specific and more precise with regard to Luis Alberto Barrios, Oscar José Barrios, Wilmer José Flores Barrios, Néstor Caudi Barrios and Juan José Barrios. Since this obligation of means is more rigorous, it required the organs of the State to take prompt and immediate action ordering the opportune and necessary measures to determine those responsible for the threats and the crimes that had occurred in this context.<sup>151</sup>

125. The Court recalls that, regarding the protection of the members of the Barrios family, the State had alleged the beneficiaries' lack of collaboration, indicating, *inter alia*, "their reluctance [...] to sign the records [of visits]." Furthermore, it had noted that it "had difficulty complying with the measures ordered by the Court because the beneficiaries had not provided all their addresses and, in addition, they lived in two different states, Miranda and Aragua," and they had refused police protection by agents from a specific police station.

126. In this regard, the Court observes that the evidence provided indicates that a local court ordered the protection of Juan José Barrios, among others, on March 30 and May 13, 2004, and repeated it on December 3 that year (*supra* para. 94). In the last decision, it ordered the creation of a permanent team to protect the beneficiaries of the measures of protection. Regarding this decision, on February 22, 2005, the Seventh Review Court of the Criminal Circuit of Aragua state (hereinafter "the Seventh Court") observed that "the weekly reports [on compliance with the measure of protection] had not been submitted to the Senior Prosecutor of Aragua state," and notified the Public Prosecution Service and the Commanding Officer of National Guard Post 28 of the measure of protection.<sup>152</sup> Additionally, on March 10, 2005, that same court notified the Commanding Officer of National Guard Post 21 and, once again, the Commanding Officer of National Guard Post 28 of the decision that was pending compliance.<sup>153</sup> In addition, the State also submitted evidence about an August 24, 2004 order for protective measures in favor of Néstor Caudi Barrios,<sup>154</sup> and records of special hearings held on June 22, 2006,<sup>155</sup> February 8,

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<sup>150</sup> Cf. *Case of the Pueblo Bello Massacre*, *supra* note 39, para. 123, and *Case of González et al.* ("Cotton Field"), *supra* note 36, para. 280.

<sup>151</sup> Cf. *Case of Manuel Cepeda Vargas v. Colombia. Preliminary objections, merits and reparations*. Judgment of May 26, 2010. Series C No. 213, para. 101.

<sup>152</sup> Cf. Notification record No. 699 and Note No. 258-05 of February 22, 2005, of the Seventh Review Court (file of attachments to the answering brief, tome VI, attachment 27, folios 7153 and 7155).

<sup>153</sup> Cf. Notes No. 335-05 and 334-05 of March 10, 2005, of the Seventh Review Court (file of attachments to the answering brief, tome VI, attachment 27, folios 7158 and 7159).

<sup>154</sup> Cf. Memorandum of the Victim's Attention Unit of September 23, 2004, *supra* note 143, folio 6031.

2011, and July 27, 2011. On the last two dates, representatives of the National Guard and the Public Prosecution Service requested the exact address of some of the beneficiaries, and received them during the said hearings.<sup>156</sup> In addition, the Court observes that there is no information concerning the implementation of specific measures of protection, other than “visits under the measure of protection” to some of the members of the Barrios family, which consisted of patrolling their homes a few times a week. According to the information furnished by the State, this procedure functioned intermittently from May to December 2004, from January to June 2005, from May to August of 2007, and from March to August of 2008.<sup>157</sup> The case file contains no evidence of protection visits carried out after August 2008. Lastly, under the provisional measures procedure, the State reported that two meetings had been held with some beneficiaries of the measures on January 12<sup>158</sup> and October 4, 2010.<sup>159</sup>

127. In this regard, from the evidence provided by the State, the Court observes the signature of Néstor Caudi Barrios, Oscar José Barrios and Juan José Barrios on some of the records of the patrols carried out during certain periods of 2004, 2005, 2006 and 2007.<sup>160</sup> Moreover, during the special hearing on February 8, 2011, the State confirmed the address of Juan José Barrios, but did not include him among the persons to be protected by National Guard patrols.<sup>161</sup> Furthermore, the Court notes that there is no evidence in the file regarding any measure taken by the State to protect Luis Alberto Barrios and Wilmer José Barrios

128. Several members of the Barrios family provided statements reporting that the patrols were either ineffective or intermittent.<sup>162</sup> There is no evidence in the case file that, prior to

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<sup>155</sup> Cf. Record of the special hearing to verify compliance with the measure of protection (file of attachments to the answering brief, tome VI, attachment 27, folios 7380 to 7384). During this hearing, the Commander of National Guard Post 28 referred to some difficulties in complying with the measure of protection.

<sup>156</sup> Cf. Record of the special hearing of the First Instance Criminal Review Court of Aragua state of February 8, 2011 (file of attachments to the answering brief, tome VI, attachment 29, folios 7469 to 7475), and Record of the special hearing of the First Instance Criminal Review Court of Aragua state (merits file, tome VI, folios 2602 to 2611).

<sup>157</sup> Cf. For example, records of protection measure visits (file of attachments to the answering brief, folios 6139, 6213, 6190, 6193, 6196, 6199, 6202, 6235, 6244, 6247, 6250, 6260, 6263, 6277, 6280, 5617, 5616, 5603, 5602, 5590, 5585, 5626, 5624, 5630, 5646, 6961, 6963, 6967, 6969, 6973, 6975, 7001, 7002, 7009 and 7010).

<sup>158</sup> Cf. *Case of Eloisa Barrios et al. Provisional measures with regard to Venezuela*. Order of the Inter-American Court of Human Rights of November 25, 2010, considering paragraph 12.

<sup>159</sup> Cf. *Case of Eloisa Barrios et al. Provisional measures with regard to Venezuela*. Order of the Inter-American Court of Human Rights of February 21, 2011, considering paragraphs 15, 16 and 19.

<sup>160</sup> Cf. for example, records of protection measures visits (file of attachments to the answering brief, tomes III, IV and VI, folios 6257, 6263, 6286, 6247, 6260, 6283, 6291, 7216, 7219, 7445, 7187 and 7175).

<sup>161</sup> Cf. Record of the special hearing of February 8, 2011, *supra* note 156, folios 7469 to 7475.

<sup>162</sup> Cf. Brief of Eloisa Barrios, Beatriz Barrios, Jorge Barrios and Rigoberto Barrios to the Ninth Review Court, *supra* note 147, folio 7119; Brief of Luis Aguilera addressed to the Ninth Review Court of the Criminal Judicial Circuit of Aragua state on January 18, 2005 (file of attachments to the answering brief, tome VI, attachment 27, folios 7131 to 7133); Record of interview with Elbira Barrios before the Forensic and Scientific Crime Investigation Unit on February 12, 2005 (file of attachments to the answering brief, tome IV, attachment 18, folio 6165); Record of interview with Pablo Julian Solórzano Barrios before the Forensic and Criminal Scientific Investigation Unit on February 23, 2005 (file of attachments to the answering brief, tome IV, attachment 18, folio 6174); Record of interview with Juan José Barrios on August 2, 2005, *supra* note 148, folio 5011; Affidavit made by Víctor Daniel

February 2011,<sup>163</sup> the State had made any attempt to coordinate directly with the beneficiaries or with the Public Prosecution Service in relation to the type of measures of protection required by the beneficiaries in order to reduce the risks they faced, the way to implement them, and the type of collaboration possibly required from the beneficiaries. In addition, the argument that the beneficiaries had refused protection by police agents from specific police stations or that they lived in two states, Miranda and Aragua, cannot justify the failure to adopt specific measures of protection to counter the risks they faced. Indeed, several members of the Barrios family relocated as a result of the danger they felt and the threats received in Guanayén (*infra* paras. 156 to 161). Furthermore, in its order for provisional measures of November 23, 2004, the Court required that “the measures of protection should not be provided by police forces that, according to the beneficiaries, were involved in the events denounced.”<sup>164</sup> This, in no way relieves the State of its strict obligation to adopt the necessary positive measures to prevent or avoid the danger and to determine those responsible.

129. In this regard, the Court takes into consideration that, when processing the provisional measures in 2004, it required the State, in view of the special characteristics of the case, to order “immediately, the [measures] that [were] necessary to protect effectively the life and personal integrity”<sup>165</sup> of the beneficiaries, who were in to situation of extreme gravity and urgency that required measures of protection to avoid irreparable harm to them. Subsequently, in 2005, the Court required Venezuela to implement the “necessary permanent custody measures to provide security to the homes of Maritza Barrios [mother of Rigoberto, Oscar José and Wilmer José Flores Barrios], and Juan [José] Barrios.”<sup>166</sup> Also, in 2010, the Court declared that “the death of the [...] beneficiary Oscar [José] Barrios denote[d] the failure to implement the provisional measures effectively,” considered that “the State ha[d] not adopted the provisional measures ordered by this Court effectively,” and verified “the State’s failure to comply [with the obligation] to implement the provisional measures ordered by this Court.”<sup>167</sup> Moreover, in its orders of November 25, 2010, and February 21, 2011, the Court reaffirmed that the deaths and the attacks on the beneficiaries “represented serious non-compliance by the State” with the provisional measures.<sup>168</sup>

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Cabrera Barrios on June 23, 2011 (merits file, tome III, folio 926) and Testimony of Eloisa Barrios during the public hearing on June 29, 2011.

<sup>163</sup> Cf. Record of the special hearing of February 8, 2011, *supra* note 156, folio 7472.

<sup>164</sup> *Case of Eloisa Barrios et al. Provisional measures*. Order of November 23, 2004, *supra* note 10, third operative paragraph.

<sup>165</sup> *Case of Eloisa Barrios et al. Provisional measures*. Order of November 23, 2004, *supra* note 10, second operative paragraph.

<sup>166</sup> *Case of Eloisa Barrios et al. Provisional measures with regard to Venezuela*. Order of the Inter-American Court of Human Rights of June 29, 2005, fifth operative paragraph.

<sup>167</sup> *Case of Eloisa Barrios et al. Provisional measures with regard to Venezuela*. Order of the Inter-American Court of Human Rights of February 4, 2010, considering paragraphs 17 and 18, and first operative paragraph.

<sup>168</sup> Cf. *Case of Eloisa Barrios et al. Provisional measures*. Order of November 25, 2010, *supra* note 158, first declarative paragraph, and *Case of Eloisa Barrios et al. Provisional measures*. Order of February 21, 2011, *supra* note 159, considering paragraph 13.

130. The foregoing reveals that the State has not demonstrated that it took adequate and effective steps to prevent the attempts on the lives of the five above-mentioned members of the Barrios family. The domestic measure of protection consisted exclusively of sporadic patrols to the homes of some members of the Barrios family, not including, for example, Luis Alberto Barrios and Wilmer José Flores Barrios. Moreover, the State has not provided evidence that it conducted a serious and thorough investigation of the facts that preceded the attacks, even though Oscar José Barrios was a minor at the time of the events. Hence this measure was insufficient to mitigate the danger suffered by the victims and to prevent future acts of violence.

131. Regarding the deaths of Luis Alberto Barrios, Oscar José Barrios, Wilmer José Flores Barrios and Juan José Barrios that occurred in September 2004, November 2009, September 2010 and May 2011, and the attempt on the life of Néstor Caudi Barrios in January 2011, the State was fully aware of the specific situation of danger of the victims, which increased with the passage of time and the occurrence of new deaths or violent acts. Moreover, regarding the State's argument that the death of Juan José Barrios was related to a debt for a purchase he had made (*supra* para. 108), the Court notes that it has insufficient evidence in this regard, other than a note of the Twentieth Prosecutor, which contains a four-page report on the investigation of the incident. Consequently, the Court considers that the State failed to fulfill its obligation to adopt the necessary and reasonable measures to ensure the right to life of Luis Alberto Barrios, Oscar José Barrios, Wilmer José Flores Barrios and Juan José Barrios, and the right to personal integrity of Néstor Caudi Barrios who, in addition, were beneficiaries of precautionary and provisional measures granted by the inter-American human rights system. The international responsibility for these facts can be attributed to the State to the extent that it failed to comply with its obligation of prevention derived from Articles 4(1) and 5(1) of the Convention, read in conjunction with Article 1(1) of this instrument, which obliges the State to guarantee the enjoyment of the rights.<sup>169</sup>

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132. Regarding the representatives' argument that the failure to comply with the provisional measures represented a violation of the rights established in Articles 44 and 63(2) of the Convention, the Court observes that the State's non-compliance with the obligation to adopt the appropriate measures of protection to safeguard the life of the beneficiaries of the precautionary and provisional measures became one of the factors that resulted in the violation of those rights, which was analyzed above Article 4(1), in relation to Article 1(1), of the Convention.

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133. Lastly, with regard to the arguments of the Commission and the representatives concerning the violation of the obligation to guarantee the right to life, to personal integrity and to personal liberty (*supra* paras. 102), this Court considers that, the facts established in the preceding paragraphs and in accordance with the provisions of Articles 1(1), 4(1), 5(1) and 7(1) of the American Convention, gave rise to the State's obligation to investigate the detention, assaults, threats and death (*supra* paras. 62, 63, 73, 74, 92 and 109 to 115) of the persons

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<sup>169</sup> Cf. *Case of Valle Jaramillo et al.*, *supra* note 94, para. 104.

declared victims in this chapter (*supra* paras. 68, 79, 84, 85, 96 and 131). In this regard, the assessment of compliance with the obligation to guarantee the right to life, to personal integrity, and to personal liberty by an effective investigation of the events that occurred will be made in Chapter X of this judgment.

## VIII RIGHTS TO PRIVACY AND TO PROPERTY

### *A. Arguments of the parties*

134. The Commission affirmed that the house searches involving the theft of property and the destruction of the homes of certain members of the Barrios family concerned issues relating to the right to property, the right to family life and privacy, and the protection of the home. The State has not justified the actions of the police agents who intervened in those incidents. Consequently, Venezuela failed to comply with the obligation to respect and ensure family and private life, and private property, and violated the rights embodied in Articles 11 and 21 of the Convention, in relation to Article 1(1) thereof, to the detriment of Brígida Oneyda Barrios, Justina Barrios, Elbira Barrios, Luis Alberto Barrios and his companion Orismar Carolina Alzul García.

135. The representatives indicated that the entry of State agent into a home without legal authorization or the consent of its inhabitants constitutes arbitrary and abusive interference in the family home. In the instant case, the searches and, in some cases, the act of setting fire to the houses and to the possessions were carried out by police agents: (a) without to judicial warrant for the search and in the absence of a situation of *flagrante delicto* that would have justified entry without a search warrant: (b) with the removal of possessions that have not been returned subsequently and the retention of which has not been justified by the authorities, and (c) with destruction of property, without any reason to explain or justify this. Based on the foregoing, they concluded that the State had violated the rights to family life and privacy and to property recognized in Articles 11(2) and 21 of the American Convention to the detriment of Justina Barrios, Elbira Barrios, Luis Alberto Barrios and Orismar Carolina Alzul García and Brígida Oneyda Barrios.

136. The State affirmed that “if the searches were conducted – a situation [...] that has not been proved – they could have been carried out without a judicial warrant in keeping with the exceptions [established] in [the Venezuela Code of Criminal Procedure].”

### *B. Facts*

137. On November 29, 2003, an incident occurred between Narciso Barrios and a police agent in a bar where some members of the Barrios family worked, which resulted in the apparent theft of the latter’s service weapon (*supra* para. 109).

138. During the night of the same day, members of the police<sup>170</sup> searched the homes of Brígida Oneyda Barrios,<sup>171</sup> and of Luis Alberto Barrios and Orismar Carolina Alzul García.<sup>172</sup> During these searches, some possessions of Brígida Oneyda Barrios, and of Luis Alberto Barrios and Orismar Carolina Alzul García were destroyed and others removed from their homes.<sup>173</sup> In addition, the home of the last two individuals was set on fire.<sup>174</sup>

### *C. Considerations of the Court*

139. Regarding these arguments of the Commission and the representatives, the Court will consider: (a) the right to privacy in relation to the alleged interference in various family homes, and (b) the right to property.

#### *1. Interference in the family home*

140. The Court has established that the protection of privacy, family life and the home entails the recognition that there is a personal sphere that must be exempt and immune from abusive or arbitrary invasion or interference by third parties or the public authorities. In this regard, the

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<sup>170</sup> Cf. Record of criminal investigation of the Forensic and Scientific Crime Investigation Unit of February 21, 2005 (file of attachments to the answering brief, tome II, attachment 10, folio 5120); Record of interview with Wilmer Bravo Teran before the Office of the Prosecutor of the Republic on January 16, 2007 (file of attachments to the answering brief, tome II, attachment 10, folio 5188); Note No. 035/07 of January 24, 2007, of the S.A.R.A. and Operations Division, with a copy of the daily log of the San Francisco de Cara Police Station of November 29, 2003 (file of attachments to the answering brief, tome II, attachment 10, folio 5193); Police technical inspection No. 1726 of November 30, 2003 (file of attachments to the answering brief, tome II, attachment 10, folios 5280 to 5282). See also, Record of interview with Eduleydis Pantoja Rodríguez by the Forensic and Scientific Crime Investigation Unit on November 30, 2003 (file of attachments to the answering brief, tome II, attachment 10, folio 5290).

<sup>171</sup> Cf. Complaint filed by Brígida Oneyda Barrios before the Fourteenth Prosecutor of the Public Prosecution Service on December 2, 2003 (file of attachments to the answering brief, tome II, attachment 10, folios 5232 to 5234); Record of interview with Brígida Oneyda Barrios on February 28, 2005, *supra* note 120, folio 5252; Record of interview with Brígida Oneyda Barrios by the Twentieth Prosecutor of the Public Prosecution Service on October 3, 2006 (file of attachments to the answering brief, tome II, attachment 10, folio 5168), and Affidavit made by Brígida Oneyda Barrios on June 20, 2006 (merits file, tome III, folio 883).

<sup>172</sup> Cf. Complaint filed by Luis Alberto Barrios on December 4, 2003 (file of attachments to the answering brief, tome II, attachment 10, folios 5236 to 5237); Complaint filed by Orismar Carolina Alzul García before the Fourteenth Prosecutor of the Public Prosecution Service on December 10, 2003 (file of attachments to the answering brief, tome II, attachment 10, folio 5238); Interview with Orismar Carolina Alzul García by officials of the Scientific Investigation Unit on February 21, 2005 (file of attachments to the answering brief, tome II, attachment 10, folios 5113 and 5114); Record of criminal investigation of February 21, 2005 (file of attachments to the answering brief, tome II, attachment 10, folio 5242), and Affidavit made by Orismar Carolina Alzul García on June 21, 2011 (merits file, tome III, folio 911). See also, Complaint filed before the Senior Prosecutor of the Public Prosecution Service on March 1, 2004, *supra* note 141, folios 3210 to 3214.

<sup>173</sup> Cf. Complaint filed by Brígida Oneyda Barrios on December 2, 2003, *supra* note 171, folios 5232 to 5234; Record of interview with Brígida Oneyda Barrios on February 28, 2005, *supra* note 120, folio 5252; Complaint filed by Luis Alberto Barrios on December 4, 2003, *supra* note 172, folio 5236, and Complaint filed by Orismar Carolina Alzul García on December 10, 2003, *supra* note 172, folio 5236.

<sup>174</sup> Cf. Complaints and statements made by Orismar Carolina Alzul García and Luis Alberto Barrios, *supra* note 172. In addition, cf. Record of visit of the Children's Ombudsman's Office on December 9, 2003 (file of attachments to the answering brief, tome II, attachment 10, folio 5239), and Police technical inspection No. 300 of February 21, 2005 (file of attachments to the answering brief, tome II, attachment 10, folios 5116 and 5117).

home, the family and private life are intrinsically linked, because the home becomes a space in which family life and private life can be led freely.<sup>175</sup>

141. The Court recalls that international case law has affirmed the authority of international courts to evaluate evidence freely, without having to adopt a rigid determination of the amount required as grounds for a judgment,<sup>176</sup> and that it is essential that the jurisdictional organ pay attention to the circumstances of the specific case and take into account the constraints imposed by respect for legal certainty and the procedural balance of the parties.<sup>177</sup> In addition, the Court has established that the use of circumstantial evidence, indications and presumptions as grounds for a judgment is legitimate, “provided that conclusions can be inferred from them that are consistent with the facts.”<sup>178</sup> In this regard, the Court has indicated that, in principle, the burden of proof for the facts on which the arguments are founded corresponds to the plaintiff; however, it has underlined that, contrary to domestic criminal law, in proceedings on human rights violations, the State’s defense cannot rest on the impossibility of the plaintiff to provide evidence, when it is the State that controls the means to clarify incidents that took place within its territory.<sup>179</sup>

142. Luis Alberto Barrios testified before the local authorities that he witnessed the arrival at his home of around 15 police agents and that, at the time, he fled for fear of being assaulted and deprived of his life.<sup>180</sup> Orismar Carolina Alzul García testified on several occasions before the domestic investigation bodies and stated that, from her mother’s house, she observed police patrol cars arrive at her home and the removal of possessions by the said agents.<sup>181</sup> Additionally, the Children’s Ombudsman advised that there were signs that the door of the home of Luis Alberto Barrios and Orismar Carolina Alzul García had been forced, that clothes and other objects had been destroyed, and that part of the house had been set on fire.<sup>182</sup> Mrs. Alzul García’s lawyer submitted several photographs of the home to the Public Prosecution Service showing the fire and the destruction that had taken place. Finally, on February 21, 2005, 15

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<sup>175</sup> Cf. *Case of the Ituango Massacres*, *supra* note 98, paras. 193 and 194, and *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 201 Series C No. 215, para. 157.

<sup>176</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 15, para. 127, and *Case of Kawas Fernández v. Honduras. Merits, reparations and costs*. Judgment of April 3, 2009. Series C No. 196, para. 82.

<sup>177</sup> Cf. *Case of the “White Van” (Paniagua Morales et al.)*, *supra* note 12, para. 70; and *Case of Escher et al. v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of July 6, 2009. Series C No. 200, para. 59.

<sup>178</sup> Cf. *Case of Velásquez Rodríguez. Merits*, *supra* note 15, para. 130; *Case of Rosendo Cantú et al.*, *supra* note 57, para. 102.

<sup>179</sup> Cf. *Case of Velásquez Rodríguez. Merits*, *supra* note 15, para. 135, and *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, reparations and costs*. Judgment of September 1, 2010. Series C No. 217, para. 70.

<sup>180</sup> Cf. Complaint filed by Luis Alberto Barrios on December 4, 2003, *supra* note 172, folio 5236.

<sup>181</sup> Cf. Complaint filed by Orismar Carolina Alzul García on December 10, 2003, *supra* note 172, folio 5238; Interview with Orismar Carolina Alzul García on February 21, 2005, *supra* note 172, folio 5113 and 5114; Record of criminal investigation of February 21, 2005, *supra* note 172, 5242, and Affidavit made by Orismar Carolina Alzul García, *supra* note 172, folio 911.

<sup>182</sup> Cf. Record of visit of the Children’s Ombudsman’s Office, *supra* note 174, folio 5239.

months after the incident occurred, a police technical inspection verified that the door had been forced and that there were signs of burning in the said house.<sup>183</sup>

143. With regard to Brígida Oneyda Barrios, the Court observes that she was not at home when the search occurred and that she stated that her neighbors had told her that the police had been responsible. Three days after the incident, she reported the search of her home to the Public Prosecution Service and then testified on three further occasions about the search and the removal or destruction of her possessions, indicating that the police were responsible, and that they “were looking for [her] brother Narciso Barrios [...] because allegedly he had to machine gun that belonged to the Police.”<sup>184</sup> Similarly, Mrs. Alzul García indicated to the Scientific Investigation Unit that the residence of Brígida Oneyda Barrios had also been searched on the same date.<sup>185</sup> In view of the absence of an investigation of the incident (*infra* paras. 246 to 249) and of an account that disproved the statements made by Brígida Oneyda Barrios to the Police and to the Public Prosecution Service, the Court grants credibility to what she said and concludes that the search of her home was carried out by members of the police team that had previously searched the home of Luis Alberto Barrios and Orismar Carolina Alzul García looking for the official weapon apparently stolen by Narciso Barrios (*supra* para. 109).

144. Lastly, the Court observes that the Commission and the representatives alleged that the homes of Elbira Barrios and Justina Barrios were also searched. As evidence, they submitted a complaint filed by the lawyer Luis Aguilera before the Senior Prosecutor on March 1, 2004, a statement by Eloísa Barrios, and the affidavit of Brígida Oneyda Barrios, none of whom witnessed the events, as well as a newspaper article.<sup>186</sup> Regarding these two searches, the Court does not have possible domestic complaints or testimony in the international proceedings by those allegedly affected. The Court observes that the parties did not provide evidence that would corroborate the statements made by Eloísa and Brígida Barrios and by their lawyer. Hence, the Court does not have sufficient evidence to reach a conclusion in this regard.

145. Regarding the inviolability of the home, the relevant part of the Venezuelan Constitution stipulates:<sup>187</sup>

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<sup>183</sup> Cf. Police technical inspection No. 300 of February 21, 2005, *supra* note 174, folios 5116 and 5117.

<sup>184</sup> Record of interview with Brígida Oneyda Barrios el February 28, 2005, *supra* note 120, folio 5252. In addition, cf. Complaint filed by Brígida Oneyda Barrios on December 2, 2003, *supra* note 171, folios 5232 to 5234; Record of interview with Brígida Oneyda Barrios of October 3, 2006, *supra* note 171, folio 5168, and Affidavit made by Brígida Oneyda Barrios, *supra* note 171, folio 883.

<sup>185</sup> Cf. Record of interview with Orismar Carolina Alzul García on February 21, 2005, *supra* note 172, folio 5112.

<sup>186</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on March 1, 2004, *supra* note 139, folios 3210 to 3215; Record of interview with Eloísa Barrios before the Public Prosecution Service on August 10, 2004 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 2, folio 3229) and Newspaper article in “*El Siglo*” of June 29, 2004 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 2, folio 3247).

<sup>187</sup> Constitution of the Bolivarian Republic of Venezuela, *supra* note 90, article 47.

The home and any private property of an individual are inviolable. They can only be searched with a judicial search warrant, to prevent the perpetration of a crime or to comply, pursuant to the law, with decisions issued by the courts, always respecting the dignity of the individual.

146. The evidence available does not show that the searches were conducted with a judicial warrant or that the entry was with the consent of those affected or that it took place in a situation of *flagrante delicto* or another legally accepted presumption. In addition, the State has not contested specifically the arguments of the Commission and of the representatives, and has not disproved the indications pointing to the participation of State agents in these facts.

147. Based on the above, the Court finds that the entry of police agents into the homes of Brígida Oneyda Barrios and of Luis Alberto Barrios and Orismar Carolina Alzul García, without a judicial order or legal authorization and without the consent of the inhabitants, constituted arbitrary and abusive interference in their family home. Consequently, the State violated the right to privacy embodied in Article 11(2) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Brígida Oneyda Barrios, Luis Alberto Barrios and Orismar Carolina Alzul García and of their direct family who, the Court has verified, lived in these homes: Marcos Antonio Díaz Barrios, Sandra Marivi Betancourt Barrios, Junior José Betancourt Barrios, Wilneidys Betania Pimentel Barrios, Ronis David Barrios Alzul and Roniel Alberto Barrios Alzul.

## **2. Right to property**

148. Regarding the right to property, the Court has developed a broad definition in its case law that covers, among other matters, the use and enjoyment of property, defined as material objects that can be acquired, as well as any right that can form part of the personal wealth of a person.<sup>188</sup> This concept includes both personal possessions and real estate, tangible and intangible elements and any other non-material objects of value.<sup>189</sup>

149. In the instant case, the Court finds that the right to property of Brígida Oneyda Barrios, Luis Alberto Barrios, Orismar Carolina Alzul García and the next of kin named above (*supra* para. 147) was affected by the fact that, during the search of their homes, police agents removed without authorization and failed to return household appliances, money, medicines, clothes and articles of personal hygiene, destroyed documents, clothes and household appliances, and set fire to part of the residence of Luis Alberto Barrios and Orismar Carolina Alzul García. The victims were deprived of the said possessions without any justification, and the State has not specifically contested these facts or provided explanations about what happened.

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<sup>188</sup> Cf. *Case of Ivcher Bronstein v. Peru. Reparations and costs*. Judgment of February 6, 2001. Series C No. 74, paras. 120-122, and *Case of Aprill Alosilla et al. v. Peru. Merits, reparations and costs*. Judgment of March 4, 2011. Series C No. 223, para. 82

<sup>189</sup> Cf. *Case of Ivcher Bronstein*, *supra* note 188, para. 122, and *Case of Salvador Chiriboga v. Ecuador. Preliminary objection and merits*. Judgment of May 6, 2008. Series C No. 179, para. 55.

150. Based on the above, the Court concludes that the State violated the right to property recognized in Article 21(1) and 21(2) of the American Convention, in relation to Article 1(1) therefore, to the detriment of Brígida Oneyda Barrios, Luis Alberto Barrios and Orismar Carolina Alzul García as well as of the next of kin who, the Court has verified, lived in the said homes: Marcos Antonio Díaz Barrios, Sandra Marivi Betancourt Barrios, Junior José Betancourt Barrios, Wilneidys Betania Pimentel Barrios, Ronis David Barrios Alzul and Roniel Alberto Barrios Alzul.

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151. Lastly, the Court understands that, from the facts established in the preceding paragraphs and, as stipulated in Articles 1(1), 11 and 21 of the American Convention, the State had the obligation to investigate the interferences in the family homes and the violation of the victims' right to property. The obligation to guarantee the said rights by means of a serious, complete and effective investigation into what happened will be assessed in Chapter X of this judgment.

## **IX RIGHTS TO FREEDOM OF MOVEMENT AND RESIDENCE, PROTECTION OF THE FAMILY, AND RIGHTS OF THE CHILD**

### *A. Arguments of the parties*

152. The Commission indicated that, in this case, the threats to the alleged victims were made by members of the police forces and resulted in the victims' displacement from their usual place of residence owing to the lack of protection from the danger they faced. Irrespective of the fact that they only moved house for a short time or that some members of the family have returned, the mere fact that they had to move to protect themselves is sufficient to establish the State's responsibility for violating the right embodied in Article 22(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of all the persons included in the list of those displaced.<sup>190</sup> In addition, regarding the children, it indicated that the State had also violated Article 19 of the American Convention.

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<sup>190</sup> Cf. Commission's Report No. 11/10, *supra* note 4, folio 146: Justina Barrios, Eloisa Barrios, Beatriz Adriana Cabrera Barrios, Víctor Daniel Cabrera Barrios, Luilmari Carolina Guzmán Barrios, Luiseidys Yulianny Guzmán Barrios, Elbira Barrios, Darelbis Carolina Barrios, Oscar José Barrios, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Maritza Barrios, Wilmer José Flores Barrios, Génesis Andreina Navarro Barrios, Víctor Tomas Navarro Barrios, Heilin Alexandra Navarro Barrios, Néstor Caudi Barrios, Brígida Oneyda Barrios, Marcos Antonio Díaz Barrios, Sandra Marivi Betancourt Barrios, Juner José Betancourt Barrios, Wilneidys Betania Pimentel Barrios, Wilker Felipe Pimentel Barrios, Inés Barrios, Daniela Yotselín Ortiz Barrios, Edinson Alexander Ortiz Barrios, Johjan Ramón Perozo Barrios, Luisa del Carmen Barrios, Gustavo Ravelo, Lusiany Nazareth Ravelo Barrios, Orismar Carolina Alzul García, Ronis David Barrios Alzul, Roniel Alberto Barrios Alzul, Luís Alberto Alzul, Dalila Ordalys Ortuño, Jorge Antonio Barrios Ortuño, Carlos Alberto Ortuño, Juncelis Esmil Rangel Teran, Annarys Alexandra Barrios Rangel, Juan José Barrios, Orianny Nazareth Pelae and Oriana Nazareth Pelae, Pablo Julián Solórzano Barrios, Beneraiz de la Rosa and Danilo David Solórzano de la Rosa.

153. The representatives agreed in substance with the Commission's arguments and indicated that the displacements produced negative effects on the families and on their members, such as the loss of their homes, unemployment, deterioration in their living conditions, interruption of the education of the children, rupture of the previous harmonious relations of the family, and serious psychological repercussions. They concluded that the State was responsible for the said displacement, because of its failure to prevent and to avoid human rights violations against the alleged victims, which it knew had taken place, and for failing to provide the necessary guarantees so that they could live in Guanayén in safety. Also, the State was responsible for the direct actions of its police agents who participated in the violent incidents against the family that resulted in their displacement.

154. In addition, they argued that there had been a direct effect on the entire family owing to the constant threats and persecution suffered by its members, the displacement of which they were victims, the disruption of their community, the fragmentation of the family group, and the loss, for many of its members, of the essential father figure, owing to the executions perpetrated. Based on the above, they asked the Court to declare the violation of Articles 22(1) and 17 of the American Convention, to the detriment of specific members of the Barrios family.<sup>191</sup>

155. The State did not present specific arguments on the alleged violations of Articles 22 and 17 of the American Convention. Nevertheless, it considered that the requests of the Commission and the representatives should be rejected.

### ***B. Facts***

156. Most of the members of the Barrios family lived in Guanayén, Aragua state.<sup>192</sup> Starting in 2003, when the death of Benito Antonio Barrios occurred, several of them went to live in other places,<sup>193</sup> while some of the next of kin who lived in other places stopped visiting Guanayén (*infra* para. 161).

157. Following the search of their home on November 29, 2003 (*supra* para. 138), the family of Brígida Oneyda Barrios moved house owing to the lack of security they felt.<sup>194</sup> Subsequently, they moved to Miranda state.<sup>195</sup>

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<sup>191</sup> Cf. Brief with pleadings, motions and evidence (merits file, tome II, folios 287 to 290).

<sup>192</sup> Cf. Communication presented to the Fourteenth Prosecutor of the Public Prosecution Service on April 21, 2004 (file of attachments to the Commission's Report No. 11/10, tome I, attachment 3, folios 3334 and 3335); Affidavit made by Brígida Oneyda Barrios, *supra* note 171, folio 882. See also affidavits of Elbira Barrios, Maritza Barrios, Orismar Carolina Alzul García and Pablo Julián Solórzano Barrios (merits file, tome III, folios 890, 891, 906, 906, 912 and 918), and testimony given by Eloisa Barrios during the public hearing, *supra* note 164.

<sup>193</sup> Cf. Record of criminal investigation of February 21, 2005, *supra* note 172, folio 5242; Affidavit made by Elbira Barrios, *supra* note 192, folios 890, 891 and 892; Affidavit made by Lilia Ysabel Solórzano Barrios on June 23 2011 (merits file, tome III, folios 897 and 898); Affidavit made by Luisa del Carmen Barrios on June 23, 2011 (merits file, tome III, folios 900 to 903); Affidavit made by Maritza Barrios on June 23, 2011 (merits file, tome III, folios 905 to 907); Affidavit made by Pablo Julian Solórzano Barrios on June 22 2011 (merits file, tome III, folios 918 to 921); Affidavit made by Víctor Daniel Cabrera Barrios, *supra* note 162, folios 924 to 927.

<sup>194</sup> Cf. Affidavit made by Brígida Oneyda Barrios, *supra* note 171, folios 882 and 883. See also Affidavit made by Luisa del Carmen Barrios, *supra* note 193, folio 901.

158. On July 12, 2004, Néstor Caudi Barrios, one of the sons of Maritza Barrios moved house because he was afraid of alleged harassment perpetrated by police agents.<sup>196</sup> On January 20, 2005, following the death of Rigoberto Barrios, another of her children, Maritza Barrios left Guanayén permanently and went to live in Charallave, Miranda state.<sup>197</sup>

159. In February 2005, after having denounced that, in January that year, two men were prowling round the house where they lived, and afraid of being murdered by Aragua state police agents, Pablo Julián Solórzano Barrios, his wife Beneraiz de la Rosa and his son Danilo David Solórzano Barrios abandoned their home.<sup>198</sup>

160. On June 19, 2005, the day after one of her sons, Oscar José Barrios, had allegedly been intercepted by five armed men, Elbira Barrios and her minor children Oscar José Barrios, Cirilo Antonio Colorado Barrios and Lorena del Valle Pugliese Barrios left Guanayén, while her other two children, Darelbis Carolina Barrios and the minor Elvis Sarais Colorado Barrios, had moved some months previously afraid of being murdered.<sup>199</sup> While Oscar José Barrios sometimes lived in the house of Eloisa Barrios in Cagua,<sup>200</sup> the others lived with their mother in Valencia.<sup>201</sup>

161. During the time the facts of this case took place, Eloisa Barrios and her direct family also lived in Cagua.<sup>202</sup> At the time, her family consisted of her minor children Víctor Daniel Cabrera Barrios, Luilmari Carolina Guzmán Barrios and Luiseidys Yulianny Guzmán Barrios.

### *C. Considerations of the Court*

#### *1. Freedom of movement and residence*

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<sup>195</sup> Cf. Record of the special hearing on July 27, 2011, *supra* note 156, folio 2606.

<sup>196</sup> Communication presented to the Senior Prosecutor of the Judicial District of Aragua state on July 28, 2004 (file of attachments to the Commission's Report No. 11/10, tome II, attachment 10, folios 3772 and 3773); Record of expanded interview with Néstor Caudi Barrios before the Twentieth Prosecutor of the Public Prosecution Service of Aragua state on August 9, 2004, in Brief with formal accusation of the Twentieth Prosecutor of March 6, 2005 (file of attachments to the answering brief, tome III, attachment 17, folios 5827 and 5828). See also Affidavit made by Maritza Barrios, *supra* note 193, folio 907.

<sup>197</sup> Cf. Affidavit made by Maritza Barrios, *supra* note 193, folios 905 to 907.

<sup>198</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service of Aragua state on February 10, 2005 (file of attachments to the Commission's Report No. 11/10, tome II, attachment 10, folios 3767 to 3768). See also Affidavit made by Pablo Solórzano Barrios, *supra* note 193, folio 918.

<sup>199</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on June 22, 2005, *supra* note 123, folio 3770.

<sup>200</sup> Cf. Affidavit of Víctor Daniel Cabrera Barrios, *supra* note 162, folio 924.

<sup>201</sup> Cf. Affidavit of Elbira Barrios, *supra* note 192, folios 890 and 891, and Record of the special hearing of July 27, 2011, *supra* note 156, folio 2553.

<sup>202</sup> Cf. Testimony of Eloisa Barrios during the public hearing, *supra* note 162, and Affidavit made by Víctor Daniel Cabrera Barrios, *supra* note 162, folios 924 to 927.

162. The Court has established on previous occasions that the right to freedom of movement and residence is an essential condition for the free development of the individual,<sup>203</sup> and includes, *inter alia*, the right of those who are legally within a State to move freely in it, as well as to choose their place of residence.<sup>204</sup> The enjoyment of this right does not depend on any particular purpose or reason on the part of the person who wishes to move or remain in one place.<sup>205</sup> This Court has indicated that freedom of movement and residence can be violated by *de facto* restrictions, if the State has not established the conditions or provided the means that allow it to be exercised.<sup>206</sup> An example of this occurs when someone is the victim of threats or harassment and the State has not provided the necessary guarantees for them to be able to reside and to move freely in the territory in question, even when the threats and harassment emanate from non-State agents.<sup>207</sup>

163. In the instant case, the members of the Barrios family denounced threats, detentions and searches of their homes on different occasions (*supra* Chapters VII and VIII). From 1998 until the delivery of this judgment, seven members of this family died in violent circumstances; in three of these cases the Court has found the State responsible for the acts of its agents (*supra* paras. 68 and 96) while, in the other four cases, its responsibility arose from failing to comply with its obligation of prevention and guarantee (*supra* para. 131). Several members of the Barrios family testified before domestic bodies and before this Court that: (a) they moved from Guayanén owing to the violent acts that occurred against their next of kin or against themselves;<sup>208</sup> (b) they moved owing to the fear and lack of security they felt,<sup>209</sup> and (c) they did not return to the said place because they were afraid of what could happen to them.<sup>210</sup> In this regard, the situation is revealed by the statements made by Brígida Oneyda Barrios, who said that her “family became totally disorganized [and] went to many different places,”<sup>211</sup> and by

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<sup>203</sup> Cf. *Case of Ricardo Canese v. Paraguay. Merits, reparations and costs*. Judgment of August 31, 2004. Series C No. 111, para. 115; and *Case of Manuel Cepada Vargas*, *supra* note 151, para. 197.

<sup>204</sup> Cf. *Case of Ricardo Canese v. Paraguay*, *supra* note 203, para. 115, and *Case of Valle Jaramillo et al.*, *supra* note 94, para. 138.

<sup>205</sup> Cf. *Case of Ricardo Canese*, *supra* note 203, para. 115, and *Case of Manuel Cepada Vargas*, *supra* note 151, para. 197.

<sup>206</sup> Cf. *Case of the Moiwana Community v. Suriname. Preliminary objections, merits, reparations and costs*. Judgment of June 15, 2005. Series C No. 124, paras. 119 and 120, and *Case of Manuel Cepada Vargas*, *supra* note 151, para. 197.

<sup>207</sup> Cf. *Case of Valle Jaramillo et al.*, *supra* note 94, para. 139, and *Case of Manuel Cepada Vargas*, *supra* note 151, para. 197.

<sup>208</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on February 10, 2005, *supra* note 198, folios 3767 to 3768; Complaint filed before the Senior Prosecutor of the Public Prosecution Service on June 22, 2005, *supra* note 123, folio 3770; Affidavits made by Brígida Oneyda Barrios, Lilia Ysabel Solórzano Barrios and Maritza Barrios, *supra* notes 171 and 193, folios 882, 897 and 905.

<sup>209</sup> Cf. Affidavits made by Brígida Oneyda Barrios, Lilia Ysabel Solórzano Barrios, Luisa del Carmen Barrios and Pablo Julian Solórzano Barrios, *supra* notes 171 and 193, folios 882, 883, 897, 900 and 918.

<sup>210</sup> Cf. Affidavit made by Víctor Daniel Cabrera Barrios, *supra* note 162, folio 924.

<sup>211</sup> Cf. Affidavit made by Brígida Oneyda Barrios, *supra* note 171, folio 883.

Luisa del Carmen Barrios who stated that, following the threats and deaths, “each member of the family took off in a different direction.”<sup>212</sup>

164. The Court observes that the State has not presented specific arguments about the incidents and about the arguments of the Commission and the representatives, merely affirming that it had not violated the right to freedom of movement and residence of the members of the Barrios family.

165. The Court considers that Venezuela has not formally restricted the freedom of movement and residence of the members of the Barrios family. Nevertheless, it finds that, in this case, this freedom has been limited by serious *de facto* restrictions arising from the threats, harassment and other violent acts that have led to the departure of several of its members from Guanayén and their reticence to return, owing to the well-founded fear that their own life or safety, or that of their next of kin, could be in danger owing to the violent events that took place and the lack of security, added to the failure to investigate and prosecute those responsible for the facts. Indeed, the State is responsible for the conduct of its agents that caused the displacements and for not having established the conditions or provided the means to allow the members of the Barrios family to return safely. As this Court has previously established, the absence of an effective investigation of violent acts can lead to or perpetuate exile or forced displacement.<sup>213</sup>

166. From the evidence provided by the parties, the Court considers that the households of Elbira Barrios, Oscar José Barrios, Pablo Julián Solórzano Barrios, Maritza Barrios, Brígida Oneyda Barrios and Eloisa Barrios either moved or suffered a restriction of their freedom of movement.<sup>214</sup>

167. Furthermore, the Commission indicated that Carlos Alberto Ortuño, his mother Dalila Ordalys Ortuño and his brother Jorge Antonio Barrios Ortuño were victims of displacement. However, Dalila Ordalys Ortuño desisted from participating in the processing of the instant case (*supra* para. 33); while Carlos Alberto Ortuño declared that he still “lives in Guanayén” with his mother and that he is “not afraid to be there.”<sup>215</sup> In addition, the Court has no information about the alleged displacement of Jorge Antonio Barrios Ortuño. Also, the evidence in the case file reveals that Orismar Carolina Alzul García and her children Ronis David Barrios Alzul García, Roniel Alberto Barrios Alzul and Luis Alberto Alzul, remained in Guanayén following the death of their husband and father,<sup>216</sup> as did Juan José Barrios, who remained in Guanayén,<sup>217</sup> and there

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<sup>212</sup> Cf. Affidavit made by Luisa del Carmen Barrios, *supra* note 193, folio 900.

<sup>213</sup> Cf. *Case of the Moiwana Community*, *supra* note 206, para. 120, and *Case of Manuel Cepeda Vargas*, *supra* note 151, para. 201.

<sup>214</sup> The Commission did not indicate Lilia Ysabel Solórzano Barrios as an alleged victim in the instant case. In this regard, the Court recalls that, in its consistent case law in recent years, it has established that the alleged victims must be indicated in the Commission’s report under Article 50 of the Convention. Also, in accordance with Article 35(1) of the Rules of Procedure, it is for the Commission and not this Court, to identify the alleged victims in a case before the Court precisely and at the appropriate procedural opportunity. Consequently, the Court will not consider Lila Ysabel Solórzano Barrios an alleged victim of the violation of the right to freedom of movement and residence.

<sup>215</sup> Cf. Affidavit made by Carlos Alberto Ortuño, *supra* note 63, folio 1053.

<sup>216</sup> Cf. Affidavit made by Orismar Carolina Alzul García, *supra* note 172, folios 912 and 913.

is insufficient evidence to prove that he left for a time. Additionally, the testimony of Pablo Julián Solórzano Barrios and the complaint filed before the Public Prosecution Service in February 2005 reveal that his oldest son, Paul David Solórzano Barrios, did not move with his family in February 2005 and continues to live in Guanayén.<sup>218</sup> Lastly, the Commission and the representatives indicated other members of the Barrios family as alleged victims of violations of Article 22 of the Convention.<sup>219</sup> However, the Court does not have sufficient evidence to consider them victims in this chapter.

168. Based on the above findings, the Court declares that the State is responsible for violation of the right to freedom of movement and residence recognized in Article 22(1) of the Convention, in relation to Article 1(1) thereof, to the detriment of Elbira Barrios, Oscar José Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Darelbis Carolina Barrios, Elvis Sarais Colorado Barrios, Pablo Julián Solórzano Barrios, Beneraiz de la Rosa, Danilo David Solórzano Barrios, Maritza Barrios, Wilmer José Flores Barrios, Néstor Caudi Barrios, Génesis Andreína Navarro Barrios, Víctor Tomás Navarro Barrios, Heilin Alejandra Navarro Barrios, Brígida Oneyda Barrios, Marcos Antonio Díaz Barrios, Sandra Marivi Betancourt Barrios, Junior Jose Betancourt Barrios, Wilneidys Betania Pimentel Barrios, Eloisa Barrios, Víctor Daniel Cabrera Barrios, Luilmari Carolina Guzmán Barrios and Luiseidys Yulianny Guzmán Barrios. In addition, the Court recalls that the State is obliged to pay special attention to the needs and the rights of children based on their special vulnerability (*supra* para. 55). In this case, the Court finds that those who were children at the time of the facts were especially affected by the family displacements, so that the State violated the right to special protection owing to their condition as minors, of Oscar José Barrios, Luilmari Carolina Guzmán Barrios, Luiseidys Yulianny Guzmán Barrios, Danilo David Solórzano, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Wilmer José Flores Barrios, Génesis Andreína Navarro Barrios, Víctor Tomás Navarro Barrios, Heilin Alejandra Navarro Barrios, Marcos Antonio Díaz Barrios, Sandra Marivi Betancourt Barrios, Junior Jose Betancourt Barrios and Wilneidys Betania Pimentel Barrios, embodied in Article 19 of the American Convention, in relation to Article 1(1) of this instrument.

## 2. *Protection of the family*

169. In the instant case, the Commission did not argue the alleged violation of the right to protection of the family. This argument was put forward only by the representatives. This Court reiterates that the alleged victims, their next of kin or their representatives may invoke rights other than those included in the Commission's Report on Merits, based on the facts described by the Commission (*supra* para. 33).

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<sup>217</sup> Cf. Affidavits made by Luisa del Carmen Barrios and Pablo Julian Solórzano Barrios, *supra* note 193, folios 901 to 903, and 918.

<sup>218</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on February 10, 2005, *supra* note 198, folios 3767 to 3768, and Affidavits made by Pablo Julian Solórzano Barrios, *supra* note 193, folio 920.

<sup>219</sup> Cf. Report on Merits, *supra* note 4, folio 146, and pleadings and motions brief, *supra* note 191, folios 287 to 290.

170. The representatives asked the Court to declare that the right to protection of the family had been violated “to the detriment of the Barrios family, whose members have been identified.” They argued that, in this case, “the whole family had been directly affected owing to the constant threats and persecution suffered by its members, the displacement of which they were victims, the disruption of their community, the fragmentation of the households and the loss, for many of its members, of the essential figure of the father, owing to the executions that were perpetrated.”

171. The Court considers that these arguments refer to alleged effects that, in substance, will be examined in different chapters of this judgment; consequently it does not find it necessary to make an additional ruling in this regard.

## X

### **RIGHTS TO JUDICIAL GUARANTEES AND TO JUDICIAL PROTECTION, IN RELATION TO THE OBLIGATION TO RESPECT AND GUARANTEE RIGHTS**

172. First, the Court will include some general considerations regarding the right to judicial guarantees and to judicial protection. It will also summarize the arguments of the parties concerning the alleged violations of these rights. It will then analyze the domestic proceedings initiated in relation to each incident suffered by the victims. Lastly, the Court will refer to the alleged violation of the right to the truth argued by the representatives.

#### *A. General considerations of the Court*

173. In previous cases, the Court has recognized the necessary relationship that exists between the general obligation to guarantee rights indicated in Article 1(1) of the Convention and the specific rights protected by this instrument. This obligation of guarantee gives rise to State obligations to ensure the free and full exercise of the rights recognized in the Convention to every person subject to its jurisdiction. Since this obligation of guarantee is related to specific rights, it may be complied with in different ways, depending on the right that the State has the obligation to guarantee and the specific circumstances of the case.<sup>220</sup>

174. The obligation to investigate human rights violations is among the positive measures that States must adopt to guarantee the rights recognized in the Convention. The Court has held that, in order to comply with the obligation of guarantee, the States must not merely prevent, but also investigate violations of the human rights recognized in this instrument, such as those alleged in this case and, in addition, ensure the re-establishment, if possible, of the violated rights and, as appropriate, the reparation of the damage caused by the human rights violations.<sup>221</sup>

175. The obligation to investigate is an obligation of means and not of results, which must be assumed by the State as its inherent legal obligation and not as a mere formality preordained to

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<sup>220</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 15, paras. 162 and 166, and *Case of Garibaldi v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of September 23, 2009. Series C No. 203, para. 111.

<sup>221</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 15, paras. 166 and 176, and *Case of Garibaldi*, *supra* note 220, para. 112.

be ineffective, or as a mere measure taken by private interests that depends on the procedural initiative of the victims or their next of kin or upon their offer of proof.<sup>222</sup> The State's obligation to investigate must be fulfilled diligently in order to prevent impunity and the repetition of this type of facts. In this regard, the Court recalls that impunity encourages the repetition of human rights violations.<sup>223</sup>

176. In light of this obligation, once the State authorities are aware of an incident, they must open, *ex officio* and immediately, a serious, impartial and effective investigation using all legal means available, designed to determine the truth and to pursue, capture, prosecute and eventually punish all the perpetrators of the acts, especially when State agents are or could be involved.<sup>224</sup>

177. Furthermore, the Court has noted that this obligation persists "whatsoever the agent to which the violation may eventually be attributed, even private individuals; because, if their acts are not investigated genuinely, they would, to some extent, be assisted by the public authorities, and this would entail the State's international responsibility."<sup>225</sup>

178. This Court has also indicated that Article 8 of the Convention reveals that the victims of human rights violations, or their next of kin, must be given ample possibility to be heard and to act in the respective proceedings, both to seek clarification of the facts and the punishment of those responsible, and to obtain due reparation.<sup>226</sup> In this regard, the Court has indicated that, in a case of extrajudicial execution, the affected rights correspond to the deceased victim's next of kin, who are the interested party in the search to obtain justice and to whom the State must provide effective remedies to guarantee them access to justice, the investigation and eventual punishment, as appropriate, of those responsible, and integral reparation of the consequences of the violations.<sup>227</sup>

179. Consequently, in keeping with the Court's case law, the next of kin of the victims have the right, and the States the obligation, to an effective investigation by State authorities of what happened to the victims; that proceedings be instituted against those presumably responsible for the illegal acts; that the pertinent sanctions be imposed, as appropriate, and that the damage suffered by the said next of kin be repaired.<sup>228</sup>

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<sup>222</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 15, para. 177, and *Case of Torres Millacura et al.*, *supra* note 41, para. 112.

<sup>223</sup> Cf. *Case of the Ituango Massacres*, *supra* note 98, para. 319, and *Case of Garibaldi*, *supra* note 220, para. 141.

<sup>224</sup> Cf. *Case of the Pueblo Bello Massacre*, *supra* note 39, para. 143, and *Case of Manuel Cepeda Vargas*, *supra* note 151, para. 117.

<sup>225</sup> *Case of Velásquez Rodríguez*, *supra* note 15, paras. 177, and *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 179, para. 167.

<sup>226</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.)*, *supra* note 43, para. 227, and *Case of Torres Millacura et al.*, *supra* note 41, para. 113.

<sup>227</sup> Cf. *Case of Valle Jaramillo et al.*, *supra* note 94, para. 170, and *Case of Kawas Fernández*, *supra* note 176, para. 120.

<sup>228</sup> Cf. *Case of Durand and Ugarte. Merits*. Judgment of August 16, 2000. Series C No. 68, para. 130, and *Case of Garibaldi*, *supra* note 220, para. 117.

180. In addition, the Court has indicated that the obligation to investigate, together with the corresponding right of the next of kin, arises not only from the binding nature of the treaty obligations of international law for the States parties, but is also derived from domestic law relating to the obligation to investigate *ex officio* certain unlawful conducts and to the laws that allow the victims or their next of kin to file complaints or institute actions, present evidence or petitions, or take any other step, in order to play a procedural role in the criminal investigation so as to establish the truth about the events.<sup>229</sup>

181. Based on the above, this Court must determine whether the State has incurred in violations of the rights recognized in Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) of this instrument. To this end, the Court has established that the clarification of whether or not the State has violated its international obligations owing to the actions of its judicial organs may mean that the Court must examine the respective domestic proceedings.<sup>230</sup> Thus, depending on the circumstances of the case, the Court may have to analyze the procedures that are related to and constitute a prerequisite for judicial proceedings, particularly the investigation procedures on the results of which the initiation and progress of the proceedings depend. Consequently, the Court will examine the different internal investigations and criminal proceedings instituted in this case, regarding which a violation of judicial guarantees and judicial protection has been alleged, and will determine whether these rights have been violated.

### ***B. Arguments of the parties***

182. The Inter-American Commission indicated that in “[a]ll the proceedings, [...] the investigations have not been conducted with due diligence or within a reasonable time.” The facts “remain in a situation of impunity and the lack of rigor, seriousness and progress in the investigations is the common characteristic of all the cases.” In this regard, it underlined that 12 years had passed since the death of Benito Antonio Barrios, without clarification of the circumstances in which it occurred, or the punishment of those responsible. The Commission also referred to a series of irregularities and omissions in the investigations of the deaths of Benito Antonio Barrios, Narciso Barrios, Luis Alberto Barrios, and Rigoberto Barrios. Regarding the latter, it added that, in the investigation into medical malpractice “the reasons why the victim was not operated on until five days after he had entered the hospital were not investigated diligently, or whether the lack of a timely blood transfusion was related to the victim’s death.” In addition, it considered that long periods of procedural inactivity had occurred in all the proceedings concerning the deaths of Benito Antonio and Narciso Barrios, without any reasons to justify the delay in the investigation, and adequate mechanisms had not been provided to establish whether the lethal use of force had been strictly necessary and proportionate in the case of confrontations with the police. Regarding the investigation into the deaths of Luis Alberto and Rigoberto Barrios, it indicated that the prosecution had failed to analyze the facts

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<sup>229</sup> Cf. *Case of García Prieto et al. v. El Salvador*. Preliminary objections, merits, reparations and costs. Judgment of November 20, 2007. Series C No. 168, para. 104, and *Case of Vera Vera et al.*, *supra* note 39, para. 86.

<sup>230</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.)*, *supra* note 43, para. 222, and *Case of Garibaldi*, *supra* note 220, para. 120.

within the context in which they occurred and had not followed logical lines of investigation that would have permitted corroborating the participation of police officials.

183. Furthermore, regarding the threats suffered by Néstor Caudi Barrios, who witnessed the death of Narciso Barrios, the Commission indicated that, even though this had been reported to the Prosecutor, no inquiries were made in this regard. In the case of the illegal detention of Rigoberto and Jorge Antonio Barrios Ortuño, it indicated that there were certain omissions and irregularities in the investigation procedures; the case was frozen for one year, no measures were taken for another year, and the case was dismissed owing to the prescription of one of the crimes committed against them, without considering other offenses such as the deprivation of liberty of the victims. Also, regarding the investigation of the deprivation of liberty, the threats and the injuries caused to Luisa del Carmen Barrios, Gustavo, Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios and Jorge Antonio Barrios Ortuño, it referred, among other irregularities, to the absence of procedures to identify the perpetrators, the failure of the authorities to forward information, and the absence of administrative proceedings with regard to the facts. Lastly, it stated that, with regard to the alleged searches, destruction and theft in the homes of Justina Barrios, Elbira Barrios, Orismar Carolina Alzul García, Brígida Oneyda Barrios and Luis Alberto Barrios, *inter alia*, essential steps were not taken at the onset of the investigation, there was no investigative activity between December 2003 and February 2005, and the case was closed without obtaining the required probative elements. It also indicated that the facts did not have the special complexity that could justify the time the investigation took.

184. For these reasons, the Commission concluded that the State had violated the rights to judicial guarantees and judicial protection contained in the Articles 8(1) and 25(1) of the Convention, in relation to Article 1(1) of this instrument, “to the detriment of the immediate family (parents, siblings, children and life companions)” of Benito Antonio, Narciso, Luis Alberto, Rigoberto and Oscar José, all with the surname Barrios, by failing to investigate the facts surrounding their death; and to the detriment of Justina Barrios, Brígida Oneyda Barrios, Elbira Barrios, Luis Alberto Barrios, Orismar Carolina Alzul García, Jorge Antonio Barrios Ortuño, Rigoberto Barrios, Oscar José Barrios, Néstor Caudi Barrios, Luisa del Carmen Barrios, Gustavo Ravelo and Jesús Ravelo, for the failure to investigate the other violations. Regarding those who died, the Commission understands that they were victims of the denial of justice up until their death.

185. The representatives indicated that there had been “insufficient advantage had been taken of information on the activities of the Aragua and Guanayén police forces; even though the members of the Barrios family denounced the participation of police agents continuously and, in some cases, even identified them.” They indicated that “there was a bias against conducting investigations in cases of extrajudicial executions” and that, despite the existence of a common pattern of threats, and that the crimes were interconnected, none of this was taken into account when pursuing lines of investigation, especially in the prosecution’s files of the cases concerning Luis Alberto and Rigoberto Barrios. In addition, “the purpose of the conduct of the members of the police [...] was evidently to ensure the impunity of the crimes they had committed.”

186. Regarding the investigations of the deaths of Benito Antonio Barrios, Narciso Barrios, Luis Alberto Barrios and Rigoberto Barrios, they indicated several irregularities in the practice of

certain procedures, including: (a) the forwarding of the case file of Benito Antonio Barrios to different judicial authorities on seven occasions, which prevented a diligent investigation and, also, for five years there was no activity; (b) regarding the death of Narciso Barrios, a causal relationship existed between this and some of the incidents that were taking place with regard to this family group, despite which the authorities have not classified the crimes as being connected, which meant that they did not exhaust those lines of investigation, and there were numerous omissions that made the review and subsequent forensic examinations to determine the circumstances of the death of the victim more difficult; (c) the investigations into the death of Luis Alberto Barrios and of Rigoberto Barrios confirmed that they had both been threatened by the police; nevertheless the individuals who were indicated as the perpetrators were not investigated, and a line of investigation that would have allowed their responsibility to be established or rejected was not followed; (d) the case concerning the death of Rigoberto Barrios was closed a little more than a year after the criminal investigation had been initiated, without any inquiries having been made and with investigation procedures pending. They indicated that, regarding the death of Narciso Barrios, they did not have the file of the investigation when they presented their pleadings and motions brief. Regarding the investigations into the alleged malpractice to the detriment of Rigoberto Barrios, the representatives indicated that they were conducted at the request of his family and that, from September 2006 to 2007, the file passed through various judicial offices without any other actions being recorded.

187. With regard to the search of the homes, the representatives indicated that “violence [was used to] destroy the victims’ possessions before stealing those that were taken from the property, so that the incident should be classified as robbery and not petty theft as the prosecutor had classified it erroneously”; among other matters, this resulted in the right of action prescribing earlier. Regarding the alleged hearing held in October 2009, following which the case was dismissed owing to the alleged victims’ failure to appear, they indicated that they were never notified about it. In relation to the arrest and assault of Luisa del Carmen Barrios, Gustavo José Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios and Jorge Antonio Barrios Ortuño, they indicated, among other shortcomings, that on two occasions the investigations were erroneously added to other files, and that there is no record in the judicial file that the Fourteenth Prosecutor responded to the requests of the Twentieth Prosecutor. They concluded that there has been a procedural delay and an “evident lack of due diligence in the investigations, even though the officials who intercepted the vehicle had been identified from the outset.”

188. Regarding the detention of Rigoberto and Jorge Antonio Barrios they argued the delay in opening the investigation into these facts and the inefficiency of it once it had started. They referred to a series of deficiencies, such as the failure to notify the next of kin about the hearing following which the case was dismissed because the right of action had prescribed. They asserted that the facts “should be analyzed within a context of aggravated vulnerability owing to the illegality of their detention and because they were minors,” and that “the severity of these [facts] and the context of persecution against the family in which they occurred determine that the State is responsible for the violation of Articles 6 and 8 of the Convention against Torture to the detriment of [both of them]. Lastly, they also referred to the failure to investigate the death threats against Néstor Caudi Barrios, despite the numerous complaints filed, which entailed a total denial of access to justice.

189. Consequently, they asked that the State be declared responsible for violation of the rights to judicial guarantees and to judicial protection established in Articles 8(1) and 25 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the members of the Barrios family indicated in Table I on the identification of victims in the pleadings and arguments brief.<sup>231</sup>

190. The State rejected the accusations concerning the alleged violation of the rights to judicial guarantees and judicial protection, indicating that investigations had been carried out by the investigative bodies in all the cases taken up by the Prosecution Services, and observing that, in most of them, there are final decisions, and that charges have even been brought in two of them. The State argued that the fact that procedures proposed by the victims have not been carried out “does not entail any irregularity, because the Public Prosecution Service is empowered [...] to carry them out or not [...] and the petitioners must indicate [their] pertinence as an essential requirement to process them, and this is not on record in the file.” It also asserted that “in offenses for which a public action is in order [...] only [the Public Prosecution Service] is empowered to determine what measures should be taken.” With regard to the alleged judicial delay, it indicated that there is no domestic law establishing “a time frame for a prosecutor, after ordering the opening of an investigation, to identify those responsible for the illegal act in question, [because it may] not be possible to identify them.” There is only one provision that establishes six months for the issue of a final decision when those responsible have been identified, according to article 313 of the Code of Criminal Procedure.

191. The State reviewed the measures taken in the domestic sphere in relation to the members of the Barrios family. It specified that, regarding the proceedings for the death of Benito Antonio Barrios, the Prosecutor had charged four police officials with the crime of complicity to commit voluntary manslaughter on April 17, 2007, and that the Ninth Court had issued an arrest warrant against them, thus revoking the precautionary measures for the accused. Regarding the proceedings for the death of Narciso Barrios, it indicated that the trial was underway; it was at the public oral stage, at the phase of receiving evidence, and three agents had been charged. Furthermore, with regard to the investigations related to the death of Luis Alberto Barrios, the State indicated that it had not been able to establish the participation of any police agent, and therefore the closing of the prosecution’s case had been ordered. In the case of Rigoberto Barrios, on August 23, 2010, the prosecution had proceeded to joinder the action on malpractice to the case of the injuries suffered on January 9, 2005, following the re-opening of the investigation in which it had been decided to close the prosecution’s case, owing to the appearance of new evidence, and it was therefore in the investigation phase. In addition, regarding the death of Oscar José Barrios, the State indicated that it had opened the criminal investigation upon being informed of the facts and that this was at a preparatory stage.

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<sup>231</sup> Pablo Julián Solórzano Barrios, Eloisa Barrios, Elbira Barrios, Darelbis Carolina Barrios, Oscar José Barrios, Michael José Barrios Espinosa, Dinosca Alexandra Barrios Espinosa, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Maritza Barrios, Rigoberto Barrios, Wilmer José Flores Barrios, Génesis Andreina Navarro Barrios, Víctor Tomas Navarro Barrios, Heilin Alexandra Navarro Barrios, Néstor Caudi Barrios, Dalila Ordalys Ortuño, Jorge Antonio Barrios Ortuño, Carlos Alberto Ortuño, Brígida Oneyda Barrios, Inés Josefina Barrios, Luis Alberto Barrios, Orismar Carolina Alzul García, Ronis David Barrios Alzul, Roniel Alberto Barrios Alzul, Luís Alberto Alzul, Lilia Ysabel Solorzano Barrios, Narciso Antonio Barrios, Junclis Esmil Rangel Teran, Annarys Alexandra Barrios Rangel, Benito Antonio Barrios Rangel, Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo and Juan José Barrios (merits file, tome II, folios 288 to 290).

## C. *Facts*

### 1. *Investigation of the death of Benito Antonio Barrios*

192. On August 28, 1998, the Technical Unit of the Judicial Police (hereinafter also “the Judicial Police”) opened to preliminary inquiry into the death of Benito Antonio Barrios.<sup>232</sup> That same day they conducted several procedures:<sup>233</sup> On August 29, 1998, an autopsy was performed, which determined as the cause of the death “acute anemia due to perforation of right lung and liver produced by bullet from firearm.”<sup>234</sup> On September 1 and 2, 1998, the judicial police requested the deceased’s criminal record and received the statements of two individuals in relation to supposed criminal acts committed by him one week earlier, and of four police agents who had taken part in the incident on August 28, 1998.<sup>235</sup> In addition, between September 1998 and February 1999 other investigative procedures were conducted.<sup>236</sup> On June 18, 1999, the

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<sup>232</sup> Cf. Note of the Judicial Police of August 28, 1998 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 2918), and Note No. 9700-081-5843 of the Technical Unit of the Judicial Police of the Aragua region, Villa de Cura Police Station of August 28, 1998 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 3017).

<sup>233</sup> They performed the following: (a) visual inspection of the body and taking of fingerprints; (b) inspection of police records of the incident; (c) inspection of the scene of the crime, where several cartridges and a knife were collected as evidence; (d) interviews with three witnesses; (e) transfer of evidence, two rifles and four cartridges, to the Judicial Police, and (f) “evidence of the criminal acts of the [deceased]” were forwarded, cf. Record of site inspection by the Technical Unit of the Judicial Police of the Aragua region, Villa de Cura Police Station of August 28, 1998; Police records of the Technical Unit of the Judicial Police of the Aragua region, Villa de Cura Police Station, and Police record of the Public Order and Security Unit, Southern Region, Police Zone No. 31 of August 28, 1998; Record of site inspection No. 646 of the Technical Unit of the Judicial Police of the Aragua region, Villa de Cura Police Station of August 28, 1998; Police record of August 28, 1998; Note No. 1991 of the Commander of Police Zone No. 31 of August 28, 1998; Note No. 074 of the San Francisco de Cara Parish Police Station of August 28, 1998, forwarding the evidence collected on criminal acts (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 2907, 2908, 2910 to 2916, 2921, 2922 and 3024).

<sup>234</sup> Cf. Report of August 31, 1998, on the result of autopsy No. 591-98 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 3046).

<sup>235</sup> Cf. Note of the Technical Unit of the Judicial Police of the Aragua region, Villa de Cura Police Station of September 1, 1998 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 3048); Statements of Apolinar Morales Mauro and Héctor Enrique Machuca Arriechi of September 1, 1998 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 3050 to 3054); Police record of the Technical Unit of the Judicial Police of the Aragua region, Villa de Cura Police Station of September 3, 1998 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 3056 and 3057); Record of the appearance of Alexis José Amador Mujica before the Technical Unit of the Judicial Police on September 2, 1998 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 3002 to 3005); Record of the appearance of Amilcar José Henríquez Cedeno before the Technical Unit of the Judicial Police on September 2, 1998 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 3007 to 3009); Record of the appearance of Carlos Alberto Sandoval Valor before the Technical Unit of the Judicial Police on August 2, 1998 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 3011 and 3012), and Record of the appearance of Rizzon Vicente Superlano Rojas before the Technical Unit of the Judicial Police on September 2, 1998 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 3014 and 3015).

<sup>236</sup> They included: (a) on September 15, 1998, the zone No. 31 Police Headquarters forwarded the judicial police the six weapons of the agents who participated in the incident, which were sent to the crime laboratory for

judicial police sent the case file to the Urdaneta Municipal Court.<sup>237</sup> Due to the entry into force of the Code of Criminal Procedure on July 1, 1999, the case file was twice transferred to different courts.<sup>238</sup>

193. On June 16, 2004, Eloisa Barrios filed an application for *amparo* [constitutional protection] against the Senior Prosecutor for procedural delay, violation of due process and denial of justice.<sup>239</sup> On June 26, 2005, the family lawyer submitted a brief to “rectify the omissions in the [application] for [*amparo*],” indicating that the case file appeared to have been mislaid and that the Senior Prosecutor would not accept responsibility for its whereabouts.<sup>240</sup> In

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expert forensic, mechanical and design inspection and ballistic comparison; the results were presented on January 15, 1999, concluding that “[the] bullet [provided as the one that caused the death] was not fired by any of the [...] firearms [examined]”; (b) forensic examination, restoration of serial numbers, and ballistic comparison of two firearms and three cartridge shells related to the facts; the expert appraisal concluded that the two 12-caliber cartridges were fired by one of the firearms in question, and (c) statements were taken from Eloisa Barrios, Jorge Antonio Barrios Ortuño and Víctor Daniel Cabrera Barrios. Cf. Note No. 229 of the Commander of police zone No. 31 of September 15, 1998, and Police record of the Technical Unit of the Judicial Police of September 15, 1998 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 3062 to 3064); Memorandum No. 6251 of the Head of the Technical Unit of the Judicial Police of September 15, 1998 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 3066); Report No. 9700-064-LC-709.98 of the Technical Unit of the Judicial Police of January 15, 1999, and Forensic examination of bullet of January 21, 1999 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 3068 to 3077); Forensic examination, restoration of serial numbers and ballistic comparison by the crime laboratory of the Technical Unit of the Judicial Police of January 21, 1999 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 3079 to 3081); Testimony of Eloisa Barrios of January 26, 1999 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 2924 and 2925); Testimony of Víctor Daniel Cabrera Barrios of February 25, 1999, *supra* note 66, folio 2931, and Testimony of Jorge Antonio Barrios Ortuño of February 27, 1999 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 2927 to 2929).

<sup>237</sup> Cf. Note No. 9700-081-4335 of the Technical Unit of the Judicial Police of June 18, 1999 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 3022), and Attestation of reception of proceedings, emitted by the Urdaneta Court, Judicial District of Aragua state of June 21, 1999 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 3083).

<sup>238</sup> Cf. Record of transfer of file from the Urdaneta Court on July 28, 1999, to the Second Court of the Transitional Procedural Regime of the Criminal Judicial Circuit of Aragua state (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 3085); Record of transfer of file from the Second Court of the Transitional Procedural Regime of the Criminal Judicial Circuit of Aragua on April 28, 2000 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 3087).

<sup>239</sup> Cf. Application for *amparo* filed by Eloisa Barrios before the Review Judge of the Criminal Judicial Circuit of Aragua state of June 16, 2004 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 2944 to 2953).

<sup>240</sup> Cf. Brief correcting the omissions in the application for *amparo* of June 26, 2005 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome I, folios 2967 and 2968). On July 1, 2005, the Fifth Trial Court of the Criminal Judicial Circuit of Aragua state (hereinafter “the Fifth Court”) declared the application for *amparo* inadmissible; this decision was appealed by Eloisa Barrios on July 11, 2005. On August 26, 2005, the Court of Appeal declared the decision of July 1, 2005, null and void and ordered a Trial Court of the Criminal Judicial Circuit of Aragua state to re-verify the admissibility of the application for *amparo*. On October 13, 2005, the Sixth Trial Court of the Criminal Judicial Circuit (hereinafter “the Sixth Court”) declared the application for constitutional protection (*amparo*) admissible and convened a “constitutional hearing.” Cf. Decision of the Court of Appeal of the Criminal Judicial Circuit of Aragua state of August 26, 2005 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 2955 to 2957 and 2963); Decision of the Court of Appeal of August 26, 2005 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 2955 and 2961); Appeal

addition, on August 29, 2005, the family lawyer informed the Ombudsman that the case file “has apparently been mislaid [in the office of the Senior Prosecutor of Aragua state, and that,] at that [...] date, [the said office] had not responded with regard to the presumed mislaying of the file.”<sup>241</sup>

194. On June 2, 2005, Eloisa Barrios asked the Office of the Prosecutor General of the Republic (hereinafter “the Prosecutor General’s Office”) to ensure procedural promptness in the case.<sup>242</sup> On July 14, this Office advised her that “[t]he Directorate for the Protection of Fundamental Rights was taking the necessary steps to locate the said case file and to obtain sufficient input, which will contribute to undertaking the actions required to achieve the said objective.”<sup>243</sup> On November 1, 2005, the Prosecutor for the Transitory Procedural Regime of Maracay, Aragua state, asked the Investigation Unit to carry out several procedures urgently.<sup>244</sup> Also, in 2006, new investigative measures were taken.<sup>245</sup>

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filed by Eloisa Barrios on July 11, 2005 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 2970 to 2975), and Decision of the Sixth Court of October 13, 2005 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 3183).

<sup>241</sup> Cf. Communication of Luís Aguilera of August 29, 2005 (file of attachments to Report 11/10 of the Commission, tome I, attachments 1 to 5, folio 3093).

<sup>242</sup> Cf. Communication of the Office of the Prosecutor General of the Republic of June 30, 2005 (file of attachments to the Report 11/10 of the Commission, tome I, attachments 1 to 5, folio 3093). In addition, Eloisa Barrios sent communications to the Ombudsman, the Prosecutor General, the Minister of the Interior and the Minister of Justice, the Human Rights Committee of the National Assembly, and the Vice President and the President of the Republic in June and July 2005, in which, among other matters, she denounce the absence of procedural activity on the part of the prosecution in the case of the death of her brother, requesting the collaboration of the authorities to promote the investigation of the case and to clarify what happened. Cf. Communications of Eloisa Barrios addressed to the Ombudsman, the Prosecutor General, the Minister of the Interior and the Minister of Justice, the Human Rights Committee of the National Assembly, and the Vice President and the President of the Bolivarian Republic of Venezuela of June 2 and July 6, 2005 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 3185 to 3207).

<sup>243</sup> Cf. Note No. DPDF-14-PRO-179-9977-05 of the Office of the Prosecutor General of the Republic of July 14, 2005 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 3091).

<sup>244</sup> Specifically: (a) to obtain photographs taken of the corpse of Benito Antonio Barrios on August 28, 1998; (b) the results of the fingerprints taken on the body, and (c) to take several statements, cf. Note N. 05-FTRJPV-17736-05 of the Prosecutor for the Transitory Procedural Regime of Maracay, Aragua state, of November 1, 2005 (file of attachments to the Report 11/10 of the Commission, tome I, attachments 1 to 5, folio 3095).

<sup>245</sup> Thus: On January 5, 2006, Eloisa Barrios, Víctor Daniel Cabrera Barrios and Jorge Antonio Barrios Ortuño testified again before the Investigation Unit. On July 10, 2006, the Investigation Unit, in response to the Prosecutor’s request of November 1, 2005, advised that “no photographs were taken” in the preliminary inquiry in the case. On July 27, 2006, the Investigation Unit ordered, *inter alia*, a ballistic trajectory appraisal. On August 14, 2006, photographs were taken of the scene of the death; however, “the [...] ranch where the incident had occurred no longer existed because the building had been demolished since becoming uninhabited.” Despite the foregoing, on August 31 and September 1, 2006, the police made a technical inspection of the site and surveyed it. The interviews previously requested with several witnesses and next of kin were conducted. On August 28, 2006, the Investigation Unit requested a hematological test to determine the blood type of a probative element sent to that office on September 15, 1998. The results, forwarded on September 6, 2006, indicated that “it [was] not possible to determine the blood type, owing to the negligible amount of material. On September 4, 2006, a report was prepared analyzing and reconstructing the events in order to establish the ballistic trajectory. Cf. Records of interview with Eloisa Barrios, Víctor Daniel Cabrera Barrios and Jorge Antonio Barrios Ortuño on January 5, 2006 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 2933 to 2942); Records of interviews with Héctor Enrique Machuca Arriechi and Mauro Apolinar Morales by the Investigation Unit on January 16, 2006; Record of

195. On February 1, 2007, the Prosecutor asked the “Antonio José de Sucre” Police Headquarters to forward to copy of the logbook for August 8, 1998, and information of which officials had been on duty at this police station that day.<sup>246</sup> On February 15, 2007, the Chief of Police indicated that “the logbooks from 1998 [...] are not in the Police Station’s archives.”<sup>247</sup>

196. On April 17, 2007, the Prosecutor filed formal charges against four police agents before the Court of First Instance for the crime of complicity to commit intentional homicide. In his brief, he concluded “that Benito Antonio Barrios was killed by a police team that, while it went to attend an incident, did not justify the death sufficiently.” He also indicated that more than eight years had passed, so that the offense of undue use of a firearm had “evidently prescribe[d],” and therefore requested the dismissal of the criminal action for this crime, and required that “the preventive measure of deprivation of liberty be ordered” against the four individuals.<sup>248</sup>

197. On April 23, 2007, the Ninth Court agreed to admit the proceedings and established a preliminary hearing for May 22, 2007.<sup>249</sup> The hearing was postponed seven times, given the non-appearance of the prosecutor on two occasions and of the accused and their defense counsel on five occasions. Consequently, on May 28, 2009, the prosecution asked for an arrest warrant against the four accused, and this was granted on June 9, 2009. On June 8, 2011, the judge reviewing the case, which had been archived, found that some matters were pending and again established a preliminary hearing and that the arrest warrants required ratification, so she proceeded to make the corresponding request and to require the preliminary hearing for June 20, 2011.<sup>250</sup>

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criminal investigation of the Investigation Unit of July 10, 2006; Memorandum No. 9700-081-SDVC4421 of the Investigation Unit of July 27, 2006; Record of criminal investigation of the Investigation Unit of August 14, 2006; record of police technical inspection by the Investigation Unit of August 31, 2006, and Memorandum No.9700-064-LC.3491.06 on the planimetric survey by the Investigation Unit of September 1, 2006; Records of interview with Carmen Elena Colorado, Antonio José Ojeda, Eloisa Barrios, Lilia Ysabel Solorzano Barrios, Jorge Antonio Barrios Ortuño and Darelbis Carolina Barrios by the Investigation Unit on August 16 and 17, 2006; Memorandum No. 9700-081-SDVC-5114 of the Investigation Unit of August 28, 2006; Expert report No. 9700-064-DC-4078-06 of the Investigation Unit of September 6, 2006, and report on the reconstruction and analysis of the facts No. 9700-064-DC-3490.06 of the Investigation Unit of September 4, 2006 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 3097 to 3102, 3104, 3106, 3113, 3116 to 3120, 3122, 3123, 3125 to 3137, 3139, 3141, 3142, and 3144 to 3147).

<sup>246</sup> Cf. Note No. 05FTMCM-0682.07 of the Prosecutor of the Public Prosecution Service for the Transitory Procedural Regime of Aragua state of February 1, 2007 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome I, folio 3153).

<sup>247</sup> Cf. Note No.114/07 of the Head of the S.A.R.A. and Operations Division of the “Antonio Jose De Sucre” Central Police Station of February 15, 2007 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome I, folio 3156), and Note No. BB-07 of the Chief Inspector of the Barbacoas Police Station of February 7, 2007 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome I, folio 3154).

<sup>248</sup> Cf. The prosecution’s indictment brief of April 17, 2007, *supra* note 63, folios 4477 to 4497.

<sup>249</sup> Cf. Proceedings of the Ninth Court of April 23, 2007 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folios 3164 and 3165).

<sup>250</sup> Cf. Decision of the Ninth Court to delay the preliminary hearing, of May 22, 2007 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 3173); Note No. 1304-11 of the Ninth Court of June 8, 2011 (merits file, tome V, folios 2366 and 2367), and Annual Report of the Office of the Prosecutor General of the Republic, attachment 2.17 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 1, folio 3180).

198. On July 27, 2011, copies of the arrest warrants of June 8, 2011, for two of the accused were sent to the Investigation Unit, and the Unit was requested to obtain results by August 4, 2011. The results were received on August 5, 2011, and included the criminal investigation record of July 29, 2011, which confirmed that one of the accused was working in the Camatagua Police Station, and the other had been discharged in 1999. On August 6, 2011, the arrest warrant against one of the accused was executed, a judicial measure of deprivation of liberty was required, and the date of the preliminary hearing was set for September 28, 2011.<sup>251</sup>

2. *Investigation of the searches, destruction and theft at the homes of Justina Barrios, Elbira Barrios, Brígida Oneyda Barrios and Orismar Carolina Alzul García and Luis Alberto Barrios*

199. On December 2 and 4, 2003, Brígida Oneyda Barrios and Luis Alberto Barrios, respectively, filed separate complaints for entry, theft and destruction of property in their homes; the former denounced a police agent as the perpetrator, and the latter also reported that several parts of his house had been set fire to.<sup>252</sup> On December 9, 2003, the Children's Ombudsman visited the home of Orismar Carolina Alzul García and Luis Alberto Barrios, confirming that several parts of the house had been set on fire.<sup>253</sup> On December 10, 2003, Mrs. Alzul Garcia also filed a complaint.<sup>254</sup> On December 12, 2003, the Fourteenth Prosecutor opened the corresponding criminal inquiry, requesting different measures.<sup>255</sup> On December 5 and 16, 2003, and on January 18 and February 28, 2004, the Investigation Unit and the Twentieth Prosecutor of the Public Prosecution Service of Aragua state with competence for the protection of fundamental rights (hereinafter "the Twentieth Prosecutor") requested the logbooks of the Guanayén Police Station for November 27 to 29, 2003.<sup>256</sup> On January 24, 2007, the police sent copies of the logbooks of the San Francisco de Cara Police Station.<sup>257</sup>

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<sup>251</sup> Cf. Aide-mémoire of the Twentieth Prosecutor of August 10, 2011 (merits file, tome VI, folio 2502).

<sup>252</sup> Cf. Complaint filed by Brígida Oneyda Barrios on December 2, 2003, *supra* note 171, folios 3218 to 3220, and Complaint filed by Luis Alberto Barrios on December 4, 2003, *supra* note 172, folios 3221 to 3223.

<sup>253</sup> Cf. Record of visit by the Office of the Children's Ombudsman, *supra* note 174, folio 3225, and Social study of the Office of the Children's Ombudsman of December 9, 2003 (file of attachments to the Commission's Report No. 11/10, attachments 1 to 5, tome I, folio 3227).

<sup>254</sup> Cf. Complaint filed by Orismar Carolina Alzul García on December 10, 2003, *supra* note 172, folio 3224.

<sup>255</sup> Corresponding to (a) technical inspection of the site by the police; (b) interviews with possible witnesses; (c) request for documentation on the stolen artifacts; (d) identification of the officials attached to the Guanayén Police Station, possible perpetrators of the acts; (e) interview with all the victims; (f) police technical inspection of the daily logbooks for those days, and (g) careful appraisal. Cf. Order to open the investigation of the Fourteenth Prosecutor of the Public Prosecution Service of December 12, 2003 (file of attachments to the Commission's Report No. 11/10, attachments 1 to 5, tome I, folio 3249).

<sup>256</sup> Cf. Note No. 9700-081-SDVC.7866 of the Investigation Unit of December 16, 2003 (file of attachments to the Commission's Report No. 11/10, tome I, attachment 2, folio 3251); Notes No. 05-F20- 2326-06, No. 05.F20-071/07 and No. 05-F20-337-07 of the Twentieth Prosecutor of December 5, 2006, January 18, 2007, and February 28, 2007 (file of attachments to the Commission's Report No. 11/10, attachment 2, tome I, folios 3287, 3306 and 3308).

<sup>257</sup> Cf. Note No. 035/07 of the Public Order and Security Unit, "Antonio José de Sucre" Central Police Station, of January 24, 2007 (file of attachments to the Commission's Report No. 11/10, tome I, attachment 2, folio 3297).

200. On March 1, 2004, a complaint was filed before the Prosecutor, among other matters, for the searches carried out without a court order in the homes of Brígida Oneyda Barrios, Elbira Barrios, Justina Barrios and Luis Alberto Barrios, indicating that the residences of the last two were set on fire, and possessions were removed from all of them. The complaint identified a police official as alleged author of the searches, and certain procedures were requested.<sup>258</sup> The absence of an investigation was denounced before several authorities between March and November 2004, and investigative procedures were requested.<sup>259</sup>

201. On February 21 and 28, 2005, the Investigation Unit interviewed Orismar Carolina Alzul Garcia and Brígida Oneyda Barrios, respectively. The former indicated the names of two police officers, allegedly authors of the acts. A technical inspection was made of the homes of both women,<sup>260</sup> and a record was drawn up for a criminal investigation attesting that a police official had given “the order to attack the homes already identified in previous records.”<sup>261</sup> On May 30, 2005, the Twentieth Prosecutor urged the Investigation Unit to undertake specific procedures in relation to the case, repeating this on August 22, 2005.<sup>262</sup>

202. On August 23, 2005, the Twentieth Prosecutor asked the Children’s Ombudsman to forward information on the social study made on December 9, 2003.<sup>263</sup>

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<sup>258</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on March 1, 2004, *supra* note 139, folios 3210 to 3216.

<sup>259</sup> Cf. Communication submitted to the Fourteenth Prosecutor by Eloisa Barrios on April 28, 2004 (file of attachments to the answering brief, tome III, folios 5896 and 5897); Communication presented to the Fourteenth Prosecutor by Luis Aguilera on June 1, 2004 (file of attachments to the Report 11/10 of the Commission, tome I, attachment 2, folios 3337 to 3342); Notes No. CJP-093-04 and No. CJP-092-04 of Luis Aguilera forwarded to the President of the Bolivarian Republic of Venezuela and to the Governor of Aragua state on March 24 and April 6, 2004, respectively (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 2, folios 3378 to 3390).

<sup>260</sup> Cf. Record of criminal investigation issued by the Investigation Unit, *supra* note 171, folios 3232 and 3233. Brígida Oneyda Barrios no longer lived in the sector when the technical inspection of the house was conducted. Also, cf. Record of interview with Brígida Oneyda Barrios on February 28, 2005 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 2, folios 3253 and 3254).

<sup>261</sup> Record of criminal investigation of the Investigation Unit of February 21, 2005 (file of attachments to the answering brief, tome II, folio 5120), and cf. Record of interview with the Investigation Unit on February 28, 2005, *supra* note 120, folios 3253 and 3254.

<sup>262</sup> Cf. Note No. 05-F20-0944-05 of the Twentieth Prosecutor (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome I, folio 3267). The following measures were requested: (a) summon and interview Brígida Oneyda Barrios and her son, and any possible witnesses they may identify (b) coordinate with the corresponding authorities the identification of the alleged authors by photogram, and (c) request copy of record of appointment and acceptance of position of the police officials who are the possible authors, as well as the logbooks and other police records. Cf. Note No. 05-F20-1407-05 of the Twentieth Prosecutor of August 22, 2005 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome I, folio 3269).

<sup>263</sup> Cf. Note No. 05-F20-1417-05 and No. 05-F20-1418-05 of the Twentieth Prosecutor of August 23, 2005 (file of attachments to the Commission’s Report No. 11/10, tome I, attachments 1 to 5, folios 3271 to 3272). He also asked the Fifth First Instance Judge to detach the photographs of the home Luis Alberto Barrios and his wife from the prosecution’s file on the death of Narciso Antonio Barrios, because “they belong to prosecution file N[o.] 05-F20-0062-(3)-2004 (criminal inquiry G-570.694) [...] and, by an involuntary error, had been added to the former file.”

203. On December 12, 2006, one of the police agents who had been identified came forward, without making a statement, and was charged with the offenses of breaking and entering and simple theft to the detriment of Brígida Oneyda Barrios, Luis Antonio Barrios and Orismar Carolina Alzul García.<sup>264</sup> On October 3, 2006, the Twentieth Prosecutor interviewed Brígida Oneyda Barrios.<sup>265</sup> Subsequently, on January 16, 2007, the two police agents who had been identified appeared before the Twentieth Prosecutor, and one of them was interviewed.<sup>266</sup> On January 24, 2007, the copies of the daily logs of the San Francisco de Cara Police Station for November 27 to 29, 2003, were forwarded to the Twentieth Prosecutor.<sup>267</sup> On March 27, 2008, the former Head of the Southern Region of Aragua of the Internal Affairs Directorate of the Security and Public Order Unit testified.<sup>268</sup> On March 11, 2008, the Barbacoas Police Station advised that it had been impossible to locate the duty roster for November 27 to 20, 2003, and that the logbooks for that date had been sent to Police Headquarters.<sup>269</sup>

204. Eloisa Barrios and her lawyer contributed fourteen photographs to the investigation of the death of Narciso Barrios, most of which were of the home of Luis Alberto Barrios after the search, and asked “that the corresponding legal appraisals be made of these photographs” in order to demonstrate the truth of their content.<sup>270</sup> On November 10, 2008, the Twentieth Prosecutor asked the security unit of Aragua state for a list of the officials posted at the Las Penitas Police Station, to be delivered within 72 hours.<sup>271</sup> On November 13, 2008, the Twentieth Prosecutor ordered that the proceedings be archived, indicating that “the results of the investigation were insufficient to file charges.”<sup>272</sup>

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<sup>264</sup> Cf. Record of indictment of Wilmer José Bravo Terán issued by the Twentieth Prosecutor on December 12, 2006 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome I, folio 3285).

<sup>265</sup> Cf. Record of interview with Brígida Oneyda Barrios of the Twentieth Prosecutor on October 3, 2006 *supra* note 119, folios 3235 to 3237.

<sup>266</sup> Cf. Indictment brief and Record of interviews of the Twentieth Prosecutor of January 16, 2007 (file of attachments to the Commission’s Report No. 11/10, tome I, attachments 1 to 5, folios 3291 to 3295).

<sup>267</sup> Cf. Note No. 035/07 of the Head of Operations and S.A.R.A. of the Public Order and Security Unit, “Antonio Jose de Sucre” Central Police Station of January 24, 2007 (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 2, folios 3297 to 3304). Subsequently, the Prosecutor requested this information. Cf. Brief No. 05-F20-2853-08 from the prosecution file of the Twentieth Prosecutor of November 13, 2008 (file of attachments to the answering brief, tome II, folio 5376).

<sup>268</sup> In addition, on March 3, 2008, a police official was summoned to testify who, at the date of the incident, was posted at the Barbacoas Police Station; the last request was repeated on April 5, 2008, the date of which another police official was also summoned to testify. There is no record that these two officials testified. Cf. Aide-mémoire of the Twentieth Prosecutor (merits file, tome VI, folios 2517 to 2519).

<sup>269</sup> Cf. Aide-mémoire of the Twentieth Prosecutor (merits file, tome VI, folios 2517 to 2519).

<sup>270</sup> Cf. Undated brief of Eloisa Barrios and her lawyer (file of attachments to the Commission’s Report No. 11/10, tome I, attachment 2, folios 3256 to 3258).

<sup>271</sup> Cf. Note No. 2810-08 of the Twentieth Prosecutor of November 10, 2008 (file of attachments to the answering brief, tome II, attachment, 10, folio 5362). Mr. Aguilera had asked the Twentieth Prosecutor for the information on the police officials from this Police Station. Cf. Communication of Luis Aguilera of October 23, 2008 (file of attachments to the answering brief, tome II, attachment, 10, folio 5361).

<sup>272</sup> Cf. Brief from the prosecution file of the Twentieth Prosecutor of November 13, 2008, *supra* note 267, folios 5363 to 5381.

### 3. *Investigation of the death of Narciso Barrios and the threats against Néstor Caudi Barrios*

205. On December 12, 2003, an investigation was opened into the death of Narciso Barrios.<sup>273</sup> Evidence was collected during the site inspection, including a rifle and a 16-caliber cartridge, which were sent to the forensic laboratory for expert appraisal the same day.<sup>274</sup> That month, other investigation procedures were ordered and implemented.<sup>275</sup> In addition, on January 18 and March 1, 2004, testimony was taken from a police official presumably involved in the facts.<sup>276</sup> On February 2, 2004, the bullets recovered from the autopsy performed on the corpse were forwarded to the forensic laboratory for hematological tests and forensic inspection, which were presented on February 19, 2004.<sup>277</sup>

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<sup>273</sup> Cf. Record of criminal investigation of the Investigation Unit of December 12, 2003 (file of attachments to the answering brief, tome III, attachment 17, folio 5930).

<sup>274</sup> The evidence collected on that day consisted of: two unused 16-caliber cartridges, one 16-caliber rifle, and six cartridge shells, one 15-caliber and five 12-caliber, cf. police technical inspection No. 1781 and Memorandum No. 9700-081-SDVD-7740 of the Investigation Unit of December 12, 2003 (file of attachments to the answering brief, tome III, attachment 17, folios 5934 and 5942). On December 17, 2003, two 16-caliber cartridges and five 16-caliber rifle cartridge shells were sent to the crime laboratory for the relevant appraisals, cf. Memorandum No. 9700-081-SDVD-7836 of the Investigation Unit of December 17, 2003 (file of attachments to the answering brief, tome III, attachment 17, folio 5963).

<sup>275</sup> Including: (a) a technical police inspection of the victim's body; (b) fingerprints were taken from the body for identification purpose; (c) Elbira Barrios was summoned; (d) the opening of the criminal inquiry was ordered; (e) the facts were notified to different authorities, informing them of what the agents implicated had done, and witnesses were interviewed; (f) a planimetric survey of the scene of the crime was requested, and the request was repeated on March 5, 2005, and (g) the results of the autopsy concluded death by acute hemorrhagic shock owing to injury by firearm. Cf. Police technical inspection No. 1782 of the Investigation Unit of December 12, 2003; Memorandum No. 9700-081-SDVC-7743 of December 12, 2003; Testimony of Eloisa Barrios before the Investigation Unit of December 12, 2003; Order to open the investigation issued by the Fourteenth Prosecutor on December 12, 2003; Notifications of the Barbacoas Police Station of December 13, 2003, addressed to the Investigation Unit and to the Fourteenth Prosecutor; Record of criminal investigation of December 12, 2003; Records of interviews with Walter Rafael Pacheco Urrutia, Antonio María Macayo Martínez and Yonis Mauricio Villega Aparicio of December 12, 2003; Memorandum No. 9700-081-SDVD-7837 of December 17, 2003, and Memorandum No. 9700-081-1394 of March 5, 2004, of the Investigation Unit, and Note No. 9700-142-8514 with the result of the autopsy performed on December 13, 2003, of the Investigation Unit of December 22, 2003 (file of attachments to the answering brief, tome III, attachment 17, folios 5936, 5938 to 5940, 5943, 5945 to 5962, 5971, 5966 and 5978). In the order to open the criminal investigation, the following procedures were required: (a) full identification of the officials concerned in the confrontation; (b) collection of evidence of forensic interest; (c) collection of firearms used by the police officials and the deceased; (d) expert appraisal of the firearms; (e) ballistic trajectory comparison; (f) planimetric survey of the scene of the crime; (g) autopsy report; (h) death certificate and burial record; (i) full identification of the deceased; (j) interview with possible witnesses; (k) police technical inspection of the site, and (l) interview with the officials concerned.

<sup>276</sup> Cf. Testimony given by Leomar Jose Rovira Mendoza before the Investigation Unit on January 18, 2004 and Record of criminal investigation of the Investigation Unit of March 1, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 5969, 5970 and 5977).

<sup>277</sup> Cf. Memorandum No. 9700-081-SDVD-0697 of the Investigation Unit of February 2, 2004, and Expertise Report of the Investigation Unit of February 19, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 5973 and 5983).

206. On March 1, 2004, the lawyer for Eloisa Barrios filed a complaint before the Prosecutor for “the execution [of] Narciso Barrios [...] committed by police officers,” in which he identified the alleged authors and requested certain procedures, and also that protection measures be granted to Juan José Barrios, Oscar José Barrios, Jorge Antonio Barrios and Pablo Solórzano Barrios in view of the threats made against the Barrios family by police officials.<sup>278</sup> Furthermore, on numerous occasions, both Eloisa Barrios and her lawyer denounced the delay and negligence in the investigation; reiterated the information about the threats made against Néstor Caudi Barrios and other members of the family, and advised that the former had moved in view of the danger to his life; they also noted specific irregularities in the case file, asked for investigation procedures to be carried out, such as the reconstruction of the events; expressed their rejection of the intention to present a conclusive decision without having collected all the evidence; asked for investigation of the fact that the procedural records of the death did not refer to the investigation of the incidents against the homes of some members of the family, as well as measures of protection in favor of Néstor Caudi Barrios, and required the opening of an administrative proceeding against the judge in charge of the case.<sup>279</sup> On April 26 and May 31, 2004, the Fourteenth Prosecutor asked the Investigation Unit to carry out the procedures ordered previously (*supra* para. 205), as well as “the procedures requested by Eloisa Barrios.”<sup>280</sup> On May 19 and 27, 2004, Eloisa Barrios, Elbira Barrios and Néstor Caudi Barrios were interviewed.<sup>281</sup>

207. On June 7, 2004, the Investigation Unit reiterated to the Barbacoas Police Station the request of December 13, 2003, for the appearance of two police agents, and asked that certain firearms be forwarded so that the corresponding forensic appraisals could be carried out; the

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<sup>278</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on March 1, 2004, *supra* note 139, folios 3318 and 3319.

<sup>279</sup> Cf. Communication of Eloisa Barrios and her lawyer of April 21, 2004, and Communication of Eloisa Barrios presented to the Fourteenth Prosecutor on April 28, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 5896, 5897, 5900 and 5901); Complaint filed by Eloisa Barrios and Luis Aguilera before the Fourteenth Prosecutor on June 1, 2004 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome I, folios 3337 to 3342); Briefs of Luis Aguilera on December 7, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 6065 to 6068); Notes No. CJP-092-04, No. CJP-093-04 and No. CJP-051-04 of Luis Aguilera sent on March 24, April 6 and June 17, 2004 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome I, folios 3378 to 3394); Brief of Luis Aguilera of July 23, 2004 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome I, folios 3344 to 3353), and Notes No. CJP-054-04, No. CJP-056-04, No. CJP-050-04, No. CJP-058-04, No. CJP-059-04 and No. CJP-055-04 of Luis Aguilera of July 28, 29 and 30, 2004 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome I, folios 3349 to 3356, and 3360 to 3369). In addition, on November 22, 2004, Eloisa Barrios informed the Twentieth Prosecutor of the existence of specific irregularities in the case file: (a) the absence of a certified copy of the duty roster and log of the Guanayén Police Station; (b) the absence of the ballistic comparison appraisal of the bullets extracted from the corpse; (c) the absence of the appraisal of the firearms of the officials involved, the ballistic trajectory, and the analysis of bullet tracks, *cf.* Communication of Eloisa Barrios of November 22, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 6040 and 6041).

<sup>280</sup> Cf. Notes No. 05-F14-5582-04 and No. 05-F14-5733-04 of the Fourteenth Prosecutor of April 26 and May 31, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 5984 and 6003).

<sup>281</sup> Cf. Record of interview with Eloisa Barrios by the Investigation Unit on May 19, 2004, and Records of interviews with Néstor Caudi Barrios and Elbira Barrios by the Investigation Unit on May 27, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 5964, 5965, 5987, 5999, 6000 and 6001).

firearms were requested again on June 24, 2004.<sup>282</sup> On June 9, 22, 24 and 29, 2004, several witnesses, police agents, and family members testified.<sup>283</sup>

208. On August 9, 2004, Darelbis Carolina Barrios and Nestor Caudi Barrios appeared before the Twentieth Prosecutor to testify “voluntarily and spontaneously”; the latter indicated that three police officers were involved in the events that resulted in the death of Narciso Barrios. On August 10, 2004, the Senior Prosecutor received Nestor Caudi Barrios at a hearing, “who said he was being threatened by a group of police officials [...], attached to the Guanayén Police Station,” because he had witnessed the death of Narciso Barrios.<sup>284</sup> On September 23, 2004, the Victims’ Attention Unit advised that, on August 24, 2004, the Seventh Review Judge had granted a measure of protection for Nestor Caudi Barrios<sup>285</sup> (*supra* para. 212).

209. In November 2004, the Twentieth Provisional Prosecutor asked the Investigation Unit to obtain, urgently, the investigations conducted into the events that involved the death of Narciso and Luis Alberto Barrios, and also asked the police headquarters of Aragua state to carry out several investigation procedures, some of which it reiterated subsequently.<sup>286</sup> On November 18, 2004, the forensic department forwarded to the head of the Villa de Cura Police Station, the copy of the planimetric survey requested on December 17, 2003.<sup>287</sup> Other procedures were also carried out in November.<sup>288</sup> On December 1, 2004, the report of the forensic inspection and ballistic comparison carried out on the weapons was issued, which concluded that the five cartridge shells implicated had been shot by the rifle examined.<sup>289</sup>

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<sup>282</sup> Cf. Notes No. 9700-081-SVC-3635 and No. 9700-081-SVC-3636 of the Investigation Unit of June 7, 2004 and Note No. 9700-081-SVC-3973 of the Investigation Unit of June 24, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 6004, 6005 and 6024).

<sup>283</sup> Cf. Records of interviews with Jorge Antonio Barrios Ortuño, Heran Bennedani La Rosa, Inés Josefina Barrios, Pablo Julián Solorzano Barrios, Walter Rafael Pacheco Urrutia, Jose Luis Riasco León and Marcos Antonio Moreno Dorta by the Investigation Unit on June 9, 22, 24 and 29, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 6006 to 6023, 6025, 6026, 6028 and 6030).

<sup>284</sup> Cf. Memorandum No. 05-FS-UAV-092-04 of the Victim’s Attention Unit of August 24, 2004 and aide-mémoire of the Victim’s Attention Unit of August 20, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 5918 to 5920).

<sup>285</sup> Cf. Memorandum of the Victim’s Attention Unit of September 23, 2004, *supra* note 143, folio 6031.

<sup>286</sup> Cf. Notes No. 05-F20-0585-04, No. 05-F20-0602-04, No. 05-F20-0603-04 and No. 05-F20-0226-05 of the Twentieth Prosecutor of November 10 and 16, 2004, and February 10, 2005 (file of attachments to the answering brief, tome III, attachment 17, folios 6032, 6037, 6038 and 6070).

<sup>287</sup> Cf. Memorandum of the Investigation Unit of November 18, 2004 (file of attachments to the answering brief, tome III, attachment 17, folio 6039).

<sup>288</sup> Among them: (a) three police agents appeared before the Twentieth Prosecutor, who were also questioned for other incidents, such as the house searches, the acts of violence against, and the arrest of certain members of the Barrios family and the Ravelos family on June 19, 2004, and the death of Luis Alberto Barrios, and (b) information was provided that the firearms located at the Barbacoas Police Station had been made available to the Investigation Unit, *cf.* Testimony of Marcos Antonio Moreno Dorta, Leomar José Rovira Mendez and Jose Luis Rascos Leon before the Twentieth Prosecutor on November 26, 2004; Note No. 050 of the Commander of the Public Order and Security Unit, “Antonio Jose de Sucre” Central Police Station of November 29, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 6052 to 6063 and 6064).

<sup>289</sup> Cf. Note No. 9700-064-DC-5658.2004 of the Investigation Unit of December 1, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 6101 to 6103).

210. On January 20, 2005, the Investigation Unit forwarded to the Twentieth Prosecutor the report on the forensic inspection, blood testing and ballistic comparison of a bullet. The report concluded that it contains “remains of a hemal nature,” but that it was not possible to determine the blood group owing to the negligible amount of material available; also, that the bullet had been fired by a weapon similar to the 9-mm caliber firearm provided under a memorandum of November 18, 2004.<sup>290</sup> On February 10, 2005, the Twentieth Prosecutor forwarded a deformed fragment of metal to the forensic laboratory for forensic inspection and blood tests.<sup>291</sup>

211. On February 21, 2005, Eloisa Barrios asked the Twentieth Prosecutor to arrange a reconstruction of the events related to the death of Narciso Barrios, so that probative elements could be collected in order to clarify the incident. In addition, she reiterated her request that certain investigation procedures be carried out, and expressed her disagreement with the Prosecutor’s intention of presenting a conclusive decision without having collected all the evidence that would allow both the perpetrator of the killing, and also the accomplices to be charged.<sup>292</sup> The case file also contains an undated brief of Eloisa Barrios and her lawyer addressed to the Investigation Unit, with 14 photographs attached (*supra* para. 204), two of which appear to correspond to the exterior of the place where Narciso Barrios died and reveal bullet holes in the wall.

212. On March 6, 2005, the Public Prosecution Service presented a conclusive decision charging three police agents with committing the crime of complicity to commit aggravated homicide.<sup>293</sup> On March 15, 2005, the Court of First Instance decided to set the preliminary hearing for April 4, 2005, but this was postponed on several occasions.<sup>294</sup> On May 25, 2005, a preliminary hearing was held before the Review Court of First Instance, which admitted the charges filed by the Fourteenth and Twentieth Prosecutors against the said three individuals. On September 30, 2005, an attempt was made to establish a joint court with lay people and judges, but this was unsuccessful. On June 8, 2006, a single-person court was established, and it was agreed that the oral and public debate would begin on July 23, 2009.<sup>295</sup> This hearing was

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<sup>290</sup> Cf. Report No. 9700-064-DC-407.05 of the Investigation Unit of January 20, 2005 (file of attachments to the answering brief, tome III, attachment 17, folios 6099 and 6100).

<sup>291</sup> Cf. Note No. 05-F20-0225-05 of the Twentieth Prosecutor of February 10, 2005 (file of attachments to the answering brief, tome III, attachment 17, folio 6069).

<sup>292</sup> Cf. Brief of Eloisa Barrios of February 21, 2005 (file of attachments to the answering brief, tome III, attachment 17, folios 6097 and 6098). Also, on November 19, 2004, Eloisa Barrios informed the Twentieth Prosecutor that she “consider[ed] his intention to present a conclusive decision without [having conducted the necessary pending procedures] inappropriate,” Cf. brief of Eloisa Barrios of November 19, 2004 (file of attachments to the answering brief, tome III, attachment 17, folios 6042 and 6043).

<sup>293</sup> Cf. Brief with criminal charges of the Twentieth and Fourteenth Prosecutors of March 6, 2005 (file of attachments to the answering brief, tome III, attachment 17, folios 5819 to 5851)

<sup>294</sup> Cf. Notification 481 of the Court of First Instance of March 15, 2005, and notifications of summons to a hearing of the Court of First Instance of April 4, 26 and 27, 2005 (file of attachments to the answering brief, tome III, attachment 17, folios 6107, 6111, 6112 and 6116).

<sup>295</sup> Cf. Note of the Second Trial Court of First Instance of the Criminal Judicial Circuit of Aragua state of June 8, 2011 (merits file, tome V, folios 2416 to 2418).

postponed at least four times, and finally the trial was initiated in February 2011; at least 11 hearings were held, and the next hearing was programmed for August 10, 2011.<sup>296</sup>

#### 4. Investigation of the detention of Rigoberto Barrios and Jorge Antonio Barrios

213. On March 4, 2004, a complaint was filed before the Senior Prosecutor based on the detention without a court order of the children Jorge Alberto Barrios Ortuño and Rigoberto Barrios, who remained on police premises and denounced that they had suffered physical and mental torture; that they were not allowed to contact their families, and that they had not been fed. Their immediate release was requested, together with the opening of a criminal inquiry against an inspector involved in the detention, forensic medical examinations of the victims, and promptness with regard to the measure of protection requested on March 1, 2003.<sup>297</sup>

214. On March 5, 2004, a forensic medical evaluation was performed on Rigoberto Barrios<sup>298</sup> who, six days later, filed a complaint for an offense against the person (injuries), based on the acts perpetrated against him, stating that Jorge Antonio Barrios Ortuño had also been the victim of these acts.<sup>299</sup> That same day procedures were carried out.<sup>300</sup> In addition, in February 2005 an agreement was signed to undertake a criminal investigation, which recorded that a visit had been made to the El Roble farm to inquire about a vehicle that had been mentioned in the proceedings. It was discovered that it belonged to the office of the Governor of Aragua state. The man in charge of the farm and his wife were interviewed; the vehicle had been assigned to the latter; a forensic examination and valuation of the vehicle was carried out, and also a police technical inspection.<sup>301</sup>

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<sup>296</sup> Cf. Aide-mémoire of the Twentieth Prosecutor of Aragua state of August 10, 2011 (merits file, tome V, folios 2508 to 2510).

<sup>297</sup> Cf. Communication of Luis Aguilera sent on March 4, 2004 (file of attachments to the Commission's Report No. 11/10, tome I, attachment 4, folios 3397 and 3398).

<sup>298</sup> Cf. Report on forensic medical examination of March 5, 2004, *supra* note 78, folio 3409.

<sup>299</sup> Cf. Complaint filed by Rigoberto Antonio Barrios on March 11, 2004 (file of attachments to the answering brief, tome I, attachment 5, folios 4801 to 4803).

<sup>300</sup> Consisting of: (a) interview with Antonio Barrios Ortuño; (b) the Investigation Unit informed the Sixteenth Prosecutor of the complaint filed by Rigoberto Barrios, and (c) the Investigation Unit asked the Barbacoas and Guanayén Police Stations to provide copies of their logbooks for March 3 and 4, 2004. Cf. Testimony of Jorge Antonio Barrios Ortuño on March 11, 2004, *supra* note 77, folios 4804 and 4805; Note No. 9700-044-1520 of the Investigation Unit of March 11, 2004 (file of attachments to the answering brief, tome I, attachment 5, folio 4788), and Notes of the Investigation Unit of March 11, 2004 (file of attachments to the answering brief, tome I, attachment 5, folios 4807 and 4808).

<sup>301</sup> Cf. Record of criminal investigation of the Investigation Unit of February 21, 2004 (file of attachments to the answering brief, tome I, attachment 5, folios 4809 and 4810); Records of interview with Didier Ali Leon Pereira and Lourdes Josefina Bedoya Torrealba by the Investigation Unit on February 22 and 23, 2005 (file of attachments to the answering brief, tome I, attachment 5, folios 4811 to 4813 and 4815 and 4816); Expert report on the identification and valuation of vehicle No. 65 of the Investigation Unit of February 23, 2005 (file of attachments to the answering brief, tome I, attachment 5, folio 4817), and Police technical inspection 285 of the Investigation Unit of February 23, 2005 (file of attachments to the answering brief, tome I, attachment 5, folio 4819).

215. On June 2, 2005, the Sixteenth Prosecutor of the Public Prosecution Service of Aragua state (hereinafter “the Sixteenth Prosecutor”) reiterated the request made to the Guanayén Police Station for a copy of the logbooks for March 3 and 4, 2003, and, on May 30, 2005, he informed the Directorate for the Protection of Fundamental Rights of the Office of the Prosecutor General of the Republic about the case.<sup>302</sup> On March 27, 2006, the Sixteenth Prosecutor asked the Review Judge of the Criminal Judicial Circuit of Aragua State to dismiss the case owing to the prescription of the offense of minor personal injuries, a request that was decided favorably on November 22, 2006.<sup>303</sup>

5. *Investigation of the deprivation of liberty of Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios, and Jorge Antonio Barrios and the threats and injuries they suffered*

216. On June 28, 2004, a complaint regarding the events of June 19, 2004, was filed before the Fourteenth Prosecutor requesting the implementation of specific procedures.<sup>304</sup> On July 23, 2004, the Twentieth Prosecutor ordered the opening of the investigation, “[h]aving seen the newspaper article published in the *Diario el Siglo*” on June 29, 2004.<sup>305</sup> The same day the Investigation Unit requested the personal data, rank and administrative location of the three police officials mentioned in the complaint.<sup>306</sup> On July 27, 2004, the Twentieth Prosecutor asked the Director of Internal Affairs of the Police to open an administrative inquiry against the officials who should be subjected to it.<sup>307</sup>

217. In August 2004, the Twentieth Prosecutor interviewed Elbira Barrios and Jesús Ravelo; the former indicated that “forensic medicine” had not been carried out with either of them and associated the incident with the death of Narciso Barrios and the searches and theft of property in the homes that had taken place in November 2003. Mr. Ravelo handed over the bullet that had

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<sup>302</sup> Cf. Notes No. 05.F16.0838-05 and No. 05-F16-0888-05 of the Sixteenth Prosecutor of May 30 and June 2, 2005 (file of attachments to the answering brief, tome I, attachment 5, folios 4822 and 4825).

<sup>303</sup> Cf. Dismissal request of the Sixteenth Prosecutor of March 27, 2006 (file of attachments to the answering brief, tome I, attachment 5, folios 4797 and 4798), and Dismissal order of the Review Court of First Instance of the Tenth Criminal Judicial Circuit of November 22, 2006 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome I, folio 3411).

<sup>304</sup> Cf. complaint filed by Luis Aguilera on June 28, 2004 (file of evidence of attachments to Commission’s Report No. 11/10, tome II, folios 3428 to 3434). The following procedures were requested: (a) the opening of the corresponding investigations; (b) forensic examination of the vehicle; (c) ballistics expertise on the bullet extracted from the vehicle; (d) copy of the duty roster and log of the Barbacoas Police Station; (e) ballistic comparison of firearms carried by the officials accused, and (f) the arrest of two police officials.

<sup>305</sup> Cf. Order to open an investigation of the Twentieth Prosecutor of July 23, 2004 (file of attachments to the Commission’s Report No. 11/10, tome II, attachment 6, folio 3464).

<sup>306</sup> Cf. Note No. 9700-081-SDVC-4667 of the Investigation Unit of July 23, 2004 (file of attachments to the Commission’s Report No. 11/10, tome II, attachment 6, folio 3466). This request was reiterated on February 23, 2005, cf. Note No. 9700-081-SDVC-1574 of the Investigation Unit of February 23, 2005 (file of attachments to the Commission’s Report No. 11/10, tome II, attachment 6, folio 3473).

<sup>307</sup> Cf. Note No. 05-F20-0062-04 of the Twentieth Prosecutor of July 27, 2004 (file of attachments to the Report No. 11/10, tome II, attachment 6, folio 3468).

hit his vehicle the day of the incident.<sup>308</sup> Between February 22 and 24, 2005, with the victims were interviewed, and to technical inspection of the vehicle was carried out by the police.<sup>309</sup>

218. On May 30, 2005, the Twentieth Prosecutor asked the Investigation Unit carry out several procedures,<sup>310</sup> and the Fourteenth Prosecutor to advise whether proceedings were underway in relation to the alleged facts published in the *Diario el Siglo* on June 29, 2004, a request he reiterated on August 22, 2005; at that time he also requested information on whether the Fourteenth Prosecutor had received a bullet collected by the victims and whether he had ordered that ballistic testing be performed.<sup>311</sup> Between August and December 2006, the Twentieth Prosecutor repeated his request for the logbooks, among other information.<sup>312</sup> On December 12, 2006, two police officers charged in the case appeared before the Prosecutor, and a new date was set for the indictment on January 11, 2007.<sup>313</sup> On January 18, 2007, one of the defendants was charged with the crime of unlawful deprivation of liberty, personal injuries, and abuse of authority.<sup>314</sup> On March 10, 2008, one of the individuals involved in the incident appeared before the Twentieth Prosecutor.<sup>315</sup>

219. On November 25, 2008, the Twentieth Prosecutor asked the Review Court of the Criminal Judicial Circuit of the Judicial District of Aragua State to order the dismissal of the case in view of the absence of evidence to determine that the offenses of intentional personal injuries

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<sup>308</sup> Cf. Decision of the Twentieth Prosecutor of August 9 2004 (file of attachments to the Commission's Report No. 11/10, tome II, attachment 6, folios 3460 to 3462), and Testimony of Jesús Ravelo before the Twentieth Prosecutor on August 10, 2004 (file of attachments to the Commission's Report No. 11/10, tome II, attachment 5, folios 3470 and 3471).

<sup>309</sup> Cf. Records of interview with Elbira Barrios, Gustavo José Ravelo, Luisa del Carmen Barrios, Jesús Eduardo Ravelo, and Oscar José Barrios of February 22, 23 and 24, 2005, *supra* notes 79 and 80, folios 3438 to 3458, and Record of police technical inspection 288 of the Investigation Unit of February 24, 2005 (merits file, tome I, folio 236). It records the existence of a hole in the rear license plate.

<sup>310</sup> Namely: (a) interviews with the victims and possible witnesses; (b) photographic identification of the perpetrators by witnesses; (c) certified copy of the record of the appointment and acceptance of the post by authorities possibly implicated, and copy of the logbook, and (d) request for results on the presumed bullet submitted by the victim that had been sent to the microanalysis department. Cf. Official letter No. 05-F20-0942-05 of the Twentieth Prosecutor of May 30, 2005 (file of attachment to Commission's Report No. 11/10, tome II, attachment 6, folio 3477).

<sup>311</sup> Cf. Notes No. 05-F20-0943-05 and No. 05-F20-1399-05 of the Twentieth Prosecutor of May 30 and August 22, 2005 (file of attachments to the Commission's Report No. 11/10, tome II, attachment 6, folio 3477).

<sup>312</sup> Cf. Notes No. 05-F20-1400-05, No. 05-F20-1943-06 and No. 05-F20-2313-06 of the Twentieth Prosecutor of August 22, 2005, and September 27 and December 1, 2006 (file of attachments to the Commission's Report No. 11/10, tome II, attachment 6, folios 3483, 3485 and 3487).

<sup>313</sup> Cf. Decision of the Twentieth Prosecutor of December 12, 2006 (file of attachments to the Commission's Report No. 11/10, attachments 1 to 5, tome II, folio 3489).

<sup>314</sup> Cf. Indictment of the Twentieth Prosecutor of January 18, 2007 (file of attachments to the Commission's Report No. 11/10, attachments 1 to 5, tome II, folios 3491 and 3492).

<sup>315</sup> Cf. Annual Report of the Office of the Prosecutor General of the Republic (file of attachments to the Commission's Report No. 11/10, attachments 1 to 5, tome II, folio 3495).

and unlawful deprivation of liberty had been committed.<sup>316</sup> On October 21, 2009, the case was dismissed.<sup>317</sup>

### 6. Investigation of the death of Luis Alberto Barrios

220. On September 21, 2004, the Twentieth Prosecutor issued an order to open the investigation and several procedures were carried out.<sup>318</sup> On September 26, 2004, the lawyer of Eloisa Barrios asked that the investigation of the case be referred to the Maracay delegation, so that investigations could be carried out with the maximum transparency and impartiality, and with the promptness that the case required.<sup>319</sup>

221. On February 22, 2005, Elbira Barrios and Oscar José Barrios testified.<sup>320</sup> On numerous occasions, the Twentieth Prosecutor and the Investigation Unit requested the pending procedures,<sup>321</sup> only some of which had been carried out in November 2004.<sup>322</sup> On August 2, 2005, members of the Investigation Unit went to the forensic laboratory in order to obtain the results of different expert appraisals requested on September 22, 2004, and were told that some of them had been taken in November 2004 by the Twentieth Prosecutor and by an official of the Villa de Cura Police Station, in addition to the autopsy of the deceased, which had been taken by an official of that Police Station in October 2004.<sup>323</sup> In this regard, the Maracay Police Station

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<sup>316</sup> Cf. Note No. 05-F20-2952-08 of the Twentieth Prosecutor of November 25, 2008 (file of attachments to the answering brief, tome II, attachment 11, folios 5396 to 5399).

<sup>317</sup> Cf. Aide-mémoire of the Twentieth Prosecutor of August 10, 2011 (merits file, tome VI, folio 2502).

<sup>318</sup> Cf. Order to open an investigation of the Twentieth Prosecutor of September 21, 2004 (file of attachments to the answering brief, tome I, attachment 6, folio 4833). The following procedures were carried out: (a) technical inspection of the house; (b) technical inspection at the morgue; (c) planimetric survey; (d) a statement was received from Orismar Carolina Alzul García, who also testified on August 30, 2005, and (e) the forensic autopsy.

<sup>319</sup> Cf. Note No. CJP-083-04 of Luis Aguilera of September 26 2004 (file of attachments to the answering brief, tome I, attachment 6, folios 4835 and 4836).

<sup>320</sup> Cf. Conclusive decision of the Twentieth Prosecutor of May 25, 2006 (file of attachments to the answering brief, tome I, attachment 6, folios 4939 and 4940).

<sup>321</sup> Cf. On March 16, 2005, the Twentieth Prosecutor informed the Investigation Unit that “to date, only four appraisals have been forwarded,” all in November 2004, in relation to the procedures ordered on September 21, 2004; therefore, he requested “extremely urgently” that the pending procedures be conducted, *cf.* order to open an investigation of the Twentieth Prosecutor of September 21, 2004, *supra* note 318, folio 4833; Notes No. 05-F20-0649-05, No. 05-F20-0939-05 and No. 05-F20-1408-05 of the Twentieth Prosecutor of March 16, May 30 and August 22, 2005 (file of attachments to the answering brief, tome I, attachment 6, folio 4839, 4841, 4842 and 4843); Memorandum No. 9700-064-14193 of the Investigation Unit of August 10, 2005 (file of attachments to the answering brief, tome I, attachment 6, folio 4872), and Note No. 9700-064-14395 of the Investigation Unit of August 11, 2005 (file of attachments to the answering brief, tome I, attachment 6, folios 4874).

<sup>322</sup> Cf. They included, planimetric survey and blood tests on several pieces of evidence, *cf.* Memorandum No. 9700-064-DC.4448.04 of November 18, 2004 and appraisals No. 9700-064-DC-4604.04, No. 9700-064-DC-4606.04 and No. 9700-064-LC-4969.04 of the Investigation Unit of November 10, 2004 (file of attachments to the answering brief, tome I, attachment 6, folios 4877 to 4882).

<sup>323</sup> Cf. Records of procedures of the Investigation Unit of August 2 and 15, 2005 (file of attachments to the answering brief, tome I, attachment 6, folios 4871 and 4875).

asked the Villa de Cura Police Station to forward all the proceedings, including the appraisal taken from the forensic laboratory.<sup>324</sup>

222. On August 25, 2005, a ballistic trajectory appraisal was conducted.<sup>325</sup> On September 1, 2005, the Twentieth Prosecutor asked the Investigation Unit to forward the results of the autopsy performed on the deceased, because this evidence was “not in the case file.”<sup>326</sup> The autopsy was forwarded on September 5, 2005, and, on October 20, 2005, a certified copy of the death certificate.<sup>327</sup> On January 24, 2006, the Twentieth Prosecutor asked the Guanayén and Barbacoas Police Stations to send all the rifles that were part of their armory.<sup>328</sup> The information requested about the weapons in relation to the death of Luis Barrios and of Rigoberto Barrios was forwarded by the police station on October 7, 2005.<sup>329</sup>

223. On February 7, 2006, four firearms were subjected to forensic, mechanical and design inspections.<sup>330</sup> On May 17, 2006, the Twentieth Prosecutor requested a copy of the results of the forensic inspections and blood tests ordered on September 22, 2004, and that several procedures be conducted.<sup>331</sup> The same day, the copy of the forensic inspection and blood tests carried out on October 18, 2004, was sent to the Prosecutor, and he was advised that, on checking the files, it had been discovered that the ballistic comparison had not been carried out, because the evidence provided “did not have the physical characteristics to be able to identify it with the firearms that had been handed in.”<sup>332</sup> On May 18, 2006, a forensic, mechanical and design inspection and ballistic comparison was carried out of a weapon, which concluded that the ballistic comparison had not been carried out, because it had been found that the probative elements provided lacked the physical characteristics to identify them in relation to the firearms that fired them and, on

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<sup>324</sup> Cf. Memorandum No. 9700-064-1419 of the Investigation Unit of August 10, 2005 (file of attachments to the answering brief, tome I, attachment 6, folio 4873) and Memorandum No. 9700-064-14426 of the Investigation Unit of August 17, 2005 (file of attachments to the answering brief, tome I, attachment 6, folio 4876).

<sup>325</sup> Cf. Report No. 9700-064-DC-4449.04 of the Investigation Unit of August 25, 2005 (file of attachments to the answering brief, tome I, attachment 6, folios 4890 to 4895).

<sup>326</sup> Cf. Note No. 05-F20-1484-05 of the Twentieth Prosecutor of September 1, 2005 (file of attachments to the answering brief, tome I, attachment 6, folio 4885).

<sup>327</sup> Cf. Note No. 7188 of the Investigation Unit of September 5, 2005, and death and burial certificate of October 20, 2010 (file of attachments to the answering brief, tome I, attachment 6, folios 4887 and 4903).

<sup>328</sup> Cf. Notes No. 05-F20-150-05 and No. 05-F20-151-05 of the Twentieth Prosecutor (file of attachments to the answering brief, tome I, attachment 6, folios 4901 and 4902).

<sup>329</sup> Cf. Note No. BB-337-05 of the Barbacoas Police Station of October 7, 2005 (file of attachments to the answering brief, tome I, attachment 6, folio 4903).

<sup>330</sup> Cf. Report No. 9700-064-DC-0533.06 of February 7, 2006 (file of attachments to the answering brief, tome I, attachment 6, folios 4904 to 4906).

<sup>331</sup> Cf. Notes No. 05-F20-940-06, No. 05-F20-941-06 and No. 05-F20-942-06 of the Twentieth Prosecutor of May 17, 2006 (file of attachments to the answering brief, tome I, attachment 6, folios 4907 to 4909).

<sup>332</sup> Cf. Reports No. 900-064-DC-1598.04 and No. 9700-064-DC-2347.06 of the Investigation Unit of May 17, 2006 (file of attachments to the answering brief, tome I, attachment 6, folios 4911 to 4915).

May 25, a ballistic trajectory expansion was carried out.<sup>333</sup> That day, the Prosecutor ordered that the proceedings be archived because: (a) it was uncertain and could not be proved that police agents on active duty had killed Luis Alberto Barrios, and (b) it was uncertain that this incident could be described as police harassment with intent to continue threatening the lives of members of the Barrios family, because the expert ballistic appraisal ordered could not be performed with any of the weapons, owing to the lack of evidence with the physical characteristics required for identification, and also there were no eyewitnesses to the incident. He also indicated that, although the companion of the deceased mentioned prior intimidating acts by to police, this would be an indictable offense only at the request of the party.<sup>334</sup>

7. *Investigation of the attempt on the life of Rigoberto Barrios and his subsequent death*

224. On January 13, 2005, the family's lawyer filed a complaint before the Senior Prosecutor and the Twentieth Prosecutor based on the events that took place on January 9 that year, indicating that the victim was in critical condition in the hospital with eight bullet wounds from shots fired by police officials.<sup>335</sup> That same day, the Twentieth Prosecutor opened the investigation and requested that certain procedures be carried out;<sup>336</sup> they included an interview with the victim with the authorization of his neurosurgeon who indicated that the patient “was overall in good medical condition [with a] high probability of a satisfactory evolution”; while the victim indicated that one of the authors was a police official he knew, and that he could recognize the other one, and connected what had happened to the complaint filed by Eloisa Barrios concerning the detention of Rigoberto Barrios the previous year.<sup>337</sup>

225. On January 17, 2005, the family's lawyer advised the Prosecutor that, during surgery, three bullets had been removed from the victim that were lodged in his neck, and therefore asked

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<sup>333</sup> Cf. Reports No. 9700-064-DC-2348.06 and No. 9700-064-DC-2524.06 of the Investigation Unit of May 18 and 25, 2006 (file of attachments to the answering brief, tome I, attachment 6, folios 4917 to 4918 and 4921 to 4925).

<sup>334</sup> Cf. Conclusive decision of the Twentieth Prosecutor, *supra* note 321, folios 4946 to 4960.

<sup>335</sup> Cf. Complaint filed by Luis Aguilera on January 13, 2005 (file of attachments to the Commission's Report No. 11/10, attachments 1 to 5, tome II, folios 3536 and 3537).

<sup>336</sup> Cf. Note No. 05-F20-0073-05 of the Twentieth Prosecutor of January 13, 2005 (file of attachments to the answer to the application, tome I, attachment 3, folio 4569), and Order to open an investigation of the Twentieth Prosecutor of January 13, 2005 (file of attachments to the answer to the application, tome I, attachment 3, folio 4570). The procedures indicated included: medical examination of the victim, also requiring that “the reports that are prepared in this regard include the exact details and characteristics of any injuries found,” *cf.* Note No. 05-F20-0072-04 of the Twentieth Prosecutor of January 13, 2005 (file of attachments to the answer to the application, tome I, attachment 3, folio 4573); the transmittal of the victim's medical records and the bullets extracted from the victim, *cf.* Note No. 05-F20-0074-05 of the Twentieth Prosecutor of January 13, 2005 (file of attachments to the answer to the application, tome I, attachment 3, folios 4576 to 4613). In response to the order of the Prosecutor, the Investigation Unit opened the inquiry that same day, *cf.* record of proceedings of the Investigation Unit of January 13, 2005 (file of attachments to the answer to the application, tome I, attachment 3, folio 4612).

<sup>337</sup> Cf. Record of interview with Rigoberto Barrios by the Twentieth Prosecutor on January 13, 2005 (file of attachments to the answering brief, tome I, attachment 3, folios 4574 and 4575). In addition, a medical report of the victim was forwarded to the Prosecutor, *cf.* Evolution report issued by the Maracay Central Hospital on January 13, 2005 (file of attachments to the answering brief, tome I, attachment 3, folio 4578).

for a ballistic comparison to be made.<sup>338</sup> On January 19, 2005, the Hospital requested that an autopsy be performed on Rigoberto Barrios.<sup>339</sup> The following day, the Investigation Unit asked the Hospital for a copy of the victim's medical record and made a police technical inspection of the corpse.<sup>340</sup> The Unit also asked for the logbook and the names of the personnel on duty at the Barbacoas Police Station on January 9, 2005, a request that was repeated subsequently (*infra* para. 227).<sup>341</sup>

226. On January 22, 2005, the results of the autopsy performed on January 20, 2005, were provided.<sup>342</sup> On January 25, 2005, the Twentieth Prosecutor requested a copy of the reports and records corresponding to the last three months "that establish how the measure of protection for [...] the members of the Barrios family is being complied with,"<sup>343</sup> and the Investigation Unit carried out a technical inspection of the crime scene, and took photographs.<sup>344</sup> On January 26, 2005, interviews were conducted with Génesys Carolina Martínez, Maritza Barrios, who stated that her son had previously denounced threats from police officials, and three eyewitnesses.<sup>345</sup>

227. Between January and September 2005, the Prosecutor and the Investigation Unit requested that certain procedures be conducted, reiterated some that had been requested previously,<sup>346</sup> and others were carried out.<sup>347</sup> In addition, on October 4, 2005, the Twentieth

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<sup>338</sup> Cf. Note No. CJP-005-05 of Luis Aguilera of January 17, 2005 (file of attachments to the answering brief, tome I, attachment 3, folio 4579).

<sup>339</sup> Cf. Report of the Maracay Central Hospital of January 19, 2005 (file of attachments to the answering brief, tome I, attachment 6, folio 4611).

<sup>340</sup> Cf. Note No. 9700-064-0844 of the Investigation Unit of January 20, 2005 (file of attachments to the answering brief, tome I, attachment 3, folio 4613); Record of proceedings of the Investigation Unit of January 20, 2005 (file of attachments to the answering brief, tome I, attachment 3, folios 4614 to 4616), and Police technical inspection No. 140 of the Investigation Unit of January 20, 2005 (file of attachments to the answering brief, tome I, attachment 3, folios 4617 and 4618).

<sup>341</sup> Cf. Notes No. 9700-064-0843 and No. 9700-064 1681 of the Scientific Investigation Unit of January 20 and February 1, 2005 (file of attachments to the answer to the application, tome I, attachment 3, folios 4620 and 4653).

<sup>342</sup> Cf. Result of the autopsy procedure of the Investigation Unit of January 22, 2005 (file of attachments to the answering brief, tome I, attachment 3, folios 4621 and 4622).

<sup>343</sup> Cf. Note No. 05-F20-0134-05 of the Twentieth Prosecutor of January 25, 2005 (file of attachments to the answer to the application, tome I, attachment 3, folio 4623).

<sup>344</sup> Cf. Record of the proceedings of the Forensic and Scientific Crime Investigation Unit of January 25, 2005 (file of attachments to the answer to the application, tome I, attachment 3, folio 4624), and Police technical inspection No. 148 of the Forensic and Scientific Crime Investigation Unit of January 25, 2005 (file of attachments to the answer to the application, tome I, attachment 3, folios 4625 to 4636).

<sup>345</sup> Cf. Record of interview with Génesys Carolina Martínez on January 26, 2005, *supra* note 100, folios 3579 to 3581; Record of interview with Maritza Barrios on January 26, 2005, *supra* note 104, folios 4650 to 4652, and Record of interview with Jean Carlos Martínez Arcile, Jorge Cerezo Rangel and Jesús Eduardo Escobar Martínez on January 26, 2005 (file of attachments to the Commission's Report No. 11/10, attachments 1 to 5, tome II, folios 3587 to 3592).

<sup>346</sup> These procedures included: (a) medical history; (b) forensic blood tests; (c) forwarding of evidence collected at the crime scene on January 25, 2005, to the microanalysis laboratory; (d) reiteration of the request for ballistic trajectory, planimetric survey and forensic blood tests; (e) repetition of request for police records, logs, identification of police agents, and copies of firearms records; (f) request for criminal records of the deceased, reiterated on subsequent occasions; (g) localization and interview of the individuals mentioned by witnesses in their

Prosecutor asked the Guayanén Police Station to advise whether rifles formed part of their armory and to whom they were assigned<sup>348</sup> and, on May 17 and 19, 2006, he requested that specific firearms be forwarded in order to carry out the pertinent examinations, and also the results of appraisals of the remains of the bullets removed from the victim's body, that had been requested in February 2005.<sup>349</sup>

228. On May 25, 2006, the Investigation Unit forwarded the Twentieth Prosecutor the report on the ballistic trajectory expansion, requested the preceding day.<sup>350</sup> The same day, the Twentieth Prosecutor ordered the archiving of the proceedings, determining that: (a) the testimony of the witnesses did not provide accurate probative elements to conclude that the assailants were police officials; (b) "the only element that fuels the thesis of possible police excesses" is the statement by the deceased, indicated by his mother; however, that version could not be corroborated with the statements of the witnesses; (c) it was determined that the injuries were caused by two types of weapons; however, one of the ballistic comparison appraisals concluded that the samples lacked the physical characteristics that would allow their respective identification in relation to the firearms that fired them, and another gave a negative result; (d) the threats indicated by the deceased's mother refer to an offense that can only be investigated at the request of the party concerned. He concluded that it was uncertain and unclear that police agents had been responsible for the facts, and it was uncertain that these facts could be described as police harassment with intent to continue perpetrating attempts against the lives of the members of the Barrios family.<sup>351</sup>

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statements; (h) forensic examination of evidence collected on January 25, 2005. *Cf.* Notes of the Twentieth Prosecutor and of the Investigation Unit No. 9700-064-1681, No. 970-064-1210, No. 9700-064-1211, No. 9700-064-1282, No. 9700-064-1280, No. 05-F20-0636-05, 05-F20-0637-05, 05-F20-0639-05, 05-F20-0640-05, 05-F20-0644-05, 05-F20-0637-05, 05-F20-0639-05, 05-F20-0640-05, 05-F20-0940-05, 05-F20-1403-05, 05-F20-1401-05, 05-F20-1402-05, 05-F20-1404-05, 05-F20-1405-05 of January 26, February 1, April 6, May 30 and August 22, 2005 (file of attachments to the answering brief, tome I, attachment 3, folios 4653 to 4667, 4683 and 4688 to 4692).

<sup>347</sup> Specifically: (a) Forensic examination and ballistic comparison of a cartridge shell; (b) Report on ballistic trajectory, which concluded, *inter alia*, that no relationship could be determined between the victim and the perpetrator owing to discrepancy of the autopsy procedure in relation to the exit wound of one of the bullets; (c) Memorandum on planimetric survey, and forwarding of copies of the agenda and logs of the Barbacoas Police Station and the armory register for January 9 and 10, 2005, *cf.* Reports No. 9700-064-DC-676.05 and No. 9700-064-DC-550.05 and Memorandum No. 9700-064-DC-0549.05 of the Investigation Unit of February 5, March 10 and September 5, 2005, and Note No. 0330 of the Public Order and Security Unit of April 20, 2005 (file of attachments to the answering brief, tome I, attachment 3, folios 4668, 4685 to 4687, and 4693 to 4698).

<sup>348</sup> *Cf.* Note No. 05-F20-1643-05 of the Twentieth Prosecutor of October 4, 2005 (file of attachments to the answering brief, tome I, attachment 3, folio 4696).

<sup>349</sup> *Cf.* Notes No. 05-F20-943-06, No. 05-F20-944-06, No. 05-F20-955-06, No. 05-F20-956-06 of the Twentieth Prosecutor of May 17 and 19, 2006 (file of attachments to the answer to the application, tome I, attachment 3, folios 4699, 4700, 4702). The results of the appraisal of the fragments of bullet extracted from the corpse were forwarded to the Twentieth Prosecutor on May 22, 2006, *cf.* Note No. 9700-064-DC-257.06 of the Investigation Unit of May 22, 2006 and Report No. 9700-064-DC-623.05 of the Investigation Unit of March 4, 2005 (file of attachments to the answer to the application, tome I, attachment 3, folios 4709 to 4711).

<sup>350</sup> *Cf.* Report 9700-064-DC-2523.06 of the Investigation Unit of May 25, 2006 (file of attachments to the answering brief, tome I, attachment 3, folios 4724 to 4726).

<sup>351</sup> *Cf.* Conclusive decision of the Twentieth Prosecutor of May 25, 2006 (file of attachments to the answering brief, tome I, attachment 3, folios 4732 to 4767)

229. Regarding the investigation of alleged medical malpractice, on January 21, 2005, the family's lawyer sent to note to the Twentieth Prosecutor reporting the death resulting from an alleged act of medical negligence and the Prosecutor ordered the opening of an investigation.<sup>352</sup> On January 25, 2005, the lawyer asked the Twentieth Prosecutor to require specific information from the hospital, which was forwarded on January 28, 2005.<sup>353</sup> Between January and June 2006, certain procedures were carried out and others were requested.<sup>354</sup>

230. On September 20, 2006, the Twentieth Prosecutor forwarded the case file to the Scientific and Technical Advisory Unit of the Public Prosecution Office (hereinafter “the Advisory Unit”), so that it could “make an exhaustive review of the file.” On November 6, 2006, he received to report with the Advisory Unit’s conclusions and recommendations, indicating that it had not found “any record in the medical record to justify the delay which led to the patient being operated on so tardily” on January 15, 2005; the medication indicated could have contributed to worsening his condition; there were delays in the treatment provided; he was not attended to during the rounds from 1 p.m. to 7 p.m. on January 19, 2005; the autopsy and the medical record do not indicate the cause of death; there is an evident connection between the actions of the medical and nursing personnel, and there are gaps in the information in the medical record.<sup>355</sup> On December 3, 2008, the Twentieth Prosecutor returned the case file to the Advisory Unit “so that it could be analyzed and all the necessary criminal investigations could be carried out [...] to determine the criminal responsibility of the parties concerned.”<sup>356</sup>

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<sup>352</sup> Cf. Note No. CJP-011-5 of Luis Aguilera of January 21, 2005 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome II, folio 3597) and Order to open an investigation issued by the Twentieth Prosecutor (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome II, folios 3595 and 3596).

<sup>353</sup> Cf. Note No. CJP-016-5 of Luis Aguilera of January 25, 2005 (file of attachments to the Commission’s Report No. 11/10, tome II, attachment 8, folios 3598 to 3600); Note No. 05-F20-0137-05 of the Twentieth Prosecutor of January 25, 2005 file of attachments to the Commission’s Report No. 11/10, tome II, attachment 8, folio 3601), and Communication of the Maracay Central Hospital of January 28, 2005 (file of attachments to the Commission’s Report No. 11/10, tome II, attachment 8, folios 3603 to 3687).

<sup>354</sup> Including: (a) the neurosurgeon who operated on Rigoberto Barrios was interviewed twice; (b) the Twentieth Prosecutor twice asked the Investigation Unit to forward the proceedings in the case file, including interviews with witnesses, family members, and the personnel who intervened, as well a technical inspection report, and (c) the Twentieth Prosecutor asked the Hospital to provide a copy of the records of the emergency area for January 10, 2005, and the medical record, and also that the bullets extracted during the operation be sent to the Investigation Unit, *cf.* Records of interviews with Rodolfo Antonio Cordoval Perez on January 28, 2005, *supra* note 110, folios 3716 to 3718, and on June 20, 2005, *supra* note 110, folios 3699 to 3702; Notes No. 05-F20-0640-05 and No. 05-F20-1410-05 of the Twentieth Prosecutor of March 16 and August 22, 2005 (file of attachments to the Commission’s Report No. 11/10, tome II, attachment 8, folios 3688 and 3696); Note No. 05-F20-0638-05 of the Twentieth Prosecutor of April 6, 2005 (file of attachments to the Commission’s Report No. 11/10, attachments 1 to 5, tome II, folio 3691).

<sup>355</sup> Cf. Note No. 05-F20-1904-06 of the Twentieth Prosecutor of September 20, 2006 (file of attachments to the answering brief, tome IV, attachment 20, folio 6580); Note DGAP-DATCI-URATCI-04-205-06 of the Advisory Unit of November 6, 2006 (file of attachments Commission’s Report No. 11/10, tome II, attachment 8, folios 3706 to 3712)

<sup>356</sup> Cf. Note No. 3042-08 of the Twentieth Prosecutor of December 3, 2008 (file of attachments to the answering brief, tome IV, attachment 20, folio 6592).

231. On February 9, 2006, and on September 27, 2007, the Twentieth Prosecutor forwarded his case file to the Office of the Prosecutor General of the Republic, as the latter had requested on February 8 and September 24, 2007.<sup>357</sup> On April 25, 2008, the Prosecutor was “making an exhaustive review of the case [...] in order to issue the pertinent conclusive decision.”<sup>358</sup>

232. On August 23, 2010, the prosecution’s files of the two cases related to the death of Rigoberto Barrios were joindered, considering that they were closely related, and the investigation, the archive of which had been ordered on May 25, 2006, was re-opened. From August 2010 to July 2011, several procedures were requested.<sup>359</sup> In July and August 2011, various probative elements were received and a date was set for the appearance of several individuals involved in the facts.<sup>360</sup>

#### ***D. General considerations of the Court regarding the investigations***

233. Eight domestic criminal investigations were initiated within the factual context of this case. None of these investigations has resulted in the judicial elucidation of the facts or the punishment of those responsible. All these investigations have common elements that reveal lack of due diligence. The Court will now list these common elements and, subsequently, will analyze each of them.

234. The Court observes that, during the on-site inspections, there was to failure to immediately photograph the sites of the incidents,<sup>361</sup> the evidence found, the bodies of the deceased victims, and the property affected; also, there is no record that fingerprints were taken from the weapons supposedly involved in the facts, or from other evidence collected, or that inquiries were made to determine to whom the weapons belonged that have not been attributed to the agents implicated. Similarly, no forensic technical inspections were made at the onset of the investigations, such as reconstructions of the events (*supra* paras. 204 and 211). Furthermore, the logbooks of the police stations concerned were not submitted, or else were presented extremely late, and their whereabouts were not investigated when the responsible authorities indicated that they did not have them; also, there is no indication that investigations were conducted, as appropriate, into administrative responsibilities for mislaying or concealing them. In addition, all the police officials involved and previously identified were not summoned to testify

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<sup>357</sup> Cf. Notes No. 05-F20-231-07 and No. 05-F20-2247-07 of the Twentieth Prosecutor of February 9 and September 27, 2007 (file of attachments to the answering brief, tome IV, attachment 20, folios 6590 and 6591).

<sup>358</sup> Cf. Annual Report of the Office of the Prosecutor General of the Republic (file of attachments Commission’s Report No. 11/10, tome II, attachment 8, folio 3726).

<sup>359</sup> Among them: (a) the technical inspection of the site of the incident was requested, together with interviews with the witness and the next of kin of the deceased, evidence of Forensic interest, technical inspection appraisals, autopsy results, and interview with the doctors who intervened and the personnel on duty; (b) the results of the procedures required in March 2005 were requested; (c) the medical report and the magnetic resonance imaging (MRI) carried out on Rigoberto Barrios, as well as other hospital documents and evidences, *cf.* Aide-mémoire of the Twentieth Prosecutor of August 10, 2011 (merits file, tome VI, folios 2445 to 2449).

<sup>360</sup> Cf. Aide-mémoire of the Twentieth Prosecutor of August 10, 2011, *supra* note 132, folio 2449.

<sup>361</sup> Cf. In the case of the investigations into the deaths of Benito Barrios and Rigoberto Barrios, photographs were taken of the site; however, they were taken eight years and more than 20 days, respectively, after the events (*supra* para. 194).

immediately, and neither were possible witness or the next of kin of the victims. Lastly, several authorities omitted or delayed obtaining or forwarding the probative elements requested by the Prosecutor and, as applicable, by the Investigation Unit.

235. Moreover, this Court has indicated the guiding principles that must be observed in an investigation into a violent death. According to the Court's case law, the State authorities who lead an investigation of this type must try, at the very least, *inter alia*: (a) to identify the victim; (b) to recover and preserve the probative material related to the death, in order to contribute to a potential criminal investigation of those responsible; (c) to identify possible witnesses and obtain their statements in relation to the death investigated; (d) to determine the cause, manner, place, and time of death, as well as any pattern or practice that may have resulted in the death, and (e) to distinguish between death from natural causes, accidental death, suicide and murder. In addition, the scene of the crime must be investigated exhaustively, and meticulous autopsies and analyses of human remains must be performed by competent professionals, using the most appropriate procedures.<sup>362</sup>

236. In the investigation of the deaths in the instant case, in which an armed confrontation between the police and the victims has been alleged, no examination was made of atomic absorption based on the samples recovered from the hands, which, in the opinion of expert witness Baraybar, would have allowed determination of whether the victim had handled a firearm in the moments before his death.

237. Regarding the autopsies performed on the bodies of the deceased victims, they have the same general characteristics in all the cases, and there is merely a report of the results of the autopsy that only indicates the wounds found and the cause of death. In this regard, expert witness Baraybar indicated, *inter alia*, the following common elements in relation to the autopsies performed in the cases under analysis: (a) no mention of photographs being taken of the victim; (b) no mention of the time of death, the body temperature or the rigidity of the body; (c) no mention of the individuals performing the autopsy; (d) no photographs were attached that could support the conclusions of the report, and no mention was made of the methods used to determine the biological profile of the victim, and (e) no mention was made of whether x-rays were taken of the body or the teeth, or where the bullets recovered from within the victims were located.

238. The said shortcomings and omissions in obtaining evidence reveal the State's lack of due diligence in recovering and preserving probative material. In several cases, this resulted in the loss of important evidence, and the difficulty to determine the truth about what happened and to identify and, as appropriate, punish the perpetrators.

239. Furthermore, the Court notes that the Prosecutor ordered the archiving of the cases of Luis Alberto Barrios and of Rigoberto Barrios (*supra* paras. 223 and 228) even though he did not have all the probative elements, and other important procedures to obtain evidence had not been implemented. Thus, Venezuela did not indicate that any of the police agents who were allegedly involved were questioned, and there is no evidence of this, or that any line of investigation was

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<sup>362</sup> Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 127, and *Case of Ibsen Cárdenas and Ibsen Peña, supra* note 179, para. 217.

initiated that would connect these acts with those suffered previously by the victims, which had been attributed to police agents. In the Court's opinion, the Prosecutor should have exhausted all possible lines of investigation in which police agents had been indicated. Contrary to what the Prosecutor indicated in his respective requests to archive the cases, in the investigation of these deaths, the investigator should have ruled out whether or not the preceding acts, irrespective of their legal definition, were related to the said deaths. Consequently, the Court finds that all possible lines of investigation were not exhausted before the archive of the cases was ordered.

240. The Court will now analyze individually the eight domestic procedures with regard to the facts of the instant case in relation to due diligence and, when appropriate, the reasonable time.

### ***E. Specific considerations of the Court regarding the investigations***

#### ***1. Investigation of the death of Benito Antonio Barrios***

241. This Court has already referred to a series of shortcomings and omissions in the investigation of the facts (*supra* paras. 234, 236 and 237), the failure to take statements from the next of kin and witnesses promptly, or photographs of the site. In addition, there is no evidence in the case file that any attempt was made to carry out a reconstruction of the facts until more than eight years after the death occurred (*supra* para. 194), or that expert appraisals were carried out to determine whether shots had really been fired against the police that could justify an equivalent response on their part. The results of the forensic examination of the cartridges found on the site indicated that they had been shot with one of the two rifles implicated in the incident. However, there is no evidence that the authorities made any further inquiries to clarify the discrepancies between the different versions of what happened.

242. To the contrary, the investigation focused initially on collecting information on the victim's criminal record, without any observations regarding the possible connection between the events that led to his death and the incorporation of that information into the case file.

243. The Court also notes that the loss of the case file in the offices of the Public Prosecution Service was reported; despite this there is no record of any clarification with regard to where it was located. This is also revealed by the fact that, in 2005, the Prosecutor requested that procedures be conducted that had already been ordered years before. This probative material should be part of the case file, so that it would not have been necessary to request it again. However, in July 2005, following more than five years without any procedures being recorded, the Directorate for the Protection of Human Rights tried to locate the case file and obtain the necessary information to take action.

244. Lastly, the State has indicated that an arrest warrant has been issued for the individuals accused, despite which, they are still at large. The evidence in the case file reveals that only one of them was arrested in August 2011 (*supra* para. 198). The Court considers that it is not sufficient that the State merely indicates that an arrest warrant exists to justify the lack of progress in the case; rather it must prove that effective measures were taken.

245. Consequently, the Court concludes that the authorities did not act with due diligence in the investigation of the death of Benito Antonio Barrios. Therefore, the State violated the right to

judicial guarantees and to judicial protection established in Article 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Justina Barrios, Jorge Antonio Barrios Ortuño, Carlos Alberto Ortuño and Eloisa Barrios.<sup>363</sup>

2. *Investigation of the searches, destruction and theft at the homes of Justina Barrios, Elbira Barrios, Brígida Oneyda Barrios, Orismar Carolina Alzul García and Luis Alberto Barrios*

246. In the investigation of these incidents, relevant procedures were not conducted immediately to ascertain the facts (*supra* para. 234) – above all considering that the incidents involved private homes – so that the prompt and thorough collection of evidence could have prevented its loss.

247. Although an investigation was opened into the searches of two homes, on several occasions it was indicated that searches had occurred in another two homes, those of Elbira and Justina Barrios (*supra* para. 200), and there is no evidence that the last two were taken into account in the investigations in the case of the first two after the authorities had been informed that the incidents at the four homes had taken place on the same day and were attributed to the same authorities.

248. The Court also notes that, from December 2003 to February 2005, no steps were taken to clarify the facts. In addition, five years after the incidents, the Prosecutor requested information on the police officials at the Penitas Police Station, a measure requested by the Barrios family's lawyer. Nevertheless, this information is not included in his decision to archive the prosecution's case, which was issued three days after the request. In addition, in 2008, the Prosecutor ordered that the statements of several police agents be taken, without any evidence that this was done. The case file also shows that, in February 2007 and 2008, the Twentieth Prosecutor requested the logbooks of the San Francisco de Cara Police Station; nevertheless, the file shows that he had received this information on January 29, 2007.

249. Consequently, the Inter-American Court concludes that the authorities did not act with due diligence in investigating the searches, destruction of property, and setting fire of the homes of Luis Alberto Barrios, Orismar Carolina Alzul García, Brígida Oneyda Barrios, Justina Barrios and Elbira Barrios. Therefore, the State violated the right to judicial guarantees and to judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Luis Alberto Barrios, Orismar Carolina Alzul García, Brígida Oneyda Barrios, Justina Barrios and Elbira Barrios.<sup>364</sup>

3. *Investigation of the death of Narciso Barrios and the threats against Néstor Caudi Barrios*

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<sup>363</sup> Cf. Application for amparo filed by Eloisa Barrios on June 16, 2004, *supra* note 239.

<sup>364</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on March 1, 2004, *supra* note 139, folios 3210 to 3216.

250. Following these incidents, the authorities in charge of the investigations have proceeded to order and carry out various procedures to determine the facts. Despite this, the Court notes that there were some shortcomings and omissions (*supra* paras. 234, 236 and 237). When removing the body and collecting the corresponding evidence, the weapons of the police involved were not confiscated; merely the weapon supposedly carried by the victim. It also clear that the body of the victim was not taken into safekeeping promptly, because the police abandoned the scene upon seeing a group of people approaching and admonishing them; also there is no record that the authorities in charge took statements from them all as witnesses. Moreover, the police stated that they did not verify the condition of the victim before leaving the scene.<sup>365</sup>

251. In addition, Eloisa Barrios was the one who gave the investigation team photographs of the exterior of the building where Narciso Barrios died, which show bullet holes in the external walls; she also asked repeatedly that certain probative measures be implemented promptly (*supra* paras. 206 and 211). In this regard, there is no record whether the authorities made the corresponding forensic appraisals of these photographs.

252. Furthermore, there is no record that an official reconstruction of the event was carried out, or a ballistic trajectory appraisal, or that those involved were located, among other omissions; particularly taking into consideration the different versions of what happened that are revealed by the statements of eyewitnesses and the police involved. In addition, no steps were taken to verify why a multiple armed response by the police was required, because the latter indicated that they each fired at least three shots, and that the victim fired “two or three” shots.<sup>366</sup> Moreover, the ballistic comparison appraisal concluded that five cartridge shells retrieved from the scene were shot by one of the rifles assigned to the Barbacoas Police Station.<sup>367</sup>

253. Lastly, the Court emphasizes that, despite the different statements and evidence that links these facts to the threats against Nestor Caudi Barrios and the searches and destruction of the homes of some members of the family, the authorities did not investigate the series of facts or take measures aimed at confirming whether or not those links existed between the different incidents that took place within a very short lapse of time against certain members of the Barrios family.<sup>368</sup>

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<sup>365</sup> Cf. Records of interviews with Jose Luis Riasco Leon and Marcos Antonio Moreno Dorta on June 24 and 29, 2004, *supra* note 283, folios 6020, 6022 and 6029.

<sup>366</sup> Cf. Testimony of Marcos Antonio Moreno Dota, Leomar Jose Rovira Mendez and Jose Luis Riascos on November 26, 2004, *supra* note 74, folios 6054, 6058 and 6061.

<sup>367</sup> Cf. Note No. 9700-064-DC-5658.2004 of the Investigation Unit, *supra* note 289, folio 6103.

<sup>368</sup> In this regard, the case file only contains a record of the criminal investigation of the Investigation Unit indicating that the inquiries into the death of Narciso Barrios and into the searches of the homes “are related,” *cf.* Record of criminal investigation of the Investigation Unit of February 21, 2005 (file of attachments to the answering brief, tome II, attachment 10, folio 5120). Furthermore, expert witness Magaly Vázquez testified before this Court that “we are talking about [...] alleged human rights violations owing to a possible extrajudicial execution; in most cases [...] there are a series of events that can lead to that execution, such as illegal arrests, or threats to personal integrity, etc. Consequently, from this perspective [...] these conducts could, in my opinion, undoubtedly constitute related crimes.”

254. In particular, the Court notes that several of the statements provided regarding the searches, thefts and setting fire at the above-mentioned homes, indicated an incident that had occurred previously between Narciso Barrios and a police agent as a possible motive for the attack (*supra* paras. 201 and 203). Also, on March 1 and June 1, 2004, the lawyer of Eloisa Barrios filed a complaint concerning the death of Narciso Barrios together with a complaint concerning the search of the homes that had taken place in November 2003, and requested an investigation into why there was no record of the facts related to the search of the homes in the procedural records of the inquiry into the death of Narciso Barrios (*supra* para. 206). Also, Nestor Caudi Barrios and other family members advised the authorities on several occasions of the threats he had received, because he had witnessed the circumstances in which the said death took place (*supra* paras. 206 and 208). Therefore, the Court considers that all the possible lines of investigation that would have permitted the facts to be elucidated were not exhausted.

255. The Court notes that although protective measures were ordered in favor of Nestor Caudi Barrios (*supra* paras. 121 and 208), there is no record that any investigation was conducted to determine the origin of the threats denounced and to punish those allegedly responsible.

256. Consequently, the Inter-American Court concludes that the authorities did not act with due diligence in the investigation into the death of Narciso Barrios, and did not investigate the threats denounced by Nestor Caudi Barrios. Therefore, the State violated the right to judicial guarantees and to judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Nestor Caudi Barrios, and of Justina Barrios, Annarys Alexandra Barrios Rangel, Benito Antonio Barrios Rangel and Eloisa Barrios.<sup>369</sup>

#### 4. *Investigation of the detention of Rigoberto Barrios and Jorge Antonio Barrios Ortuño*

257. Faced with the complaint of arbitrary detention, physical and mental violence, and the alleged torture of two minors attributed to police agents, partly on police premises, the only measures that were taken by the authorities in charge of the investigation were: an interview with Jorge Antonio Barrios Ortuño; a forensic medical examination of Rigoberto Barrios; procedures concerning a farm and a vehicle allegedly related to the facts, and a request for the logbooks of the Police Stations, which were not provided (*supra* paras. 213 and 215).

258. Furthermore, no forensic medical examination was performed on one of the victims; also, there is no record that any measures were taken to determine whether one of the police agents identified as being involved in the incident, who was the son of the person in possession of the vehicle examined, was implicated in the facts. In addition, the case was dismissed owing to the prescription of the offense of minor injuries, without taking into account that other possible offenses had been committed, since the victims had complained that they had been deprived of their liberty arbitrarily, transferred to different places, beaten by several authorities, had shots fired near them, and had been threatened with death. Also, expert witness Vazquez indicated

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<sup>369</sup> Cf. Complaint filed before the Senior Prosecutor of the Public Prosecution Service on March 1, 2004, *supra* note 139, folios 3313 to 3319.

before the Court that, in cases such as this one, “the Public Prosecution Service, as leader of the investigation, is empowered to order the suspension of proceedings, which would have prevented the prescription of the criminal act [...] and, consequently, would also have avoided impunity.”

259. The Court considers that the State organs in charge of the investigation of the complaint of torture, and illegal and arbitrary deprivation of liberty of the minors committed by police officials, the purpose of which was to determine the facts, identify those responsible, and their possible punishment, must perform their tasks diligently and thoroughly. The personal characteristics of the victims, who were minors at the time of the events, and the juridical rights investigated, called for the necessary measures to be taken to achieve this objective. Negligent or omissive actions of the State organs are incompatible with the obligations arising from the Convention.

260. Consequently, the Inter-American Court concludes that the authorities did not act with due diligence in investigating the deprivation of liberty, violence, threats and torture suffered by the minors Rigoberto Barrios and Jorge Antonio Barrios Ortuño. Therefore, the State violated the right to judicial guarantees and to judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, and failed to comply with Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture in relation to the obligation to investigate the alleged acts of torture to the detriment of Rigoberto Barrios and Jorge Antonio Barrios Ortuño.

*5. Investigation of the deprivation of liberty of Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios and Jorge Antonio Barrios Ortuño, and the threats and injuries they suffered*

261. Initially a complaint was filed before the Fourteenth Prosecutor on June 28, 2004; despite this, the Twentieth Prosecutor also ordered the opening of the investigations on July 23, 2004, following a newspaper article about the incident. Although the latter ordered that certain measures be taken and asked the former, almost a year after the complaint, to advise whether he was taking measures with regard to the same facts, there is no record in the case file that the Fourteenth Prosecutor provided the collaboration requested by the Twentieth Prosecutor.

262. During this investigation, several measures were omitted that have been referred to previously (*supra* para. 234). Despite this, the Prosecutor ordered the dismissal of the case, even though there is no record that any steps had been taken to implement the pending procedures he had ordered. In this regard, expert witness Vázquez stated before the Court that the Public Prosecution Service is “obliged to have the result of each and every procedure ordered in order to be able to submit a conclusive decision.” In addition, there is no record that coercive measures or sanctions were adopted against the authorities who failed to collaborate in the preliminary investigation of the case. In this regard, in July 2004, the Prosecutor asked the Internal Affairs Directorate of the Police to open an administrative inquiry against the police agents; however, there is no record that this was done.

263. Consequently, the Inter-American Court concludes that the authorities did not act with due diligence in investigating the deprivation of liberty, violence and threats referred to in this

section. Therefore, the State violated the right to judicial guarantees and to judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios and Jorge Antonio Barrios Ortuño.

#### *6. Investigation of the death of Luis Alberto Barrios*

264. In addition to the irregularities in this investigation mentioned above (*supra* paras. 234 and 237), no statement was taken from Jorge Antonio Barrios Ortuño, even though the previous day he had witnessed how an identified police agent had threatened the deceased, or from any police officials. Also, the Court underlines the lack of collaboration between the authorities and the absence of coordination in obtaining and providing evidence. Thus, the conclusive decision of the Twentieth Prosecutor indicates that the designated Investigation Unit was the Maracay Police Station. However, the case file contains several measures taken by the Villa de Cura Police Station, and the Maracay Police Station's request to the latter, almost a year after the investigation of the case had been opened, to forward any proceedings and evidence it had (*supra* para. 221). Furthermore, almost a year after the death, the Prosecutor continued to ask the Investigation Unit to carry out various procedures (*supra* paras. 222 and 223).

265. In addition, there is no record that evidence that had been obtained previously, such as the autopsy, was delivered to the authority in charge of the investigation. Hence, in September 2005, the Prosecutor was still requesting this evidence, which has been obtained in October 2004. The same occurred with the forwarding of the weapons requested. Furthermore, the latter were not examined until May 2006, the month in which the Prosecutor requested that the case file be archived (*supra* paras. 222 and 223).

266. Based on the above, the Inter-American Court concludes that the authorities did not act with due diligence in investigating the death of Luis Alberto Barrios. Therefore, the State violated the right to judicial guarantees and to judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Justina Barrios, Orismar Carolina Alzul García, Ronis David Barrios Alzul, Roniel Alberto Barrios Alzul, and Luis Alberto Alzul and Eloisa Barrios.<sup>370</sup>

#### *7. Investigation of the attempt on the life of Rigoberto Barrios and his subsequent death*

##### *Investigation of the attempt on his life*

267. The investigation of the attempt on his life, which the Prosecutor qualified as “a punishable act that can be prosecuted *ex officio*,” was opened four days after it occurred following the complaint filed by the family's lawyer, with no record that the local police or the hospital officials had reported it to the corresponding authorities.

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<sup>370</sup> Cf. Note No. CJP-083-04 of Luis Aguilera of September 26, 2004, *supra* note 319, folios 4835 and 4836.

268. It was only when the victim had died that the authorities requested the logbook and the information on the personnel on duty at the Barbacoas Police Station on the day of the attempt, even though there were indications of police involvement at the time of the initial complaint. Furthermore, it was not until January 25, 2005, that the police made a technical inspection of the scene of the crime, where a cartridge shell was found; and it has been verified that no order was issued to forward it so that the police could make the corresponding technical inspection until April 6, 2005. Similarly, the ballistic trajectory appraisal and planimetric survey procedures were requested 17 days after the incident. In addition, forensic inspection and blood tests of the evidence taken from the victim's body were requested on February 1, 2005 (*supra* paras. 225 to 227).

269. As in the investigations of other cases examined in this chapter, the Court observes that requests were reiterated on several occasions for certain measures to be taken such as ballistic trajectory appraisals, a planimetric survey, and forensic inspections and blood tests, the identification of police officials attached to the Barbacoas Police Station, and the weapons register (*supra* paras. 224, 225 and 227). In addition, even though the forensic inspection and blood tests of the fragments of bullet extracted from the victim's body had been performed in March 2005, the Twentieth Prosecutor requested that they be forwarded to his office more than a year later.

#### *Investigation of medical malpractice*

270. The Prosecutor began the inquiry into these facts promptly, as soon as he had been informed of them by the family's lawyer, and ordered the implementation of the procedures requested by the latter. Some of them were not remitted opportunely, and the Prosecutor repeated his requests several times (*supra* paras. 229 and 232).

271. Nevertheless, the conclusive decision presented by the Investigation Unit on November 6, 2006, indicated the existence of several irregularities in the medical care provided to the victim (*supra* para. 230). Despite this, the case file does not show that any progress was made in the investigation to clarify what happened until 2010, when the two cases relating to Rigoberto Barrios were joinded. At that time, another request was made for procedures that had already been implemented, and that should have been included in the medical malpractice file.

272. Consequently, the Inter-American Court concludes that the authorities did not act with due diligence in the investigation of the attempt on the life of Rigoberto Barrios and his death. Therefore, the State violated the right to judicial guarantees and to judicial protection established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Maritza Barrios.

#### ***F. Considerations on reasonable time***

273. This Court has indicated that the right of access to justice must ensure, within a reasonable time, the right of the alleged victims or their next of kin that all necessary measures are taken to know the truth about what happened and for those responsible to be punished.<sup>371</sup> In

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<sup>371</sup> Cf. *Case of Bulacio*, *supra* note 55, para. 114, and *Case of Kawas Fernández*, *supra* note 176, para. 112.

principle, the lack of reasonableness in the duration of the investigation is, in itself, a violation of judicial guarantees.<sup>372</sup> In this regard, the Court has considered four elements to determine the reasonableness of the duration: (a) the complexity of the matter; (b) the procedural activity of the interested party; (c) the conduct of the judicial authorities,<sup>373</sup> and (d) the effects on the legal situation of the person involved in the proceedings.<sup>374</sup>

274. The Court will now analyze the elements of the reasonable time in relation to: (a) the death of Benito Antonio Barrios; (b) the death of Narciso Barrios; (c) the searches of the homes of Brígida Oneyda Barrios, Luis Alberto Barrios and Orismar Carolina Alzul García, and (d) the deprivation of liberty, threats and violence to the detriment of Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios, and Jorge Antonio Barrios Ortuño. Regarding the other investigations, the Court does not have sufficient evidence to rule on them.

275. With regard to the first element, the Court observes that in none of these four cases the delay in the investigation can be justified by the complexity of the matter. Indeed, in the cases of the two deaths, these are not cases in which there are several victims, and they do not have particularly complex characteristics, because they relate to the death of a single individual, the possible perpetrators have been identified, and it has been verified that there were witnesses to the incident. Regarding the other two investigations, the authors have been identified by the victims or the witnesses, witnesses have been identified, and possible lines of investigation were provided relating to a possible reason for the incidents.

276. Regarding the second element, the victims or their next of kin, especially Eloisa Barrios in the case of the death of her brothers, assumed an active role through her lawyer, making the authorities aware of all the information she possessed. Also, on several occasions, they reported the lack of procedural action to various authorities and requested progress in the investigations, going as far as to file an application for *amparo* owing to the judicial delay in one case (*supra* paras. 192 to 194, 199 to 204, 206, 208, 211 and 217).

277. In relation to the conduct of the authorities, in the case of the investigation of the death of Benito Antonio Barrios, the Court has already indicated the delay in implementing certain procedures (*supra* paras. 234, 241 and 243). In addition, the Court has verified that since his death, which was when the investigation of the case began, to date, more than 13 years have passed and the criminal case in the domestic sphere is still being processed. Even though, since July 2005, the Prosecutor has ordered the implementation of new procedures relatively rapidly, up until that date more than five years had passed without the investigation agencies taking any measure. The passage of four years from the time formal charges were brought against four

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<sup>372</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, reparations and costs*. Judgment of June 21, 2002. Series C No. 94, para. 145, and *Case of Valle Jaramillo et al.*, *supra* note 94, para. 154.

<sup>373</sup> Cf. *Case of Genie Lacayo v. Nicaragua*. Merits, reparations and costs. Judgment of January 29, 1997. Series C No. 30, para. 77, and *Case of Kawas Fernández*, *supra* note 176, para. 112.

<sup>374</sup> Cf. *Case of Valle Jaramillo et al.*, *supra* note 94, para. 155, and *Case of Kawas Fernández*, *supra* note 176, para. 112.

alleged perpetrators until a judge requested the reiteration of the arrest warrant and the summons to a hearing on June 8, 2011, is also excessive.

278. Moreover, this delay has given rise a violation of reasonable time, and an evident denial of justice. The fact that eight years passed before a request was made to carry out procedures such as blood tests on a piece of evidence, and the police technical inspection of the homes meant that the evidence was destroyed or unusable owing to the passage time (*supra* para. 194). In addition, the case file shows that the Public Prosecution Service indicated the prescription of the criminal action for the offense of misuse of firearms, when “eight years, eight months and eleven days” had elapsed (*supra* para. 196).

279. As for the third element, in relation to the investigation of the searches of the homes, there was a delay in receiving the statements of witnesses and of the alleged perpetrators, especially the police agents implicated, who came forward to testify three years later; in complying with procedures ordered such as the delivery of the logbooks, and in making a technical inspection of the homes, which did not take place until February 2005 (*supra* paras. 201 and 203). Additionally, there was a period of more than a year in which the authorities did not take any measures. Five years after the incident, information was provided on procedures that had been requested from the start, and eight years after the incident, the facts had still not been clarified.

280. Regarding the conduct of the authorities in charge of the investigation of the death of Narciso Barrios, the Court notes that although the Prosecutor ordered the necessary procedures to clarify the facts promptly, the authorities responsible for them delayed implementation (*supra* para. 234). Thus, the interviews with key witnesses such as Nestor Caudi Barrios and Jorge Antonio Barrios Ortuño, who witnessed what happened, took place five months after the incident (*supra* paras. 206, 207 and 209). In addition, other measures were not implemented promptly, such as: (a) the planimetric survey that was conducted nearly to year after the facts and after several requests; (b) the firearms assigned to the Barbacoas Police Station were forwarded so that the pertinent appraisals could be carried out almost a year after the events occurred, and (c) the ballistic evidence extracted from the victim’s body was not sent for the corresponding appraisal until almost two months after his death, without any reason being given for this delay (*supra* paras. 205, 207 and 209).

281. Furthermore, the Court has verified that, following the Prosecutor’s conclusive decision, the Court of First Instance delayed the preliminary hearing on several occasions and, subsequently, the Second Trial Court delayed almost nine months in installing a court to open the public and oral proceedings. The trial was postponed until 2011; in other words, almost five years later (*supra* para. 212).

282. Since the death of Narciso Barrios, when the preliminary inquiry in the case began, to date, nearly eight years have passed and the criminal case continues to be processed in the domestic sphere, without a judgment, and with no record of the detention of the alleged authors, who have already been identified.

283. With regard to the conduct of the authorities in the investigation of the detention of the members of the Barrios-Ravelo family and the violent acts against them, it has already been proved that there was a delay in implementing several procedures (*supra* para. 234), such as: the statements of the officials implicated were taken more than two years after the incident, and those of some victims nine months after the incident, and the logbook was requested also nine months after the incident, and two years later was still being required (*supra* paras. 217 and 218). The Court emphasizes that more than four years passed at the investigation stage to implement the above-mentioned procedures, up until the request was made to dismiss the case.

284. Regarding the fourth element, which refers to the effects of the duration of the proceedings on the legal situation of those involved, the Court considers, as it has previously,<sup>375</sup> that it is not necessary to analyze this to determine the reasonableness of the duration of the investigations mentioned above.

285. Consequently, the Inter-American Court concludes that the investigations into the deaths of Benito Antonio Barrios and Narciso Barrios, and the searches of the homes of Luis Alberto Barrios, Orismar Carolina Alzul García, Brígida Oneyda Barrios, Justina Barrios and Elbira Barrios, and the arrests, threats and injuries to the detriment of Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios and Jorge Antonio Barrios Ortuño, exceeded a reasonable time. Therefore, the State violated the rights established in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the individuals indicated in paragraphs 245, 249, 256 and 263 of this judgment.

### ***G. Investigation of the deaths of Oscar José Barrios, Wilmer José Flores Barrios and Juan José Barrios, and the attempt on the life of Néstor Caudi Barrios***

#### *1. Arguments of the parties*

286. Regarding the investigation into the death of Oscar José Barrios, the Commission indicated that it “is in its preliminary stages” and that the Commission “does not have sufficient probative elements to rule on the investigations that have been carried out in relation to this incident.” The Commission did not submit any specific arguments about the investigation into the deaths of Wilmer José Flores Barrios and Juan José Barrios, or about the attempt on the life of Néstor Caudi Barrios.

287. The representatives argued that certain procedures had not been carried out, such as the reconstruction of the facts, the ballistic trajectory or the on-site inspection, and nor had procedures which would allow the responsibility of any police officials to be rejected. Thus, investigations had not been conducted that took into account the elements of the existing context or the circumstances that forced Oscar José Barrios to flee from Guanayén owing to police harassment. They added that the case file only includes some procedures such as the police technical inspection of the site, the autopsy report and some interviews. Regarding the investigation of the death of Wilmer José Flores Barrios, they indicated that it is in the preparatory phase and that neither the next of kin nor the witnesses have been summoned to

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<sup>375</sup> Cf. *Case of Garibaldi*, *supra* note 220, para. 138.

testify. Lastly, regarding the death of Juan José Barrios, they indicated that the State had indicated that the investigation of the facts determined the criminal responsibility of two individuals; however, they indicated that “those responsible have not received a final judgment convicting them and all the lines of investigation had not yet been exhausted.”

288. The State argued that the Prosecutor had opened the criminal investigation into the death of Oscar José Barrios upon being informed by the officials attached to the Investigation Unit of a confrontation. At that time, he ordered that certain procedures be carried out in order to clarify the facts and attribute responsibilities; these included taking the deceased’s fingerprints, the technical inspection of the bullets collected, and the summoning of witnesses and next of kin. The State indicated that the investigation was at the preparatory stage. In addition, it indicated that, since the “case is at the investigative stage, [it was] unable to say whether or not [any] police official was involved.” Regarding the death of Wilmer José Flores Barrios, “the Fourteenth Prosecutor [had] ordered the opening of the investigation.” Regarding the death of Juan José Barrios, the State advised that one of the two accused had been arrested. Lastly, regarding the attempt on the life of Néstor Caudi Barrios, it indicated that, on January 14, 2011, the Twentieth Prosecutor had opened the investigation and, currently, the necessary measures were being taken to determine what had happened and the corresponding responsibilities.

## *2. Considerations of the Court*

289. The Court observes that, in its Report on Merits, the Commission indicated that it did not have sufficient evidence to rule on the investigations that had been conducted into the death of Oscar José Barrios. In addition, the representatives referred to alleged shortcomings in the initial phase of the investigation procedure, although they indicated that some measures had been taken such as reports, autopsies and interviews. The State indicated that it had taken investigative measures. The foregoing reveals that the investigation into the death of Oscar José Barrios is underway and relates to a recent incident; in this regard, the Court does not have sufficient evidence to rule on the alleged violation of the rights to judicial guarantees and judicial protection. Similarly, the investigations into the deaths of Wilmer José Flores Barrios and Juan José Barrios, and the attempt on the life of Néstor Caudi Barrios, relate to recent cases regarding which this Court does not have specific evidence to rule on this alleged violation.

## ***H. Right to the truth***

### *1. Arguments of the representatives*

290. The representatives stated that “[a]lthough [the right to the truth] is not explicitly stated in the text of the [Convention], the protections established in Articles 1(1), 8, 13 and 25, taken as to whole, implicitly signify the existence of this right.” They asked the Court to “establish that the Venezuelan State had violated the right of the members of the Barrios family to know the truth about the acts perpetrated against them, [...] by failing to provide effective procedures and mechanisms to elucidate the truth of what occurred, and to identify, prosecute and punish those responsible; also, to establish that these acts and omissions of the State constituted a violation of the right to the truth, which is protected by Articles 1(1), 8, 13 and 25 of the [Convention] taken as to whole.”

## 2. Considerations of the Court

291. The Court recalls that the right to the truth is subsumed fundamentally in the right of the victims or their next of kin to obtain from the competent State bodies clarification of the acts that violated the Convention and the corresponding responsibilities, by the investigation and prosecution established in Articles 8 and 25 of the Convention,<sup>376</sup> which is also to form a reparation.<sup>377</sup> Consequently, in this case, the Court will not make an additional ruling on the alleged violation of the right to the truth asserted by the representatives.<sup>378</sup>

### I. General conclusion of the Court on judicial guarantees and protection

292. The Court observes that, even though investigations were opened in this case, it is evident that the necessary steps were not taken to elucidate the facts. In addition, none of them was able to identify and punish those responsible, and delays have been verified in carrying out key procedures to advance the investigations, without the State having justified this sufficiently. Therefore, this Court finds that, in this case, none of the investigations constituted an effective means to guarantee the rights to life, personal integrity, personal liberty, private life, and private property of the victims. As this Court has stated repeatedly, impunity encourages the chronic repetition of human rights violations.<sup>379</sup>

293. The Court considers that, in the instant case, the shortcomings and omissions common to all the investigations reveal that the State authorities failed to act with due diligence and in accordance with the obligations arising from Articles 8(1) and 25(1) of the Convention concerning the obligation to investigate.

## XI

### RIGHT TO PERSONAL INTEGRITY OF THE NEXT OF KIN IN RELATION TO THE OBLIGATION TO RESPECT RIGHTS

#### A. Arguments of the parties

294. The Inter-American Commission argued that the impact on the mental and moral integrity of the members of the Barrios family was twofold, as regards: (a) the immediate family of each

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<sup>376</sup> Cf. *Case of Gómez Palomino v. Peru*. Merits, reparations and costs. Judgment of November 22, 2005. Series C No. 136, para. 78, and *Case of Chitay Nech et al. v. Guatemala*. Preliminary objections, merits, reparations and costs. Judgment of May 25, 2010. Series C No. 212, para. 206.

<sup>377</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 15, para. 181, and *Case of Chitay Nech et al.*, *supra* note 376, para. 206.

<sup>378</sup> In the *case of Gomes Lund et al.*, the right to the truth was related to Article 13, because the Court observed that, according to the facts involved in that case, the right to know the truth was related to an action filed by the next of kin to obtain certain information related to access to justice, and to the right to seek and receive information.

<sup>379</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.)*, *supra* note 12, para. 173, and *Case of Garibaldi*, *supra* note 220, para. 111.

of the alleged victims who were murdered, owing to the particular gravity of the violent events, and (b) the Barrios family as a whole, owing to the context of the case.

295. Regarding the harm to the right to integrity of the immediate family of the seven members of the Barrios family who lost their life,<sup>380</sup> the Commission considered that “the mere loss of a loved one as a result of the arbitrary use of force by security agents, in a permanent context of threat and vulnerability, followed also by the failure to elucidate the facts and their impunity,” are elements that allow the violation of the right to integrity of the immediate family of the deceased to be inferred.” In addition, it stated that the investigations in these cases “have not taken into account that the facts occurred in a broader context of harassment against the family,” which has resulted in greater vulnerability for its members. Therefore, the Commission concluded that the State was responsible for the violation of the right to mental and moral integrity established in Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the immediate family (parents, siblings, children, life companions) of Benito Antonio Barrios, Narciso Barrios, Luis Alberto Barrios, Rigoberto Barrios and Oscar José Barrios.

296. Moreover, regarding the effect on the mental and moral integrity of all the members of the Barrios family,<sup>381</sup> the Commission considered that the “pattern of persecution against [the family] has been characterized by a sequence of violent events of a greater and lesser degree,” and by the consequent extreme lack of protection and vulnerability in which the members of the family remain. In addition, it emphasized that this context has caused them to live “in a permanent state of distress, fear and anxiety in the face of the possibility that [...] they may be the next target of violence”; and this has had effects on their usual daily activities and their general life project, because many members of the family have spent the last few years seeking protection and justice, and others have even had to make personal and family decisions to protect their own safety and that of their children.

297. The representatives stated that “the suffering of the [Barrios] family is immeasurable,” because the violation of the right to integrity of the next of kin was perpetrated not only in relation to the effects on the members of the family as a whole but, in some cases, they have been victimized twice, “by having suffered direct effects, in addition to the pain that the loss of a family member may have caused them.”

298. Regarding the right to personal integrity of the next of kin of the victims who lost their life, the representatives indicated that the impact caused by the deaths, the manner and the violence of the executions, and the impunity in the investigations “have severely affected all the next of kin, but especially the mothers, [wives] and sisters of the victims who were executed,”

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<sup>380</sup> In the Report on Merits, the Inter-American Commission referred to the immediate next of kin of the five members of the family who had lost their life at that time, namely: Benito Antonio, Narciso, Luis Alberto, Rigoberto and Oscar Jose Barrios, because Wilmer José Flores Barrios and Juan José Barrios died after this report had been presented on September 1, 2010, and May 28, 2011, respectively.

<sup>381</sup> The Inter-American Commission clarified that these family members are those individualized at that date in the proceedings before the Inter-American Commission, indicated in the genealogical tree sent by the Commission, except for Brígido Solórzano who died on September 2, 1998, and Benito Antonio Barrios who was the first member of the Barrios family to be executed, in the absence of evidence of threats prior to that time.

who had to assume new roles and identities within the family group, or decided to separate from it, experiencing pain and mental scars of all kinds. In addition, they added that, as a result of the executions, “the absence of the father figure and the brutal way in which the Barrios siblings were murdered caused great suffering to [their] children,” who have experienced problems in their daily and academic life. Consequently, the representatives asked the Court to declare the violation of Article 5 of the Convention, in relation to Article 1(1) thereof, regarding all the “immediate family (mothers, fathers, children and companions)” of the victims who were executed “owing to the loss of a loved one in the conditions of extreme violence that characterize this case.”

299. In connection with the violation of the personal integrity of the Barrios family as a whole, the representatives indicated that this is due to: the actions they have taken in their search for justice and to combat impunity, without obtaining any response from the State authorities; the threats, harassment and intimidation used against them to prevent them from continuing their search for justice, and the “permanent anxiety and insecurity” in which the members have lived. This has caused many of them to leave the village where they lived and to move to other places “to protect their lives and integrity, completely rupturing the harmony and stability of the family.” This has been “the most difficult aspect to overcome, [because] it forced [two generations] to change their life project, to move away from their land, to abandon their work [...] and their schools.” All the foregoing “entails the international responsibility of the State [...], which gives rise to an evident violation of Article 5 of the Convention” to the detriment of all the members of the Barrios family.

300. The State did not present arguments on the violation of the right to personal integrity of the next of kin of the victims or on the effects on the Barrios family as to whole. However, on several occasions, Venezuela referred to the pending legal cases involving the Barrios family in which, it acknowledged, “there have been judicial delays,” and to compliance with the measures of protection ordered by the State and the Inter-American Court for some of the members of the family. At the public hearing, the State asserted that “it is clear [...] that the Barrios family has suffered greatly because of what happened.”

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

301. On numerous occasions, the Court has considered that the next of kin of the victims of human rights violations may, in turn, be victims.<sup>382</sup> The Court has found that the right to mental and moral integrity of the next of kin of victims has been violated because of the additional anguish they have suffered as a result of the particular circumstances of the violations perpetrated against their loved ones and because of the subsequent acts or omissions of State authorities with regard to the facts.<sup>383</sup>

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<sup>382</sup> Cf. *Case of Castillo Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34, fourth operative paragraph, and *Case of Torres Millacura et al.*, *supra* note 41, para. 142.

<sup>383</sup> Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Ibsen Cárdenas and Ibsen Peña*, *supra* note 179, para. 127.

302. In this regard, this Court has found that it can presume harm to the mental and moral integrity of the immediate family of the victims of certain human rights violations by applying a *iuris tantum* presumption with regard to mothers and fathers, sons and daughters, spouses, and permanent companions, provided that this responds to the specific circumstances of the case. In the case of these family members, it is for the State to disprove the said presumption.<sup>384</sup> In relation to the other next of kin, regarding whom the Court does not presume harm to their personal integrity, the Court must evaluate, for example, whether particularly close ties existed between them and the victims in the case that would enable them to prove an impairment of their personal integrity and, accordingly, a violation of Article 5 of the Convention. The Court may also evaluate whether the alleged victims have been involved in seeking justice in the specific case,<sup>385</sup> or whether they have suffered harm as a result of the facts of the case or of subsequent acts or omissions on the part of the State authorities in relation to the facts.<sup>386</sup>

303. Thus, taking into consideration the circumstances of this case, the Court presumes the violation of right to personal integrity of the immediate family of Benito Antonio Barrios, Narciso Barrios and Rigoberto Barrios, regarding whom the responsibility of State agents has been determined (*supra* paras. 68 and 96), as well as of the immediate family of Luis Alberto Barrios, Oscar José Barrios, Wilmer José Flores Barrios, and Juan José Barrios, for whose death the State was been found responsible for failing to comply with its obligation to guarantee and to protect rights (*supra* para. 131).

304. Therefore, the said family members who are considered victims in this case are: Justina Barrios, Jorge Antonio Barrios Ortuño, Carlos Alberto Ortuño, Orismar Carolina Alzul García, Ronis David Barrios Alzul García, Roniel Alberto Barrios Alzul, Luis Alberto Alzul, Annarys Alexandra Barrios Rangel, Benito Antonio Barrios Rangel, Orianny Nazareth Pelae, Oriana Nazareth Pelae, Maritza Barrios, Elbira Barrios, Michael José Barrios Espinosa and Dinosca Alexandra Barrios Espinosa.

305. Regarding the siblings and other next of kin of the victims indicated by the Commission in its Report on Merits,<sup>387</sup> the Court recalls that, according to its case law, it cannot presume an effect on the integrity of the siblings and other next of kin of the Barrios family, in the terms of Article 5(1) of the American Convention. Therefore, it must analyze whether the evidence provided by the parties proves that their personal integrity has been harmed.

306. In this regard, based on the testimony, and on the pertinent parts of the psychological report and other documents in the case file, the Court finds proven that, regarding some of the non-immediate members of the victims' families, one or more of the following circumstances

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<sup>384</sup> Cf. *Case of Valle Jaramillo et al.*, *supra* note 94, para. 119, and *Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2010. Series C No. 219, para. 235.

<sup>385</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Merits.* Judgment of November 25, 2000. Series C No. 70, para. 63, and *Case of Gomes Lund et al. ("Guerrilha do Araguaia")*, *supra* note 384, para. 235.

<sup>386</sup> Cf. *Case of Blake*, *supra* note 385, para. 114, and *Case of Gomes Lund et al. ("Guerrilha do Araguaia")*, *supra* note 384, para. 235.

<sup>387</sup> Cf. Report on Merits of the Commission (merits file, tome I, folio 54).

has occurred: (a) there were close family ties between them and the victims who were executed; (b) they have been involved in filing domestic complaints or actions to obtain justice; (c) the death of their next of kin has affected them personally, physically and emotionally; (d) the facts have affected their family relationships, and have ruptured family dynamics and forced some of them to assume new roles within the family; (e) the effects they have experienced have been compounded by the State's omissions in relation to the absence of an investigation into what happened and of information on why their next of kin were executed, as well as by the permanent desire to obtain justice, and (f) because of what happened to their brothers and nephews, they have been forced to move to other places.

307. In this case, it has been proved that there were close family ties between the siblings of Benito Antonio Barrios, Luis Alberto Barrios, Narciso Barrios and Juan José Barrios, because they formed a single family group with Pablo Julián Solórzano Barrios, Eloisa Barrios, Elbira Barrios, Maritza Barrios, Brígida Oneyda Barrios, Inés Josefina Barrios, Lilia Ysabel Solórzano Barrios and Luisa del Carmen Barrios. They were very united; they had an excellent relationship, they took part in the same activities, and they gathered together for festivities.<sup>388</sup> In the same way, there were close ties between Víctor Daniel Cabrera Barrios and his cousin Oscar José Barrios.<sup>389</sup>

308. Also, some next of kin have been involved, to a greater or lesser degree, in filing domestic complaints or actions to obtain justice; this is the case of Eloisa Barrios.<sup>390</sup>

309. Similarly, it has been proved that the death of their brothers has had personal, physical and emotional effects on Brígida Oneyda Barrios, Lilia Ysabel Solórzano Barrios, Luisa del Carmen Barrios, Pablo Julián Solórzano Barrios, Elbira Barrios and Eloisa Barrios,<sup>391</sup> as well as on some of the nephews and nieces of the deceased; this is the case of Marcos Antonio Diaz Barrios, Sandra Marivi Betancourt Barrios, Junior José Betancourt Barrios, Wilneidys Betania Pimentel Barrios, Beatriz Adriana Cabrera Barrios, Víctor Daniel Cabrera Barrios, Luilmari Carolina Guzmán Barrios and Luiseidys Yulianny Guzmán Barrios.<sup>392</sup> In this regard, the violation of the right to personal integrity of the next of kin of the victims is verified by the consequences that the events have had on them at a personal, physical and, above all, emotional level. In this regard, expert witness Valdez Labadi indicated that “[i]t is not easy to predict all the kinds of aftereffects; the most usual range from suicidal notions, panic, depression, anger,

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<sup>388</sup> Cf. Testimony given by Eloisa Barrios during the public hearing, *supra* note 162; Affidavit made by Luisa del Carmen Barrios, *supra* note 193, folio 903; Affidavit made by Pablo Julián Solórzano Barrios, *supra* note 193, folio 920 and Affidavit made by Elbira Barrios, *supra* note 192, folio 889.

<sup>389</sup> Cf. Affidavit made by Víctor Daniel Cabrera Barrios, *supra* note 162, folio 924.

<sup>390</sup> Cf. Testimony given by Eloisa Barrios during the public hearing, *supra* note 162.

<sup>391</sup> Cf. Affidavit made by Brígida Oneyda Barrios, *supra* note 171, folios 882 and 884; Affidavit made by Lilia Ysabel Solórzano Barrios, *supra* note 193, folios 897 and 898; Affidavit made by Luisa del Carmen Barrios, *supra* note 193, folios 902 and 903; Affidavit made by Pablo Julián Solórzano Barrios, *supra* note 193, folio 920; Affidavit made by Elbira Barrios, *supra* note 192, folio 892 and Testimony given by Eloisa Barrios during the public hearing, *supra* note 162.

<sup>392</sup> Cf. Affidavit made by Brígida Oneyda Barrios, *supra* note 171, folios 883 and 884, and Affidavit made by Víctor Daniel Cabrera Barrios, *supra* note 162, folio 925.

helplessness, and psychosomatic disorders.”<sup>393</sup> Equally, the facts have affected their family relationships, as well as having caused a rupture of their family dynamics, which has impaired the family’s harmonious relations,<sup>394</sup> and meant that some of them have had to assume new roles within the family.<sup>395</sup>

310. Moreover, some members of the family have been affected by the failure to investigate what happened, as well as by the permanent desire to obtain justice.<sup>396</sup> In that regard, expert witness Valdez Labadi indicated that this situation has even led them to think that “if they had not sought to obtain justice, perhaps fewer [family members] would have died.”<sup>397</sup> In this regard, the Court considers that the violation of the right to integrity of the next of kin of the victims is also due to the lack of effective investigations to clarify the facts and punish those responsible and, in general, the impunity in which the cases remain, which exacerbates the feelings of frustration, helplessness, and anxiety. In particular, the Court observes that the lack of investigation and of a response from the State authorities has harmed the personal integrity of Eloisa Barrios, who has been behind the proceedings at the national and the international levels, because “[e]verything she has done this far has only increased her emotional torment, because she has had to learn about and [...] deal with all the channels that maintain the impossibility of obtaining justice.”<sup>398</sup>

311. Moreover, the Court considers that, in some cases, the harm to the right to integrity of the next of kin of the victims is manifested in the fact that they felt obliged to move elsewhere because they were afraid (*supra* para. 163), leaving the village of Guanayén in which almost all their family lived before the first death occurred, causing the disintegration and rupture of the harmonious relations of certain members of the Barrios family. Expert witness Valdez Labadi stated that “the forced flight of most of them from the village where they had set down their roots and wanted to stay, the separation, has been very painful because, living far away, each of them feel greater helplessness.”<sup>399</sup>

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<sup>393</sup> Cf. Expert opinion of Susana Migdalia Valdez Labadi (merits file, tome III, folio 971).

<sup>394</sup> Cf. Affidavit made by Brígida Oneyda Barrios, *supra* note 171, folio 882; Affidavit made by Lilia Ysabel Solórzano Barrios, *supra* note 193, folios 897 and 898; Affidavit made by Luisa del Carmen Barrios, *supra* note 193, folio 902; Affidavit made by Pablo Julián Solórzano Barrios, *supra* note 193, folio 921; Affidavit made by Elbira Barrios, *supra* note 192, folio 893; Affidavit made by Víctor Daniel Cabrera Barrios, *supra* note 162, folio 925, and Testimony given by Eloisa Barrios during the public hearing, *supra* note 164.

<sup>395</sup> Cf. Affidavit made by Luisa del Carmen Barrios, *supra* note 193, folios 902 and 903.

<sup>396</sup> Cf. Affidavit made by Brígida Oneyda Barrios, *supra* note 171, folio 884; Affidavit made by Lilia Ysabel Solórzano Barrios, *supra* note 193, folio 897; Affidavit made by Luisa del Carmen Barrios, *supra* note 193, folio 903; Affidavit made by Pablo Julián Solórzano Barrios, *supra* note 193, folio 920; Affidavit made by Elbira Barrios, *supra* note 192, folio 893; Affidavit made by Maritza Barrios, *supra* note 193, folio 907; Affidavit made by Víctor Daniel Cabrera Barrios, *supra* note 162, folios 924 and 926, and Testimony given by Eloisa Barrios during the public hearing, *supra* note 164.

<sup>397</sup> Cf. Expert opinion of Susana Migdalia Valdez Labadi, *supra* note 393, folio 970.

<sup>398</sup> Cf. Expert opinion of Susana Migdalia Valdez Labadi, *supra* note 393, folio 969.

<sup>399</sup> Cf. Expert opinion of Susana Migdalia Valdez Labadi, *supra* note 393, folio 971.

312. Based on the above, the Court concludes that the State violated the right to personal integrity established in Article 5 of the Convention, in relation to Article 1(1) thereof, to the detriment of the following people: Justina Barrios, Brígida Oneyda Barrios, Maritza Barrios, Elbira Barrios, Eloisa Barrios, Inés Josefina Barrios, Lilia Ysabel Solórzano Barrios, Luisa del Carmen Barrios, Pablo Julián Solórzano Barrios, Jorge Antonio Barrios Ortuño, Carlos Alberto Ortuño, Orismar Carolina Alzul García, Ronis David Barrios Alzul, Roniel Alberto Barrios Alzul, Luis Alberto Alzul, Annarys Alexandra Barrios Rangel, Benito Antonio Barrios Rangel, Orianny Nazareth Pelae, Oriana Nazareth Pelae, Michael José Barrios Espinosa, Dinosca Alexandra Barrios Espinosa, Marcos Antonio Diaz Barrios, Sandra Marivi Betancourt Barrios, Junior José Betancourt Barrios, Wilneidys Betania Pimentel Barrios, Beatriz Adriana Cabrera Barrios, Victor Daniel Cabrera Barrios, Luilmari Carolina Guzmán Barrios and Luiseidys Yulianny Guzmán Barrios.

### *Final considerations on the facts previously analyzed*

313. Having analyzed the facts of this case, the Court concludes that Venezuela: (a) is responsible for the violations committed by police agents of Aragua state in relation to the rights to life, to personal integrity and liberty, to privacy, to property, and to movement and residence of different members of the Barrios family; (b) failed to comply with the obligation of protection and prevention with regard to five beneficiaries of measures of protection ordered by the organs of the inter-American system, and (c) failed to conduct a serious and diligent investigation of the facts of the case.

314. The Court considers that the events that occurred to the detriment of numerous members of the Barrios family cannot be analyzed in isolation, because there are connections between several of them, as indicated in this judgment. Indeed, the attempts against the life of their members, especially starting in 2004, had common characteristics: the deaths were the result of several shots from a firearm in places near their homes in the village of Guanayén. In all these cases, the State was aware of the situation of risk of the different members of the family who were beneficiaries of precautionary or provisional measures and who also denounced the threats and other facts at the domestic level. Their denunciations attributed responsibility to police officials of Aragua state. To date, none of the investigations opened into the facts of the instant case have concluded with the clarification of the facts and the punishment of those responsible. To the contrary, several of these proceedings have been archived or are still at the preliminary stages of the investigation.

## **XII REPARATIONS**

### *(Application of Article 63(1) of the American Convention)*

315. Based on the provisions of Article 63(1) of the American Convention,<sup>400</sup> the Court has indicated that any violation of an international obligation that has produced harm gives rise to

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<sup>400</sup> Article 63(1) of the American Convention stipulates:

If the Court finds that there has been a violation of a right or freedom protected by th[e] Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was

the obligation to repair it adequately,<sup>401</sup> and that this provision “reflects a provision of customary law that constitutes one of the fundamental principles of contemporary international law on State responsibility.”<sup>402</sup>

316. The Court has established that the reparations must have a causal connection to the facts of the case, the violations declared, the damage proved, and the measures requested to repair the respective damage. Therefore, the Court must observe that these factors are present in order to rule appropriately and in keeping with the law.<sup>403</sup>

317. Based on the violations declared in the preceding chapters, the Court will proceed to examine the claims presented by the Commission and by the representatives, as well as the arguments of the State, so as to order measures designed to repair the harm caused to the victims. Regarding the State’s arguments, the Court observes that it only submitted specific arguments on some of the measures of reparation requested. Apart from this, in general, Venezuela asked the Court to reject the requests for reparations made by the Commission and the representatives.

#### ***A. Injured party***

318. According to Article 63(1) of the American Convention, those who have been declared victims of the violation of a right embodied in the Convention are considered injured parties.<sup>404</sup> The victims in the instant case have been identified in the corresponding chapters on merits (*supra* paras. 68, 79, 84, 85, 96, 131, 147, 150, 168, 245, 249, 256, 260, 263, 266, 272, 285 and 312). These persons shall be considered beneficiaries of the reparations ordered by the Court.

#### ***B. Obligation to investigate the facts***

319. The Commission and the representatives agreed substantially as regards the State’s obligation to investigate the facts and, as appropriate, to punish those responsible. In summary, they asked the Court to order the State to conduct a complete, impartial and effective investigation, within a reasonable time, in order to identify, prosecute and punish the masterminds and perpetrators of the facts of the instant case.

320. The Commission added that these investigations must be conducted so that they establish the connections between each of the facts of the case, as well as between those facts and the

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violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

<sup>401</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 15, para. 25, and *Case of Barbani Duarte et al.*, *supra* note 12, para. 239.

<sup>402</sup> Cf. *Case of the “Street Children” (Villagrán Morales)*, *supra* note 43, para. 62, and *Case of Barbani Duarte et al.*, *supra* note 12, para. 239.

<sup>403</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Case of Barbani Duarte et al.*, *supra* note 12, para. 241.

<sup>404</sup> Cf. *Case of the La Rochela Massacre v. Colombia. Merits, reparations and costs*. Judgment of May 11, 2007. Series C No. 163, para. 233, and *Case of Barbani Duarte et al.*, *supra* note 12, para. 242.

more general context of extrajudicial executions in Venezuela and the harassment of the victims' next of kin. In addition, it indicated that the State must order the corresponding administrative, disciplinary or criminal measures for all the State officials who contributed to the denial of justice, and to impunity in relation to this case.

321. The representatives added that Venezuela must guarantee that the authorities in charge of the investigation have available all the means required to conduct it promptly, as well as the powers to have access to the pertinent documentation to investigate the facts, and that the State must not use provisions of domestic law, such as prescription, *res judicata*, non-retroactivity of criminal law, *ne bis in idem*, or any other similar mechanism excluding responsibility, to evade its obligations. In addition, they asked that the results of the said investigation be published so that society is aware of them. Lastly, they also requested the administrative sanction of the public servants responsible for the irregularities in the investigations.

322. In Chapter X of this judgment, the Court declared the violation of the right to judicial guarantees and to judicial protection owing to the absence of investigation, prosecution and eventual punishment of those responsible for the facts. Taking this into account, as well as its case law, the Court orders that the State must conduct an effective criminal investigation into the facts of this case in order to elucidate them, determine the corresponding criminal responsibilities, and apply the punishments and consequences established by law.<sup>405</sup> This obligation must be fulfilled within a reasonable time, observing the criteria for investigations in this type of case,<sup>406</sup> *inter alia*:

- a) The pertinent investigations must be conducted taking into consideration the relationship between the different facts of the case, avoiding omissions in gathering evidence and in following up on logical lines of investigation;
- b) The masterminds and perpetrators of the violations committed must be identified and individualized. Due diligence in the investigation signifies that all the competent State authorities are obliged to collaborate in gathering evidence and must abstain from acts that obstruct the course of the investigative procedure, and
- c) The competent authorities must conduct the corresponding investigations *ex officio* and to this end must have available and use all the logistic and scientific resources necessary to gather and process the evidence; moreover the safety of the persons who take part in the investigation, including the victims' next of kin, the witnesses and the agents of justice, must be duly guaranteed.

323. In addition, in accordance with its case law,<sup>407</sup> and given the specific characteristics of the case, the Court recalls that, in principle, the deprivation of the right to life constitutes a grave

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<sup>405</sup> Cf. *Case of Velásquez Rodríguez*, *supra* note 15, para. 174, and *Case of Contreras et al. v. El Salvador*. Merits, reparations and costs. Judgment of August 31, 2011 Series C No. 232, para. 185.

<sup>406</sup> Cf. *Case of Manuel Cepeda Vargas*, *supra* note 151, para. 216, and *Case of Gomes Lund et al. ("Guerrilha do Araguaia")*, *supra* note 384, para. 256.

<sup>407</sup> Cf. *Case of Barrios Altos v. Peru*. Merits. Judgment of March 14, 2001. Series C No. 75, para. 41, and *Case of Vera Vera et al.*, *supra* note 39, para. 177.

violation of human rights and, as such, its investigation cannot be subject to mechanisms such as amnesty to the benefit of the perpetrators, or to any other similar provisions, such as the statute of limitations, non-retroactivity of criminal law, *res judicata*, *ne bis in idem*, or any other similar means of waiving responsibility.

324. The Court, as it has also established in its case law,<sup>408</sup> considers that the State must ensure full access and capacity to act to the victims' next of kin at all stages of the investigation and prosecution of those responsible, in keeping with domestic law and the provisions of the American Convention. Also, the results of the corresponding proceedings must be publicized so that Venezuelan society is aware of the facts that are the purpose of this case, as well as those responsible.

325. Lastly, as it has on other occasions,<sup>409</sup> the Court orders that, pursuant to the pertinent disciplinary provisions, the State must examine any possible investigative and procedural irregularities related to the instant case and, as appropriate, the conduct of the corresponding public servants.

### ***C. Measures of integral reparation: restitution, rehabilitation and satisfaction, and guarantees of non-repetition***

326. The Court will determine other measures that seek to repair the non-pecuniary damage that is not of a monetary nature, and will order measures of public scope and repercussion.<sup>410</sup>

327. International jurisprudence and, in particular, the case law of the Court, has established repeatedly that the judgment constitutes *per se* a form of reparation.<sup>411</sup> Nevertheless, considering the circumstances of the case *sub judice*, the sufferings that the violations perpetrated caused to the victims, as well as the change in the living conditions and the other consequences of a non-pecuniary nature that the latter suffered as a result of the violations of Articles 4, 5, 7, 8, 11, 21, 22 and 25 of the American Convention, declared to the detriment of the victims, the Court finds it appropriate to establish the following measures.

#### ***1. Rehabilitation***

##### ***i) Medical and psychological treatment for the victims***

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<sup>408</sup> Cf. *Case of El Caracazo v. Venezuela. Reparations and costs*. Judgment of August 29, 2002. Series C No. 95, para. 118, and *Case of Contreras et al.*, *supra* note 405, para. 187.

<sup>409</sup> Cf. *Case of the Dos Erres Massacre*, *supra* note 59, para. 233(d), and *Case of Contreras et al.*, *supra* note 405, para. 188.

<sup>410</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.)*, *supra* note 43, para. 84, and *Case of Mejía Idrovo v. Ecuador*. Preliminary objections, merits, reparations and costs. Judgment of July 5, 2011 Series C No. 228, para. 132.

<sup>411</sup> Cf. *Case of Neira Alegría et al. v. Peru. Reparations and costs*, Judgment of September 19, 1996. Series C No. 29, para. 56, and *Case of López Mendoza*, *supra* note 16, para. 213.

328. The representatives asked the Court to order the State to guarantee free, permanent medical and psychological treatment for the victims. They asked that the said treatment be provided by “competent professionals, [and that it include] the provision of any medicines that may be required.” They also asked that the State assume “other expenses related to the provision of treatment, such as the cost of transport, among other needs that may arise.”

329. The Court considers, as it has in other cases,<sup>412</sup> that a measure of reparation is required that provides adequate attention to the physical and mental ailments suffered by the victims, arising from the violations established in this judgment. Therefore, the Court finds it appropriate to order that the State provide free, immediate, adequate and effective medical and psychological treatment, through its specialized public health institutions to the victims that request this. To this end, the specific ailments of the beneficiaries must be taken into consideration by previously making a physical and psychological or psychiatric evaluation. In addition, the respective treatment must be provided for as long as necessary and include the free provision of any medicines that they may eventually require.

330. In particular, the psychological treatment must be provided by State institutions and personnel specialized in attending victims of acts such as those that occurred in the instant case. If the State does not have the institutions or personnel able to provide the required level of care, it must have recourse to specialized civil society or private institutions. When providing the said treatment, the specific circumstances and needs of each victim must be considered so that they are offered family and individual treatment, as agreed with each of them following an individual evaluation.<sup>413</sup> Lastly, this treatment must be provided, insofar as possible, in the nearest centers to their places of residence. The victims who request this measure of reparation have a period of six months from notification of this judgment to advise the State, in person or through their legal representatives, of their wish to receive medical or psychological attention.

## 2. Satisfaction

### i) Publication of the judgment

331. The Commission asked the Court to order the State to publish the judgment. The representatives specified that this publication should be made in the Official Gazette and in to national newspaper within six months and should include “at least the sections on context and proven facts, as well as the operative paragraphs of the judgment.” In addition, they asked that the publication be made on the web page of the Public Prosecution Service until the judgment had been complied with fully.

332. The Court orders, as it has in other cases,<sup>414</sup> that the State must publish, within six months of notification of this judgment:

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<sup>412</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and costs*. Judgment of November 30, 2001. Series C No. 87, paras. 42 and 45, and *Case of Contreras et al.*, *supra* note 405, para. 199.

<sup>413</sup> Cf. *Case of 19 Tradesmen v. Colombia*. Merits, reparations and costs. Judgment of July 5, 2004. Series C No. 109, para. 278, and *Case of Contreras et al.*, *supra* note 405, para. 200.

<sup>414</sup> Cf. *Case of Barrios Altos v. Peru. Reparations*, *supra* note 412, Operative paragraph 5(d), and *Case of Barbani Duarte et al.*, *supra* note 12, para. 252.

- a) The official summary of this judgment prepared by the Court, once, in the Official Gazette;
  - b) The official summary of this judgment prepared by the Court, once, in a national newspaper with widespread circulation, and
  - c) This judgment in its entirety, for a period of one year, on an official web site.
- ii) *Public act in acknowledgement of international responsibility*

333. The Commission asked that the Court order the State to carry out a “public acknowledgement of international responsibility.” The representatives specified that this event should be: (a) carried out by a State representative of the highest level; (b) agreed with the members of the Barrios family; (c) held in the presence of representatives of the institutions involved in the violations, in particular the highest authorities of the State’s law enforcement agencies and (d) attended by the media also to ensure its widest possible dissemination. During this event, the State must: (a) undertake to adopt measures to eradicate the abuses perpetrated by its agents; (b) express its commitment not to tolerate human rights violations by its own agents, and (c) offer a public apology in which it acknowledges its responsibility for the violations perpetrated against the victims.

334. As it has in other cases,<sup>415</sup> the Court finds that the State must organize a public act to acknowledge international responsibility in relation to the facts of the instant case, referring to the violations established in this judgment. The act must be carried out by means of a public ceremony conducted by senior national and state authorities, in the presence of the members of the Barrios family, and it must be disseminated by the media. The State must reach agreement with the victims or their representatives on the way in which it complies with the public act of acknowledgement, as well as the required characteristics, such as the place and date. The State has one year from notification of this judgment to comply with this measure.

iii) *Scholarships*

335. The representatives argued that “the facts of the case had a direct impact on the education of some members of the family; the mere fact that they were forced to move from their community interrupted their educational continuity.” They added that several of the next of kin had expressed their interest in being able to return to their studies and even undertake university studies, but, owing to the instability of their situation, they have been unable to fulfill this wish. In the case of Darelbis, Sarais, Víctor Daniel, Beatriz Adriana, Luisa del Carmen and Jorge Antonio Barrios, they could have completed their high school certificate and be enrolled in the university, but this project has been obstructed by the facts. The representatives concluded that “[t]he statements of the next of kin provided to the Court refer to this point in greater detail.”

336. The Court has established in this judgment that several members of the Barrios family had to move as a result of the facts; have undergone the disintegration of the family, and the facts

<sup>415</sup> Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs*. Judgment of December 3, 2001. Series C No. 88, para. 81, and *Case of Contreras et al.*, *supra* note 405, para. 206.

have had aftereffects at the personal, physical and emotional levels. The representatives indicated that the facts had an impact on the education of some members of the family and referred to the expression of interest “of the next of kin” to return to their studies. However, they did not specify who they were referring to, but merely forwarded a “list with the level of schooling of the Barrios family,” which included the deceased victims in this case. Notwithstanding the lack of specific information provided by the representatives, the Court infers that the circumstances and adverse effects in the instant case may have had an impact on the education of the children of the deceased victims, as well as on the children who were victims of displacement. Based on the foregoing, the Court finds it appropriate to order, as a measure of satisfaction in this case, as it has in others,<sup>416</sup> that the State must grant scholarships in Venezuelan public institutions to Jorge Antonio Barrios Ortuño, Carlos Alberto Ortuño, Ronis David Barrios Alzul, Roniel Alberto Barrios Alzul, Benito Antonio Barrios Rangel, Annarys Alexandra Barrios Rangel, Michael Jose Barrios Espinosa, Dinosca Alexandra Barrios Espinosa, Luis Alberto Alzul, Orianny Nazareth, Oriana Nazareth, Luilmari Carolina Guzman Barrios, Luiseidys Yulianny Guzmán Barrios, Danilo David Solórzano, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Génesis Andreina Navarro Barrios, Victor Tomás Navarro Barrios, Heilin Alejandra Navarro Barrios, Marcos Antonio Díaz Barrios, Sandra Marivi Betancourt Barrios and Junior Jose Betancourt Barrios, that cover the educational costs corresponding to enrolment and educational material, until the conclusion of their advanced education, whether they undertake vocational or university studies. The State’s compliance with this obligation means that the beneficiaries must take certain steps to exercise their right to this measure of reparation. Therefore, those who request this measure of reparation, or their legal representatives, have six months from notification of this judgment, to request their scholarships from the State.

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

#### i) *Training programs for officials*

337. The Commission asked the Court to order the State to implement training programs on international human rights standards in general, and with regard to boys, girls and adolescents in particular, for the Police of Aragua state.

338. The representatives requested that the State “conduct training courses for all the members of its security forces on the principles and norms for the protection of human rights, in particular the prohibition of torture,” and on the restrictions to the disproportionate use of force and firearms.

339. The State provided information on the constant training provide to the Bolivarian National Police by the creation of the *Universidad Nacional Experimental de la Seguridad*, under the country’s police reform process.

340. Expert witness Rosario Salas advised that the said university has four campuses throughout the country, that its academic policy is based on respect for human rights, and that it

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<sup>416</sup> Cf. *Case of the Gómez Paquiyauri Brothers*, *supra* note 61, para. 237, and *Case of Fernández Ortega et al.*, *supra* note 175, para. 257.

offers training to candidates for the police corps, and refresher courses for those who are already part of it. Moreover, the laws that this expert provided to the Court include the provision that all police officials must take a retraining course at least once every two years,<sup>417</sup> and a refresher course on progressive and differentiated use of force, at least once a year.<sup>418</sup>

341. The Court assesses positively the information provided by Venezuela about the creation of the *Universidad Nacional Experimental de la Seguridad* and about the training and re-training of police officials. However, in order to guarantee the non-repetition of human rights violations, the Court considers it important to enhance the institutional capacities of the police personnel of Aragua state by training them on the principles and norms for the protection of human rights, including the rights to life, to personal integrity, and to personal liberty, as well as on the restrictions to which they are subject when arresting anyone.<sup>419</sup> To this end, the State must continue the actions it has carried out and implement, within a reasonable time, a compulsory program or course on the elements indicated as part of the general and continuous training of all ranks of the police of Aragua state. During this program or course, reference must be made to this judgment, to the case law of the Inter-American Court concerning the prohibition of torture, to personal integrity and personal liberty, to the use of force, and to the rights of children and adolescents in relation to the penal system, as well as to the international human rights obligations arising from the treaties to which Venezuela is party.<sup>420</sup>

342. Additionally, the representatives asked that the Court order the State to train the agents of the Forensic Unit of the Public Prosecution Service on essential elements of investigation such as “exhumation, autopsy and identification procedures, [and] return of the identified remains to the next of kin.” Apart from this, they merely requested general training that “includes the necessary expertise to prosecute cases of serious violations of fundamental rights and to overcome the shortcomings identified [in the investigation].”

343. In the instant case, the facts are not related to investigation procedures that involve the exhumation and identification of remains. Consequently, the Court does not find it necessary to order additional training measures.

#### ***4. Other measures of reparation requested***

##### *i) Adaptation of domestic law concerning the lethal use of force*

344. The Commission asked the Court to order the State to adopt legislative, administrative or any other measures to investigate with due diligence, and according to the relevant international

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<sup>417</sup> Cf. Article 31 of the “Law on the Statute for Police Functions,” published in Official Gazette No. 5,940 on December 17, 2009 (merits file, tome VII, folios 1252 to 1289).

<sup>418</sup> Cf. “Manual on Progressive and Differentiated Use of Force by the Police” (merits file, tome VII, folios 1682 to 1718).

<sup>419</sup> Cf. *Case of the La Rochela Massacre*, *supra* note 404, para. 303, and *Case of Torres Millacura et al.*, *supra* note 41, para. 173.

<sup>420</sup> Cf. *Case of El Caracazo*, *supra* note 408, para. 127, and *Case of Torres Millacura et al.*, *supra* note 41, para. 173.

standards, the need and proportionality of the lethal use of force by police officials, so that effective protocols exist that permit the implementation of adequate mechanisms of control and accountability to deal with the actions of these officials.

345. The representatives asked that Venezuelan domestic law should include provisions in keeping with the principles on the use of force and of firearms, *inter alia*, those established by the Court in the judgment in the case of Montero Aranguren *et al.* (*Retén de Catia*).

346. From the norms provided by expert witness Rosario Salas, the Court observes that the State has established the principles on the use of force in the “*Manual de Uso Progresivo and Diferenciado de la Fuerza Policial*” [Manual on Progressive and Differentiated Use of Force by the Police].<sup>421</sup> Furthermore, the law establishes the type of firearms for police use for the different State police agencies, as well as the type of ammunition, and also non-lethal weapons, and prohibited weapons.<sup>422</sup> In addition, Venezuelan laws regulate the control, storage and distribution of firearms, establish a quarterly accountability procedure,<sup>423</sup> and specify the circumstances in which police agents are authorized to carry such weapons;<sup>424</sup> they establish that they are to be used exceptionally “only in extreme circumstances, as a reaction to the use of lethal force for personal defense or for [...] the defense of third parties, in the face of unlawful attack and taking into account the principles of need, opportunity and proportionality,” and establish the warning that must be given before using the firearm.<sup>425</sup> In addition, a reporting system has been created called “Report for the immediate superior on use of force,”<sup>426</sup> which must be prepared, *inter alia*, when “[a] police official fires a weapon at any citizen or group of citizens.” In addition, in such cases, “an immediate investigation shall be conducted by trained personnel” and the official concerned “shall be assigned administrative tasks until the investigation determines his responsibility.”<sup>427</sup> Furthermore, Venezuelan law has established the obligation of the Police to be accountable and, to implement this obligation, a system has been created of periodic and special reports on police activities.<sup>428</sup> Based on the foregoing, in this

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<sup>421</sup> “Manual on Progressive and Differentiated Use of Force by the Police”, *supra* note 418.

<sup>422</sup> *Cf.* “Regulations for the acquisition, registration and control of weapons, ammunition, equipment and accessories for the Police Forces, and the Security Agencies that provide services to the Police,” articles 4 to 7 (merits file, tome VII, folios 1353 and 1354).

<sup>423</sup> *Cf.* Regulations for the acquisition, registration and control of weapons, ammunition, equipment and accessories for the Police Forces, articles 12 to 37, *supra* note 422.

<sup>424</sup> *Cf.* Regulations for the acquisition, registration and control of weapons, ammunition, equipment and accessories for the Police Forces, articles 9 and 40, *supra* note 422, folios 1354 to 1355; Regulations for the actions of Police Forces in their different territorial political spheres in order to ensure public order, social peace and civic co-existence in public meetings and protest demonstrations,” article 21, paragraph 9, and “Manual on Progressive and Differentiated Use of Force by the Police”, *supra* note 418, folios 1700 and 1701.

<sup>425</sup> “Manual on Progressive and Differentiated Use of Force by the Police”, *supra* note 418, folios 1685 and 1700.

<sup>426</sup> “Manual on Progressive and Differentiated Use of Force by the Police”, *supra* note 418, folio 1702.

<sup>427</sup> “Manual on Progressive and Differentiated Use of Force by the Police”, *supra* note 418, folios 1702 and 1703.

<sup>428</sup> *Cf.* “Regulations for the accountability of Police Forces in their different territorial political spheres”, articles 5 to 10 (merits file, tome IV, folio 1657). In addition, *cf.* “Accountability Guidelines” (merits file, tome IV, folio 1637).

case, the Court does not find it necessary to order an additional measure of reparation in this regard.

*ii) Adaptation of the law on the protection of victims and witnesses*

347. The representatives asked that the Court order the State to adapt the law on the protection of victims and witnesses to the relevant international standards. They argued that, “[e]ven though Venezuelan law establishes the procedures that should exist for the protection of witnesses, in practice, the said norm has become ineffectual.”

348. The Court observes that the representatives did not provide sufficient elements to indicate that the shortcomings they attribute to the protection of the members of the Barrios family arose from a problem related to the law on victims and witnesses. On this basis, the Court does not order the requested measure of reparation.

*iii) Identification of the source of danger*

349. The Commission asked that the Court order the State “to adopt all necessary measures to identify the source of the danger experienced by the Barrios family and to make every effort to eradicate it.”

350. The representatives asked that the Court order the State “to implement the measures of protection granted in favor of the members of the Barrios family that are in force in order to safeguard their life and integrity.”

351. The Court has already ordered the investigation of the facts of the instant case that constitute violations of different rights under the American Convention (*supra* para. 322). In addition, the Court recalls that the State must comply with the obligations derived from the provisional measures ordered in the context of this case, which include, in addition to the protection of the beneficiaries, the investigation of the facts that gave rise to the protection measures.

*iv) Creation of an accessible public record of detainees*

352. The representatives asked that the Court order the State to create a public record of detainees in all the places where those who are accused of an offense are detained, which documents the chain of custody of the detainee from the moment of the arrest, specifying the time, place and circumstances of the arrest, the place to which the person detained will be taken and the probable time of arrival there, the procedural status of the detainee, the names of the individuals who at each moment are responsible for immediate physical custody, the names of the individuals who are responsible for the legal custody of the detainee, and the name of the public servant in charge of the investigation.

353. The Court observes that the laws and regulations submitted by expert witness Rosario Salas include the “Manual of Norms and Procedures for Guaranteeing the Rights of the Detainee,” which stipulates detention procedure in Venezuela, stating that an official record must be kept that includes the following information: the complete particulars of the citizen arrested;

the reasons for the arrest; the time and place of the arrest; the time of the transfer of the person arrested to the place of custody; the time of departure and appearance of the said persons before the judge or other competent authority; the identity of the officials involved, and those responsible for the transfer; precise information on the place of custody,” and the inventory of personal effects and objects that will remain in police custody. In addition, it provides that the said record shall be made “available to the competent judicial or other authority, institution or next of kin, when they request it.”<sup>429</sup> Consequently, the Court does not find it necessary to order the requested measures of reparation.

v) *Creation of a procedure for compiling statistics*

354. Under the section entitled “[c]reate a procedure for compiling statistics and create public databases on extrajudicial executions,” the representatives asked that the Court order the State “to compile statistics [...] on the murder rate in the country, [as well as] on other relevant indicators,” arguing that the absence of official figures hinders the security functions of Government entities.

355. The State forwarded statistics from the Prosecutor General’s Office on the number of police agents charged, accused and convicted from 2006 to 2010,<sup>430</sup> affirming that the said statistics are available to anyone on the web page of the Prosecutor General’s Office or on a CD issued each year. Similarly, it presented statistics on the figures for complaints of extrajudicial executions received by the Ombudsman’s Office for the years 2000 to 2010.

356. The Court observes that the statistics on the country’s murder rate bear no relationship to this case. Moreover, in addition to the figures presented by the State, expert witness Rosario Salas presented some statistics taken from the 2009 Annual Report of the Public Prosecution Service related to investigations of violations of fundamental rights, among others.<sup>431</sup> In addition, the normative presented by the expert witness reveals that Venezuelan law provides for the elaboration of annual reports by the police forces in order to detect patterns or trends concerning compliance with the law and policing standards,<sup>432</sup> and the obligation of the Ministry of the People’s Power responsible for public security to compile and process the information concerning crime rates, police actions and any other information relating to the population’s safety.<sup>433</sup> In this regard, despite the alleged differences in the statistics presented to the Court, official figures on crime and violence in the State exist, and the obligation of the police forces and the Ministry of the People’s Power responsible for public security to compile and process

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<sup>429</sup> Cf. “Manual of regulations and procedures to guarantee the rights of detainees” (merits file, tome IV, folio 1742).

<sup>430</sup> Cf. Note No. DFGR-VFGR-DPDF-08-PRO-791-092-1193-11 of the Office of the Prosecutor General of the Republic of June 17, 2011 (merits file, tome III, folio 1062).

<sup>431</sup> Expert opinion provided by Gustavo Rosario Salas (merits file, tome IV, folios 1212, 1216, 1217 and 1221).

<sup>432</sup> “Regulations on accountability of the Police Forces in their different territorial political spheres,” article 7, *supra* note 428, folio 1657.

<sup>433</sup> Cf. “Organic law of the Police Service and the Bolivarian National Police Force,” article 18 (merits file, tome IV, folio 1229).

information is regulated by law. Thus, the Court does not find it necessary to order the measure of reparation requested.

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357. Lastly, the representatives also asked the Court to order the State: (a) to prepare a television video and a radio program on the problem of extrajudicial executions in Venezuela; (b) “to adopt comprehensive measures to combat violence”; (c) to adapt the protocols on due diligence in investigations to international standards, and (d) to erect a memorial to preserve the memory of the victims. The State opposed this last reparation request.

358. The Court considers that the delivery of this judgment and the reparations ordered in this chapter are sufficient and adequate to redress the violations suffered by the victims and does not find it necessary to order the said measures.<sup>434</sup>

### ***C. Compensation***

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

359. The Court has developed the concept of pecuniary damage in its case law and has established that this presumes “the loss of or prejudice to the income of the victims, the expenditure incurred owing to the facts, and the consequences of a pecuniary nature that have a causal connection to the facts of the case.”<sup>435</sup>

360. The Commission asked the Court to order the State to make reparation to the victims for the pecuniary damage suffered.

361. The representatives advised that, as a direct result of the death of six members of the Barrios family, their next of kin incurred funeral expenses amounting to BsF24,200.00 (twenty-four thousand two hundred Bolivares Fuertes).<sup>436</sup> Given that the next of kin do not have the corresponding vouchers, the representatives asked the Court to establish an amount based on the equity principle.

362. Although the representatives did not provide vouchers for the funeral expenses. The Court presumes, as it has in previous cases, that the next of kin incurred such expenses as a result of the death of their next of kin.<sup>437</sup> The Court considers, in equity, that the sums of US\$3,000.00,

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<sup>434</sup> Cf. *Case of Radilla Pacheco v. Mexico*. Preliminary objections, merits, reparations and costs. Judgment of November 23, 2009. Series C No. 209, para. 359, and *Case of Rosendo Cantú et al.*, *supra* note 57, para. 267.

<sup>435</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of López Mendoza*, *supra* note 16, para. 231.

<sup>436</sup> The representatives advised that Eloisa Barrios paid the funeral expenses of Benito Antonio Barrios and Luis Alberto Barrios in the amount of BsF 6,600 (six thousand six hundred Bolívares Fuertes), Elbira Barrios paid the funeral expenses of Narciso Barrios and Oscar José Barrios in the amount of BsF 8,100 (eight thousand one hundred Bolívares Fuertes), and Maritza Barrios paid the funeral expenses of Rigoberto Barrios and Wilmer José Flores Barrios in the amount of BsF 9,500 (nine thousand five hundred Bolívares Fuertes).

<sup>437</sup> Cf. *Case of Servellón García et al.*, *supra* note 57, para. 177, and *Case of González et al. (Cotton Field)*, *supra* note 36, para. 565.

US\$2,000.00 and US\$2,000 (three thousand United States dollars, two thousand United States dollars and two thousand United States dollars), or the equivalent in Bolívares Fuertes must be delivered to Eloisa Barrios, Elbira Barrios and Maritza Barrios, respectively, for funeral expenses for the seven individuals who have died.

363. The representatives stated that, as a result of the death of Benito Antonio Barrios, Luis Alberto Barrios and Narciso Antonio Barrios, their homes were abandoned. The representatives asked the Court to determine an amount, in equity, for the loss of the homes of Benito and Narciso Barrios, to be delivered to their next of kin. In addition, they alleged that the State must compensate Brígida Oneyda Barrios, Justina Barrios, Elbira Barrios, Luis Alberto Barrios and Orismar Carolina Alzul for the arbitrary and illegal intrusion in their homes with the corresponding destruction of property, taking into account that, in some cases, it was necessary to rebuild the home almost entirely.<sup>438</sup> They added that they have no vouchers for the material losses, because the agents retained the objects without making a record, and the Prosecutor never conducted the on-site inspection; consequently, they asked the Court to establish the amount based on equity.

364. The Court observes that, although no probative elements have been provided in the instant case specifying the damage caused to the personal wealth of the members of the Barrios family, the Court has considered proved the destruction of private property and the removal of possessions of Brígida Oneyda Barrios, Luis Alberto Barrios and Orismar Carolina Alzul García (*supra* para. 138). Consequently, the Court finds it appropriate, based on the equity principle, to order the State to pay as compensation the sum of US\$600 (six hundred United States dollars), or the equivalent in Bolívares Fuertes, to Brígida Oneyda Barrios, and US\$5,000 (five thousand United States dollars), or the equivalent in Bolívares Fuertes, to Orismar Carolina Alzul García and Luis Alberto Barrios.

365. Additionally, the representatives stated that the facts of the instant case have resulted in the members of the Barrios family incurring different expenses related to medical and psychological care, particularly for the children, for which they do not have receipts. In addition, Maritza Barrios, mother of Rigoberto Barrios, paid the expenses of hospitalization, surgery, transport, medicines, tests, implements and equipment for the 11 days that her son was in hospital, indicating that the said expenses amounted to BsF 9,600.00 (nine thousand six hundred Bolívares Fuertes).

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<sup>438</sup> The representatives alleged that, in the case of the search of the domicile of Brígida Oneyda Barrios, the property lost had a value of BsF 900,000.00 (nine hundred thousand Bolívares) and she incurred expenses for the reparation of a door of BsF 480.00 (four hundred and eighty Bolívares Fuertes). In the case of the search of the domicile of Justina Barrios, the value of the property lost was BsF 503,000.00 (five hundred and three thousand Bolívares), and she incurred expenses for the reparation of a door of BsF 480.00 (four hundred and eighty Bolívares Fuertes), as well as BsF 400.00 (four hundred Bolívares Fuertes) to purchase new clothes. In the case of the search of the domicile of Elbira Barrios, property with a value of Bs 278,500.00 (two hundred and seventy-eight thousand five hundred Bolívares) was destroyed and/or seized and she indicated that she had purchased personal possessions and two doors for her house without indicating the value. Lastly, in the case of the search of the domicile of Luis Alberto Barrios and Orismar Carolina Alzul García, property with a value of BsF 452,000.00 (four hundred and fifty-two thousand Bolívares) was destroyed and/or seized and they incurred reparation expenses of BsF 22,080.00 (twenty-two thousand and eighty Bolívares Fuertes).

366. The Court has declared the State responsible for the death of Rigoberto Barrios (*supra* para. 96), and has considered as a proven fact of the case that he was hospitalized for 11 days before he died (*supra* para. 92). Nevertheless, based on the evidence in the case file, the Court is unable to quantify precisely the amount that Maritza Barrios expended owing to the said hospitalization. Consequently, the Court establishes in equity the sum of US\$2,000.00 (two thousand United States dollars), or the equivalent in Bolívares Fuertes, that the State must pay to Maritza Barrios in reimbursement of expenses for medical attention. Furthermore, regarding the medical and psychological care for the other members of the Barrios family, the Court does not find sufficient evidence in the case file to corroborate the alleged treatment. Hence, it will not rule on this measure of reparation.

367. The representatives also stated that they incurred different expenses in order to obtain justice and establish the truth of what happened. Given that these expenses were incurred over a period of more than 12 years, the next of kin have not kept receipts for them; therefore they asked the Court to establish, based on equity, the sum of US\$3,000.00 (three thousand United States dollars) to be delivered to Eloisa Barrios.

368. The Court observes that the expenses relating to the activities of investigation and promotion of legal actions referred to by the representatives were supposedly incurred to obtain justice. Therefore, it will examine them in the section on costs and expenses of this judgment and not in this section which concerns compensation for pecuniary damage.<sup>439</sup>

369. Additionally, the representatives stated that Luisa del Carmen Barrios assumed the maintenance of the children of her brother Narciso Barrios as of 2003, and that the children lived with their grandmother, Justina Barrios. They indicated that Luisa del Carmen incurred expenses for uniforms, school materials and food, among other elements and, to December 2010, this amounted to the sum of BsF 144,000.00 (one hundred and forty-four thousand Bolívares Fuertes), approximately US\$33,488.37 (thirty-three thousand four hundred and eighty-eight United States dollars and thirty-seven cents) based on BsF 1,500.00 (one thousand five hundred Bolívares Fuertes) each month.

370. The Court has found proven that the children of Narciso Barrios, Benito Antonio Barrios Rangel and Annarys Alexandra Barrios Rangel, went to live with Luisa del Carmen Barrios following the death of Narciso Barrios.<sup>440</sup> The case file does not contain any probative support for the expenses incurred in this regard. However, the Court finds it reasonable to assume that Luisa del Carmen Barrios incurred financial expenses owing to the maintenance of the children of Narciso Barrios. Consequently, the Court establishes, in equity, the sum of US\$5,000.00 (five thousand United States dollars), or its equivalent in Bolívares Fuertes, in her favor.

371. Regarding loss of earnings, the representatives indicated that “the members of the Barrios family, finding themselves in a vulnerable financial situation and not having studied a profession, did not have a specific salary.” They asked the Court to determine loss of earnings

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<sup>439</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, reparations and costs*. Judgment of March 1, 2005. Series C No. 120, para. 152, and *Case of Contreras et al.*, *supra* note 405, para. 224.

<sup>440</sup> Cf. Affidavit made by Luisa del Carmen Barrios on June 23, 2011 (merits file, tome III, folio 903).

based on the minimum wage in Venezuela, taking into consideration the age of the victim at the time of his death and his life expectancy in the cases of Benito Antonio Barrios, Narciso Flores Barrios, Luis Alberto Barrios, Rigoberto Barrios, Oscar José Barrios and Wilmer José Barrios. Based on these criteria, they developed a formula for calculating loss of earnings, and used it to estimate the amounts due to each victim for this concept.<sup>441</sup>

372. The State rejected the amounts requested by the representatives and indicated that the compensation should not make the victim richer.

373. Taking into account the age of the victims at the time of their death, the elements in the case file and based on the principle of equity, the Court decides to establish the following amounts for pecuniary damage:

<b>Name</b>	<b>Amount</b>
Benito Antonio Barrios	US\$ 55,000.00
Narciso Barrios	US\$ 57,500.00
Luis Alberto Barrios	US\$ 55,000.00
Rigoberto Barrios	US\$ 60,000.00
Oscar José Barrios	US\$ 57,500.00
Wilmer José Flores Barrios	US\$ 60,000.00
Juan José Barrios	US\$ 55,000.00

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

374. In its case law, the Court has developed the concept of non-pecuniary damage and has established that this “may include both the suffering and anguish caused to the direct victim and to his next of kin, the harm to values that are very significant for the individual, and the changes of a non-pecuniary nature in the living conditions of the victim or his family.”<sup>442</sup>

375. The Commission asked the Court to order the State to make reparation to the victims for the non-pecuniary damage suffered.

376. The representatives indicated that the non-pecuniary damage should be the object of financial compensation established on the basis of criteria of equity. Regarding the deceased victims, they had been executed with extreme violence and, since they were aware of the pattern of persecution against their family, it can be presumed that they experienced great fear and suffering, as did those who received threats because they had witnessed or denounced previous

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<sup>441</sup> The representatives requested US\$253,671.00 in the case of Benito Antonio Barrios, US\$286,705.00 in the case of Narciso Antonio Barrios, US\$271,882.00 in the case of Luis Alberto Barrios, US\$329,858.00 in the case of Rigoberto Barrios, US\$297,158.00 in the case of Oscar José Barrios, and US\$312,548.00 in the case of Wilmer José Barrios. The 25% corresponding to personal expenses has not been subtracted from these amounts (file of attachments to the pleadings and motions brief, sole tome, attachment 8, folios 4141 to 4144).

<sup>442</sup> Cf. *Case of the “Street Children” (Villagrán Morales et al.)*, *supra* note 43, para. 84, and *Case of Contreras et al.*, *supra* note 405, para. 224.

violations. Consequently, they requested the sum of US\$80,000.00 (eighty thousand United States dollars) for non-pecuniary damage for each victim who had been executed. In addition, Gustavo Ravelo, Jesús Ravelo, Jorge Antonio Barrios Ortuño, Oscar José Barrios and Víctor Daniel Cabrera Barrios were subjected to disproportionate use of force during their detention. Furthermore, Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo, Elbira Barrios, Jorge Antonio Barrios Ortuño and Néstor Caudí Barrios were harassed and threatened on repeated occasions. Based on the foregoing, the representatives requested the sum of US\$5,000.00 (five thousand United States dollars) for non-pecuniary damage. Moreover, with regard to the immediate family of the victims who were executed, they requested compensation for non-pecuniary damage of US\$50,000.00 (fifty thousand United States dollars).

377. In addition, regarding the other members of the Barrios family, they asked the Court to take into consideration the severe anxiety owing to the feelings of insecurity, helplessness and fear owing to the lack of justice for the violations perpetrated and the disintegration of their family, and, for this, they requested compensation of US\$5,000.00 (five thousand United States dollars) for each member of the Barrios family. Furthermore, they asked the Court to order the State to grant the additional amount of US\$10,000.00 (ten thousand United States dollars) to Eloisa Barrios, for “her active participation in all the steps taken to clarify the deaths of the members of her family and for the emotional burden she assumed as her family’s spokesperson in the search for justice.”

378. Based on its case law, and taking into consideration the circumstances of the instant case, the violations committed, the suffering caused, the time elapsed, the denial of justice, as well as the change in their living conditions, the proven effects on the personal integrity of the next of kin of the victims and the other consequences of a non-pecuniary nature that they suffered, the Court establishes, in equity, the following amounts in favor of the victims, as compensation for non-pecuniary damage:

<b>Name</b>	<b>Amount</b>
Benito Antonio Barrios	US\$ 60,000.00
Narciso Barrios	US\$ 60,000.00
Rigoberto Barrios	US\$ 70,000.00
Luis Alberto Barrios	US\$ 50,000.00
Oscar José Barrios	US\$ 60,000.00
Wilmer José Flores Barrios	US\$ 50,000.00
Juan José Barrios	US\$ 50,000.00
Néstor Caudí Barrios	US\$ 25,000.00
Jorge Antonio Barrios Ortuño	US\$ 20,000.00
Jesús Ravelo	US\$ 5,000.00
Gustavo Ravelo	US\$ 5,000.00
Luisa del Carmen Barrios	US\$ 5,000.00
Justina Barrios	US\$ 35,000.00
Carlos Alberto Ortuño	US\$ 10,000.00

Orismar Carolina Alzul García	US\$ 20,000.00
Ronis David Barrios Alzul	US\$ 10,000.00
Roniel Alberto Barrios Alzul	US\$ 10,000.00
Luis Alberto Alzul	US\$ 10,000.00
Annarys Alexandra Barrios Rangel	US\$ 10,000.00
Benito Antonio Barrios Rangel	US\$ 10,000.00
Orianny Nazareth Pelae	US\$ 10,000.00
Oriana Nazareth Pelae	US\$ 10,000.00
Maritza Barrios	US\$ 25,000.00
Elbira Barrios	US\$ 20,000.00
Michael José Barrios Espinosa	US\$ 10,000.00
Dinosca Alexandra Barrios Espinosa	US\$ 10,000.00
Cirilo Antonio Colorado Barrios	US\$ 5,000.00
Lorena del Valle Pugliese Barrios	US\$ 5,000.00
Darelbis Carolina Barrios	US\$ 5,000.00
Elvis Sarais Colorado Barrios	US\$ 5,000.00
Pablo Julián Solórzano Barrios	US\$ 5,000.00
Beneraiz de la Rosa	US\$ 5,000.00
Danilo David Solórzano Barrios	US\$ 5,000.00
Eloisa Barrios	US\$ 10,000.00
Beatriz Adriana Cabrera Barrios	US\$ 5,000.00
Víctor Daniel Cabrera Barrios	US\$ 5,000.00
Luseidys Yulianny Guzmán Barrios	US\$ 5,000.00
Brígida Oneyda Barrios	US\$ 5,000.00
Marcos Antonio Diaz Barrios	US\$ 5,000.00
Sandra Marivi Betancourt Barrios	US\$ 5,000.00
Junior José Betancourt Barrios	US\$ 5,000.00
Wilneidys Betania Pimentel Barrios	US\$ 5,000.00
Inés Josefina Barrios	US\$ 5,000.00
Lilia Ysabel Solórzano Barrios	US\$ 5,000.00
Génesis Andreina Navarro Barrios	US\$ 5,000.00
Heilin Alejandra Navarro Barrios	US\$ 5,000.00
Luilmari Carolina Guzmán Barrios	US\$ 5,000.00
Victor Tomás Navarro Barrios	US\$ 5,000.00

### 3. *Costs and expenses*

379. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparation established in Article 63(1) of the American Convention.<sup>443</sup>

380. In their briefs with pleadings and motions and with final arguments, the representatives asked the Court to order the State to pay the following amounts for costs and expenses: (a) the sum that the Court establishes, in equity, to the Barrios family for their disbursements in the domestic legal proceedings; (b) to the Aragua Commission, US\$30,000.00 (thirty thousand United States dollars) for the expenses incurred at the domestic level and in the international sphere up until the presentation of the pleadings and motions brief, and US\$2,599.00 (two thousand five hundred and ninety-nine United States dollars) for the expenses incurred subsequently; (c) to COFAVIC, US\$7,078.00 (seven thousand and seventy-eight United States dollars) from October 2010 until the presentation of the pleadings and motions brief, and US\$8,990.00 (eight thousand nine hundred and ninety United States dollars) for the expenses incurred subsequently, and (d) to CEJIL, US\$17,000.00 (seventeen thousand United States dollars) from 2005 until the presentation of the pleadings and motions brief, and US\$7,585.00 (seven thousand five hundred and eighty-five United States dollars) for the expenses incurred subsequently.

381. Regarding their reimbursement, the Court must assess their scope prudently, which includes the expenditure arising before the authorities of the domestic jurisdiction and that incurred during the proceedings before the inter-American system, taking into account the authentication of the expenses incurred, the circumstances of the specific case, and the nature of the international jurisdiction for the protection of human rights. The calculation may be made based on the equity principle and assessing the expenses authenticated by the parties, provided the amount is reasonable.<sup>444</sup>

382. The Court has indicated repeatedly that “the claims of the victims or their representatives for costs and expenses, and the evidence supporting them, must be presented to the Court on the first procedural occasion granted them, that is in the pleadings and motions brief, without prejudice to those claims being updated at a later date, to take into account the new costs and expenses that have been incurred in the proceedings before this Court.”<sup>445</sup> In the instant case, the Court observes that the documents forwarded by the representatives regarding the costs and expenses incurred prior to the submission of the pleadings and motions brief were presented late (*supra* para. 17). Consequently, the Court will only consider those provided with the final written arguments that refer to the new costs and expenses incurred owing to the proceedings before this Court; in other words, those incurred after the pleadings and motions brief.

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<sup>443</sup> Cf. *Case of Garrido and Baigorria v. Argentina*. Reparations and costs. Judgment of August 27, 1998. Series C. No. 39, para. 79, and *Case of Barbani Duarte et al.*, *supra* note 12, para. 252.

<sup>444</sup> Cf. *Case of Garrido and Baigorria*, *supra* note 443, para. 82, and *Case of Barbani Duarte et al.*, *supra* note 12, para. 270.

<sup>445</sup> Cf. *Case of Chaparro Álvarez and Lapo Iñiguez*, *supra* note 56, para. 197, and *Case of Barbani Duarte et al.*, *supra* note 12, para. 270.

383. Notwithstanding the foregoing, the Court has verified that the representatives incurred different expenses before the Court. Bearing this in mind, the Court determines, in equity, that the State must deliver the sum of US\$2,000.00 (two thousand United States dollars), or the equivalent in Bolívares Fuertes, to Eloisa Barrios, and a total of US\$18,000.00 (eighteen thousand United States dollars) to the Justice and Peace Commission of Aragua state, COFAVIC and the Center for Justice and International Law for costs and expenses. In the proceeding on monitoring compliance with this judgment, the Court may order the State to reimburse the victims or their representatives reasonable subsequent expenses that are duly authenticated.

#### ***4. Reimbursement of the expenses to the Victims' Legal Assistance Fund***

384. In 2008, the General Assembly of the Organization of American States created the Legal Assistance Fund of the inter-American human rights system “to facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system.”<sup>446</sup> In the instant case, the victims were granted the necessary financial assistance from the Fund to present one testimony and the opinion of an expert witness at the public hearing held in Costa Rica, as well as the expenses of the preparation and forwarding of a statement made by affidavit (*supra* para. 7).

385. The State had the opportunity to present its observations on the disbursements made in the instant case, which amount to US\$3,232.16 (three thousand two hundred and thirty-two United States dollars and sixteen cents); however, it did not present any observations in this regard (*supra* para. 9). Consequently, in application of Article 5 of the Fund’s Rules of Procedure, the Court must assess whether it is appropriate to order the defendant State to reimburse the expenditure incurred to the Inter-American Court’s Legal Assistance Fund.

386. Owing to the violations declared in this judgment, the Court orders the State to reimburse the said Fund the sum of US\$3,232.16 (three thousand two hundred and thirty-two United States dollars and sixteen cents) for the expenses incurred for the appearance of one deponent and one expert witness at the public hearing in this case, as well as the presentation of a statement by affidavit. This amount must be reimbursed to the Court within 90 day of notification of this judgment.

#### ***5. Method of complying with the payments ordered***

387. The State must pay the compensation for pecuniary and non-pecuniary damage and the reimbursement of costs and expenses established in this judgment directly to the persons and organizations indicated herein, within one year of notification of the judgment, as established in the following paragraphs.

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<sup>446</sup> AG/RES. 2426 (XXXVIII-O/08), resolution adopted by the thirty-eighth OAS General Assembly at the fourth plenary session, held on June 3, 2008, “*Establishment of the Legal Assistance Fund of the Inter-American Human Rights System*,” operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS Permanent Council, “*Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System*,” article 1(1).

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

389. The State must comply with its pecuniary obligations by payment in United States dollars or the equivalent in Bolívares Fuertes, using the exchange rate in force on the New York market the day before the payment to make the respective calculation.

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

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

392. If the State falls into arrears, it must pay interest on the amount owed corresponding to the bank interest on arrears in Venezuela.

### **XIII OPERATIVE PARAGRAPHS**

393. Therefore,

#### **THE COURT**

#### **DECLARES,**

unanimously, that:

1. The State is responsible for the violation of the right to life established in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Benito Antonio Barrios, Narciso Barrios, Luis Alberto Barrios, Rigoberto Barrios, Oscar José Barrios, Wilmer José Flores Barrios and Juan José Barrios, in accordance with the provisions of paragraphs 45 to 55, 64 to 68, 94 to 96, and 116 to 131 of this judgment.

2. The State is responsible for the violation of the right to personal integrity, established in Article 5 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Benito Antonio Barrios, Rigoberto Barrios, Jorge Antonio Barrios, Oscar José Barrios, Jesús Ravelo, Gustavo Ravelo, Luisa del Carmen Barrios, Elbira Barrios and Néstor Caudi Barrios, in accordance with the provisions of paragraphs 66, 68, 77 to 84, 94 to 96, 116 and 123 to 131 of this judgment.

3. The State is responsible for the violation of the right to personal liberty, established in Article 7 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Benito Antonio Barrios, Rigoberto Barrios, Jorge Antonio Barrios, Oscar José Barrios, Jesús Ravelo, Gustavo Ravelo, Luisa del Carmen Barrios and Elbira Barrios, in accordance with the provisions of paragraphs 65, 66, 68 and 75 to 79 of this judgment.

4. The State is responsible for the violation of the right to special protection due to their condition as minors of Rigoberto Barrios, Oscar José Barrios and Jorge Antonio Barrios, established in Article 19 of the American Convention on Human Rights, in relation to Article 1(1) and, respectively, Articles 4, 5 and 7 of this instrument, in accordance with the provisions of paragraphs 85 and 96 of this judgment.

5. The State is responsible for the violation of the rights to privacy and to private property established, respectively, in Articles 11(2), 21(1) and 21(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the persons indicated in paragraphs 147 and 150 of this judgment, in accordance with the provisions of paragraphs 140 to 150 hereof.

6. The State is responsible for the violation of the right to freedom of movement and residence, recognized in Article 22(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the persons indicated in paragraph 168 of this judgment, in accordance with the provisions of paragraphs 162 to 168 hereof. In addition, the State is responsible for the violation of the right to special protection of minors, established in Article 19 of the American Convention on Human Rights, in relation to Articles 1(1) and 22(1) of this instrument, to the detriment of the minors indicated in paragraph 168 of this judgment.

7. The State is responsible for the violation of the rights to judicial guarantees and to judicial protection established in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the persons indicated in paragraphs 245, 249, 256, 260, 263, 266, 272 and 285 of this judgment, as established in paragraphs 173 to 181, 233 to 239, 241 to 285 hereof.

8. The State is responsible for failing to comply with Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, to the detriment of Rigoberto Barrios and Jorge Antonio Barrios, in accordance with paragraph 260 of the judgment.

9. The State is responsible for the violation of the right to personal integrity, established in Article 5(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of the next of kin indicated in paragraphs 304 and 312 of this judgment, in accordance with the provisions of paragraphs 301 to 312 hereof.

**AND DECIDES,**

Unanimously, that:

1. This judgment constitutes, *per se*, a form of reparation.
2. The State must conduct an effective criminal investigation into the facts of this case in order to clarify them, to determine the corresponding criminal responsibilities, and to apply the punishments and consequences provided for by law, as established in paragraphs 322 to 324 of this judgment.
3. The State must examine, in accordance with the pertinent disciplinary norms, the possible procedural and investigative irregularities related to this case and, as appropriate, sanction the conduct of the corresponding public servants, as established in paragraph 325 of this judgment.
4. The State must provide medical and psychological care, free of charge and immediately, through its specialized public health institutions to the victims who request this, as established in paragraphs 329 and 330 of this judgment.
5. The State must make the publications ordered, as established in paragraph 332 of this judgment.
6. The State must organize a public act to acknowledge its international responsibility for the facts of this case, as established in paragraph 334 of this judgment.
7. The State must award scholarships in Venezuelan public institutions to the persons indicated in paragraph 336 of this judgment, as established in that paragraph.
8. The State must continue the actions it is implementing with regard to training and implement, within a reasonable time, a compulsory program or course on the aspects indicated as part of the general and ongoing training for all ranks of the police of Aragua state, as established in paragraph 341 of this judgment.
9. The State must pay the amounts established in paragraphs 362, 364, 366, 370, 373, 378, 383 and 386 of this judgment, as compensation for pecuniary and non-pecuniary damage, and for reimbursement of costs and expenses, and to reimburse the Victims' Legal Assistance Fund, in the terms of paragraphs 388 to 392 hereof.
10. The Court will monitor full compliance with this judgment, in exercise of its authority and in compliance with its obligations, as established in the American Convention on Human Rights, and will close this case when the State has complied fully with the provisions of its operative paragraphs. Within one year of its notification, the State must provide the Court with a report on the measures adopted to comply with the judgment.

Judge Eduardo Vio Grossi advised the Court of his Concurring Opinion, which accompanies this judgment

Done, at San José, Costa Rica, on November 24, 2011, in the Spanish and English languages, the Spanish text being authentic.

Diego García-Sayán  
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary

**CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI**  
**JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**OF NOVEMBER 24, 2011**  
**CASE OF THE BARRIOS FAMILY v. VENEZUELA**  
**(Merits, Reparations and Costs)**

With his vote, the undersigned has concurred with the judgment indicated above, but wishes to place on record that, since this is the “final and non-appealable judgment”<sup>1</sup> that has effectively concluded this case in which the Inter-American Court of Human Rights (hereinafter “the Court”) adopted provisional measures while it was “hearing” it,<sup>2</sup> its competence with regard to those provisional measures has precluded and, in future, it is only incumbent on the Court “to monitor” compliance with the said judgment.<sup>3</sup>

In this regard, and if it is considered that the said measures should continue beyond the judgment, then the judgment should have established that the obligation of the State concerned to guarantee “that the injured party be ensured the enjoyment of his right or freedom that was violated,”<sup>4</sup> logically also included the obligation to adopt the pertinent measures to “avoid irreparable damage to persons”<sup>5</sup> related to the case that has been decided and that, for this reason, is no longer submitted to the “consideration” of the Court. In this way, those measures would have been incorporated into this “final and non-appealable judgment,” so that they would not only have shared its binding nature, but also compliance with them could have been monitored as part of the judgment and, consequently, as if the judgment had not closed the case, and not as if it referred to a different and even an autonomous case.

The most detailed grounds for this position, which considers that the strict respect by the Court for the norms that regulate it is a requirement *sine qua non* for the due safeguard of human rights, is to be found in both the Dissenting Opinions, in the same sense that the undersigned issued on July 15, 2011, with regard to the orders of the Court concerning the “*Provisional measures with regard to the Republic of Colombia, Case of Gutiérrez Soler v. Colombia*” of June 30, 2011; “*Provisional measures with regard to the United Mexican States, Case of Rosendo Cantú et al. v. Mexico*” of July 1, 2011, and “*Provisional measures with regard to the Republic of Honduras, case of Kawas Fernández v. Honduras*” of July 5, 2011, and also in the brief concerning the same orders, that the undersigned submitted to the Court on August 17, 2011.

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<sup>1</sup> Article 67 of the American Convention on Human Rights.

<sup>2</sup> Article 63(2) of the Convention.

<sup>3</sup> Article 69 of the Court’s Rules of Procedure. See the undersigned’s Concurring Opinions on the orders on compliance with judgment in the cases of Blanco Romero *et al. v. Venezuela*, and Servellón García *et al. v. Suriname*, of November 2011.

<sup>4</sup> Article 63(1) of the Convention.

<sup>5</sup> Article 63(2) of the Convention.

Eduardo Vio Grossi  
Judge

Pablo Saavedra Alessandri  
Secretary

**CONCURRING OPINION OF JUDGE EDUARDO VIO GROSSI**  
**JUDGMENT OF THE INTER-AMERICAN COURT OF HUMAN RIGHTS**  
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<sup>6</sup> Article 67 of the American Convention on Human Rights.

<sup>7</sup> Article 63(2) of the Convention.

<sup>8</sup> Article 69 of the Court’s Rules of Procedure. See the undersigned’s Concurring Opinions on the orders on compliance with judgment in the cases of Blanco Romero *et al. v. Venezuela*, and Servellón García *et al. v. Suriname*, of November 2011.

<sup>9</sup> Article 63(1) of the Convention.

<sup>10</sup> Article 63(2) of the Convention.

Eduardo Vio Grossi  
Judge

Pablo Saavedra Alessandri  
Secretary