



INTER - AMERICAN COMMISSION ON HUMAN RIGHTS  
COMISIÓN INTERAMERICANA DE DERECHOS HUMANOS  
COMISSION INTERAMERICANA DE DIREITOS HUMANOS  
COMMISSION INTERAMÉRICAINE DES DROITS DE L'HOMME



ORGANIZATION OF AMERICAN STATES  
WASHINGTON, D.C. 2 0 0 0 6 USA

July 26, 2010

Ref.: Case No. 12.488  
*Barrios Family*  
Venezuela

Mr. Secretary:

I am pleased to address you on behalf of the Inter-American Commission on Human Rights in order to file Case No. 12.488, *Barrios Family et al.* v. the Bolivarian Republic of Venezuela (hereinafter "the State," "the Venezuelan State" or "Venezuela") before the jurisdiction of the Honorable Inter-American Court of Human Rights. The State ratified the American Convention on Human Rights on August 9, 1977, and accepted the contentious jurisdiction of the Court on June 24, 1981.

The Commission has designated Commissioner Paulo Sérgio Pinheiro, and Executive Secretary Santiago A. Canton, as its delegates. Likewise, Elizabeth Abi-Mershed, Deputy Executive Secretary, and Silvia Serrano Guzmán, attorney of the Executive Secretariat of the IACRH, have been designated to serve as legal advisors.

In accordance with Article 35 of the Rules of Procedure of the Inter-American Court, the Commission is enclosing to this communication a copy of report 11/10 prepared in compliance with Article 50 of the American Convention, as well as a copy of the entire file before the Inter-American Commission (Appendix 1.) The merits report 11/10 was notified to the Venezuelan State by communication of April 26, 2010, granting it a two-month term to inform on the implementation of the recommendations. The State did not reply to the request of the Commission.

The Commission submits the instant case to the jurisdiction of the Inter-American Court due to the State's lack of compliance with the recommendations and the consequent need to obtain justice on the part of the Barrios family who has been subjected to grave persecution by the Police of the state of Aragua, as described on the merits report. As a part of this persecution, five members of the family have lost their lives, several persons have been illegally and arbitrary detained and subjected to raids in their homes, have suffered threats to their lives and personal integrity and have had to move from their place of residence. Many of the facts accredited by the Commission in its report affected children. All the human rights violations against the Barrios family remain in state of impunity.

Mr.  
Pablo Saavedra Alessandri, Secretary  
Inter-American Court of Human Rights  
P.O. Box 6906-1000  
San José, Costa Rica  
Annex

The Commission also wants to mention that most of the facts described in the report took place when the organs of the Inter-American System had already required the State of Venezuela to protect the Barrios family by means of the mechanisms of precautionary or provisional measures, respectively. The State did not implement effective measures to protect the beneficiaries and up to date the Barrios family is still under a situation of risk and lack of protection which favored the human rights violations against them.

The Commission underlines that the facts of the instant case are part of a more general context of extrajudicial executions in Venezuela. The Commission has followed this situation by means of different mechanisms. In particular, the Commission has referred to this issue since its report on the Situation of Human Rights in Venezuela in 2003, in its annual reports of 2004, 2005, 2006, 2007 and 2008, as well as its recent report Democracy and Human Rights in Venezuela in 2009. The IACtHR deems it necessary that when considering the instant case, the Inter-American Court takes into account the characteristics of this grave context in Venezuela, as described in the merits report.

The Inter-American Commission submits to the jurisdiction of the Court all the facts and human rights violations described in the merits report 11/10 and requests the Court to conclude and declare the international responsibility of the State by Venezuela for:

- a) The violation of the rights to life, personal integrity and personal liberty enshrined in Articles 4.1, 5.1 and 5.2, 7.1, 7.2, 7.3, 7.4 and 7.5 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Benito Antonio Barrios.
- b) The violation of the rights to the protection of private and family life, and to private property, set out in Articles 11 and 21 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Justina Barrios, Brígida Oneida Barrios, Elbira Barrios, Luís Alberto Barrios and Orismar Carolina Alzul.
- c) The violation of the right to life enshrined in Article 4.1 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Narciso Barrios.
- d) The violation of the rights to personal integrity, personal liberty and special protection of children, enshrined in 5.1, 5.2, 7.1, 7.3, 7.4, 7.5 and 19 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Jorge Antonio Barrios and Rigoberto Barrios.
- e) The violation of the rights to personal integrity, personal liberty, enshrined in Article 5, 7.1, 7.2, 7.3, of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Elbira Barrios, Luisa del Carmen Barrios, Gustavo Ravelo and Jesús Ravelo; and the rights to personal integrity, personal liberty and special protection of children, enshrined in 5.1, 5.2, 7.1, 7.3, 7.4, 7.5 and 19 of the American Convention to the prejudice of Jorge Antonio Barrios and Oscar José Barrios.
- f) The violation of the rights to personal integrity, and the special protection of children, enshrined in 5.1 and 19 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Néstor Caudi Barrios and Oscar José Barrios.
- g) The violation of the right to life enshrined in Article 4.1 of the Inter-American Convention in relation to Article 1.1 of the same instrument to the prejudice of Luís Alberto Barrios.
- h) The violation of the rights to life, personal integrity, and the special protection of children, enshrined in Articles 4.1, 5.1, 5.2 and 19 of the American Convention

- in relation to Article 1.1 of the same instrument, to the prejudice of Rigoberto Barrios.
- i) The violation of the right to life enshrined in Article 4.1 of the Inter-American Convention in relation to Article 1.1 of the same instrument to the prejudice of Oscar José Barrios.
  - j) The violation of the right to free movement and residence enshrined in Article 22.1 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Justina Barrios, Eloisa Barrios, Beatriz Adriana Cabrera Barrios, Víctor Daniel Cabrera Barrios, Luimary Carolina Guzmán Barrios, Luisaidy Yulianni Guzmán Barrios, Elbira Barrios, Darelvis 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 Oneida Barrios, Marcos Antonio Díaz Barrios, Sandra Maribi Betancurt Barrios, Junior José Betancurt Barrios, Wilneidy Betania Pimentel Barrios, Wilkar Felipe Pimentel Barrios, Inés Barrios, Daniel Yoselín Ortiz Barrios, Edinson Alexander Ortiz Barrios, Johjan Ramón Perozo Barrios, Luisa del Carmen Barrios, Gustavo Ravelo, Luisiani Nazareth Ravelo Barrios, Carolina Orismar Alzul, Ronny David Barrios Alzul, Roniel Alberto Barrios Alzul, Luís Alberto Alzul, Dalila Ordalys Ortúñoz, Jorge Antonio Barrios, Carlos Alberto Ortúñoz, Junclis Rangel, Annarys Alexandra Barrios, Benito Antonio Barrios, Juan Barrios, Orianny Nazareth Pelaez and Orina Nazareth Pelaez, Pablo Solórzano, Beneraiz de la Rosa and Danilo David Solórzano de la Rosa. With respect to the children, the Commission concludes that the State has violated Article 19 of the American Convention.
  - k) The violation of the right to personal integrity enshrined in Article 5.1 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Justina Barrios, Pablo Solórzano, Eloisa Barrios, Elbira Barrios, Maritza Barrios, Brígida Oneida Barrios, Inés Barrios, Luís Alberto Barrios, Lilia Isabel Solórzano, Narciso Barrios, Luisa del Carmen Barrios, Juan Barrios, Jorge Antonio Barrios, Carlos Alberto Ortúñoz, Dalila Ortúñoz, Annarys Alexandra Barrios, Benito Antonio Barrios, Junclis Rangel, Ronny David Barrios, Roniel Alberto Barrios, Luís Alberto Alzul, Orismar Carolina Alzul, Wilmer José Flores Barrios, Genesis Andreina Navarro Barrios, Víctor Tomas Navarro Barrios, Heilín Alexandra Navarro Barrios, Néstor Caudi Barrios, Darelvis Carolina Barrios, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Michael José Barrios Espinosa and Dinosca Alexandra Barrios Espinosa
  - l) The violation of the right to personal integrity enshrined in Article 5.1 of the American Convention in relation to Article 1.1 of the same instrument to the prejudice of all the members of the Barrios family named in the family tree annexed to the present report.
  - m) The violation of the rights to judicial guarantees and judicial protection in Articles 8.1 and 25.1 of the American Convention in relation to Article 1.1 of the same instrument to the prejudice of Justina Barrios, Pablo Solórzano, Eloisa Barrios, Elbira Barrios, Maritza Barrios, Brígida Oneida Barrios, Inés Barrios, Luís Alberto Barrios, Lilia Isabel Solórzano, Narciso Barrios, Luisa del Carmen Barrios, Juan Barrios, Jorge Antonio Barrios, Carlos Alberto Ortúñoz, Dalila Ortúñoz, Annarys Alexandra Barrios, Benito Antonio Barrios, Junclis Rangel, Ronny David Barrios, Roniel Alberto Barrios and Luís Alberto Alzul, Orismar Carolina Alzul, Wilmer José Flores Barrios, Genesis Andreina Navarro Barrios, Víctor Tomas Navarro Barrios, Heilín Alexandra Navarro Barrios, Néstor Caudi Barrios, Darelvis Carolina Barrios, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del

Valle Pugliese Barrios, Michael José Barrios Espinosa and Dinosca Alexandra Barrios Espinosa.

- n) The violation of the rights to judicial guarantees and judicial protection enshrined in Articles 8.1 and 25.1 of the American Convention in relation to Article 1.1 of the same instrument to the prejudice of Justina Barrios, Brígida Oneida Barrios, Elbira Barrios, Luís Alberto Barrios, Orismar Carolina Alzul, Jorge Antonio Barrios, Rigoberto Barrios, Oscar José Barrios, Néstor Caudi Barrios, Luisa del Carmen Barrios, Gustavo Ravelo and Jesús Ravelo.

Accordingly, the Commission requests the Inter-American Court to order the following measures of reparation:

- a) To undertake a complete, impartial and effective investigation within a reasonable time into the violations of human rights of the instant case, with the object of establishing and punishing the instigators and perpetrators of each one of the facts described.
- b) These investigations must be conducted so that they are capable of establishing the connections between each of the facts of the case, as well as between those facts and the more general context of extrajudicial executions in Venezuela and the persecution against the victims' next of kin.
- c) Order the appropriate administrative, disciplinary or criminal measures for the actions or omissions of the State officials who either contributed to the denial of justice and impunity surrounding the facts of this case, failed to fulfill their duties of reply faced with the situation complained of or who took part in the measures to obstruct the procedures aimed at identifying and punishing those responsible.
- d) Repair the victims for the pecuniary and non-pecuniary damages suffered, including public acknowledgement of international responsibility and the publication of the judgment that could be rendered by the Inter-American Court.
- e) Adopt the necessary measures to identify the source of the risk suffered by the Barrios family and use all necessary efforts to eradicate it.
- f) Provide for measures of non-recurrence, that include: i) training programs on the international standards of human rights in general, and with respect to the children and teenagers in particular, aimed at the Police of the state of Aragua; and ii) legislative, administrative and other kinds of measures to investigate with due diligence and in accordance with relevant international standards, the necessity and proportionality of the lethal use of force when deployed by police officers, so that there are adequate and effective protocols allowing for the implementation of measures of control and accountability of the acts of said officers.

In addition, the Commission offers the following expert declarations related to issues of the inter-American public interest in the instant case:

- a) Expert whose name will be informed shortly, who will declare about international human rights standards applicable to the use of lethal force by security officers, the obligations of States regarding investigations to establish if a death occurred as a consequence of the use of lethal force or if it constituted an extrajudicial execution, as well as the obligations of States regarding prevention when there is a known problem of extrajudicial executions committed by security officers.

- b) Roberto Briceño León, who will declare on the problems in Venezuela of extrajudicial executions committed by police in different regions of the country, pattern and *modus operandi* through which this problem manifests, impact in the state of Aragua, and response from the public prosecutor's Office and the judiciary to this situation.

The *curricula vitae* of the experts proposed by the Inter-American Commission are attached.

Finally, the petitioners expressed the victims' interest in the submission of the instant case to the Inter-American Court and informed that representatives of the victims are the *Comisión de Derechos Humanos de Justicia y Paz del Estado Aragua* represented by Luis Manuel Aguilera, and the Center for Justice and international Law (CEJIL), represented by the Mrs. Viviana Krsticevic and Ariela Peralta. The data provided is:

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Please allow me to greet you and express my appreciation.

Santiago A. Canton  
Executive Secretary

**REPORT No. 11/10**  
**CASE 12.488**  
**MERITS**  
**MEMBERS OF THE BARRIOS FAMILY**  
**VENEZUELA<sup>1</sup>**  
March 16, 2010

**I. SUMMARY**

1. On March 16, 2004, and December 30, 2004, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission", or "the IACRH") received two complaints presented by Mrs. Eloisa Barrios, by Luís Aguilera -- in his capacity as the director of the Commission of Human Rights of Justice and Peace of the State of Aragua -- and by the Center for Justice and International Law,<sup>2</sup> (hereinafter "the petitioners"), alleging the violation of various provisions of the American Convention on Human Rights (hereinafter "the American Convention", "the Convention", or "the ACHR") by the Bolivarian Republic of Venezuela (hereinafter "the State of Venezuela", "the State", or "Venezuela") based on a series of acts of violence committed against various members of the Barrios family since 1998, which they view as part of a general framework of extrajudicial executions and police abuse which exist in Venezuela.

2. Throughout the proceedings, which included the adoption of precautionary measures by the Commission, and later provisional measures by the Inter-American Court of Human Rights (hereinafter "the Inter-American Court", or "the Court"), the petitioners have submitted updates on facts occurring up until November 2009. The allegations include extrajudicial executions, illegal and arbitrary detentions, illegal searches, theft of goods and physical injuries committed, in the main, by members of the police of the State of Aragua. The petitioners also allege that there has been no accountability for this conduct which has had serious consequences for family life, including the displacement of various family members.

3. For its part, the State of Venezuela alleged that the investigations undertaken at the internal level on the alleged facts were diligent, and that it has made available all possible procedures to clarify what has happened and to identify those responsible. In its presentations, the State submitted information on the steps taken in these investigations. Even at the merits stage, it has continued to present arguments on admissibility, including the failure to exhaust domestic remedies and the duplication of international procedures, aspects already resolved in the corresponding stage.

4. After analyzing the parties' positions, the Inter-American Commission concluded that the State of Venezuela is responsible for violations of the rights to life, personal integrity, personal liberty, private and family life, the rights of the child, private property, freedom of movement, judicial guarantees and judicial protection established in Articles 4, 5, 7, 11, 19, 21, 22, 8, and 25 of the American Convention in relation to the obligations established in Article 1.1 of the same instrument, against the family members which will be set out throughout this report, and in the conclusions.

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<sup>1</sup> In conformity with Article 17.2 of the IACRH Rules of Procedure, Commissioner Luz Patricia Mejía Guerrero, a Venezuelan citizen, did not participate in the debates regarding the present report.

<sup>2</sup> The organization Center for Justice and International Law was a petitioner in the first complaint at a later stage, while with respect to the second complaint it was petitioner from the presentation of the initial petition.

## **II. PROCESSING BEFORE THE IACHR**

### **A. Processing of the Case**

5. With respect to Petition 204-04, received on March 16, 2004, the Commission approved the admissibility report 23-05 on February 25, 2005, during its 122nd period of ordinary sessions. The petition was registered as case number 12.488.

6. On March 16, 2005, the Commission informed the parties about the adoption of admissibility report 23-05 and requested the petitioners to present additional observations on the merits within two months. The Commission also put itself at the disposal of the parties in order to reach a friendly settlement.

7. On December 30, 2005, petition 1491-05 was received and consolidated with case 12.488 by communication of March 13, 2006. The Commission took the opportunity to inform the parties that pursuant to Article 37.3 of the Rules of Procedure then in force, it had decided to defer the admissibility analysis of petition 1491-05 until the decision on the merits.

8. On May 8, 2006, the petitioners presented additional observations on the merits of case 12.488 and on the admissibility and merits of petition 1491-05. This brief was transmitted to the State on May 16 2006, for observations. In the same communication, the Commission requested the State to supply a copy of the criminal investigation corresponding to each one of the allegations of facts made by the petitioners.

9. On June 20, 2006, the State presented its observations on the merits. On September 19, 2006, and April 18, 2007, the petitioners and the State filed additional observations, respectively.

10. On July 5, 2007, the Commission addressed the parties to inform them that petition 1491-05 had been separated from case 12.488.

11. After a series of proceedings, on January 17, 2009, the Commission approved admissibility report 1-09, and registered petition 1491-05 under case number 12.687. This decision was notified to the parties on January 23, 2009, and the petitioners were requested to present additional observations on the merits.

12. On December 4, 2009, the petitioners presented their observations on the merits. Through a communication of January 7, 2010, the Commission informed the parties that cases 12.488 and 12.687 had been consolidated, and invited them thenceforth to refer to the case with the number 12.488. In the same letter, the Commission passed to the State the petitioners' brief of December 4, 2009, and requested its observations on the merits. Updated information was also requested from the State regarding the judicial proceedings relating to the denounced facts and regarding the death of Oscar José Barrios on November 28, 2009.

13. On February 16, 2010, the petitioners presented additional information, which was duly transmitted to the State. As at the date of approval of the present report, the State of Venezuela has not presented its observations on either of the petitioners' briefs of December 4, 2009 or of February 16, 2010.

### **B. Processing of Precautionary and Provisional Measures**

14. On June 22, 2004, after receiving information regarding a series of alleged acts of intimidation against member of the Barrios family after the death of Narciso Barrios on December

11, 2003, the Commission requested the State to adopt precautionary measures to protect the life and personal integrity of Eloisa Barrios and her family members. On July 2 and 13 and August 4 and 13, 2004, the Commission repeated its request to the State for information about the situation of the Barrios family and the measures adopted to give effect to the precautionary measures. The State failed to respond to the request.

15. On September 23, 2004, after learning of the death of beneficiary Luís Alberto Barrios on September 20, 2004, the Commission filed a request for provisional measures before the Inter-American Court, on the basis of the available information on acts of violence against the family, the lack of a response from the State to the precautionary measures and the murder of one of its beneficiaries.

16. On September 24, 2004, the President of the Court granted urgent measures that were confirmed by the Inter-American Court on November 23, 2004. Based on the information provided by the Commission and the representatives of the beneficiaries about the death of another beneficiary Rigoberto Barrios and new acts of intimidation against the family, on June 29, 2005, the Inter-American Court issued a new resolution expressing its grave concern over these acts, reiterating the provisional measures and amplifying them in favor of other family members.

17. By a resolution of September 22, 2005, the Court reiterated the provisional measures and amplified them in favor of a further 19 members of the family. Since that date, the Commission and the representatives of the beneficiaries have presented their observations to the corresponding State reports, pointing out the inadequacy of the protective mechanisms arranged by the State, and, in general, the failure to adequately implement all the measures ordered by the Court.

18. On December 3, 2009, the Commission informed the Inter-American Court that beneficiary Oscar José Barrios had been killed on November 28, 2009. The Commission expressed its grave concern and requested the Court to convene a public hearing on the provisional measures. On December 18, 2009 the Chief Judge issued a resolution convening a public hearing, which took place on January 28, 2010.

19. At the said hearing, the Commission presented a list of failings in the State's reply to the protective measures granted by the organs of the Inter-American system. These failings can be summarized in the following list:

- The only protective measure adopted consists of visiting the beneficiaries' place of residence;
- These visits are not regular and do not constitute a protection strategy carefully designed to respond to the peculiar nature of the threats;
- This measure was implemented towards a very reduced group of beneficiaries only, which suggests that more than half of the individuals at risk do not receive any protection;
- The measures were not designed with the participation of the beneficiaries; there were a few meetings regarding the situation of one, or a few, beneficiaries but there is no follow-up and the participating officials have no power of decision-making;
- There is not co-ordination between the different state entities involved; the State has failed to submit to the Court a response to the Commission's and the representatives' observations on the nonconformity of the few beneficiaries that receive protection; and
- The manner in which the investigations are being conducted is inconsistent with the nature and gravity of the situation raised, which could contribute to increasing

the risk, due to the perception of tolerance towards acts committed against the beneficiaries.

20. On February 4, 2010, the Court issued a new resolution reconfirming the provisional measures and stating that "the murder of the beneficiary Oscar José Barrios demonstrates the failure by the State to effectively implement the provisional measures ordered by this Court."<sup>3</sup>

### **III. POSITIONS OF THE PARTIES**

#### **A. The Petitioners**

21. Throughout all the proceedings the petitioners presented information on a series of facts that, on reflection, appear inter-linked and form part of a general context of intimidation against the Barrios family, starting in 1998 with the extrajudicial execution of Benito Antonio Barrios and which persists to this day. Among the facts stated, the petitioners include four more killings - the last having occurred on November 28, 2009; illegal and arbitrary arrests, accompanied by physical violence, illegal raids on their homes, death threats and other forms of intimidation and harassment. The petitioners emphasize that several of these acts were aimed at the children. In general terms, the petitioners point to the failure to investigate effectively all that has happened and the situation of impunity which exists to date.

22. Among the obvious effects of this situation, the petitioners stress the displacement of various family members as a defense mechanism, as well as the constant state of fear and helplessness they have to bear in the face of continuous threats from the police of the State of Aragua, and the failings in the protection provided by the State.

23. The petitioners also consider that the deaths occurring against this background are a reflection of a practice of extrajudicial executions in Venezuela by state officials in separate regions of the country, particularly in the more remote areas. With regard to this context, the petitioners underline that the victims of this practice are generally young men belonging to economically deprived social groups; and that, in particular, the State of Aragua is one of the regions where the highest number of *ajusticiamientos* by the security forces occur, especially by the Security and Public Order Corps (hereinafter the "SPOC"), having formed a pattern of extrajudicial executions.

24. According to the petitioners, this pattern involves a *modus operandi* consisting *inter alia*, of: i) the presentation of the facts as a confrontation which in the majority of cases involves changing the scene of the crime and transferring the injured or lifeless victim to public hospitals without leaving information on what occurred; ii) the use of official uniforms and/or official weapons and equipment, including vehicles; iii) the public slandering or crimilization of the victim, pointing them out as someone who resisted the authorities and has a criminal record; iv) the intimidation, threat and killing of material witnesses and close family members of the victim; and v) the lack of clarification of the facts, leading to total impunity.

25. They detailed that the facts of the present case occurred in the rural town of Guanayen, in the Urdaneta municipality, in the south of the State of Aragua, and, due to its location, it is difficult to control effectively the officials associated with the security forces. According to the petitioners, this situation has favored the shaping of a systematic practice of extrajudicial executions in the area, the excessive and arbitrary use of force, as well as the mechanisms of impunity surrounding such situations.

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<sup>3</sup> /A Court HR. Resolution on Provisional Measures. February 4, 2010 in the matter of Eloisa Barrios and others respecting Venezuela, Resolution point 1.

26. Considering that the facts will be described in detail in the analysis section, in this section the Commission will limit itself to a succinct summary of the allegations of fact and law submitted by the petitioners. To this end, the Commission will use the same order to present the allegations on the merits on the part of petitions, that is to say, according to the rights allegedly violated.

27. As regards **the right to personal liberty**, the petitioners allege that illegal arrests by the Venezuelan police were conducted against Benito Antonio, Jorge, Rigoberto, Néstor Caudi, Luisa del Carmen, Oscar and Elbira, all surnamed Barrios, as well as against Gustavo and Jesús, both named Ravelo. In this respect, as a common denominator, all the arrests showed a lack of judicial warrants; that no-one was reported actually committing the alleged criminal acts at the time of the deprivation of liberty; in no case was there evidence that the victims were immediately brought before a judge or other lawfully authorized official exercising judicial functions, nor were they judged within a reasonable time; and neither was there any possibility of lodging a simple and effective remedy before a judge or competent tribunal which could decide without delay on the legality of the arrest or detention and order their release if the arrest or detention proved to be illegal. They also observed that there is no documentary evidence confirming that the authorities involved in the detentions fulfilled the criteria laid down by Venezuelan law, and that none of the detentions appear in the arrest logs of the police stations implicated.

28. As a result, they alleged the responsibility of the State of Venezuela for the breach of the right to personal liberty, laid down in Article 7 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of the persons mentioned in the previous paragraph. They also allege the violation by the State of the special obligation to protect children, set out in Article 19 of the American Convention, in relation of Article 1.1 of the same instrument, to the prejudice of Jorge, Rigoberto, Néstor Caudi and Oscar José Barrios, for not having afforded them the special measures of protection that their status as children warranted.

29. With regard to **the right to personal integrity**, the petitioners alleged the responsibility of the State of Venezuela for the breach of the right enshrined in Article 5 of the Convention, in relation to Article 1.1 of the same, to the prejudice of Jorge, Rigoberto, Néstor Caudi, Luisa del Carmen, Oscar and Elbira, all named Barrios, as well as of Gustavo and Jesús, both named Ravelo. The petitioners explained that at the point when they were illegally deprived of their liberty by state agents, the victims were threatened and subjected to the excessive use of force by the police, suffering physical and psychological injuries of such profound severity that they felt afraid of the real and imminent danger that the acts would lead to their own deaths. The petitioners also submitted that in the moments prior to his death, it is reasonable to suppose that Narciso Barrios suffered deep feelings of fear in the face of the certainty of his fatal demise.

30. The petitioners also alleged that the gaps in the investigation of these facts constituted a failure to fulfill the guarantee of the said right. With respect to the children Jorge, Rigoberto, Néstor Caudi and Oscar José Barrios, the petitioners alleged that the State of Venezuela violated the obligation of special protection for children, established in Article 19 of the Convention in conjunction with Article 1.1 of the same instrument, for not having taken the necessary precautions dictated by the superior interests of the child to safeguard their personal integrity.

31. The petitioners also alleged the State's responsibility for the violation of the right to personal integrity to the prejudice of the victims' families detailed in their briefs, due to their additional feelings of anxiety, suffering and anguish caused by the threats, intimidation, harassment, acts of aggression and crimes against the immediate family (two of them being extrajudicially executed even when protected by the provisional measures granted by the Inter-American Court), as well as due to the lack of an effective investigation into the denounced facts, the punishment and trial of those responsible, thus perpetuating the feelings of insecurity.

32. As regards **the right to life**, the petitioners alleged the State's responsibility to the prejudice of Benito Antonio, Narciso and Rigoberto Barrios for their extrajudicial executions when held in custody or under the control of state agents, by gunshots and in the midst of disproportionate acts of violence. In addition, with regard to Rigoberto and Luís Alberto Barrios, they argued that the State failed to fulfill its obligation to effectively protect them despite knowing the risks they faced from the protective measures issued by the Inter-American Commission and Court. Finally, they alleged the failure to fulfill the obligations derived from the procedural dimension of the right to life respecting Benito Antonio, Narciso, Luís and Rigoberto Barrios for the gaps in the investigation of the facts leading to their deaths.

33. With respect to Rigoberto Barrios, they alleged a breach of the same Articles for the failure to fulfill the obligations derived from procedural aspects of the right to life due to the gaps in the investigation of alleged medical malpractice as a contributing factor to his death. In relation to this point, they indicated that the State failed in its duty of supervision, control, and regulation of the provision of health services, so that third parties were able to interfere unduly in the said public interest. Additionally, they alleged the State's responsibility for a violation of **the obligation of special protection for children** established in Article 19 of the American Convention to the prejudice of Rigoberto Barrios, for not having taken the necessary precautions dictated by the superior interests of the child to save his life.

34. With regard to **the right to property**, the petitioners alleged that the raids on the homes of various members of the Barrios family - Luís, Oneida, Justina and Elbira – and the destruction of goods found there, including the arson attacks on the homes themselves, were carried out by police agents, without the authority of a judicial warrant prior to the raids nor any case of *in flagrante* offenses which might justify their entering the homes without a warrant. They also indicated that these acts included the theft of goods which were not returned. Their confiscation was not justified by the respective authorities. They argued that this situation implies that in no case did the respective authorities allege beforehand the existence of a public interest or an overriding social interest that might justify the measures taken, nor their extremely violent nature. They added that the perpetrators have not been investigated, arrested, tried or punished.

35. With regard to the right to judicial guarantees and judicial protection, the petitioners alleged the denial of justice on the part of the State of Venezuela with respect to Benito Antonio, Narciso, Luís, Oneida, Justina, Jorge, Rigoberto, Néstor Caudi, Luisa del Carmen, Oscar and Elbira Barrios, as well as to Gustavo and Jesús Ravelo for the lack of a diligent and effective investigation of the violations of human rights committed against them, specifically: the extrajudicial execution of Benito Antonio Barrios; the extrajudicial execution of Narciso Barrios; the murder of Luís Alberto Barrios; the raids and theft of goods belonging to Justina, Luís, Elbira and Brígida Oneida Barrios; the illegal arrest and mistreatment suffered by Jorge and Rigoberto Barrios; the acts of intimidation and death threats suffered by Néstor Caudi Barrios; the interception of the vehicle carrying Jesús Ravelo, Gustavo Ravelo, Luisa del Carmen Barrios, Elbira Barrios, Oscar José Barrios and Jorge Antonio Barrios and the subsequent acts of aggression and deprivation of liberty committed by agents of the State; and the attempt against, and later death of, the child Rigoberto Barrios.

36. In all these cases, the petitioners identified a number of omissions that, in their view, had amounted to irregularities in the procedures and contributed to a perpetuation of impunity. The petitioners stated in detail the criminal investigations and the present state of each one of them, stressing that none had led to a clarification of the facts and the punishment of those responsible. All in all, they argued that the existing judicial process (formal complaint to the authorities) has been useless and ineffective in producing the desired outcome, that is, a clarification of the facts, the singling out of all those responsible, as well as punishment and reparations. They concluded that all this translates to a total denial of access to justice.

37. As regards **the right to free movement and residence**, the petitioners allege the responsibility of the State of Venezuela, to the prejudice of Justina, Eloisa, Elbira, Maritza, Brígida Oneida, Inés Josefina, Luisa del Carmen, all named Barrios, Orismar Carolina Alzul (Luis Barrios' widow), Dalila Ordalys Ortúñoz (Benito Antonio Barrios' widow), Juncis Rangel (Narciso Barrios' widow) together with their sons, daughters and partners; Juan Barrios and Pablo Solórzano, with his sons and their partners, for not having provided them with minimum levels of security so they could travel and reside freely in the town of Guanayen, resulting in their forced displacement to other cities in order to protect their personal integrity after the extrajudicial executions, arbitrary detentions, violence, threats, intimidation and other acts of violence of which the Barrios family have been victims. They also argue the State's responsibility for not having guaranteed minimum subsistence levels when some of the family members returned to the town of Guanayen.

38. In their last brief, received on February 16, 2010, the petitioners provided information on Oscar José Barrios' death, on November 28, 2009, indicating that it resulted from lack of protection despite being a beneficiary of provisional measures.

39. On this occasion, the petitioners argued that three members of the Barrios family were killed when already under the protection of measures granted by the Inter-American system. They alleged that the State's responsibility extends not only to their right to life "but, in addition, other rights which the American Convention itself grants the individual, such as the right to petition." Specifically, the petitioners indicated that following the jurisprudence of the European Court of Human Rights, the failure to implement measures of protection violated the procedural right to present petitions before the Inter-American system enshrined in Article 44 of the American Convention, to the prejudice of Luís, Rigoberto and Oscar José Barrios.

## B. The State

40. The State of Venezuela failed to submit in its briefs an official version of any one of the facts alleged by the petitioners. It submitted general information on the status of some of the investigations ongoing internally with respect to such facts, and on proceedings undertaken. The details on these proceedings will be incorporated into the Commission's analysis section.

41. The State raised the argument of lack of exhaustion of domestic remedies for the first time at the merits stage, indicating that the petition had been admitted in error. In its arguments, it indicated that the competent bodies had undertaken serious and impartial investigations to clarify the facts; and that they had issued the corresponding conclusive acts, and that the victims had failed to initiate the corresponding legal actions either to join the conclusive acts presented by the Public Prosecutor, or to lodge appeals against them.

42. The State stressed that each investigation had produced various conclusive acts and the start of an oral and public trial. It added that even when the perpetrators have not been punished, sanctions could not be imposed without considering the necessary evidence, "simply to find someone guilty."

43. The State also presented arguments relating to the inappropriateness of the Commission's consolidating the cases. Specifically, it indicated that the case on Benito Antonio Barrios' death in 1998 was mistakenly consolidated with the petition initially relating to the death of Narciso Barrios, since they deal with separate facts without any temporal or spatial connection.

44. In relation to the death of Benito Antonio and Narciso Barrios, the State emphasized that officials of the police of the state of Argagua were accused of causing both and that the accusations were based on the crime of homicide. In its submissions, the State recognized that the

preliminary hearings and trials have been repeatedly postponed and that it has not been possible to complete that stage of the proceedings. The State pointed out that a large number of complaints had been received against Benito Antonio Barrios for the alleged commission of crimes against individuals, security and public order, and that he also had prior criminal convictions, a police record and that he had signed written undertakings. The State stressed that individuals in the community had demanded that the authorities do something to curb his criminal activities. The State added that Luís and Narciso Barrios were also the object of these complaints.

45. The State mentioned that the authorities have acted diligently in the different internal procedures and that a certain amount of time was required to study and elaborate on the evidence necessary.

46. In addition, and in reference to the proceedings that were ordered to be archived by the Public Prosecutor, the State stressed that the decision did not imply the definitive closure of proceedings and - in accordance with the relevant provisions of the Basic Code of Criminal Procedure (hereinafter the "BCCP") - the investigations may be reopened when new evidence is presented. The State indicated that archiving applies whenever elements directed at identifying those responsible cannot be gleaned from the available evidence. It also added that when the archiving was ordered, the victims were notified and they could then have requested the file be reopened (as mentioned) as well as to go before a judge to request that the basis for the measure be examined.

47. With respect to the petitioners' allegation that they had to push for the proceedings relating to the production of evidence, the State argued that whenever the victims request the production of evidence it is up to the Public Prosecutor to determine whether such evidence is relevant and useful and in those cases where it is not, it must be put on record pursuant to Article 305 of the BCCP.

48. As regards the arguments relating to the failure to fulfill the legal time periods, the State submitted that Venezuelan law on criminal procedure does not set a time limit to identify those responsible and that the six months established in Article 313 BCCP only apply once the suspects have been identified, in order that a conclusive act can be issued. They added that the rule referred to contains an exception to the application of the said time limit when crimes against humanity or in the area of human rights are involved, as in the present case in accordance with the allegations of the petitioners themselves.

49. In relation to the alleged threats and acts of violence, the State indicated that the protective measures were effective, since the said acts had ceased since 2005, after the death of Rigoberto Barrios.

50. The State mentioned that during 2005 and 2006, the Ministry of Popular Power for Internal Relations and Justice started to monitor the Police Force of Aragua, in view of the numerous complaints alleging unlawful activities. Specifically, during 2005, the state authorities commenced a process of purging of the security forces, resulting in dismissals and removals from office. It also indicated that during 2006, a review of the stock of weapons was undertaken in order to create a database of bullet patterns of each gun carried by the officials. The results of the inspection were submitted to the Public Prosecutor so that any relevant investigations could be initiated. In view of the foregoing, the State indicated that "it is impractical to allege that due to the acts of intimidation of 2004 and 2005, the families that moved to other areas were not able to return to their homes."

## **IV. ANALYSIS OF FACT AND LAW**

### **A. General Considerations**

51. The Commission observes that, according to the petitioners, the facts of the present case fall within a background of persecution against the Barrios family that in turn reflects a more general context of extrajudicial executions in Venezuela, under observation by the Commission for several years by different means. In addition, the Commission considers it necessary to make some preliminary observations about the Barrios family, both in general and in context, in order to have a more complete understanding of the facts.

#### **1. The Barrios Family**

52. During proceedings before the Commission as well as the precautionary and provisional measures, the parties have referred to a large number of members of the Barrios family, which consists of four generations. The Barrios family tree is the annex of this report.

53. In order to establish the inter-relationships between family members throughout the whole report, the Commission built and will refer primarily to this family tree that is based on the available documentation of both parties and the information supplied by the petitioners about their respective family ties. The State has not objected to this information. Finally, the Commission notes that the parties had presented the names with different writing and, therefore, the Commission considers as final version the names mentioned by petitioners in their last communication.

#### **2. The Context of Extrajudicial Executions in Venezuela**

54. Taking into account that among the facts of the case are the deaths of five individuals, allegedly at the hands of state security agents of the state of Aragua, the Commission finds it necessary to explain the characteristics of this issue of extrajudicial executions in Venezuela.

##### **2.1 International sources**

###### **2.1.1 International authorities**

55. During the *in loco* visit conducted by the Inter-American Commission in that country in 2002, it was possible to confirm the existence of patterns of extrajudicial executions committed by state police officers and/or by para-police or "extermination" groups acting with the acquiescence or collaboration of police officers.<sup>4</sup>

56. In certain cases, the pattern consists on executions perpetrated during faked confrontations in routine procedures, either in detention operations or raids. In these cases, the victim is murdered at the place where the operation takes place with the police officers alleging that the death occurred during a confrontation with an attacker.<sup>5</sup> In other cases, the executions occur once the victims have been illegally or arbitrarily detained and take place under state custody. In other circumstances, they take place after illegal searches by hooded or unidentified persons who then proceed to kill the victims.

<sup>4</sup> IACtHR, *Report on the Situation of Human Rights in Venezuela*, 2003, paragraphs 321-343.

<sup>5</sup> IACtHR, *Report on the Situation of Human Rights in Venezuela*, 2003, paragraph 333. Citing: COFAVIC/Venezuela, Democracy and Human Rights, Bi-annual Report: January-August 2002. See also: PROVEA, Annual Report No 14, Caracas, Venezuela; COFAVIC/Parapolice Groups in Venezuela, 2005, pages 29 to 33; Human Rights Watch, Annual Reports 1998 and 1999.

57. In its recent report on Democracy and Human Rights in Venezuela, approved on December 30, 2009, the Inter-American Commission referred to information provided by the State relating to the context of extrajudicial executions in the following terms:

Neither did the State answer the request for information on the annual figures for deaths occurring in confrontations with the police over the past five years, although it did report that figures from the Attorney General's Office indicate that during 2008, a total of 509 killings occurred during confrontations or *ajusticiamientos*. (In Venezuela, arbitrary denials of the right to life through extrajudicial killings are generally known as "ajusticiamientos").

[...]

The State acknowledges that a preponderance of the reported extrajudicial killings and forced disappearances involve the police, chiefly state and municipal police forces, and it explains that these phenomena are the result of the structural problems that the Venezuelan State, along with other sister countries in the Latin American region, have faced for years. According to the State, in spite of its resolve to continue improving mechanisms and actions to uphold the right to life and physical integrity, certain practices that violate or undermine human rights still remain common in certain state agencies, including the police.<sup>6</sup>

58. The United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions reported in several occasions on the complaints received regarding extrajudicial executions committed in Venezuela by the security forces, as well as the threats made against the victims' families in order to avoid complaints.<sup>7</sup>

59. For its part, in its final observations on Venezuela of April 26, 2001, the Committee on Human Rights stated its grave concern for "the numerous complaints of extrajudicial executions and the State's failure to respond to them".<sup>8</sup>

### **2.1.2 Non governmental organizations**

60. Since 1993, Human Rights Watch has also referred to the above recurrent practice in its Annual Reports. In its last report corresponding to 2009, it stated,

In Venezuela [...] extrajudicial executions by the security forces continue to be a recurrent practice. In the last decade, thousands of extrajudicial executions have been recorded. In 2009, the Public Prosecutor presented a complaint indicating that up until 2008 investigations were undertaken in 6,422 cases of violations of human rights by the police, leading to the prosecution of 463 policemen.<sup>9</sup>

61. In a similar sense, in a publication in 2000, Amnesty International stated that it still had serious concerns over the "recent extrajudicial executions" committed by the security forces of the State, and reported that

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<sup>6</sup> IACtHR, *Report on the Situation of Human Rights in Venezuela*, 2003, paragraphs 739 and 740.

<sup>7</sup> United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: E-CN.4-1994-7; E/CN.4/1998/68/Add.1; E/CN.4/1999/39/Add.1; E/CN.4/2001/9/Add.1; E/CN.4/2003/3/Add.1; E/CN.4/2004/7/Add.1. Reports to the General Assembly of the United Nations, see A/55/288, of August 11, 2000: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/604/84/PDF/N0060484.pdf?OpenElement>.

<sup>8</sup> See: <http://www.acnur.org/biblioteca/pdf/1373.pdf>

<sup>9</sup> See: <http://www.hrw.org/es/world-report-2010/venezuela-0>

in recent years, [...], Amnesty International has received dozens of reports of people dying at the hands of the security forces in circumstances suggesting that they were victims of extrajudicial executions.

The police heads the statistics of those responsible for possible extrajudicial executions, but responsibility was also attributed to the army in several cases. Such incidents have hardly ever been exhaustively investigated and only in a very few cases have those responsible been brought to trial.<sup>10</sup>

62. In its 2008 Annual Report it also reported that up until the end of 2007, none of the recommendations made by the National Commission for Police Reforms had been implemented. Among these were the adoption of measures to improve police responsibility, human rights training and the use of force and the regulation and control of the weapons used by the security forces, etc.<sup>11</sup>

## 2.2 National sources

### 2.2.1 National authorities

63. This situation has also been recognized by state agencies such as the Ombudsman and the General Prosecutor of the Republic.

64. In its 2001 Annual Report, the Ombudsman indicated that

Among the patterns where a person is deprived of his or her life in an arbitrary manner, the practice of extrajudicial executions, known as *ajusticiamiento*, was recurrent throughout the period of this Annual Report. This term refers to the conduct of agents authorized by law to use force and firearms that has the purpose and intent of causing death.

The situation analyzed here presupposes tendencies permitting the inference of the permanent existence of illegal police practices, resulting in the establishment of a *de facto* death penalty, and which infringes at the same time the fundamental right to life, the values of justice, solidarity and respect towards the individual.

We have identified three elements that favor impunity. The first is the acceptance of the discourse on police confrontations by the organs charged with law enforcement and the citizenry itself, leading to no relevant criminal investigations being undertaken. The second element that protects impunity is the discretionary use of much of the mass media in the states affected by this phenomenon, which present the facts as an effective tool to combat the high levels of insecurity. Lastly, another of the reasons favoring impunity is the general lack of awareness on the part of the citizens of their rights and guarantees, as well as the means to vindicate them.<sup>12</sup>

65. For its part, when presenting the 2005 Annual Report to the National Assembly, the General Prosecutor of the Republic indicated that between 2000 and 2005, the number of victims of killings perpetrated by the State security forces was 6,377, with a total of 6,100 policemen

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<sup>10</sup> Amnesty International. Venezuela. PROTECTING HUMAN RIGHTS - THE TASK IS NOT YET OVER. Available at <http://www.amnesty.org/en/library/asset/AMR53/008/2000/en/f766fc23-de0f-11dd-a3e1-93acb0aa12d8/amr530082000en.pdf>

<sup>11</sup>

Amnesty

International.

Annual

Report.

<http://www.unhcr.org/refworld/country,COI,AMNESTY,ANNUALREPORT,VEN,,483e27bd3c,0.html>.

<sup>12</sup> Ombudsman of Venezuela. Report: '*Ajusticiamientos*' and Forced Disappearances. Yearbook 2001. Available at <http://www.defensoria.gob.ve/lista.asp?sec=1404080002>.

implicated. Of these cases, 3,346 were killings allegedly committed by the police of the states, 1,198 by agents of the Corps of Scientific, Penal and Criminal Investigations (hereinafter "CSPCI"), 706 by the municipal police, 140 by members of the National Guard, and 72 by members of the Directorate of Intelligence and Prevention Services (DISIP).<sup>13</sup>

## 2.2.2 Non governmental organizations

66. For more than a decade, the organizations of civil society in Venezuela have also denounced the existence of this problem.

67. For example, PROVEA, in its 1999 Annual Report stated: "With regard to the patterns of violations of the right to life present in the actions of the police and security services, executions were again the pattern under which the largest number of victims were reported, with a total of 59 cases. [...] The definition of execution includes the executions where the state agent shoots with the purpose of causing the immediate death of the victim, which is a *de facto* application of the death penalty. In these cases it is usual - as has already been mentioned - that the official version of events speak of a confrontation and the extensive criminal records of the victims. In the vast majority of cases, the family members deny such confrontations afterwards".<sup>14</sup>

68. In its more recent reports, PROVEA indicated that extrajudicial executions make up the highest number of violations of the right to life in Venezuela. Again, in the 2007-2008 Annual Report, it noted that of the 247 victims of a violation of the right to life, 196 (84.85%) were due to extrajudicial executions.<sup>15</sup> In the 2009 Annual Report it also indicated that the pattern of "executions" makes up more than half of all known deaths as violations of the right to life (135 deaths out of 205, 65.85% in total).<sup>16</sup>

69. Regarding the incidence of this context in the state of Aragua, in its 1997 Annual Report PROVEA indicated that the State of Aragua has been singled out as the state with the highest number of extrajudicial executions committed in Venezuela, with more than 20 complaints in that year.

70. Additionally, the Commission of Human Rights, Justice and Peace of Aragua in its report *Balance of the Situation of Human Rights in the State of Aragua between June 1996 and March 2003*, indicates that alleging "citizen insecurity", preventative plans have been made aimed at the detection, detention and retention of citizens suspected of criminal behavior. After this they were more thoroughly looked for with the purpose of a killing or a forced disappearance.<sup>17</sup>

71. Specifically, this report indicates that, initially, citizens already identified by subjective characteristics are looked for: "commonly it is aimed at low income groups [...] they detain those allegedly involved without implementing the relevant measures demanded by the officer's function, and they shoot directly at the individuals allegedly caught *in flagrante* committing a crime. Or, on being detained, they are treated brutally, with blows [...] and in many cases shot at close range in the presence of witnesses. They are taken to the police unit wounded, after which

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<sup>13</sup> Speech of the General Prosecutor of the Republic on occasion of the release of the Annual Report of 2005. April 25, 2006.

<sup>14</sup> PROVEA. Available at: [http://www.derechos.org.ve/publicaciones/infannual/1996\\_97/derecho\\_vida.htm](http://www.derechos.org.ve/publicaciones/infannual/1996_97/derecho_vida.htm).

<sup>15</sup> PROVEA. Available at: <http://www.derechos.org.ve/proveaweb/wp-content/uploads/132-vida1.pdf>

<sup>16</sup> PROVEA. Available at: <http://www.derechos.org.ve/proveaweb/wp-content/uploads/20-vida.pdf>

<sup>17</sup> Balance of the Situation of Human Rights in the State of Aragua between July 1996 and March 2003, prepared by the Commission of Human Rights, Justice and Peace of the State of Aragua

they then turn up murdered in some abandoned area or admitted to a hospital or medical centre with no signs of life."<sup>18</sup>

### **3. The Existence of a Pattern of Persecution against the Barrios Family**

72. A comprehensive analysis of the information contained in the file shows that the majority of the events described appear to be interrelated, and that they form part of a context of persecution against the Barrios family that has had consequences on all its members, and has consistently involved members of the police of the State of Aragua.

73. In effect, five members of the Barrios family have been murdered since 1998. Several of these murders were preceded by threats and physical injuries against the victims; the said acts have continued against other family members, especially those who witnessed the above facts or who dared to file complaints on them. The most recent acts committed against the Barrios family - in particular, the murder of Oscar José Barrios on November 28, 2009 - show that this situation continues up to the present. The investigations into the facts also have similar characteristics. The only two investigations that have proceeded with an indictment of those responsible have lingered for several years in the trial stage with no progress whatsoever, while others have either been archived or remain in the preliminary stages. This entire situation has led to a lack of protection and defenselessness for the Barrios family for more than a decade.

74. The Commission highlights that an important number of facts have occurred since the beginning of both the Commission's as well as the Inter-American Court's involvement through the precautionary and provisional measures granted, respectively, in 2004.

75. Taking into account that the Inter-American Commission decided to consolidate the allegations of fact in the present case on the ground that their development showed a connection, the IACHR will undertake the analysis of fact and law based on the chronological evolution of the situation starting in the following order: 1) the rights to life, personal integrity and personal liberty with respect to Benito Antonio Barrios for the facts of August 28, 1998; 2) the rights to a private and family life, and private property with respect to Justina Barrios, Elbira Barrios, Luís Alberto Barrios, Orismar Carolina Alzul and Brígida Oneida Barrios for the facts occurred between November 28 and November 30, 2003; 3) the right to life with respect to Narciso Barrios for the facts of December 11, 2003; 4) the rights to personal liberty, personal integrity and special protection of children with respect to Rigoberto Barrios and Jorge Antonio Barrios for the facts of March 3, 2004; 5) the rights to personal integrity, personal freedom and special protection of children respecting Néstor Caudi Barrios and Oscar José Barrios for various alleged facts between May 26, 2004, and June 18, 2005; 6) the rights to personal liberty and integrity with respect to Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios and Jorge Antonio Barrios; and the right to special protection of children respecting Oscar José Barrios and Jorge Antonio Barrios for the facts of June 19, 2004; 7) the right to life with respect to Luís Alberto Barrios for the facts of September 20, 2004; 8) the rights to personal liberty, life, personal integrity and special protection for children with respect to Rigoberto Barrios for the facts occurring between February 9, 2005, and February 20, 2005; 9) the right to life respecting Oscar José Barrios for the facts of November 28, 2009; 10) the rights to freedom of movement and residence and special protection for children respecting various members of the Barrios family; 11) the right to personal integrity with respect to the Barrios family; and 12) the rights to judicial guarantees and judicial protection with respect to various members of the Barrios family. In each one of these sections the Commission

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<sup>18</sup> Balance of the Situation of Human Rights in the State of Aragua between July 1996 and March 2003, prepared by the Commission of Human Rights, Justice and Peace of the State of Aragua.

will describe the facts which it considers to be proved and will proceed to evaluate them in the light of the relevant provisions of the American Convention.

### C. Specific Rights

76. The Commission recalls that in the Inter-American procedure the assessment of evidence has greater flexibility than in the national legal systems. This is because the object of the analysis is not the determination of criminal liability of those responsible for the violations of human rights, but the international responsibility of the State for the actions and omissions of its organs. Precisely because of the nature of certain violations of human rights, the Commission and the Court evaluate the sum of the evidence at their disposal, taking into consideration rules on the burden of proof according to the circumstances of the case. This leads on many occasions to logical inferences, presumptions and to the determination of facts from the body of evidence and with reference to more general contexts.

#### 1. The Rights to Life<sup>19</sup>, Personal Integrity<sup>20</sup> and Personal Liberty<sup>21</sup> with respect to Benito Antonio Barrios for the Events of August 28, 1998

##### 1.1 The Facts

77. Benito Antonio Barrios was born on August 14, 1969.<sup>22</sup> The available information indicates that his life partner was Dalila Ordalys Ortúñoz,<sup>23</sup> with whom he had two sons,<sup>24</sup> Jorge Antonio Barrios Ortúñoz, born on July 12, 1988,<sup>25</sup> and Carlos Alberto Ortúñoz, born on October 22, 1991.<sup>26</sup>

78. On August 28, 1998, at the age of 28, Benito Antonio Barrios was admitted to the care center known as Ambulatory Care of Barbacoa, without signs of life. He had gunshot wounds in the right side of his chest and in the right epigastric area.<sup>27</sup> Members of the "uniformed police of

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<sup>19</sup> Article 4.1 of the American Convention states that: 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

<sup>20</sup> Articles 5.1 and 5.2 of the American Convention state 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>21</sup> Articles 7.1 – 7.5 of the American Convention state 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 prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

<sup>22</sup> Identity Document of Benito Antonio Barrios (Annex 3 to the Petitioners' Brief of December 4, 2009).

<sup>23</sup> Identity Document of Dalila Ordalys Ortúñoz (Annex 4 to the Petitioners' Brief of December 4, 2009).

<sup>24</sup> Death Certificate of Benito Antonio Barrios, issued on October 3, 2005 by the Civil Registry (Annex 1 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005).

<sup>25</sup> Identity Document of Jorge Antonio Barrios Ortúñoz (Annex 3 to the Petitioners' Brief of December 4, 2009).

<sup>26</sup> Identity Document of Carlos Alberto Ortúñoz (Annex 3 to the Petitioners' Brief of December 4, 2009).

<sup>27</sup> Transcription of report issued by the Judicial Police Technical Body of August 28, 1998 (Annex to the Petitioners' Brief of November 14, 2007); and Death Certificate of Benito Antonio Barrios, issued on October 3, 2005 by the Civil Registry (Annex 1 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005).

the area" took him to the care center.<sup>28</sup> According to the death certificate, he died as a consequence of acute blood loss, hemotorax, and a bullet wound.<sup>29</sup>

79. In accordance with the witness statements of various family members, the acts that preceded the murder of Benito Antonio Barrios began on the same day, August 28, 1998, when he was at home with his two sons, Jorge Antonio Barrios y Carlos Alberto Ortúño. According to declarations, his brother Luís Alberto Barrios was also there. In the early hours of the morning, a group of between four and seven policemen of the State of Aragua entered his home and, while hitting him violently, took Benito Antonio Barrios away under arrest. While these acts were unfolding, Jorge Antonio Barrios ran to the house of his grandmother, Justina Barrios, to tell her what was happening, when his cousin Víctor Daniel Cabrera Barrios who happened to be there went to the place of the acts. He was able to see when they were taking away his uncle Benito Antonio Barrios in a patrol car. The next day, his relatives took knowledge that Benito Antonio Barrios died as a consequence of bullet wounds<sup>30</sup>. In general terms, this account is consistent with the evidence presented by the petitioners in the context of the constitutional amparo procedure in 2005.<sup>31</sup> Also the accusation made on April 17, 2007 by the Prosecutor for the Transitory Regime maintained that Benito Antonio Barrios was arrested at his home by a police commission and that the events cannot be justified as a case of confrontation.<sup>32</sup>

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<sup>28</sup> Police Report of the Judicial Police Technical Body of August 28, 1998 (Annexed to the Petitioners' Brief of November 14, 2007).

<sup>29</sup> Death Certificate of Benito Antonio Barrios, issued on October 3, 2005 by the Civil Registry (Annex 1 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005).

<sup>30</sup> Statement of Eloisa Barrios before the Judicial Police Technical Body on January 26, 1999 (Annex to Petitioners' Brief of November 14, 2007). In this statement, Eloisa Barrios indicated that on August 28, 1998, her mother, Justina Barrios, told her that Benito Barrios had been arrested and afterwards her sister, Maritza Barrios, told her that they had killed him with two shots in his body. She added that she went to see her brother's body and there were signs of it being beaten and "dragged through the mud". As indicated Benito Barrios' two sons, Jorge Antonio and Carlos Alberto, were present.

Statement of Jorge Antonio Barrios before the Judicial Police Technical Body on January 27, 1999 (Annex to Petitioners' Brief of November 14, 2007). In this statement, Jorge Antonio Barrios indicated that he was at home with his father and brother, all asleep, when the police arrived and handcuffed his father while hitting him and butting him on the head, so he saw him all bloodied. He stated that a policeman covered his mouth with his hand but when they "released" him, he ran off to tell his grandmother what had happened, but when they returned home they had already taken his father away. His mother, Odalis Ortúño, informed him the next day that they had killed his father. He stated that when went to his grandmother's house to tell her what was happening, his uncle Juan Barrios, his cousin Victor and his grandmother Justina Barrios were there.

Statement of Víctor Daniel Cabrera Barrios before the Judicial Police Technical Body on February 25, 1999 (Annex to Petitioners' Brief of November 14, 2007). The copy that appears in the file of the case before the Commission is incomplete. In this statement, Víctor Daniel Cabrera Barrios indicated that when he was at his grandmother's house, his cousins Jorge Antonio and Carlos Alberto arrived to tell them that policemen had entered their father's ranch and were hitting him. When trying to follow what was happening, the witness saw his uncle being introduced into a police patrol car identified with the badge of the Police of the State of Aragua. He added that the next day he learnt his uncle was dead.

These three statements were repeated at a later stage of the proceedings. See: Interview with Eloisa Barrios before the CICPC of January 5, 2006 (Annex to Petitioners' Brief of November 14, 2007); Interview with Víctor Daniel Cabrera Barrios before the CICPC of January 5, 2006 (Annex to Petitioners' Brief of November 14, 2007); Interview with Jorge Antonio Barrios before the CICPC of January 5, 2006 (Annex to Petitioners' Brief of November 14, 2007); the interview transcription of Víctor Daniel Cabrera Barrios was illegible.

<sup>31</sup> Lodging of an amparo on June 16, 2004 (Annex 3 of the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); Decision of the Appeal Court of the Criminal Judicial Circuit of the State of Aragua of August 26, 2005 (Annex 1 of the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); Communication presented in the Office of Alguacilazgo on June 28, 2005 (Annex 3 of the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); Lodging of an appeal on June 28, 2005 (Annex 3 of the initial petition on Benito Barrios and his next of kin presented on December 30, 2005).

<sup>32</sup> Accusation of April 17, 2007 by the Public Prosecutor for the Interim Regime of (Annex to the Petitioners' brief on April 17, 2007). This conclusive act describes the steps in the investigation and indicates that Benito Barrios was taken from his home by policemen assigned to the Police Force of Barbacoas of CSOP of the State of Aragua, who killed him. It

80. For their part, during the proceedings, the four policemen have maintained that after the call informing that two men were involved in a shooting in the Las Casitas sector of the Parroquia San Francisco de Cara, a commission from the Police Command of Barbacoa had a confrontation with Benito Antonio Barrios on August 28, 1998, who attacked the agents with several gunshots. According to this version of the event, Benito Antonio Barrios was wounded in the chest, after which he was transported to the ambulatory center, where he died<sup>33</sup>.

81. As will be addressed in more detail below, there is still no judicial version of the facts in the proceedings before the domestic courts where the alleged illegal conduct of Benito Antonio Barrios was particularly considered.

## 1.2 Considerations of the Commission

82. The Inter-American Court has indicated that, pursuant to Article 7.1 of the Convention, the protection of liberty safeguards "both the individuals' physical liberty and their personal safety, in a context in which the lack of guarantees may result in the subversion of the rule of law and the deprivation of the minimum forms of legal protection for the detainees."<sup>34</sup>

83. The Commission recalls that, according to the case law of the Inter-American Court, once it is proved that the deprivation of liberty was a step prior to the execution or disappearance of the victims, in order to establish the violation of the personal liberty, it is unnecessary to determine whether the alleged victims were informed of the reasons for their arrest; nor whether this was outside the reasons and conditions set out in the legislation in force at the time of the acts, nor if the arrest was unreasonable, unpredictable or lacking in proportionality.<sup>35</sup>

84. In regard to the duty to guarantee the right to personal liberty, the Court has emphasized that the State must ensure that the individuals' liberty is not compromised by the actions of state agents or third parties, and must investigate and punish acts which violate this particular right.<sup>36</sup>

85. As regards the rights enshrined in Articles 5.1 and 5.2 of the Convention, the Court has consistently pointed out that "International Human Rights Law strictly prohibits torture and cruel, inhuman, or degrading punishment or treatment. The absolute prohibition of torture, both physical and psychological, is currently part of the domain of the international *jus cogens*. Said prohibition remains valid even under the most difficult circumstances, such as war, threat of war, the fight against terrorism and other crimes, state of siege, or a state of emergency, civil

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also shows that the bullet removed from Benito Barrios' body did not match those of the guns used by the policemen and none of them were injured, so it is impossible to state that their actions were justified.

<sup>33</sup> Police reports of the Judicial Police Technical Body [of August 28, 1998 (Annex to the petitioners' brief of November 14, 2007); Statement of Alexis José Amador Mujica before the Judicial Police Technical Body, of September 2, 1998 (Annex to the petitioners' brief of November 14, 2007); Statement of Amilcar José Henríquez Cedeno before the Judicial Police Technical Body, of September 2, 1998 (Annex to the petitioners' brief of November 14, 2007); Statement of Carlos Alberto Sandoval Valor before the Judicial Police Technical Body, of September 2, 1998 (Annex to the petitioners' brief of November 14, 2007); and Statement of Rizzon Vicente Rojas before the Judicial Police Technical Body [of September 2, 1998 (Annex to the petitioners' brief of November 14, 2007).

<sup>34</sup> I/A Court HR, *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, paragraph 104; *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, paragraph 56; *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 97; and *Case of the Gómez Paquiyaurí brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 82.

<sup>35</sup> I/A Court HR, *Case La Cantuta*. Judgment of November 29, 2006, Series C No. 162. paragraph 109.

<sup>36</sup> I/A Court HR, *Case González and others "Campo algodonero"*. Judgment of November 16, 2009, paragraph 297.

commotion or domestic conflict, suspension of constitutional guarantees, domestic political instability or other public emergencies or catastrophes."<sup>37</sup>

86. The Court has also indicated that universal and regional treaties also enshrine this prohibition and the non-derogable right not to be tortured. Numerous international instruments also consecrate this right and repeat the same prohibition, also under international humanitarian law.<sup>38</sup>

87. Regarding the undertaking to ensure Article 5 of the American Convention, the Court has established that it involves the State's duty to investigate possible acts of torture or other cruel, inhuman or degrading treatment.<sup>39</sup> The Court has also emphasized that

in the light of the general obligation to guarantee all persons under their jurisdiction the human rights enshrined in the Convention, established in Article 1(1) of the same, along with the right to humane treatment pursuant to Article 5 (Right to Humane Treatment) of said treaty, there is a state obligation to start ex officio and immediately an effective investigation that allows it to identify, prosecute, and punish the responsible parties, when there is an accusation or well-grounded reason to believe that an act of torture has been committed.<sup>40</sup>

88. As regards the right to life, the Inter-American Court has consistently held that it is a fundamental human right, whose full enjoyment is a prerequisite to the enjoyment of all the other human rights.<sup>41</sup> The Court has also said that States have the obligation to ensure the creation of the conditions necessary to avoid the violation of this inalienable right, as well as the duty to

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<sup>37</sup> I/A Court HR, *Case Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164. paragraph 76; I/A Court HR, *Case Penal Miguel Castro Castro*. Judgment of November 25, 2006. Series C No. 160. paragraph 271; and I/A Court HR, *Case Baldeón García*. Judgment of April 6, 2006. Series C No. 147. paragraph 117.

<sup>38</sup> I/A Court HR, *Case Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164. paragraph 77. Citing: International Covenant on Civil and Political Rights, Art.7; Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Art.2; Convention on the Rights of the Child, Art.37, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, Art.10; Inter-American Convention to Prevent and Punish Torture, Art.2; African Charter on Human and Peoples' Rights, Art.5; African Charter on the Rights and Welfare of the Child, Art.16; Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women (Convention of Belém do Pará), Art. 4, and European Convention for the Protection of Human Rights and Fundamental Freedoms, Art.3; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 6; Code of Conduct for Law Enforcement Officials, Art.5; United Nations Rules for the Protection of Juveniles Deprived of their Liberty, Rule 87(a); Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live, Art.6; United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Rule 17.3; Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Art.4, and Guidelines of the Committee of Ministers of the Council of Europe on Human Rights and the Fight Against Terrorism, Guideline 4; and Common Art.3 to the four Geneva Conventions; Convention (III) relative to the Treatment of Prisoners of War, Arts. 49, 52, 87 and 89, 97; Convention (IV) relative to the Protection of Civilian Persons in Time of War, Arts. 49, 52, 95, 96, 100 and 119; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), Art.75.2.ii and Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), Art.4.2.a.

It is worth to mention that Venezuela is a party of the international treaties listed in this foot note, with the exception of those regional different from the Inter – American System.

<sup>39</sup> I/A Court HR, *Case Escué Zapata Vs. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165. paragraph 73; I/A Court HR, *Case Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164. paragraph 88.

<sup>40</sup> I/A Court HR, *Case Escué Zapata Vs. Colombia*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165. paragraph 74; I/A Court HR, *Case Baldeón García*. Judgment of April 6, 2006. Series C No. 147. paragraph 117 and paragraph 156; and I/A Court HR, *Case Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164. paragraph 89.

<sup>41</sup> I/A Court HR, *Case Zambrano Vélez and others Vs. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. paragraph 78; I/A Court HR, *Case of the "Niños de la Calle" (Villagrán Morales and others)*. Judgment of November 19, 1999. Series C No. 63. paragraph 144.

prevent its agents, or individuals, from violating it.<sup>42</sup> According to the Court, the object and purpose of the Convention, as an instrument for the protection of the human individual, require that the right to life be interpreted and applied in such a way that its protection is practical and effective (*effet utile*).<sup>43</sup>

89. As the Court has repeatedly asserted in its case-law that "compliance with the duties imposed by Article 4 of the American Convention, in conjunction with Article 1(1) thereof, does not only presuppose that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction."<sup>44</sup> Thus the Court held:

States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals; and guarantee the right to unimpeded access to conditions for a dignified life. Especially, States must see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.<sup>45</sup>

90. The Commission considers it necessary to remind at this point the relevant international standards on the use of force by state security bodies.

91. The IACtHR has indicated that even when the State has the right and the obligation to offer protection against threats -and thus may use lethal force on certain occasions- this capacity must be restricted to cases of strict necessity and proportionality. If it does not correspond to these principles, the lethal use of force may constitute an arbitrary deprivation of life or a summary execution. This is the same as saying that the lethal use of force must necessarily be justified by the right of the State to protect everyone's security.<sup>46</sup>

92. The Commission has also emphasized that the use of force may be justified, for example, in self-defense, or by the need to neutralize or disarm individuals involved in an armed confrontation. Nevertheless, if someone loses their life as a result of the excessive or disproportionate use of force on the part officials charged with upholding the law, this fact would equate to an arbitrary deprivation of life.<sup>47</sup>

93. In this respect, the Court has established that the use of force must be defined as exceptional, and must be planned and proportionally limited by the authorities. In this sense, the

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<sup>42</sup> I/A Court HR, *Case of the "Street Children" (Villagrán Morales and others)*. Judgment of November 19, 1999. Series C No. 63. paragraph 144.

<sup>43</sup> I/A Court HR, *Case Zambrano Vélez and others Vs. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. paragraph 79; I/A Court HR, *Case Baldeón García*. Judgment of April 6, 2006. Series C No. 147. paragraph 83.

<sup>44</sup> I/A Court HR, *Case Zambrano Vélez and others Vs. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166. paragraph 80; I/A Court HR, *Case of the "Street Children" (Villagrán Morales and others)*. Judgment of November 19, 1999. Series C No. 63. paragraph 144.

<sup>45</sup> I/A Court HR, *Case Zambrano Vélez and others Vs. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 81; I/A Court HR, *Case Montero Aranguren and others (Retén de Catia)*. Judgment of July 5, 2006. Series C No. 150. paragraph 66.

<sup>46</sup> IACtHR. Report on Terrorism and Human Rights, paragraph 88.

<sup>47</sup> IACtHR, *Case 10559, Chumbivilcas vs. Peru*, Report 1/96, March 1, 1996; IACtHR, *Case 11291, Carandiru v. Brazil*, Report 34/00, April 13, 2000, paragraphs 63, 67, 91.

Court has made it clear that the use of force, or tools of control, may only be justified when all other means of control have been tried, and have failed.<sup>48</sup>

94. According to the Court, the lethal use of force and firearms by state security agents against individuals, which must be prohibited as a general rule, is within higher level of exceptionality. Its exceptional use must be set out by law, and be interpreted strictly in a way so as to be minimized, being no more than an "absolute necessity" in relation to the force or threat that it seeks to confront.<sup>49</sup> When excessive force is used, all resulting loss of life is arbitrary.<sup>50</sup>

95. When it is alleged that as a consequence of the excessive use of force a death has occurred, the Inter-American Court has established clear rules on the burden of proof. In the words of the Tribunal:

whenever the use of force [by state agents] results in the death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability, through appropriate evidentiary elements<sup>51</sup>

96. The Court has specifically laid down that it is up to the State to prove that the state authorities tried other less lethal methods of intervention that proved to be unsuccessful, and that the reaction of the security forces was as necessary and proportional as the situation required, in particular the threat posed by the victim.<sup>52</sup>

97. The European Court of Human Rights has also detailed the contents that an effective investigation should fulfill in order to evaluate the legality of the lethal use of force. In the words of this Tribunal "the essential aim of the investigation is to ensure the effective implementation of national laws which protect the right to life and in cases involving state agents or bodies, to assure the accountability for deaths occurring under their responsibility. The investigation must be independent, open to the families of the victim, and take place within a reasonable time, effective - in the sense of being capable of reaching a determination as to whether the force used in such cases was or was not justified, or was illegal - and must allow public scrutiny of the investigation or its conclusions."<sup>53</sup>

98. The petitioners alleged in their initial complaint that what happened to Benito Antonio Barrios was symptomatic of a wider context of extrajudicial executions in Venezuela and

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<sup>48</sup> I/A Court HR, *Case Montero Aranguren and others (Retén de Catia)*. Judgment of July 5, 2006. Series C No. 150. paragraph 67.

<sup>49</sup> I/A Court HR, *Case Montero Aranguren and others (Retén de Catia)*. Judgment of July 5, 2006. Series C No. 150. paragraph 68. In a similar sense, see: ECHR, *Huohvanainen v. Finland*, 13 March 2007, no. 57389/00, paragraphs 93-94.; ECHR, *Erdogan and Others v. Turkey*, 25 April 2006, no. 19807/92, paragraph 67; ECHR, *Kakoulli v. Turkey*, 22 November 2005, no. 38595/97, paragraphs 107-108; ECHR, *McCann and Others v. the United Kingdom*, judgment of 27 September 1995, Series A no. 324, paragraphs 148-150, 194, and Code of Conduct for Law Enforcement Officials adopted by the General Assembly of United Nations, Resolution 34/169, December 17, 1979, Article 3.

<sup>50</sup> I/A Court HR, *Case Montero Aranguren and others (Retén de Catia)*. Judgment of July 5, 2006. Series C No. 150. paragraph 68. In a similar sense, see also the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, Principle 9.

<sup>51</sup> I/A Court HR, *Case Zambrano Vélez and others Vs. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 108; I/A Court HR, *Case Montero Aranguren and others (Retén de Catia)*. Judgment of July 5, 2006. Series C No. 150. paragraph 80; I/A Court HR, *Case Baldeón García*. Judgment of April 6, 2006. Series C No. 147. paragraph 117 and paragraph 120.

<sup>52</sup> I/A Court HR, *Case Zambrano Vélez and others Vs. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 108.

<sup>53</sup> ECHR. *Hugh Jordan v. the United Kingdom*, no. 24746/94, paragraphs 105-109, 4 May 2001; *Douglas-Williams v. the United Kingdom* (December), no. 56413/00, 8 January 2002.

that the acts of the case follow the same characteristic *modus operandi* of the said practice. For its part, the State of Venezuela described the version of the police force and the next of kin of Benito Antonio Barrios, pointing out that the investigations into what happened are still in progress.

99. The Commission observes that in the present case various elements are present that must be taken into account at the moment of establishing whether the State of Venezuela has violated the American Convention by what happened to Benito Antonio Barrios.

100. In the first place, there are various witness statements of the next of kin who were either present or became aware of the facts second hand. This evidence reveals a level of consistency and uniformity on the main facts, i.e., on the detention at Benito Antonio Barrios' home, on the lack of an *in flagrante* situation or a judicial order, on the commission of acts against his physical integrity during his detention, the removal of Benito Antonio Barrios from the area and the later knowledge they had of his murder. These statements, together with the evidence gathered in the investigation, led the Prosecutor in charge to the conclusion that Benito Antonio Barrios' death was preceded by his detention and could not be classified as a confrontation.

101. In the second place, the Commission observes that these facts bear all the hallmarks of the type of conduct described in the context section, including the usual profile of the victims, the official presentation of the events as a confrontation with the local police, the person's transfer to a health center with no vital signs, the description of the person as a criminal, the subsequent acts of threats and intimidation against other members of the family,<sup>54</sup> and the lack of clarity in what happened next.

102. In the third place -and directly related to this last aspect - before the lethal use of force on the part of the police, the Venezuelan authorities did not establish by internal investigation whether the said use of force was legitimate and whether it complied with the principles of legality, necessity and proportionality. All in all, they have not provided an adequate explanation as to what happened to Benito Antonio Barrios at the hands of the security forces. This point has particular relevance in Venezuela, due to the widespread problem of extrajudicial executions with certain characteristics, and brings with it a duty to investigate especially carefully the strict observance of such principles, given that the members of the security forces have used lethal force.<sup>55</sup>

103. In the fourth place, and as will be described in the following sections of the present report, the death of Benito Antonio Barrios was followed by a series of acts, not only threats and intimidation against his family members - including those who gave evidence on the facts surrounding his death - but also others of extreme seriousness such as the assassination of four more family members, one of them still a child. In the majority of these acts members of the same police force of the State of Aragua appear to be clearly implicated.

104. The Commission considers that the foregoing elements, taken together, permit the conclusion that the State of Venezuela failed in its duty to respect the rights to personal integrity, personal liberty and life of Benito Antonio Barrios due to the acts of physical violence against him, the illegal and arbitrary detention without any due process guarantees, the fear that it is reasonable to presume he felt at that moment and his subsequent extrajudicial execution at the hands of the police of the State of Aragua. The State has also failed to fulfill the duty to guarantee such rights by not undertaking a serious and proper investigation to clarify what happened to the victim, to

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<sup>54</sup> As a result of an analysis of the all the combined facts on which this report is based.

<sup>55</sup> Details of internal procedures will be included in the section relating to the rights to judicial guarantees and judicial protection.

determine the legality of the lethal use of force, and, if this be the case, of imposing appropriate punishment.

105. Consequently, the State of Venezuela has violated the rights enshrined in Articles 4.1, 5.1, 5.2, 7.1, 7.2, 7.3, 7.4 and 7.5<sup>56</sup> of the American Convention in relation to the obligations set out in Article 1.1 of the same instrument, to the prejudice of Benito Antonio Barrios.

**2. The Rights to Private and Family Life<sup>57</sup>, the Right to Private Property<sup>58</sup> with respect to Justina Barrios, Elbira Barrios, Luís Alberto Barrios, Orismar Carolina Alzul and Brígida Oneida Barrios for the facts between November 28 and November 30, 2010**

**2.1 The Facts**

106. Between November 28 and 30, 2003<sup>59</sup>, an argument took place between members of the police of the State of Aragua and the two brothers Luís Alberto Barrios and Narciso Barrios in the liquor store called 'El Picaflor'. Hours later, a group of policemen comprised of various members of the state of Aragua raided the homes of Brígida Oneida Barrios, Justina Barrios, Elbira Barrios and Luís Alberto Barrios in succession. Various items belonging to them were also stolen from the four homes. Considerable damage was also caused to three of the houses.<sup>60</sup>

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<sup>56</sup> In accordance with what was emphasized by the Court in its jurisprudence, when imprisonment is the act prior to execution of an individual, it is not necessary to analyze point by point each and every guarantee in Article 7 of the American Convention. The Commission considers this to be the case because a violation of the said guarantees is evident. However, despite the Court's practice being otherwise, the Commission considers that in order to establish the complete ambit of State responsibility for the said provisions, it is necessary to declare that the State in question ignored these guarantees.

<sup>57</sup> Articles 11.1 y 11.2 of the American Convention establish: 1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, his home, or his correspondence, or of unlawful attacks on his honor or reputation.

<sup>58</sup> Article 21.1 of the American Convention states: 1. Everyone has the right to the use and enjoyment of his property. The law may subordinate such use and enjoyment to the interest of society.

<sup>59</sup> The documents in the file are not consistent regarding the date in which this fact took place. In the documents available different dates are indicated.

<sup>60</sup> Communication filed before the Chief Public Prosecutor of the Judicial Circuit of the state of Aragua on March 1, 2004. (Annex A of the Petitioners' Brief dated May 3, 2004). In this complaint before the Prosecutor, they relate the following:

On November 30, 2003, at approximately 6 p.m., two uniformed members of the police of the state of Aragua, of the Guanayen command, turned up at the liquor store, called 'El Picaflor', leased by Luís Barrios y Narciso Barrios. The policemen started to drink beer, and one of them, in a drunken state, had an 'exchange of words' with Narciso Barrios, who threw a stone at the policeman's head and caused his standard issue submachine gun to fall on the floor.

Because of the official's aggressiveness, Mr. Narciso Barrios took the gun and left the establishment to hide it and hand it in the next day at the headquarters of the policeman's unit, which he succeeded in doing. The other official, named José Gregorio Clavo, took his colleague from the establishment and approximately five minutes later a group of policemen, made up of several patrols, on average 15 officials, under the command of Wilmer Bravo, turned up at the establishment carrying guns. The Prefect of the town of Guanayen, Walter Pacheco, also made an appearance at the establishment.

On this occasion, the officials of the police commission raided four homes without a judicial warrant. The first home belonged to Onedia Barrios, in Los Ilustres Street No.1-20, in the sector Las Casitas of Guanayen, where as well as verbally assaulting her, they stole her television, a fan, food valued at 50,000 Bolivars, personal effects, a bicycle and personal documents.

The second home to be raided belonged to Justina Barrios, and was located at the same address. They took one television, one radio receiver, clothes and brand new children's shoes. To enter the house, the officials kicked down the door, collected all her belongings and used clothes in the main room and burnt them, leaving the house partly uninhabitable.

The third house raided belonged to Elvira Barrios, located in Calle 9, Las Casitas Sector - a house without a number - Guanayen. They also kicked down the door of this house and took away one television, one blender, one iron and one portable fan.

107. In its briefs before the Commission, the State did not contest that the raids had been carried without a court order nor the damage caused to the homes, mentioned above. As will be explained below, the internal processes did not allow for a clarification of the raids and the damage caused to the property of the victims.

## 2.2 Considerations of the Commission

108. Article 11.2 of the Convention protects private life and the home from arbitrary or abusive interference. That provision acknowledges a personal sphere requiring protection from actions by strangers and that personal and family honor as well as the home require protection from interference.<sup>61</sup> In this sense the home and private and family life are inextricably linked since the home is the place where private and family life can be developed with freedom.<sup>62</sup>

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The fourth house to be raided belonged to Luís Barrios, located in the Calle Los Cocos, with no number, Las Casitas Sector. Here they took one gas cooker and its cylinder, one bicycle, one piece of sound equipment, one clothes iron, one portable fan, and one pair of crutches (used by Mr. Luís Barrios by virtue of his convalescence from recent surgery). The officials 'set fire' to the house, leaving it partially uninhabitable.

See also: See also: Complaints of Brígida Oneida Barrios, Luís Barrios and Orismar Carolina Alzul between December 2 and 4, 2003 (Annex to the petitioners' brief received on February 16, 2010); Report of the visit conducted by the Ombudsman of Boys, Girls and Young People, on December 9, 2003 (Annex to the petitioners' brief received on February 16, 2010); Investigative Report of the CICPC of February 21, 2005 (Annex to the petitioners' brief received on February 16, 2010); Interview of Eloisa Barrios of August 10, 2004 (Annex to the petitioners' brief received on February 16, 2010); Declaration of Brígida Oneida Barrios on October 3, 2006 (Annex of the Petitioner's Brief received on February 16, 2010); Communication presented to the Office of Alguacilazgo on June 14, 2004 (Annex 1 of the Petitioners' Brief received on August 9, 2004); and El Siglo Press Notice of June 29, 2004 (Annex 55 of the Petitioners' Brief received on 4 December 2009). In this Press Notice, Eloísa Barrios referred to the assassination and to the raids on the four homes.

Mrs. Brígida Oneida Barrios made clear in her statements that on November 28, 2003, policemen came into her house at night, knocked down her two doors and took away her belongings: specifically, a fan, a television set, sound equipment, and items belonging to her sons. She said they robbed her of 500,000 Bolivars that her husband had brought her that day, that several of her neighbors could see what was happening, that she was in her mother-in-law's house with her husband. She indicated that those responsible were policemen under orders of a police chief named "Clavo" who had been "drinking" all day.

Mr. Luís Barrios indicated in his complaint that on November 28, 2003, 15 policemen arrived at his house and that he had to leave due to the violence used to gain entrance. He detailed how they set fire to his house with all his belongings inside. He explained that commander José Rafael Peñas Clavo and officer Fredy González had spent all day drinking beer in his shop and all this had resulted from an incident involving a gun. He indicated that he was left penniless and he would not be able to provide for his partner and two sons.

Mrs. Orismar Carolina Alzul (Luís Barrios' partner) indicated that the police had set fire to her house and left her 'in the street'. She added that the neighbors saw everything and mentioned the chief's name as Clavo. Afterwards Mrs. Alzul repeated her account of the facts and indicated that the individuals who entered her house were policemen under the command of Wilmer Bravo and José Clavo and explained which station each one belonged to. She mentioned that this happened due to an argument with the brother of her husband, Luís Barrios, over a machine gun, and that her sister-in-law Brígida Oneida Barrios' house had also been ransacked and burnt.

The report on the visit conducted by the Ombudsman for Boys, Girls and Young People to Luís Barrios' house, noted the following damage: "furniture, clothes and kitchen utensils all tossed about and some damaged. The ceiling was burnt. The main room's ceiling totally burnt, and need replacing. The other parts of the ceiling was also burnt but could be repaired (by painting). The walls were burnt and so were peeling. The mattress of the main room, plus a fan, were burnt beyond repair. The locks of the door were smashed and damaged."

Eloisa Barrios stated that on November 30, 2003, a squad under the command of Wilmer Bravo and Walter Pacheco came into the homes of Brígida Oneida Barrios, Justina Barrios, Elbira Barrios and Luís Barrios, causing damage and taking away belongings.

<sup>61</sup> IA Court HR, *Case of the Massacres of Ituango*. Judgment of July 1, 2006, Series C No. 148, paragraph 193.

<sup>62</sup> IA Court HR, *Escué Zapata Vs. Colombia Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 165, paragraph 95; IA Court HR *Case of the Massacres of Ituango*. Judgment of July 1, 2006, Series C No. 148, paragraphs 193 and 194.

109. Regarding the right protected in Article 21 of the Convention, the case law of the Court has developed a wide concept of property including, among others, the use and enjoyment of "goods" defined as material objects subject to ownership, as well as any right that may become part of the patrimony of a person. Such a concept includes movable and immovable objects, corporeal and incorporeal objects and any other non-material objects susceptible of valuation.<sup>63</sup>

110. In cases linked to home searches by State security forces involving the removal of objects and the destruction of property, the Inter-American Court has followed the case law of the European Court of Human Rights indicating that this sort of conduct involves issues relating to the right to private property as well as the right to private and family life and the protection of the home.<sup>64</sup>

111. In view of the facts of the case, the Commission considers that the raids on Oneida, Justina, Elbira and Luís Alberto Barrios' homes without a court order, constitute an interference in the home and private and family life of these persons that has not been justified by the State in its allegations before the Commission and has not been clarified by the authorities in charge of the investigation of the facts of this sort. Also, damage to the victims' property –destruction of their homes and removal of objects— constituted a violation of the right to private property in view of the fact that the conduct of the members of the Police has not been explained by the State and no effective remedies have been made available to investigate what happened.

112. In view of the above, the Commission concludes that the State failed to comply with the duty to respect and ensure private and family life and therefore violated the rights enshrined in Articles 11 and 21 in conjunction with Article 1.1 of the same instrument, against Oneida, Justina, Elbira, Luis Alberto Barrios and Orismar Carolina Alzul.

### **3. The Right to Life of Narciso Barrios and the Events of December 11, 2003**

#### **3.1 The Facts**

113. On the evening of December 11, 2003, Jorge Antonio Barrios – son of Benito Antonio Barrios who witnessed the detention, mistreatment and removal of his father, years before – was detained by a Police Commission. His uncle Narciso Barrios and his other nephew, Néstor Caudi Barrios, followed the Police Commission on foot to defend the then child Jorge Antonio Barrios. In response, the latter was released by members of the Police of the state of Aragua who shot Narciso Barrios in the head nine times in the presence of his nephew Nestor Caudi Barrios<sup>65</sup>.

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<sup>63</sup> IA Court HR, *Case of the Massacres of Ituango*. Judgment of July 1, 2006, Series C No. 148, paragraph 174; IA Court HR, *Case of the Sawhoyamaxa Community Vs. Paraguay*. Judgment of March 29, 2006. Series C No. 146, paragraph 121; *Palamara Iribarne Case*. Judgment of November 22, 2005. Series C No. 135, paragraph 102.

<sup>64</sup> IA Court HR, *Case of the Massacres of Ituango*. Judgment of July 1, 2006, Series C No. 148, paragraphs 182, 192 – 196. Citing *Eur.C.H.R., Ayder et al v. Turkey*, No. 23656/94, Judgment of 8 January 2004, paragraph 119; *Eur.C.H.R., Bilgin v. Turkey*, No. 23819/94, Judgment of 16 November 2000, paragraph 10; *Eur.C.H.R., Selçuk v. Turkey*, No. 23184/94, Judgment of 24 April 1998, paragraph 86; *Eur.C.H.R., Xenides-Arestis v. Turkey*, no. 46347/99, Judgment of 22 December 2005; *Eur.C.H.R., Demades v. Turkey*, no. 16219/90, Judgment of 31 October 2003; *Eur.C.H.R., Yöyler v. Turkey*, no. 26973/95, Judgment of 10 May 2001; *Eur.C.H.R., Cyprus v. Turkey*, no. 25781/94, Judgment of 10 May 2001; and *Eur.C.H.R., Akdivar et al. v. Turkey*, no. 21893/93, Judgment of 16 September 1996.

<sup>65</sup> Communication presented to the Chief Public Prosecutor of the Judicial Circuit of the state of Aragua on March 1, 2004. (Annex A of the petitioners' brief dated May 3, 2004); El Siglo Press Notice of June 29, 2004 (Annex 55 of the Petitioners' Brief received on 4 December 2009).

See also: statement in the petitioners' brief received on May 8, 2006.

114. His body was taken to the CICPC's mortuary situated at the Urbanización de Caña de Azúcar in Maracay. At the time of his death, Narciso Barrios was 23 years old and was the father of Annaris Alexandra Barrios and Benito Antonio Barrios<sup>66</sup>.

115. The State has not controverted the allegations on the circumstances of Narciso Barrios' death, as described. The Commission highlights the written accusation of March 2005 of the Public Prosecutors in charge of the case, mentioned by the State in its brief received on June 21, 2006. The said brief makes it clear that the accused individuals were officials of the police of the State of Aragua. Although this does not amount to a judicial determination as to their criminal responsibility, the existence of this accusation permits the inference that the evidence in the internal file shows the participation of the said agents. This is corroborated by the petitioners' version of the facts in the brief received on March 8, 2006, indicating that the death of Narciso Barrios was presented as a confrontation with the police. It is reasonable to conclude from these elements that it was the police agents who shot Narciso Barrios.

116. As described later in further detail, there is still no judicial version of the facts in the judicial proceedings carried at the domestic level on the death of Narciso Barrios, on December 11, 2003.

### **3.2 Considerations of the Commission**

117. Taking into account the general criteria on the right to life and the use of force mentioned above, the Commission considers that the facts outlined show that -in a similar sense to those outlined respecting the death of Benito Antonio Barrios- various hallmarks characteristic of a more general context of extrajudicial executions in Venezuela are to be found. The Commission highlights in the first place the involvement of policemen of the state of Aragua, who presented the facts as a confrontation. In addition, the threats and intimidation occurring previously against the family (for example, the raids on their homes at the end of November, 2003) and afterwards (which will be recounted in the remaining sections of this report and that still persist) and particularly against those who witnessed these events (for example the arrests and subsequent threats against Néstor Caudi Barrios and Jorge Antonio Barrios), as well as the ineffectiveness of the investigations and the resulting lack of clarification and punishment for the illegal use of lethal force in the concrete case.

118. In addition to the foregoing points, the Commission also highlights that the manner in which the facts developed does not support the version of a confrontation. Especially, the number of gunshot wounds found in the victim's body does not appear to correspond with a means of legitimate self-defense or with a proportionate manner of cancelling it out in the case that he was armed. For its part, the State of Venezuela has not presented any evidence to justify a possible confrontation, for example that the victim was carrying a gun or had fired shots. A number of elements show that the perpetrators were state agents, consistent with an extrajudicial execution and the State has not offered grounds supporting a different version. The State of Venezuela has once again failed to discharge the burden of proof resting on it in this matter.

119. The Commission considers that the analysis of all the elements mentioned allows the conclusion to be drawn that Narciso Barrios was extra-judicially executed by the police of the state of Aragua.

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<sup>66</sup> Communication presented to the Chief Public Prosecutor of the Judicial Circuit of the state of Aragua on March 1, 2004. (Annex A of the petitioners' brief dated May 3, 2004); El Siglo Press Notice of June 29, 2004 (Annex 55 of the Petitioners' Brief received on 4 December 2009).

See also: statement in the petitioners' brief received on May 8, 2006.

120. Additionally, the State has not fulfilled the duty to guarantee such rights by not undertaking a serious and diligent investigation to clarify what happened to the victim, to determine the legality of the lethal use of force, and, where applicable, to impose the corresponding punishment. Details of internal procedures will be included in the section relating to the rights to judicial guarantees and judicial protection.

121. The Commission considers that the State of Venezuela has failed to fulfill the duties to respect and ensure life and, hence, has violated the right enshrined in Article 4.1 in relation to Article 1.1 of the American Convention, to the prejudice of Narciso Barrios.

#### **4. The Rights to Personal Integrity, Personal Liberty and Special Protection for Children<sup>67</sup> with Respect to Rigoberto Barrios and Jorge Antonio Barrios for the events of March 3, 2004**

##### **4.1 The Facts**

122. As indicated above, Jorge Antonio Barrios, Benito Antonio Barrios' son, is a witness to the arrest that preceded his father's death. He was also the individual whom Narciso Barrios tried to defend against the police before being executed.

123. On March 3, 2004, Jorge Antonio Barrios and Rigoberto Barrios, 16 and 15 years old respectively, were arrested by a group of policemen of the state of Aragua. In accordance with the victims' testimony Jorge Antonio Barrios was arrested in the street and taken to the surroundings of Guárico river. As for Rigoberto Barrios, he was arrested and taken to the same place. Both children in the surroundings of Guárico river were pushed to the floor, severely beaten and threatened with death. In their testimony they mention punches, kicks, injuries from pistol-whipping, and shots close to their ears. Whilst this was going on, the policemen questioned them about the recent alleged theft in the El Roble farm. Afterwards they were transferred to the police headquarters of Guanayen and then Barbacoa. They were beaten again at the first location. Jorge Antonio Barrios and Rigoberto Barrios remained in *incommunicado* detention from their families at this latter headquarters until the morning of the following day. Jorge Antonio Barrios said that on being released, the policemen threatened to kill them if they complained about what had happened.<sup>68</sup>

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<sup>67</sup> Article 19 of the American Convention states that: Every 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>68</sup> Communication presented to the Chief Public Prosecutor of the Judicial Circuit of the state of Aragua on March 4, 2004. (Annex B to the petitioners' brief dated May 3, 2004); Request of acquittal of the 16<sup>th</sup> Provisional Public Prosecutor of the state of Aragua (Annex 37 to the Petitioners' brief received on December 4, 2009, in which reference is made to Rigoberto Barrios' evidence; Statement of Jorge Antonio Barrios Ortuño before the CICPC on March 11, 2004 (Annex 36 to the petitioners' brief received on December 4, 2009); and Medical Report of March 5, 2004 (Annex 40 to the petitioners' brief of December 4, 2009), in relation to the injuries caused to Rigoberto Barrios. The details of both witnesses' statements can be summarized in the following way.

Rigoberto Barrios declared before the CICP that on March 3, 2003 he was arrested in the Ilustres Street near the El Pica restaurant in Guanayen from where he was taken to Río Guárico, where he was handcuffed, placed on the ground and beaten. He emphasized that his cousin was also there and they were questioned about a theft of cattle. He pointed out that they were taken to the Guanayen police station, where they were kicked and pistol-whipped, afterwards taken to the Barbacoas police station, where they remained in custody until the morning of March 4.

Jorge Barrios declared that on March 3, 2004 "several hooded policemen arrived" at his grandmother's house where he was, and they took him to Río Guárico where he met his cousin Rigoberto Barrios handcuffed. He indicated that in this place the policemen hit them on various parts of their body, fired guns close to their ears and questioned them about a theft. He underlined that since they did not reply, they were taken under arrest to the Guanayen police station, where they continued with the beatings then finally taking them to the Barbacoas police station where they remained locked up until

## 4.2 Considerations of the Commission

124. The Commission reiterates at this stage its general considerations on the rights to personal integrity and personal liberty. Given that in the section relating to the extrajudicial execution of Benito Antonio Barrios, an analysis of each one of the aims of Article 7 of the Convention was not considered necessary, due to the nature of the detentions analyzed in this section and the victim's condition as children, the Commission considers relevant to point out the obligations deriving from the interpretations of Article 7 of the Convention, as well as the general principles on the special protection of children<sup>69</sup> and the obligations of the States in the light of the American Convention.

125. In cases involving children, the Court has stated that the breadth of the right to personal liberty may not be separated from the superior interests of the child and from the person who takes on the position of guarantor of the State respecting children,<sup>70</sup> because the adoption of special measures to protect them are required, in view of their condition of vulnerability.<sup>71</sup>

126. The Inter-American Court has indicated that Article 7.2 of the Convention "recognizes the main guarantee of the right to physical liberty: the legal exception, according to which the right to personal liberty can only be affected by a law."<sup>72</sup> It has also ruled that "the legal exception must necessarily be accompanied by the principle of legal definition of the offense (*tipicidad*), which obliges the States to establish, as specifically as possible and "beforehand," the "reasons" and "conditions" for the deprivation of physical liberty. Hence, Article 7(2) of the Convention refers automatically to domestic law. Accordingly, any requirement established in domestic law that is not complied with when depriving a person of his liberty will cause this deprivation to be unlawful and contrary to the American Convention."<sup>73</sup>

127. As the Court has consistently underlined in its case-law, in accordance with Article 7.3 "no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality."<sup>74</sup>

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9:30 am the next day. He added that he could recognize his attackers and that they threatened them if they complained. See also the version in the petitioners' brief received on May 8, 2006.

Afterwards, in the investigation into what happened to Rigoberto Barrios on January 9, 2005 and his subsequent death, Maritza Barrios and Rigoberto Barrios provided statements making reference to this fact as an antecedent. See: Interview with Maritza Barrios on January 26, 2005 in the context of the investigation into the murder of Rigoberto Barrios (Annex 83 of the Petitioners' Brief received on December 4, 2009); and Interview with Rigoberto Barrios on January 13, 2005, days before his murder (Annex 80 of the Petitioners' Brief received on December 4, 2009).

The medical-legal examination conducted to Rigoberto Barrios resulted in: "Contusion in his left *flanco*. Contusion in his left shoulder. Slight injuries. Estimated recovery time 8 days since the day of the fact, with 4 of incapacity to perform his work".

<sup>69</sup> It is worth to mention that Venezuela is a party of the Convention on the Rights of the Child.

<sup>70</sup> I/A Court HR, *Case Bulacio*. Judgment of September 18, 2003. Series C No. 100. paragraph 135.

<sup>71</sup> I/A Court HR, *Case "Instituto de Reeducación del Menor"*. Judgment of September 2, 2004. Series C No. 112. paragraph 225.

<sup>72</sup> I/A Court HR, *Case Chaparro Álvarez and Lapo Íñiguez. Vs. Ecuador*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. paragraph 56.

<sup>73</sup> I/A Court HR, *Case Chaparro Álvarez and Lapo Íñiguez. Vs. Ecuador*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. paragraph 57.

<sup>74</sup> I/A Court HR, *Case Gangaram Panday Vs. Surinam*. Judgment of January 21, 1994. Series C No. 16, paragraph 47; and I/A Court HR, *Case López Álvarez Vs. Honduras*. Judgment of February 1, 2006. Series C No. 141, paragraph 66.

128. In a similar sense, and referring to the arbitrariness of the detention, the Court has established that "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law."<sup>75</sup>

129. In developing the content of Article 7.4 of the Convention, the Inter-American Court has indicated that "the information on the motives and reasons for the arrest must be provided when [the arrest] occurs, as this constitutes a mechanism to avoid unlawful or arbitrary arrests as of the very moment of the deprivation of liberty and, also, guarantees the individual's right of defense."<sup>76</sup>

130. The Court has also held that "the information about the motives and reasons for the arrest necessarily supposes, first, providing information on the arrest itself. The detained person must understand that he is being detained. Second, the agent who carries out the arrest must inform him in simple language, free of technical terms, about the essential legal grounds and facts on which the arrest is based."<sup>77</sup>

131. In cases where the person arrested has the status of a child, the Court has stressed that "those who represent him or are his legal guardians have the right to be informed of the motives and reasons of the detention when it takes place, as well as regarding the rights of the detainee."<sup>78</sup> It has also stated that the right to make contact with a family member acquires special importance in the arrest of a minor,<sup>79</sup> and that this notification must take place immediately by the arresting authorities<sup>80</sup> and they must adopt all necessary steps to ensure the notification is carried out effectively.<sup>81</sup>

132. The content of Article 7.5 of the American Convention has been established by the Inter-American Court in the following terms: "The first part of Article 7(5) of the Convention establishes that the detained person must be brought promptly before a judge. Prompt judicial control is a measure intended to avoid arbitrary or unlawful arrests, bearing in mind that, under the rule of law, the judge is responsible for guaranteeing the rights of the detained person, authorizing

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<sup>75</sup> I/A Court HR, *Case Chaparro Álvarez and Lapo Íñiguez. Vs. Ecuador.* Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. paragraph 92.

<sup>76</sup> I/A Court HR, *Case Chaparro Álvarez and Lapo Íñiguez. Vs. Ecuador.* Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. paragraph 70.; I/A Court HR, *Case Juan Humberto Sánchez.* Judgment of June 7, 2003. Series C No. 99. paragraph 82.

<sup>77</sup> I/A Court HR, *Case Chaparro Álvarez and Lapo Íñiguez. Vs. Ecuador.* Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. paragraph 71.

<sup>78</sup> I/A Court HR, *Case of the Brothers Gómez Paquiyauri.* Judgment July 8, 2004. Series C No. 110. paragraph 92; I/A Court HR, *Case Maritza Urrutia.* Judgment of November 27, 2003. Series C No. 103. paragraph 72; I/A Court HR, *Case Bulacio.* Judgment of September 18, 2003. Series C No. 100. paragraph 128; I/A Court HR, *Case Juan Humberto Sánchez.* Judgment of June 7, 2003. Series C No. 99. paragraph 82.

<sup>79</sup> I/A Court HR, *Case of the Brothers Gómez Paquiyauri.* Judgment July 8, 2004. Series C No. 110. paragraph 93; I/A Court HR, *Case Bulacio.* Judgment of September 18, 2003. Series C No. 100. paragraph 130.

<sup>80</sup> I/A Court HR, *Case of the Brothers Gómez Paquiyauri.* Judgment July 8, 2004. Series C No. 110. paragraph 93; I/A Court HR, *Case Bulacio.* Judgment of September 18, 2003. Series C No. 100. paragraph 130; and I/A Court HR, *El Derecho a la Información sobre la Asistencia Consular en el Marco de las Garantías del Devido Proceso Legal.* Consultative Opinion OC-16/99 of October 1, 1999. Series A No.16. paragraph 106.

<sup>81</sup> I/A Court HR, *Case of the Brothers Gómez Paquiyauri.* Judgment July 8, 2004. Series C No. 110. paragraph 93; I/A Court HR, *Case Bulacio.* Judgment of September 18, 2003. Series C No. 100. paragraph 130. Quoting: Council of Europe. Committee on the Prevention of Torture. 2nd General Report on the CPT's activities covering the period January to December 1991, paragraphs 36-43.

the adoption of precautionary or coercive measures when strictly necessary and, in general, ensuring that the accused is treated in a manner in keeping with the presumption of innocence."<sup>82</sup>

133. In the case of children, they differ from adults both by their physical and psychological development as well as their emotional and educational needs, justifying obligations of special protection on the part of the State. Therefore the Commission considers that only exceptional reasons - according to relevant international standards - may justify the deprivation of liberty of persons under the age of 18.

134. The petitioners alleged that the arrest of the children Jorge Antonio Barrios and Rigoberto Barrios was made without an order from a competent authority, without any reasons being given either to them or to their families on the reasons justifying it or without being brought before a judge.

135. In this respect, the Commission highlights the case law of the Court bearing on the burden of proof when the State's failure to fulfill certain Convention guarantees is alleged. Specifically, the Court has ruled in the following terms, referring to the guarantees contemplated by Article 7 of the Convention:

In the instant case, the victim has no available means of proving this fact. His allegation is of a negative nature, and indicates the inexistence of a fact. The State declares that the information about the reasons for the arrest was provided. This is an allegation of a positive nature and, thus, susceptible of proof. Moreover, if it is recalled that, on other occasions, the Court has established that "in proceedings on human rights violations, the defense of the State cannot be based on the impossibility of the plaintiff to provide evidence that, in many cases, cannot be obtained without the cooperation of the State this leads to the conclusion that the burden of proof on this point corresponds to the State"<sup>83</sup>.

136. In the present case, the State did not contest the petitioners' version of the events surrounding the arrest. The Commission underlines that the coming and going of people at the different police stations, the information regarding the reasons for the arrest, the existence or not of an order from the competent authority and the appearance before a judge are part of the official records under the State's control, and therefore it is up to the latter to provide them in a timely fashion. This did not happen in the present case and therefore the Commission considers that Venezuela has failed to discharge the burden of proof for which it is responsible.

137. On the other hand, the physical injuries caused to the victims during this procedure - without being any justification whatsoever for the use of force - constitute acts to the detriment of their physical integrity and, in themselves, are proof that the arrests were arbitrary both by the methods used as well as the finality of the aims pursued in the context of the police persecution of the family.

138. The Commission recalls that Jorge Antonio Barrios is Benito Antonio Barrios' son, and was present at the time of arrest which preceded his father's death. Jorge Antonio Barrios was also involved in the events that preceded the extrajudicial execution of his uncle, Narciso Barrios, three months earlier and on which a complaint was presented two days before the facts analyzed in this section. These elements, together with the lack of official information and a judicial

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<sup>82</sup> I/A Court HR, *Case Chaparro Álvarez and Lapo Íñiguez. Vs. Ecuador*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170. paragraph 81; I/A Court HR, Case of the Brothers Gómez Paquiayuri. Judgment July 8, 2004. Series C No. 110. paragraph 96; and I/A Court HR, *Case Maritza Urrutia*. Judgment November 27, 2003. Series C No. 103. paragraph 66.

<sup>83</sup> I/A Court HR, *Case Chaparro Álvarez and Lapo Íñiguez. Vs. Ecuador*. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, paragraph 73.

clarification explaining the reasons for the arrest, and the treatment of the victims, permits the conclusion that the aim of all this was to intimidate, threaten and break down the physical and psychological resistance of the children Jorge and Rigoberto Barrios. The Commission considers it a reasonable inference that, under these circumstances, the victims suffered fear as to what would happen to them, taking into account the manner in which the facts occurred, the vulnerable position they found themselves in, and the previous extrajudicial executions and other forms of intimidation against their family in general.

139. The Commission considers that these facts are especially serious given that the victims were children, and, as such, ought to have had special protection by the State. In the face of this obligation, the policemen themselves committed acts against their rights, taking advantage of their own position and increasing the vulnerability of the children's situation.

140. Additionally, and as will be detailed later, the investigations of these facts did not lead anywhere, and were in fact archived. The available information on this investigation reveals that it was not conducted with due diligence.<sup>84</sup> In particular, the State of Venezuela has not investigated the illegal and arbitrary arrest of Jorge and Rigoberto Barrios, nor if the injuries caused to the victims constituted acts of torture or other cruel, inhuman or degrading treatment.

141. By virtue of the above considerations, the Commission concludes that the State of Venezuela has failed to fulfill its obligations to respect and guarantee the rights to personal integrity and personal liberty, and neglected its duty of special protection with regard to children. In this sense, the State has violated the rights enshrined in Articles 5.1, 5.2, 7.1, 7.2, 7.3, 7.4, 7.5 and 19 of the American Convention in relation to Article 1.1 of the same instrument to the prejudice of Jorge Antonio Barrios and Rigoberto Barrios.

## **5. The Rights to Personal Integrity, Personal Liberty, and Special Protection for Children with Respect to Néstor Caudi Barrios and Oscar José Barrios for Various Events Allegedly Occurred between May 26, 2004 and June 18, 2005**

### **5.1 The Facts**

142. As stated above, Néstor Caudi Barrios was the principal witness present at the extrajudicial execution of his uncle, Narciso Barrios.

143. In accordance with the complaint lodged before the Public Prosecutor, in the context of the case brought by the death of Narciso Barrios, on May 26, 2004, the official in charge of the investigation into what happened to the uncle warned Néstor Caudi Barrios that he could be arrested and sent to the court holding center of Tocorón under a suspicion on his involvement in a theft at a farm. These facts were denounced before the 14<sup>th</sup> Public Prosecutor for the Judicial District of the state of Aragua on June 1, 2004, indicating the existence of a form of intimidation to prevent Néstor Caudi Barrios from giving his testimony about the execution of Narciso Barrios. On the same day, special protection was requested for Néstor Caudi Barrios.<sup>85</sup>

144. According to the complaint before the Public Prosecutor, on December 6, 2004, two uniformed policemen approached Néstor Caudi Barrios indicating to him, with a razor in their hand, that "if they got him alone he would be in for a slapping", informed him that "they had killed all his

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<sup>84</sup> The details of the internal procedures will be included in the section relating to the rights to judicial guarantees and judicial protection.

<sup>85</sup> Communication presented to the 14 Public Prosecutor of the Judicial Circuit of the state of Aragua on June 1, 2004 (Annex B to the petitioners' brief received on June 7, 2004).

family" and that neither he nor his cousin Oscar José Barrios "would be eating hayacas (sic) at Christmas".<sup>86</sup> This act was denounced on December 7, 2004, before the Chief Public Prosecutor of the Public Ministry of the Judicial District of the State of Aragua, and the request for protective measures for the Barrios family was repeated, especially for those members who "might be murdered by the police."<sup>87</sup>

145. There was another complaint that on June 18, 2005, Oscar José Barrios, then 18, was at the house of his aunt, Orismar Carolina Alzul, and as he left he was picked up by five men in civilian clothes, who pointed their rifles at him, so that "he ran fast until he was able to hide in some bushes". That same night Elbira Barrios, Oscar José Barrios' mother, called the National Guard and as a result a group of four soldiers came who "arrived at the bar Pica Flor" and then left without taking an interview.<sup>88</sup>

146. The petitioners allege that none of these events has been investigated. The State has neither contradicted this statement nor provided information which allows other conclusions to be drawn.

## 5.2 Considerations of the Commission

147. In the first place, the Commission observes that the petitioners allege that on March 19, 2005, Néstor Caudi Barrios was detained by members of the Police of Guanayen, without an arrest warrant and without verifying a situation of flagrancy. They indicate that he was taken to a detention cell in the town's Police Station where he remained *incommunicado* for a day. This allegation was unsupported by documentary evidence and there is no information on whether it was brought to the attention of the authorities. In view of the above, the Commission lacks the necessary information to pronounce upon the alleged deprivation of liberty of Néstor Caudi Barrios.

148. Without prejudice of the above, the Commission considers that the warnings of members of the police to Néstor Caudi Barrios - in particular, the death threats against him and his cousin Oscar José Barrios - who was also subject to further harassment, as children, together with the lack of investigation of the respective complaints, the evidence that the threats could materialize (by then two of their uncles had been killed) and the lack of general protection of the family since the beginning of the facts, are elements sufficient to infer that Néstor Caudi Barrios and Oscar José Barrios have suffered from fear and constant panic to the point of affecting their physical and psychological integrity. These facts also demonstrate the State's neglect of the special duty to protect children.

149. In view of the previous considerations, the Commission concludes that the State of Venezuela failed to comply with its duty to respect and ensure the physical integrity of Nestor Caudi Barrios and Oscar José Barrios, and failed to comply with its duty to grant them special protection given their condition as children. Consequently, Venezuela is responsible for violating the rights enshrined in Articles 5.1 and 19 of the American Convention, in conjunction with Article 1.1 of that instrument, against Néstor Caudi Barrios and Oscar José Barrios.

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<sup>86</sup> Communication presented to the Chief Public Prosecutor of the Judicial Circuit of the state of Aragua (Annex 45 of the Petitioners' Brief received on December 4, 2009).

<sup>87</sup> Communication presented to the Chief Public Prosecutor of the Judicial Circuit of the state of Aragua (Annex 45 of the Petitioners' Brief received on December 4, 2009).

<sup>88</sup> Complaint before the Chief Public Prosecutor of the Judicial Circuit of the state of Aragua on June 22, 2005 (Annex 77 of the Petitioners' brief received on December 4, 2009).

**6. The Rights to Personal Freedom and Physical Integrity relating to Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios and Jorge Antonio Barrios; and the Right of Children to Special Protection relating to Oscar José Barrios and Jorge Antonio Barrios and the events of June 19, 2004**

**6.1 The Facts**

150. According to testimony and the official as well as journalistic complaints, on June 19, 2004 Luisa del Carmen Barrios, her husband Gustavo Ravelo, her father in law, Jesús Ravelo, her sister Elbira Barrios and her nephews Oscar and Jorge Antonio Barrios, were in the car belonging to Mr. Jesús Ravelo, when they heard gunshots and were intercepted by a police patrol of the state of Aragua. When Gustavo Ravelo got out of his car, he was attacked by a member of the Police who demanded that he lie face down on the floor, hit him in the face, legs and ribs, and asked for the money he carried. When Ravelo refused to hand over money, the state agent took his firearm and positioned it near Ravelo's ear, after which he decided to cooperate. In view of the situation Jesús Ravelo, father of Gustavo Ravelo, who was also face down on the pavement, lifted his head and was hit again. He fell on the floor and his arm was injured. When Luisa del Carmen Barrios protested, she was told she could be killed, she was hit in the face, called a prostitute and was pushed. Elbira Barrios was treated similarly after claiming that Jorge and Oscar José Barrios should not be interfered with because protective measures had been issued in their favor. In the meantime the agents fired a gun and the bullet hit the car<sup>89</sup>.

151. Next a Sergeant intervened to calm the situation down and he took Jorge Antonio Barrios and Oscar José Barrios to the town of Barbacoa, where they remained detained until June 21, 2004. According to the family, the reason for this was that Oscar and Jorge Antonio Barrios were being persecuted. They indicated "they want to kill them" because "they are cruel with them" following the death of Narciso Barrios for trying to defend Jorge Antonio Barrios from the Police. According to the testimony of Oscar José Barrios, one of the members of the Police threatened him with a gun and told him "he had to kill him."<sup>90</sup>

152. A complaint on these facts was filed on June 28, 2004 before the 14<sup>th</sup> Public Prosecutor of the Judicial Circuit of the state of Aragua<sup>91</sup> and, to date, the decision on the request on acquittal filed by the corresponding Prosecutor is still pending.<sup>92</sup>

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<sup>89</sup> Complaint filed with the 14<sup>th</sup> Public Prosecutor of the judicial circuit of the state of Aragua on June 28, 2004 (Annex 48 of the Petitioners' brief received on December 4, 2009); El Siglo Press Notice of June 29, 2004 (Annex 55 of the Petitioners' brief received on December 4, 2009); Interview with Gustavo José Ravelo before the CICPC on February 23, 2005 (Annex 51 of the Petitioners' brief received on December 4, 2009); Interview with Elbira Barrios before the CICPC on February 22, 2005 (Annex 50 of the Petitioners' brief received on December 4, 2009); Interview with Luisa del Carmen Barrios before the CICPC of February 23, 2005 (Annex 51 of the Petitioners' brief received on December 4, 2009); and Interview with Jesús Eduardo Ravelo before the CICPC on February 24, 2005 (Annex 51 of the Petitioners' brief received on December 4, 2009); Interview with Oscar José Barrios before the CICPS on February 22, 2005 (Annex 49 of the Petitioners' brief received on December 4, 2009); and Interview with Elbira Barrios before the 20<sup>th</sup> Prosecutor's Office of the state of Aragua on August 9, 2004 (Annex 56 of the Petitioners' brief received on December 4, 2009).

<sup>90</sup> Complaint filed with the 14<sup>th</sup> Public Prosecutor of the judicial circuit of the state of Aragua on June 28, 2004 (Annex 48 of the Petitioners' brief received on December 4, 2009); El Siglo Press Notice of June 29, 2004 (Annex 55 of the Petitioners' brief received on December 4, 2009); Interview with Gustavo José Ravelo before the CICPC on February 23, 2005 (Annex 51 of the Petitioners' brief received on December 4, 2009); Interview with Elbira Barrios before the CICPC on February 22, 2005 (Annex 50 of the Petitioners' brief received on December 4, 2009); Interview with Luisa del Carmen Barrios before the CICPC of February 23, 2005 (Annex 51 of the Petitioners' brief received on December 4, 2009); and Interview with Jesús Eduardo Ravelo before the CICPC on February 24, 2005 (Annex 51 of the Petitioners' brief received on December 4, 2009); Interview with Oscar José Barrios before the CICPS on February 22, 2005 (Annex 49 of the Petitioners' brief received on December 4, 2009); and Interview with Elbira Barrios before the 20<sup>th</sup> Prosecutor's Office of the state of Aragua on August 9, 2004 (Annex 56 of the Petitioners' brief received on December 4, 2009).

<sup>91</sup> Complaint submitted to the 14 Public Prosecutor of the judicial circuit of the state of Aragua on June 28, 2004 (Annex 48 of the Petitioners' brief received on December 4, 2009).

## **6.2 Considerations of the Commission**

153. The Commission observes that the State of Venezuela has failed to provide information on the reasons why the persons referred to in this section were detained by State agents, or the reasons why Jorge Antonio Barrios and Oscar José Barrios, both children, were taken to a Police Station. There is no official information either regarding any immediate judicial control of the detention.

154. According to the parameters above, the Commission considers that the State failed to satisfy the burden of proof corresponding to these cases. In view of the lack of official information on the deprivation of liberty through the detention of a person or his or her effective arrest, given that the information is under the control of the State, the Commission finds that these forms of deprivation of liberty were illegal. Additionally, the circumstances in which the facts took place, the use of firearms, the violence used against the persons in the car and the death threats made at the time, show that the deprivation of liberty was arbitrary.

155. The available information shows that these facts involve the use of physical violence against Gustavo Ravelo, Jesús Ravelo and Luisa del Carmen Barrios. As indicated *supra* para. 150, the victims declared that one of them ended up with scratches in the arm and that Luisa del Carmen Barrios was slapped in the face by one of the police officers. Also, the verbal threats against the whole group, the insults addressed to some of them, the use of firearms as a mean of intimidation and the previous grave acts of violence against the family, lead to the conclusion that these acts affected the psychological integrity of the victims and generated profound feelings of fear, given the danger of aggression and even death. The Commission highlights the particularly vulnerable situation of Oscar and Jorge Antonio Barrios as children and after being the object of serious threats on previous occasions. As indicated in previous sections, the death threat against Néstor Caudi Barrios included Oscar José Barrios. Also, Jorge Antonio Barrios witnessed the events prior to the extrajudicial execution of his father Benito Antonio Barrios and was the person that his uncle Narciso Barrios was defending from police abuse moments prior to his extrajudicial execution. Also, Jorge Antonio Barrios had been arbitrarily detained and hit months before, while in company of his cousin Rigoberto.

156. On the other hand, as it will be examined in detail in the section on due process guarantees and judicial protection, the deprivation of liberty of the victims, the injuries and threats against them failed to be investigated in a serious and diligent manner.

157. In view of the above, the Commission considers that the State of Venezuela failed to comply with its duty to respect and ensure the personal liberty and physical integrity of Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios and Jorge Antonio Barrios. Consequently the State of Venezuela violated the rights enshrined in Articles 5, 7.1, 7.2 and 7.3 of the American Convention against Luisa del Carmen Barrios, Elbira Barrios, Gustavo Ravelo and Jesús Ravelo; and the rights enshrined in Articles 5.1, 7.1, 7.2, 7.3, 7.4, 7.5 and 19 of the American Convention, all in conjunction with Article 1.1 of the same instrument, against Oscar and Jorge Antonio Barrios.

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<sup>92</sup> Report of the State before the Inter-American Court of Human Rights in the provisional measures procedure on October 2, 2009 (Annex 7 of the Petitioners' brief received on February 16, 2010).

## **7. The Right to Life of Luís Alberto Barrios and the Events of September 20, 2004**

### **7.1 The Facts**

158. As indicated in previous sections, Luís Alberto Barrios witnessed the detention that preceded the execution of his brother Benito Antonio Barrios. Also, at the end of November, 2003, his home was raided and burned down. By the time that the facts referred to in this section took place, Luís Alberto Barrios was the beneficiary of precautionary measures granted by the Commission.

159. On the evening of September 20, 2004, Luís Alberto Barrios was at his home with his partner Orismar Carolina Alzul García, when they heard a noise on the roof. They inspected the area surrounding their house but they could not determine the source of the noise and they decided to return. Soon the noises were heard once more and Luís Alberto Barrios decided to go out again. A moment later a number of gunshots were heard. Orismar Carolina Alzul came out asking for help, without knowing what had happened. She was assisted by persons who told her that her partner had been killed.<sup>93</sup>

160. The forensic report of September 21, 2004 indicated that the victim's body had: "...Seven (7) wounds caused by firearm bullets: three of them in the skull with severe wounds to the brain by their entry and exit; and a fracture of the top and the base of the skull. CAUSE OF DEATH: severe concussion of the brain and trauma caused by firearm bullet."<sup>94</sup>

161. According to the testimony of his partner, on the day of Luís Alberto Barrios' death, he had indicated that a policeman nicknamed "El Gocho" had warned him that he should behave and be alert in case he got a surprise. She added that when the policeman delivered the warning Jorge and Oscar José Barrios, nephews of Luís Alberto Barrios, were present.<sup>95</sup>

162. According to the testimony of Elbira Barrios, the death of Luís Alberto Barrios is linked to the overall context of the family being followed and the death of his other two brothers Benito Antonio and Narciso Barrios. According to Elbira Barrios:

Police harassment started as from the killing of my brother BENITO ANTONIO BARRIOS, who died approximately six years ago, by the Police of the state of Aragua. Since then the problems with the Police started and they took my son Oscar José Barrios and my nephews Rigoberto and Jorge, they took him (sic) to the Barbacoas's command, they beat him (sic) and released them after three days. In the same way my nephew Caudy started to be detained ... for that reason I filed complaints before the competent authorities until one day my brother Narciso Barrios was killed and later my brother Luís Alberto was killed. [...] They threatened

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<sup>93</sup> Concluding Report of the 20<sup>th</sup> Prosecutor's Office of the state of Aragua of May 25, 2006 (Annex D of the States' brief received on June 21, 2006). In the report it refers to the statement of Orismar Carolina Alzul made on September 21, 2004. In the declaration she indicated that on September 20, 2004 she was with her partner Luís Alberto Barrios in his house, when they heard noises. So they then decided to walk round the building to see what was happening. The second time that they heard noises, Luís Alberto Barrios went out alone onto the patio when she heard the shots. She declared that she decided not to go onto the patio but go out to the street to ask for help, when two individuals arrived, entered onto the patio and told her that her partner was dead. When questioned about prior threats, Mrs. Orismar Carolina Alzul stated that Luís Alberto Barrios had told her that very day that a policeman nicknamed 'El Gocho' had spoken with him and told him that he should continue to behave and not to be shocked if he got a surprise. She related that when the policeman made this warning Jorge and Oscar José Barrios, both Mr. Luís Barrios' nephews, were present..

<sup>94</sup> Concluding Report of the 20<sup>th</sup> Prosecutor's Office of the state of Aragua of May 25, 2006 (Annex D of the State's brief received on June 21, 2006). In this decision there is a list of the judicial steps taken during the investigation.

<sup>95</sup> Concluding Report of the 20<sup>th</sup> Prosecutor's Office of the state of Aragua of May 25, 2006 (Annex D of the State's brief received on June 21, 2006). In this decision, reference is made to the postmortem performed on September 21, 2004.

Luís Alberto until one morning he was dead. She said that agents Leomal Rubira, aka "El Gocho", José Gregorio Clavo, others named Cordero and others she could not remember were responsible for the crimes.<sup>96</sup>

163. The next day after the death, the CICPC started the investigation and on May 25, 2006 the 20<sup>th</sup> Prosecutor's Office with Jurisdiction in the area of Fundamental Rights in the judicial circuit of the state of Aragua, decided to archive the proceedings without clarifying the circumstances surrounding Luís Alberto Barrios' death.<sup>97</sup>

## 7.2 Considerations of the Commission

164. The Commission observes that prior to his death Luís Alberto Barrios had been subjected to acts of harassment and intimidation in the context of a persecution against the Barrios family. Specifically, after an incident with police officers in a bar, their home was searched and burned down by a police detachment days before the extrajudicial execution of his brother Narciso Barrios in December, 2003. Also, as indicated by his sister Elbira Barrios and his partner Orismar Carolina Alzul, Luís Alberto Barrios had been previously threatened by members of the police in the area. In particular, his partner indicated that on the same day as his death, Luís Alberto Barrios told her that a policeman threatened him in the presence of his nephews. The Commission also notes that Luís Alberto Barrios was a beneficiary of precautionary measures granted months before, and that the State had failed to adopt measures to protect him before his death,<sup>98</sup> which shows that he was in a defenseless and vulnerable predicament.

165. As the victim was subject to acts of intimidation by the police with the knowledge of the State, and having failed to protect him and eradicate the risk generated by its own security agents, the Commission considers that there are serious indicia of state agent participation in the death of Luís Alberto Barrios. In view of the situation, the Commission considers that Venezuela should have made all necessary efforts to carry out a diligent investigation of the events, in particular, regarding the participation of State agents. Instead, the investigation was archived pursuant to a number of irregularities described in the section on due process guarantees and judicial protection. Given the lack of a response on what happened to the victim, taking into account the acts of intimidation against the victim and especially the threats by the police, related by family members, as well as against a general background of persecution against the family, the Commission considers that the State failed to comply with the obligation to respect the right to life of Luís Alberto Barrios.

166. Regarding the duty to ensure the rights protected in the Convention, the case law of the organs of the Inter-American System incorporates aspects such as prevention, protection and investigation. When these aspects remain unfulfilled, States may be internationally responsible for the violation of the right to life.

167. Especifically, the Commission has stated that the lack of protection of a person when he or she requested the said protection, leaves that person in situation of indefenseness and facilitates the perpetration of human rights violations against them, unfulfilling its obligation to prevent.<sup>99</sup>.

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<sup>96</sup> Concluding Report of the 20<sup>th</sup> Prosecutor's Office of the state of Aragua of May 25, 2006 (Annex D of the State's brief received on June 21, 2006). This decision refers to the declaration made by Elbira Barrios on February 22, 2005.

<sup>97</sup> Concluding Report of the 20<sup>th</sup> Prosecutor's Office of the state of Aragua of May 25, 2006 (Annex D of the State's brief received on June 21, 2006).

<sup>98</sup> As indicated in the Proceedings section, the State of Venezuela did not respond to the Commission's enquiries in the precautionary measures procedure.

168. The Court has recently reiterated the criteria that must be taken into consideration when evaluating the fulfillment of the obligation for preventative protection as a means of guaranteeing a right. In the Court's words:

a State cannot be responsible for all the human rights violations committed between individuals within its jurisdiction. Indeed, the nature *erga omnes* of the treaty-based guarantee obligations of the States does not imply their unlimited responsibility for all acts or deeds of individuals, because its obligations to adopt prevention and protection measures for individuals in their relationships with each other are conditioned by the awareness of a situation of real and imminent danger for a specific individual or group of individuals and to the reasonable possibilities of preventing or avoiding that danger. In other words, even though an act, omission or deed of an individual has the legal consequence of violating the specific human rights of another individual, this is not automatically attributable to the State, because the specific circumstances of the case and the execution of these guarantee obligations must be considered<sup>100</sup>.

169. In the present case, the prior death threats and the previous acts of intimidation against Luís Alberto Barrios, together with his link as a witness to the extrajudicial execution of one of his brothers and in the general context of persecution towards the Barrios family, all show that he was in a situation of risk.

170. This situation was known to the State, since many of the threats and acts of intimidation against the family in general and against Luís Alberto Barrios in particular<sup>101</sup> were publicly condemned before the competent authorities. Protective measures had also been sought before the domestic authorities. What is more, on the date these acts occurred, Luís Alberto Barrios was already a beneficiary of precautionary measures of protection granted by the Inter-American Commission.

171. The State did not provide information either in the context of the precautionary measures then in force, or in the proceedings of the case indicating that Luís Alberto Barrios was being protected effectively. The Commission considers that there were a myriad of reasonable measures of protection that were not explored or utilized by the State, knowing the situation of risk that the family faced. In effect, the failure to fulfill the precautionary measures was such that as a consequence of the murder of Luís Alberto Barrios, the Commission decided to present a request for provisional measures to the Inter-American Court.

172. In short, the Commission considers that there are grounds for the criteria used both by the Commission and by the Court to establish the failure to fulfill the duty to guarantee derived from the lack of protection and prevention.

173. Additionally, as will be evaluated in detail in the section relating to the judicial guarantees and judicial protection, the Commission considers that the State did not investigate the murder of Luís Alberto Barrios in a serious and diligent way, thus failing to fulfill the duty of guarantee at the beginning of the investigation.

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<sup>99</sup> IACtHR. Report. 24/98. Joao Canuto de Oliveira. Brasil. April 7, 1998. Para. 53.

<sup>100</sup> I/A Court HR, *Case González and others "Campo algodonero"*. Judgment of November 16, 2009. paragraph 280; I/A Court HR, *Case of the Massacre de Pueblo Bello Vs. Colombia*. Judgment of January 31, 2006. Series C No. 140. paragraph 123. See also ECHR, *Case of Kiliç v. Turkey*, Judgment of 28 March 2000, paragraphs 62 and 63 and ECHR, *Case of Osman v. the United Kingdom*, Judgment of 28 October 1998, paragraphs 115 and 116.

<sup>101</sup> By this date they had already denounced the raiding and destruction of their home at the end of November, 2003.

174. By virtue of the foregoing considerations, the Commission concludes that the State of Venezuela has not fulfilled its duty to respect and guarantee the life of Luís Alberto Barrios, and in consequence, committed a violation of Article 4.1, in relation to Article 1.1 of the American Convention.

**8. The Rights to Life, Personal Integrity, Personal Liberty, and Special Protection for Children with respect to Rigoberto Barrios for the events occurring between January 9, 2005, and January 20, 2005**

**8.1 The Facts**

175. As indicated in the previous section, Rigoberto Barrios was arrested and attacked by the police of the state of Aragua on March 3, 2004. On the date when the facts analyzed here occurred, Rigoberto Barrios was the beneficiary of provisional measures issued by the Inter-American Court.

176. On January 9, 2005, Rigoberto Barrios, 16 years of age, met his girlfriend, Genesys Carolina Martínez, in the area Las Casitas, in the town of Guanayen, when he was addressed by two armed individuals who asked him his name, asked his girlfriend to leave with her head lowered and then shot him eight times. Rigoberto Barrios identified one of his attackers as a policeman of the State of Aragua. For her part, Genesys Carolina Martínez stated that the attackers identified themselves as "from the government". That same night, a neighbor took him to the village hospital in Camatagua and later he was transferred to the Central Hospital of Maracay in a very serious condition.<sup>102</sup>

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<sup>102</sup> Complaint before the Chief Public Prosecutor of the state of Aragua of January 13, 2005 (Annex 79 of the Petitioners' brief received on December 4, 2009); and Conclusive Act of the [] on May 25, 2006 (Annex B of the State's brief received on June 21, 2006). This decision refers to the complaint at the root of the investigation; Interview with Rigoberto Barrios on January 13, 2005 (Annex 80 of the Petitioners' brief received on December 4, 2009).

Rigoberto Barrios related that on Sunday January 9, 2005, he was in the Las Casitas Sector, where he resided, together with his girlfriend, at approximately 9 pm, when two armed men approached them and asked them for their identification documents in front of other witnesses, and after identifying himself and asking them to release his girlfriend, they shot him several times, leaving him lying on the ground. He indicated that he knew one of them since he was imprisoned before in Barbacoa, and one of the men is an official of the Aragua Police. Rigoberto Barrios indicated the persons present at the moment of the acts and emphasized that he would be able to recognize his attackers, and also provide details of the guns they were carrying and their physical appearance. He also indicated that he thought they had attacked him when he was arrested and hit one year previously, and when his aunt, Eloisa, had denounced the officials.

See also: Interview with Genesys Carolina Martínez of January 26, 2005 (Annex 81 of the Petitioners' brief received on December 4, 2009).

Genesys Carolina Martínez testified that on the night of January 2, 2005 she was together with her boyfriend Rigoberto Barrios, when two persons arrived and one of them told her to lower her head and pointed a pistol at her. When they asked Rigoberto his name, he replied that he was called José and said he did not have his identification document with him, to which they replied that he should not run off since they were from the government. At that time they told her that she should leave with her head down and as she was going home she heard several shots. Approximately 20 minutes later she left her house and saw several people asking that Rigoberto should be taken to hospital. She indicated that a police patrol car passed by but did not want to stop.

See also: Interview with Maritza Barrios of January 26, 2005 (Annex 83 to the Petitioners' brief of December 4, 2009).

Maritza Barrios, Rigoberto Barrios' mother, stated that on January 9, 2005, her son Wilmer José told her that Rigoberto Barrios had gone out and that afterwards her two sisters, Elbira and Inés Barrios, and her sister-in-law, Odalis, looked for her to tell her that Rigoberto had been shot; so she came to verify the information, finding her son injured. She indicated that he was taken to the Central Hospital of Maracay and on January 15, 2005 they operated on him; he then died on January 20, 2005. She added that her son had been threatened by a policeman who was taken to Las Peñitas, nicknamed 'El Gocho', since he always took her son prisoner. She said that her son told her that he had seen one of his attackers dressed in police uniform in Barbacoa, and he described his physical characteristics to her.

177. On January 13, 2005, the petitioners complained before the Chief Public Prosecutor of the state of Aragua that Rigoberto Barrios was in a very serious condition in the Hospital in Maracay, as a result of eight gunshot wounds inflicted by policemen.<sup>103</sup> On the same date, finding himself in hospital, Rigoberto Barrios made a statement as to what had occurred.<sup>104</sup>

178. After a surgical operation, Rigoberto Barrios died on January 20, 2005 in the hospital in Maracay.<sup>105</sup> The autopsy results indicated: "male adolescent who has received single and multiple bullet impacts causing a cerebral contusion that warranted admittance to hospital and [sic] surgical operation, consequently producing stress ulceration and death by hypovolemic shock. CAUSE OF DEATH: Hypovolemic shock. Upper digestive hemorrhage. Stress ulceration. Post operative state of cervicocranial wound from multiple firearm bullets."

179. The mother of Rigoberto Barrios and Néstor Caudi Barrios, Maritza Barrios, stated that before her son's death, a policeman named Cordero threatened her, telling her that her sons "were not going to eat 'hallacas'".<sup>106</sup>

180. Two investigations were launched in relation to these facts: one relating to the attack on January 9, 2005, and the other relating to the possible death by medical malpractice. The petitioners denounced both the acts of the policemen on January 9, 2005 as well as the possible responsibility of the hospital medical staff. In the first investigation, on May 25, 2006, the 20<sup>th</sup> Public Prosecutor's Office of the judicial circuit of the state of Aragua with competence in the area of fundamental rights ordered the file archived without clarification of the circumstances in which the facts took place.<sup>107</sup> In the second, the latest information available indicates that the same Public Prosecutor's Office of the state of Aragua is still revising the investigation in order to issue the corresponding conclusive report.<sup>108</sup>

## 8.2 The Commission's considerations

181. The Commission observes in the first place that the petitioners alleged the violation of the right to personal freedom to the detriment of Rigoberto Barrios. In this respect, the Commission considers that the facts, as related, do not fall within a case of the deprivation of liberty and that the provisions of the Convention which fit the facts are those relative to the rights to life and personal integrity.

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On his injuries and the visit to hospital see: Interview with January 26, 2005 (Annex 82 of the Petitioners' brief received on December 4, 2009).

<sup>103</sup> Complaint before the Chief Public Prosecutor of the state of Aragua of January 13, 2005 (Annex 79 of the Petitioners' brief received on December 4, 2009); and Conclusive Report of the 20<sup>th</sup> Prosecutor's Office the state of Aragua of May 25, 2006 (Annex B to the State's brief received on June 21, 2006). This decision makes reference to the complaint at the origin of the investigation.

<sup>104</sup> Interview with Rigoberto Barrios on January 13, 2005 (Annex 80 of the Petitioners' brief received on December 4, 2009).

<sup>105</sup> Interview with Maritza Barrios on January 26, 2005 (Annex 83 of the Petitioners' brief received on December 4, 2009).

<sup>106</sup> Interview with Maritza Barrios on January 26, 2005 (Annex 83 of the Petitioners' brief received on December 4, 2009)

<sup>107</sup> Conclusive Report of the 20<sup>th</sup> Prosecutor's Office the state of Aragua of May 25, 2006 (Annex B of the State's brief received on June 21, 2006).

<sup>108</sup> State's Report before the Inter-American Court of Human Rights in the provisional measures proceedings, dated October 2, 2009 (Annex 7 of the Petitioners' brief received on February 16, 2010).

182. Based on the facts as described, the Commission will, firstly, analyze the State of Venezuela's responsibility respecting the events occurring on January 9, 2005, and, secondly, respecting the medical treatment administered from January 10, 2005, up until the date of Rigoberto Barrios' death.

### **8.2.1 The Facts Occurring on January 9, 2005**

183. The Commission observes that the investigations undertaken internally do not establish the identity of those who shot Rigoberto Barrios on January 9, 2005. However, the Commission observes that there are a series of elements present that need highlighting.

184. In the first place, prior to his death, the said victim testified and clearly emphasized that one of the two individuals who approached him was an police official of the Barbacoa division. He explained that he recognized him because months before he had been arrested in the same place. In the second place, the person accompanying him at the time of the acts stated that the perpetrators identified themselves as being "from the government". In the third place, Mrs. Maritza Barrios, the victim's mother, stated that a policeman had threatened her with causing her sons' deaths. In the forth place, as developed in an earlier section, Rigoberto Barrios was the victim of an arbitrary arrest months previously, during which he was physically attacked and threatened with death if he reported what had happened. As has been established, the family denounced the acts relating to the arrest of March 3, 2004, before the Public Prosecutor and Rigoberto Barrios came to make his statement. And, in the fifth place, in the general context of persecution of the Barrios family with regard to almost all of the facts as related up to the present, the perpetrators are policemen of the state of Aragua.

185. The Commission considers that these facts, taken together, permit the inference of the participation of state agents in the injuries inflicted upon Rigoberto Barrios on January 9, 2005.

186. The Commission observes that Rigoberto Barrios did not die instantly but almost 12 days after the attack. The Commission also notes that allegations have been presented on the existence of possible medical malpractice that could have led to this death. This last point will be dealt with later. At this juncture, the Commission considers that independently of the allegations of possible malpractice or medical negligence, and including whether Rigoberto Barrios was alive, the characteristics of the facts of January 9, 2005, the coercion of Rigoberto Barrios' girlfriend to leave with her head down, the number of bullet wounds, abandoning the wounded victim in the place of the acts and the death threats received earlier, are evidence that Rigoberto Barrios was physically injured in violation of his personal integrity, with the clear intention of ending his life and in such a way that this was a virtual certainty.

187. In this respect, the Inter-American Court and the European Court have considered the possibility that, in certain circumstances, it might be possible to sustain a violation of the right to life in the case of persons surviving an attempt, taking into account the force used, the purpose and objective in using it, the situation that the victims were in, and the danger for life which the conduct generated.<sup>109</sup>

188. The Commission considers that the above rulings are fully applicable to what happened to Rigoberto Barrios, as evidence of a violation of the obligation to respect not only the right to personal integrity, but also the right to life on the part of the State of Venezuela. Add to this the neglect of the special obligations regarding the victim, due to his status as a child.

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<sup>109</sup> I/A Court HR, *Case of the Massacre of La Rochela*. Judgment of May 11, 2007. Series C. No. 163, citing ECRH *Acar and Others v. Turkey; Makaratzis v. Greece*.

189. Regarding the obligation to guarantee the rights protected, the Commission reiterates the considerations expressed earlier in the section on the death of Luís Alberto Barrios with respect to the duty of prevention and protection. Without prejudice that State agents' involvement has been established in what happened to Rigoberto Barrios and the consequent violation of the obligation to respect in any case, it was the State's duty to adopt special protective measures for him due to: i) his status as a child; ii) the certain risk existing against his life; iii) the awareness the State had of this risk; and iv) his status as a beneficiary of provisional measures issued by the Inter-American Court. Far from protecting him, the State failed to fulfill the protective measures issued, an aspect consistently denounced before the Inter-American Court. Based on these points, the Commission considers that the State failed to fulfill its obligation to protect the life and integrity of the victim.

190. Additionally, the Commission underlines that the State did not launch a serious and diligent investigation of the facts in order to determine what happened, to identify those responsible and to impose appropriate punishment. This statement will be detailed in the section on the rights to judicial guarantees and judicial protection.

191. By virtue of the preceding considerations, the Commission concludes that the State of Venezuela has failed to fulfill its obligation to respect and guarantee the right to life and personal integrity of Rigoberto Barrios. In regard to this latter right, the Commission points out that the violation does not only derive from the serious injuries inflicted on January 9, 2005, but also from the physical and psychological state that it is reasonable to infer he suffered up until his death as a result of the gunshots and the consequent fear of dying, or being permanently injured. The State also neglected its special obligation of protection respecting children. To sum up, the State of Venezuela has violated the rights enshrined in Articles 4.1, 5.1, and 19 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Rigoberto Barrios.

### **8.2.2 Medical Treatment from January 10, 2005 until the Time of Death**

192. The Commission considers that there is insufficient evidence to conclude that medical malpractice or a lack of timely medical treatment caused the death of the victim. However, the Commission notes that there are certain elements that at least permit a consideration of this possibility and that, therefore, in light of the complaint presented by the victim's family, it was up to the State to launch a serious and diligent investigation of the actions of the medical staff in charge of his care at the Central Hospital of Maracay, especially because it is a state body.

193. Among these elements there is room to state that despite having eight gunshot wounds, Rigoberto Barrios was operated on five days after his admittance to hospital. It is also alleged that the bad positioning of his surgical collar caused asphyxiation and worsened his condition. It has also come to light that the blood transfusion he received on January 19, 2005, was late.<sup>110</sup>

194. Despite these indications, and as will be explained in the section on the rights enshrined in Articles 8 and 25 of the Convention, the investigations undertaken internally did not comply with the requirements of diligence and effectiveness. When dealing with a child who is especially vulnerable due to his condition, the Commission considers that the State has a special obligation to undertake investigations with particular care and speed.

195. By reason of the foregoing, the Commission concludes that the State of Venezuela has failed to fulfill its duty to guarantee the right to life for not seriously investigating the complaints

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<sup>110</sup> On the details of these allegations, see: Petitioners' brief received on December 4, 2009.

of medical malpractice or negligent treatment. In consequence, the State violated the rights enshrined in Articles 4.1 and 19 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Rigoberto Barrios.

## 9. The Right to Life with respect to Oscar José Barrios and de events of November 28, 2009

### 9.1 The Facts

196. As was previously analyzed above, at the end of November, 2003, the home of Oscar José Barrios - Elbira Barrios' son - was illegally raided. Then, on June 19, 2004, Oscar José Barrios was illegally and arbitrarily arrested, in breach of applicable guarantees. In accordance with the facts previously outlined, Oscar José Barrios and his nephew Néstor Caudi Barrios also received death threats on December 6, 2004. Finally, in the complaint, on June 18, 2005, he managed to escape from an attempted detention by armed individuals.

197. From the date of these events, as well as up until the time of his death, Oscar José Barrios was the beneficiary of provisional measures issued by the Inter-American Court.

198. Oscar José Barrios' impression that there was a context of persecution of his family is mirrored in the statement made on February 22, 2005, in the midst of the investigation of the death of his uncle Luís Alberto Barrios, in which he stated there was an official named Clavo in Guanayen with whom he had had an incident involving a gun - a reference to what occurred at the end of November, 2003, in the bar 'El Picaflor', preceding the raids on the homes of various members of his family and that after that "he took it against us and he went about on the hills, hooded, trying to catch us. One day the policeman called Rubira was circulating in a patrol car and stop where Jorge, aunt Maritza, Rigoberto and myself were and he told us not to be shocked if a phantom car came and killed the whole Barrios family."<sup>111</sup>

199. On November 28, 2009, Oscar José Barrios was brutally murdered. The following day, the Commission became aware of the situation, and proceeded to inform the Inter-American Court as quickly as possible due to the fact that, as stated, Oscar José Barrios was a beneficiary of provisional measures. When informed of the situation, the Inter-American Court requested information from the State as to what had transpired on December 3 and December 14, 2009. Given the lack of response, the Inter-American Court convened a public hearing specifically requiring information on the death of Oscar José Barrios.<sup>112</sup>

200. This hearing took place on January 28, 2010, the date on which the State merely reported "the 14th Public Prosecutor of the State of Aragua, by the lawyer Guillermo José Raven Freite, undertook the respective investigations. They conducted interviews with the families of the deceased and took a statement from a relevant witness to the facts under investigation, but from then on it is clear who are the perpetrators or participants in the criminal acts." The State indicated that the process was at the investigation stage.<sup>113</sup>

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<sup>111</sup> Conclusive Report of the 20<sup>th</sup> Prosecutor's Office the state of Aragua of May 25, 2006 (Annex D to the State's brief received on June 21, 2006). In this decision there is a list of steps taken during the investigation.

<sup>112</sup> See the Ruling of the President of the Inter-American Court of Human Rights of December 18, 2009, to call a public hearing on provisional measures in the matter of Eloisa Barrios and others.

<sup>113</sup> I/A Court HR. Resolution on Provisional Measures. February 4, 2010 in the matter of Eloisa Barrios and others respecting Venezuela, Consideration 8.

201. On February 4, 2010, the Inter-American Court issued a resolution on the provisional measures, stating that "the murder of the beneficiary Oscar José Barrios demonstrates the failure on the part of the State to effectively implement the provisional measures ordered."<sup>114</sup>

202. In the context of the proceedings in the present case, from a communication of January 7, 2010, the Commission requested information both from the State as well as the petitioners on the death of Oscar José Barrios. The State did not respond to this request.

203. For their part, in a communication of February 16, 2010, the petitioners, after recounting the previous acts of intimidation suffered by Oscar José Barrios, stated the following: Oscar José Barrios, 22 years of age, was executed on November 28, 2009, by two men dressed in black clothes and scarves, of the same type used by police motorcycle patrols of the State of Aragua. This occurred at night on the outskirts of the village of Guanayen, when he met another youth from the community after a game of softball. Both subjects came from a dark area and, without speaking, shot Oscar Barros six times, killing him instantly. The other youth fled the scene, but was caught afterwards by both subjects and killed. - the local press reported these facts. - It was suspicious that no officers of the Guanayen force turned up at the scene of the facts, who merely took part in the CICPC whose officers were present and moved the two bodies to the mortuary of the same institution. - Oscar José Barrios' autopsy report indicates that the cause of death was a sub dermal trauma by cardiac and pulmonary laceration due to a gunshot wound.<sup>115</sup>:

204. This information of the petitioners was duly sent to the State. No response has been received to date.

205. In these circumstances, the only official information available on Oscar José Barrios' death is that submitted by the State at the public hearing before the Inter-American Court of last January 18, 2010. As explained, despite the repeated requests both from the Commission and the Court, the State has abstained from providing complete and detailed information as to what occurred. This lack of information forces the Commission to base its pronouncement with respect to these facts on the information provided by the petitioners and on the evolution of the context of the present case.

## 9.2 The Commission's Considerations

206. The Commission emphasizes that the death of Oscar José Barrios is a supervening fact at the admissibility state, in which he has already been included as a presumed victim of a series of acts of intimidation and threats against him. The death of Oscar José Barrios is connected with the acts admitted by the Commission and the analysis of admissibility remains applicable to this act.<sup>116</sup>

207. Although the available information indicates that investigations were launched into the death of Oscar José Barrios, the State has abstained from presenting evidence which would allow an evaluation as to whether they were conducted with due diligence, and, therefore, if they can form an effective means to clarify the facts, identify those responsible and impose appropriate penalties. In this situation, and taking special note that delays and lack of diligence have characterized the investigations into everything that has happened to the Barrios family, there is no

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<sup>114</sup> I/A Court HR. Resolution on Provisional Measures. February 4, 2010 in the matter of Eloisa Barrios and others respecting Venezuela, Resolution point 1.

<sup>115</sup> Brief of the Petitioners received on February 16, 2010.

<sup>116</sup> See IACtHR. Report No. 61/06 of October 26, 2006, Merits, Case 12.442, *Gabriela Perozo and others*, paragraphs 69 y 70.

indication that investigations formally undertaken in this case have any prospect of effectiveness.<sup>117</sup> As will be examined in the section on the rights to judicial guarantees and judicial protection, the members of the Barrios family have lacked the effective means, faced with the continuous persecution up to the present time.

208. In these circumstances, it does not appear reasonable to expect the families of the victim to face the entire internal procedures nor to initiate the Inter-American procedure from its initial stages in order that the Commission is able decide on this act. The Commission points out that the State has had the possibility to adduce evidence on Oscar José Barrios' death and to discuss the relevant information presented by the petitioners. The State of Venezuela has not availed itself of this opportunity. As a consequence, the Commission decides to incorporate Oscar José Barrios' death into the analysis of the merits of the present case and leave it as established that this is not an impairment of the State's rights of defense.

209. The Commission observes that Oscar José Barrios' death has similar characteristics to the other facts of the case, a similarity which permits them to be considered as part of the same context of persecution against the family. In effect, Oscar José Barrios was illegally and arbitrarily arrested by the police of the State of Aragua and twice received death threats: on June 19, 2004 in the incident that led to his arrest, and on December 6, 2004 together with his cousin Néstor Caudi Barrios. These facts have already been analyzed above. Oscar José Barrios was also a beneficiary of provisional measures issued by the Inter-American Court, despite the lack of evidence of having been the object of any protective measures in his favor. Neither were the acts of intimidation and harassment committed against him by the police adequately investigated. This permits the inference that Oscar José Barrios, at the time of his death, was in the same position of vulnerability as the rest of his immediate family.

210. The victim found himself threatened with death by the police themselves and having informed the State of this situation without its adopting protective measures on his behalf to avoid the risk generated by its own security forces, the Commission deems it reasonable to presume the participation of agents of the State in Oscar José Barrios' death.

211. As regards the obligation to guarantee the rights protected, the Commission repeats the considerations expressed above in the section on the death of Luís Alberto Barrios as respects the duty of prevention and protection. Without prejudice to the fact that the Commission has found a the violation of the obligation to respect the right to life of Oscar José Barrios, in any case, it was incumbent on the State to adopt protective measures in his favor due to: i) the certain risk existing against his life; ii) the awareness the State had of this risk; and iii) his status as a beneficiary of provisional measures issued by the Inter-American Court. Despite the existence of protective measures that could have been effectively implemented, the State has failed to comply with the provisional measures issued, a question consistently reported to the Inter-American Court. Based on these points, the Commission considers that the State has failed to fulfill its obligation to protect the life of the victim and to prevent his death.

212. With respect to the piece of the investigation relating to the guarantee obligation, the Commission considers that at this time there is insufficient documentation necessary to issue an opinion on the merits of this aspect, without prejudice to what has been emphasized, *supra*, on the lack of prospects for effective

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<sup>117</sup> The Commission has applied the criterion of 'perspectives of effectiveness' on various occasions in its decisions on admissibility. See IACtHR, Report No 57/00, *Case 12.050, Admissibility, La Granja Ituango*, paragraph 45; IACtHR, Report No. 75/03 of October 22, 2003, *Admissibility, José Milton Cañas Cano and others*, paragraph 31.

213. By virtue of the considerations above, the Commission concludes that the State of Venezuela has failed to fulfill its duty to respect and guarantee the right to life of Oscar José Barrios and, in consequence, has committed a violation of Article 4.1 in relation to Article 1.1 of the American Convention.

## **10. The Rights to Freedom of Movement and Residence<sup>118</sup> and the Special Protection of Children with Respect of Various Members of the Barrios Family**

### **10.1 Facts**

214. In accordance with the information supplied in the case file, the Commission observes that at the domestic level a complaint was made about the displacement of the family circles of Elbira Barrios and Pablo Solórzano, as well as Néstor Caudi Barrios, as explained below.

215. On February 10, 2005, the petitioners complained before the Chief Public Prosecutor of the state of Aragua that on February 2, 2005, Mr. Pablo Solórzano, Eloisa Barrios' brother, was forced to leave the Las Casitas sector of the town Guanayen together with his wife Beneraíz De la Rosa and his one year old son Danilo Solórzano, "in the face of the danger of being killed by officials of the Aragua State police".<sup>119</sup>

216. On June 22, 2005, the petitioners complained before the Chief Public Prosecutor of state of Aragua, that owing to the continuing threats, the entire family of Elbira Barrios and her sons Oscar José Barrios, Cirilio Robert Barrios (10 years old) and Lorena Barrios (2 years old) had decided to move to a location far away on June 19, 2005, to save their lives. They indicated that months before Elvira Barrios' other daughters, Darelvis Barrios and Elvis Sarais Barrios, 20 and 14 years old respectively, had moved to another location for fear of being killed.<sup>120</sup>

217. Against the background of the investigation of Narciso Barrios' murder, on July 28, 2004, the petitioners complained before the Chief Public Prosecutor of the state of Aragua that owing to "the constant intimidation and repeated death threats towards young Caudi Barrios (16 years of age) by the police [...] assigned to the Guanayen Station, on Monday July 12 of this year, we decided to remove her from hiding in her home located in the Las Casitas sector of the town of Guanayen and take her to another location where her life is safe."<sup>121</sup>

218. The petitioners alleged the displacement of a larger number of people. In particular, they mentioned that the direct family circles (meaning partners, sons and daughters) of Eloisa, Elvira, Maritza, Oneida, Inés, Luisa del Carmen, Carolina Orismar Alzul (the widow of Luís Alberto Barrios), Dalila Ordalys Ortuño (the widow of Benito Antonio Barrios), Junclis Rangel (the widow of Narciso Barrios), Juan Barrios and Pablo Solórzano, were forced to move from their habitual place of residence at different times, due to the lack of protection experienced by the Barrios family.

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<sup>118</sup> Article 22.1 of the American Convention establishes: 1 Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject of the provisions of the law.

<sup>119</sup> Complaint before the Chief Public Prosecutor of the state of Aragua presented on February 10, 2005 (Annex 78 to petitioners' brief received on December 4, 2009).

<sup>120</sup> Complaint before the Chief Public Prosecutor of the state of Aragua on June 22, 2005 (Annex 77 to petitioners' brief received on December 4, 2009).

<sup>121</sup> Communication presented to the Chief Public Prosecutor of the judicial circuit of the state of Aragua on July 28, 2004 (Annex 44 to petitioners' brief of December 4, 2009).

## 10.2 Considerations of the Commission

219. As the Inter-American Court has established, the right to freedom of movement and of residence, established in Article 22.1 of the Convention, is an indispensable condition for the free development of the individual.<sup>122</sup> This Article sets out, *inter alia*, the following: a) the right of those who are legally present within a State to move freely and to choose their place of residence, and b) their right to enter, remain and leave the State's territory without legal interference. Thus the enjoyment of this right does not depend on any particular object or motive of the individual desiring to move or remain in a location.<sup>123</sup>

220. The Court has also emphasized that the right of movement and residence may also be impaired by *de facto* restrictions if the State has not established the conditions nor provided the means permitting them to be exercised.<sup>124</sup> Of special relevance in the present case, the Court has established that the right of movement and residence may be affected when an individual is the victim of threats and intimidation and the State does not provide the necessary guarantees for the individual to travel and reside freely in the territory concerned, including when the threats and intimidation emanate from non state actors.<sup>125</sup>

221. The Commission believes that these considerations are applicable to the present case, aggravated by the fact that the threats come from the state security bodies. As the petitioners have shown both before the Commission and before the Court, the reason why there have been displacements from their habitual place of residence is the lack of protection in the face of the risks confronting them. The Commission has insufficient information on the period of time or the places to which some members of the Barrios family have been displaced. Neither is it aware of the current precise location of a number of them. Nevertheless, independently of the fact that the change of residence was carried out during a short period of time, and that some family members have already returned, the Commission considers the mere fact that they were forced to move to ensure their safety due to the State's lack of attention to the risk, and the lack of protection -the source of the risk being the very state police of Aragua- is sufficient to establish the State's responsibility for the violation of the right set out in Article 22.1 of the Convention.

222. As regards the persons affected by this situation, the Commission considers that for various reasons, what the petitioners have indicated up until now has special relevance to the situation described up to this point. Firstly, it is reasonable to infer that the displaced family members were afraid to find out officially about the measures adopted to ensure their safety. Especially understandable is the Barrios family's feeling that to go and denounce this situation would not lead to an adequate response on the authorities' part. In effect, there is no indication that the complaints about the displacement of the family circles of Elbira Barrios and Pablo Solórzano, as well as Néstor Caudi Barrios, resulted in either the adoption of any measure to ensure their safety, to allow them to return to their town, or an investigation into what had occurred.

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<sup>122</sup> I/A Court HR, *Case Ricardo Canese Vs. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, paragraph 115; I/A Court HR, *Case of the Massacres of Ituango*. Judgment of July 1, 2006. Series C No. 148, paragraph 206.

<sup>123</sup> United Nations Committee on Human Rights, General Commentary No.27 of November 2, 1999, paragraphs 1, 4, 8 and 19; I/A Court HR, *Case Ricardo Canese Vs. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, paragraph 115; I/A Court HR, *Case of the Massacres at Ituango*. Judgment of July 1, 2006. Series C No. 148, paragraph 206.

<sup>124</sup> I/A Court HR. *Case de la Comunidad Moiwana Vs. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, paragraphs 119 and 120; I/A Court HR, *Case of the Massacres at Ituango*. Judgment of July 1, 2006. Series C No. 148, paragraph 210.

<sup>125</sup> I/A Court HR, *Case Valle Jaramillo and others Vs. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, paragraph 139.

Secondly, the State has not contradicted the list of persons submitted by the petitioners affected by this situation. On the contrary, despite the fact that in the context of the provisional measures proceedings the Inter-American Court ordered the State to ensure the prompt return of the Barrios family members to their homes, Venezuela has not adopted any concrete measures to that effect.

223. This being the case, the Commission takes into account the list of displaced persons submitted by the petitioners, and, in consequence, concludes that the State violated the right laid down in Article 22.1 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Justina Barrios, Eloisa Barrios, Beatriz Adriana Cabrera Barrios, Víctor Daniel Cabrera Barrios, Luimary Carolina Guzmán Barrios, Luisaidy Yulianni Guzmán Barrios, Elbira Barrios, Darelvis 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 Oneida Barrios, Marcos Antonio Díaz Barrios, Sandra Maribi Betancurt Barrios, Junior José Betancurt Barrios, Wilneidy Betania Pimentel Barrios, Wilkar Felipe Pimentel Barrios, Inés Barrios, Daniel Yoselín Ortiz Barrios, Edinson Alexander Ortiz Barrios, Johjan Ramón Perozo Barrios, Luisa del Carmen Barrios, Gustavo Ravelo, Luisiani Nazareth Ravelo Barrios, Orismar Carolina Alzul, Ronny David Barrios Alzul, Roniel Alberto Barrios Alzul, Luís Alberto Alzul, Dalila Ordalys Ortúñoz, Jorge Antonio Barrios, Carlos Alberto Ortúñoz, Juncis Rangel, Annarys Alexandra Barrios, Benito Antonio Barrios, Juan Barrios, Orianny Nazareth Pelae and Orina Nazareth Pelae, Pablo Solórzano, Beneráiz de la Rosa and Danilo David Solórzano de la Rosa. With respect to the children appearing on the list, the Commission considers that the State has also violated Article 19 of the American Convention.

## **11. The Right to Personal Integrity with Respect to the Members of the Barrios Family**

224. In this section the Commission will analyze two aspects of adverse effects on the physical and psychological integrity. In the first place, with respect to the immediate family unit of each of the murdered individuals, due in part to the gravity of the facts, and in the second, with respect to the Barrios family as a whole in the more general context of the present case.

### **11.1 The Adverse Effects on the Physical and Psychological Integrity of the Next of Kin of the Five Murdered Family Members**

225. As the Inter-American Court has indicated, the immediate families of victims of certain violations of human rights may be, in turn, victims themselves.<sup>126</sup> Especially, the Court has indicated that the victims' next of kin may be adversely affected in their physical and psychological integrity as a consequence of the particular situations their loved ones suffered, and from the subsequent actions or omissions by the local authorities in the face of these acts.<sup>127</sup>

226. Throughout the present report, the Commission has concluded that the State of Venezuela is responsible for a violation of the right to life to the prejudice of Benito Antonio Barrios, Narciso Barrios, Luís Alberto Barrios, Rigoberto Barrios and Oscar José Barrios.

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<sup>126</sup> I/A Court HR. *Case Cantoral Huamán and García Santa Cruz Vs. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007 . Series C No. 167, paragraph 112; I/A Court HR, *Case Bueno Alves*. Judgment of May 11, 2007. Series C. No. 164, paragraph 102.

<sup>127</sup> I/A Court HR. *Case Cantoral Huamán and García Santa Cruz Vs. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007 . Series C No. 167, paragraph 112; I/A Court HR, *Case Vargas Areco*. Judgment of September 26, 2006. Series C No. 155, paragraph 103, paragraph 96.

227. The Commission considers that the single loss of a loved one as a consequence of the arbitrary use of force by security forces, in an ongoing context of threats and defenselessness, followed by the further lack of clarification and impunity, permits the inference of an adverse effect on the physical and psychological integrity of the immediate family unit of those killed.

228. In the present case, four of the five murders occurred against a constant background of lack of protection on the State's part. The Commission also emphasizes the suffering under which the immediate families had to live at the moment of the arrest and murder of their loved ones, as is the case of the then children Jorge Antonio Barrios and Carlos Alberto Ortúño, who were present at the detention and beating suffered by Benito Antonio Barrios moments before his execution. The Commission also stresses that in the four murders subsequent to that of Benito Antonio Barrios, their immediate families went to make statements before the investigatory authorities, relating that the families were receiving death threats, which was an additional contributing factor to their families' suffering and feelings of helplessness.

229. Additionally, as will be addressed in detail in the following section, the common denominator in the investigations into the violent deaths of Benito Antonio, Narciso, Luís and Rigoberto Barrios is the lack of a clarification of what happened and a determination of any applicable punishment. The proceedings have been characterized by delays and a lack of diligence in evidence gathering and the issuing of resolutions. Especially, the investigations have not taken into account that the facts occurred against a wider background of harassment against the family, which has necessarily had a major impact on the lack of protection for its members.

230. The Commission considers that these elements are sufficient for the conclusion that the deaths of their loved ones caused profound suffering and enormous changes in the life of the close family members of Benito Antonio, Narciso, Luís, Rigoberto and Oscar José Barrios. In this sense, the Commission concludes that the State of Venezuela is responsible for the violation of the right to physical and psychological integrity enshrined in Article 5.1 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of the immediate family members (parents, brothers and sisters, sons, daughters and partners) of Benito Antonio, Narciso, Luís, Rigoberto and Oscar José Barrios, i.e.: Justina Barrios, Pablo Solórzano, Eloisa Barrios, Elbira Barrios, Maritza Barrios, Brígida Oneida Barrios, Inés Barrios, Luís Alberto Barrios, Lilia Isabel Solórzano, Narciso Barrios, Luisa del Carmen Barrios, Juan Barrios, Jorge Antonio Barrios, Carlos Alberto Ortúño, Dalila Ortúño, Annarys Alexandra Barrios, Benito Antonio Barrios, Junclis Rangel, Ronny David Barrios, Roniel Alberto Barrios, Luís Alberto Alzul, Orismar Carolina Alzul, Wilmer José Flores Barrios, Genesis Andreina Navarro Barrios, Víctor Tomas Navarro Barrios, Heilín Alexandra Navarro Barrios, Néstor Caudi Barrios, Darelvis Carolina Barrios, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Michael José Barrios Espinosa and Dinosca Alexandra Barrios Espinosa. Although some of these individuals have since died, the Commission is including them because it understands that as from the death of their family member until their own death, their physical and psychological integrity was affected.

## **11.2 The Adverse Effect on the Physical and Psychological Integrity of all the Members of the Barrios Family as a Consequence of a Pattern of Persecution against them and the Ongoing Lack of Protection**

231. The Commission has established in the first part of the analysis of the present report that the facts of the case bear all the hallmarks of a wider background of persecution against the family, characterized by the series of violent events to a greater or lesser degree, to which the Venezuelan authorities have not adequately responded, either in the implementation of the protection granted by the organs of the Inter-American system, or in the adequate clarification of what occurred and the identification and punishment of those responsible, as the case may be.

232. The involvement of state agents, the impunity resulting from the lack of an adequate response, protection and investigation, necessarily creates a general impression of tolerance towards the acts of abuse committed against all the family, which itself reproduces more acts of violence against them. These acts have occurred successively within a period of time covering more than a decade, during which time the Barrios family in general have been obliged to adopt measures to overcome the failings of the State authorities called up to protect them, and to investigate the acts of persecution against them.

233. The Commission considers that this background allows the inference that the members of the Barrios family have lived in a constant state of anguish, fear and anxiety faced with the possibility that they or their immediate family would be the next target of violence. This has necessarily had affects on the development of their normal daily activities and their plans for life in general. Many of the members of the Barrios family, such as Mrs. Eloisa Barrios, have devoted the past few years to the search for protection and justice without being heard by the State. Others have been forced to adopt radical personal and family choices to protect their security and that of their children. An important number of the family members are young children who have been born into a background in which their parents and siblings are in great danger of their life and personal integrity, which of course has repercussions for their development and family relations.

234. Due to the nature of the present case, the Commission considers that these facts affect all the members of the family in their quality as such, resulting in the conclusion that the State of Venezuela has violated the right to physical and psychological integrity of all the members of the Barrios family, up to now individually identified in the proceedings before the Inter-American Commission, with the exception of Brígido Solórzano, Justina Barrios' partner, who died on September 2, 1998, and thus was not a part of the context of threats and lack of protection of the family. Equally, the Commission considers that Benito Antonio Barrios - being the first member of the family to be executed and due to the lack of evidence of threats prior to that moment - cannot be considered a victim from this point of view.

See. Combined Family Tree, which includes a list of all the members of the Barrios family.

## **12. The Rights to Due Process Guarantees<sup>128</sup> and Judicial Protection<sup>129</sup> with Respect the Various Members of the Barrios Family**

235. The Court has emphasized that "as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial remedies to the victims of human rights violations that must be substantiated according to the rules of due process of law".<sup>130</sup> The Court has also indicated that

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<sup>128</sup> Article 8.1 of the Inter-American Convention provides: 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

<sup>129</sup> Article 25.1 of the Inter-American Convention establishes: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

<sup>130</sup> I/A Court HR, *Case Cantoral Huamán and García Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007 . Series C No. 167, paragraph 124; I/A Court HR, *Case of the Massacre of la Rochela*. Judgment of May 11, 2007. Series C. No. 163, paragraph 145; I/A Court HR, *Case del Penal Miguel Castro Castro*. Judgment of November 25, 2006. Series C No. 160, paragraph 381; and I/A Court HR, *Case Trabajadores Cesados del Congreso (Aguado Alfaro and others)*. Judgment of November 24, 2006. Series C No. 158, paragraph 106.

From Article 8 of the Convention it is evident that the victims of human rights violations, or their next of kin should have substantial possibilities to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, and to seek due reparation.<sup>131</sup>

236. In the same sense, the Court has indicated that the victims and their next of kin of the alleged victims have the right to expect, and the States the obligation to ensure, that what befell the alleged victims will be investigated effectively by the State authorities; that proceedings will be filed against those allegedly responsible for the unlawful acts; and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next of kin repaired.<sup>132</sup> According to this, the state authorities, once they become aware of an act in violation of human rights, in particular of the rights to life, personal integrity and personal liberty,<sup>133</sup> they should initiate a serious, impartial and effective investigation, *ex officio* and without delay,<sup>134</sup> which should take place within a reasonable time.<sup>135</sup>

237. On the content of the duty to investigate "with due diligence", the Inter-American Court has emphasized that it implies that the steps in the investigations should be undertaken utilizing all the legal means available and should be oriented toward the determination of the truth.<sup>136</sup> In the same vein, the Court has indicated that the State has the duty to ensure that everything necessary is done to discover the truth about what happened and for those responsible to be punished,<sup>137</sup> by involving every state institution.<sup>138</sup>

238. The Court has also said that the authorities must adopt reasonable measures to preserve the evidence necessary in order to undertake the investigation.<sup>139</sup>

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<sup>131</sup> I/A Court HR, *Case García Prieto and others*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 102; I/A Court HR, *Case of los "Niños de la Calle" (Villagrán Morales and others)*. Judgment of November 19, 1999. Series C No. 63, paragraph 227; and I/A Court HR, *Case of las Hermanas Serrano Cruz*. Merits, Reparations and Costs. Judgment of March 1, 2005. Series C No. 120, paragraph 63.

<sup>132</sup> I/A Court HR, *Case García Prieto and others*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 103; I/A Court HR, *Case Bulacio*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, paragraph 114; and I/A Court HR, *Case del Penal Miguel Castro Castro*. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

<sup>133</sup> I/A Court HR, *Case Cantoral Huamaní and García Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007 . Series C No. 167, paragraph 100.

<sup>134</sup> I/A Court HR, *Case García Prieto and others*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 101; I/A Court HR, *Case of los Hermanos Gómez Paquiyauri*. Judgment of July 8, 2004. Series C No. 110, paragraphs 146; I/A Court HR, *Case Cantoral Huamaní and García Santa Cruz*, Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007 . Series C No. 167, paragraph 130.

<sup>135</sup> I/A Court HR, *Case Bulacio*. Judgment of September 18, 2003. Series C No. 100, paragraph 114; I/A Court HR, *Case of the Massacre of la Rochela*. Judgment of May 11, 2007. Series C. No. 163, paragraph 146; I/A Court HR, *Case del Penal Miguel Castro Castro*. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

<sup>136</sup> I/A Court HR, *Case García Prieto and others*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, paragraph 101.

<sup>137</sup> I/A Court HR, *Case Bulacio*. Judgment of September 18, 2003. Series C No. 100, paragraph 114; I/A Court HR, *Case of the Massacre of la Rochela*. Judgment of May 11, 2007. Series C. No. 163, paragraph 146; I/A Court HR, *Case del Penal Miguel Castro Castro*. Judgment of November 25, 2006. Series C No. 160, paragraph 382.

<sup>138</sup> I/A Court HR, *Case Cantoral Huamaní and García Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007 . Series C No. 167, paragraph 130; I/A Court HR, *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006. Series C No. 140, paragraph 120; and I/A Court HR, *Case Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, paragraph 66.

<sup>139</sup> I/A Court HR, *Case Zambrano Vélez and others*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 122.

239. Although the duty to investigate is an obligation of means, and not of result, this must be assumed by the State as a judicial duty itself and not as a mere formality preordained to be ineffective,<sup>140</sup> nor as a mere step taken by private interests that depends upon the initiative of the victims or their families or upon their offer of proof.<sup>141</sup>

240. The Court has also emphasized that the right of access to justice must ensure, within a reasonable time, the right of the alleged victims or their next of kin, to have everything necessary done to discover the truth of the events and to punish those responsible.<sup>142</sup>

241. By virtue of the above quoted jurisprudence, the Commission will analyze whether in the present case the State of Venezuela has undertaken a serious and diligent investigation, within a reasonable period of time, on the facts as described in the present report, as a means of guaranteeing the substantive rights to life, personal integrity and personal liberty,<sup>143</sup> and to ensure access to an effective judicial process in the face of the violations of human rights presented up to this point. To this end, it is necessary to evaluate the procedures initiated at the domestic level.

242. Bearing in mind the fact that various acts correspond to extrajudicial executions, the Commission will take into account in its evaluation the guidelines that should govern in these types of investigations - in accordance with the United Nations Protocol for the Legal Investigation of Extrajudicial, Arbitrary and Summary Executions. In this respect, the said instrument also known as the Minnesota Protocol, establishes certain minimum steps such as: the identification of the victim, the recovery and preservation of evidence relating to the death to aid in any potential prosecution of those responsible, the identification of possible witnesses and obtaining statements from them concerning the death, the determination of the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death, distinguishing between natural death, suicide and homicide, the identification and apprehension of the individual(s) involved in the death and bringing the alleged perpetrators before a competent court established by law.<sup>144</sup>

243. The Commission will present hereafter the facts relating to the judicial procedures undertaken with respect to each one of the facts analyzed in numbers 1 to 9 of the present report, detailing its considerations on each one of the proceedings, and concluding with general findings on the entirety of all the investigations.<sup>145</sup>

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<sup>140</sup> I/A Court HR, *Case Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paragraph 177; I/A Court HR, *Case Cantoral Huamaní and García Santa Cruz*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007 . Series C No. 167, paragraph 131; and I/A Court HR, *Case Zambrano Vélez and others*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 120.

<sup>141</sup> I/A Court HR, *Case Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4, paragraph 177; I/A Court HR, *Case Zambrano Vélez and others*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 120.

<sup>142</sup> I/A Court HR, *Case of the Massacre of las Dos Erres*. Judgment of November 24, 2009, paragraph 105; *Case Bulacio Vs. Argentina*. Merits, Reparations and Costs. Judgment of September 18, 2003. Series C No. 100, paragraph 114; *Case Zambrano Vélez and others Vs. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, paragraph 115.

<sup>143</sup> I/A Court HR, *Case González and others "Campo algodonero"*. Judgment of November 16, 2009, paragraph 287; I/A Court HR, *Case of the Massacre of Pueblo Bello Vs. Colombia*. Judgment of January 31, 2006. Series C No. 140, paragraph 142.

<sup>144</sup> See U.N. Doc E/ST/CSDHA/.12 (1991). In previous cases, the Commission has used United Nations documents to evaluate the minimum investigatory steps to be undertaken in such cases. See IACtHR. Report 10/95. *Case. 10.580*. Ecuador. September 12, 1995, paragraph 53.

<sup>145</sup> As regards the acts analyzed in numbers 10 and 11, i.e., the displacements and the adverse effects on the physical and psychological integrity of the members of the Barrios family, the Commission has not included a specific section on this point, because they are considered, principally, effects of the violations of human rights.

## **12.1 The Detention and Extrajudicial Execution of Benito Antonio Barrios on August 28, 1998**

### **12.1.1 The Judicial Proceedings**

*Initial Investigatory Proceedings before the Judicial Police Technical Body from August 28, 1998, until June 18, 1999, under the Criminal Code of Prosecution*

244. On August 28, 1998, the Judicial Police Technical Body agreed to initiate the summary procedures according to the version of the Criminal Code of Prosecution<sup>146</sup> then in force. The file was identified as No. F-111-921, under the system then used by the defunct Judicial Police Technical Body.<sup>147</sup> That same day a visual inspection of the body was carried out;<sup>148</sup> a visual inspection of the location of the facts was carried out;<sup>149</sup> a statement was taken from one of the officials participating in what had occurred;<sup>150</sup> and records on the alleged criminal activity of Benito Antonio Barrios, were received.<sup>151</sup> The next day the autopsy was performed.<sup>152</sup>

245. On September 1, 1998, from the file there was an indication of the necessity of adding to the investigation possible criminal records registered against Bentio Barrios, and it was agreed to request them from the Police Technical Section.<sup>153</sup> Between September 1 and 2, 1998, two individuals appeared to make statements on alleged thefts committed by Benito Antonio Barrios.<sup>154</sup> On September 3, 1998, other inquiries were made on the criminal record of Benito Antonio Barrios and whether the gun that he was allegedly carrying on the day of his death had been requested.<sup>155</sup>

246. On September 2, 1998, Alexis José Amador Mujica, Amilcar José Henriquez Cedeno, Carlos Alberto Sandoval Valor, Rizzon Vicente Superlano Rojas, and four officials of the

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<sup>146</sup> File of the Judicial Police Technical Body of August 28, 1998. (Annex to the petitioners' brief received on November 14, 2007).

<sup>147</sup> Communication of the First Instance Court of the Criminal Judicial Circuit of the state of Aragua of September 26, 2005 (Annex 2 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); Lodging of an *amparo* appeal received at the Bailiff's Office on June 16, 2004 (Annex 3 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); Document of transmission to the Court in the Urdaneta Municipality in the state of Aragua, June 18, 1999 (Annex to the petitioners' brief received on November 14, 2007).

<sup>148</sup> Police Reports of the Judicial Police Technical Body of August 28, 1998. (Annex to the petitioners' brief dated November 14, 2007).

<sup>149</sup> Police Reports of the Judicial Police Technical Body of August 28, 1998. (Annex to the petitioners' brief dated November 14, 2007).

<sup>150</sup> Police Reports of the Judicial Police Technical Body of August 28, 1998. (Annex to the petitioners' brief dated November 14, 2007).

<sup>151</sup> Transmission of records of criminal activity on August 28, 1998. (Annex to the petitioners' brief received on November 14, 2007).

<sup>152</sup> Autopsy Results of August 29, 1998 (Annex to the petitioners' brief received on November 14, 2007).

<sup>153</sup> Decree of the Judicial Police Technical Body of September 1, 1998 (Annex to the petitioners' brief received on November 14, 2007).

<sup>154</sup> Statement of Apolinario Morales Mauro before the Judicial Police Technical Body on September 1, 1998. (Annex to the petitioners' brief received on November 14, 2007); Statement of Héctor Enrique Machuca Arriechi before the Judicial Police Technical Body of September 2, 1998. (Annex to the petitioners' brief received on November 14, 2007).

<sup>155</sup> Police Report of the Judicial Police Technical Body of September 3, 1998 (Annex to the petitioners' brief received on November 14, 2007).

Aragua Police connected with the facts appeared to make statements. As has been indicated above, all these individuals submitted that it was a case of a confrontation.<sup>156</sup>

247. Between September 7, 1998, and January 22, 1999, the production of a number of items of evidence was requested. Some were produced, others did not receive a response. In accordance with the available items in the case file, the procedural activity during these months can be summarized as follows: the request for Benito Antonio Barrios' burial and death certificates;<sup>157</sup> the transmission by the Body of Security and Public Order of the State of Aragua of the weapons used in the operation leading to the death of Benito Antonio Barrios;<sup>158</sup> the transmission of the said guns to the Crime Laboratory in order that expert witness reports be conducted on the legal, mechanical and design identification and a ballistic comparison;<sup>159</sup> the transmission of the results of these experts' reports indicating that the bullet was not fired by any of the submitted firearms;<sup>160</sup> the transmission of the experts' conclusions on the legal identification of a bullet;<sup>161</sup> the request for an average costing for the goods allegedly stolen by Benito Antonio Barrios;<sup>162</sup> the determination of the said costs;<sup>163</sup> and the sending of the experts' report on the two guns and three empty bullet casings.<sup>164</sup>

248. Between January 26, and February 25, 1999, three members of the Barrios family appeared to make statements: Eloisa Barrios, Benito Antonio Barrios' sister;<sup>165</sup> Jorge Antonio Barrios, Benito Antonio Barrios' son, who was present at the moment of arrest and removal of his father;<sup>166</sup> Víctor Daniel Cabrera Barrios, Benito Antonio Barrios' nephew, who was present at the time his uncle was taken from his home.<sup>167</sup>

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<sup>156</sup> Statement of Alexis José Amador Mujica before the Judicial Police Technical Body of September 2, 1998 (Annex to the petitioners' brief received on November 14, 2007); Statement of Amilcar José Henríquez Cedeno Statement of Amilcar José Henríquez Cedeno before the Judicial Police Technical Body of September 2, 1998. (Annex to the petitioners' brief received on November 14, 2007); Statement of Carlos Alberto Sandoval Valor before the Judicial Police Technical Body of September 2, 1998. (Annex to the petitioners' brief received on November 14, 2007); and Statement of Rizzon Vicente Superlano Rojas before the Judicial Police Technical Body of September 2, 1998. (Annex to the petitioners' brief received on November 14, 2007).

<sup>157</sup> Applications of the Judicial Police Technical Body of September 7, 1998 (Annex to the petitioners' brief received on November 14, 2007).

<sup>158</sup> Remission of weapons to Judicial Police Technical Body of September 15, 1998 (Annex to the petitioners' brief received on November 14, 2007).

<sup>159</sup> Request for Investigatory Steps to the Criminal Laboratory of September 15, 1998 (Annex to the petitioners' brief received on November 14, 2007).

<sup>160</sup> Results of the expert's report on legal identification and ballistic comparison of January 15, 1999 (Annex to the petitioners' brief received on November 14, 2007).

<sup>161</sup> Official identification of projectile of September 29, 1998 (Annex to the petitioners' brief received on November 14, 2007).

<sup>162</sup> Request for assessment of the Judicial Police Technical Body of January 21, 1999 (Annex to the petitioners' brief received on November 14, 2007).

<sup>163</sup> Assessment of January 22, 1999 (Annex to the petitioners' brief received on November 14, 2007).

<sup>164</sup> Legal Identification Report, Serial Number Returns and Ballistic Comparison January 21, 1999 (Annex to the petitioners' brief received on November 14, 2007).

<sup>165</sup> Statement of Eloisa Barrios before the Judicial Police Technical Body of January 26, 1999 (Annex to the petitioners' brief received on November 14, 2007).

<sup>166</sup> Statement of Jorge Antonio Barrios before the Judicial Police Technical Body of January 27, 1999 (Annex to the petitioners' brief received on November 14, 2007).

<sup>167</sup> Statement of Víctor Daniel Cabrera Barrios before the Judicial Police Technical Body of February 25, 1999 (Annex to the petitioners' brief received on November 14, 2007). The document in the IACtHR's possession is incomplete.

*Transmission of the case file to the Judicial Branch, the entry into force of the Basic Code of Criminal Procedure and investigatory steps between November 1, 2005, and February 7, 2007*

249. On June 18, 1999, the case was transmitted to the Judge of the Municipality of Urdaneta in the state of Aragua where it was entered under No. 755-99.<sup>168</sup>

250. Due to the entry into force of the Basic Code of Criminal Procedure, on July 28, 1999, the case file was remitted to the Second Transitional Judge of the Criminal Judicial Circuit of the state of Aragua.<sup>169</sup> On April 28, 2000, this latter Judge sent the case file to the Chief Public Prosecutor of the state of Aragua.<sup>170</sup> As a result of these transfers, a complaint was made that the case file was lost.<sup>171</sup>

251. The available information indicates that between April 28, 2000 and November 1, 2005, no further steps were taken in the investigation. In effect, the investigations were restarted as a consequence of Mrs. Eloisa Barrios' requests made on June 2, 2005 to the Public Prosecutor to speed up the investigation.<sup>172</sup>

252. On November 1, 2005, the Prosecutor for the Procedural Transitory Regime of the state of Aragua (hereinafter "the Public Prosecutor for Transitory Regime"), contacted the CICPC in order to request the undertaking of the following procedural steps: gather photographs of Benito Antonio Barrios' body; obtain the results of necro-fingerprinting carried out on Benito Antonio Barrios body in accordance with a memorandum of September 1, 1998; and conduct interviews with the same individuals who had made statements before the Judicial Police Technical Body.<sup>173</sup>

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<sup>168</sup> Communication of the First Instance Court of the Criminal Judicial Circuit of the state of Aragua of September 26, 2005 (Annex 2 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); Lodging of an amparo appeal received at the Office of the Bailiff on June 16, 2004 (Annex 3 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); Remission warrant to the Judge of the Municipality of Urdaneta in the state of Aragua of June 18, 1999 (Annex to the petitioners' brief received on November 14, 2007); and Remission warrant to the Judge of the Municipality of Urdaneta in the state of Aragua of June 21, 1999 (Annex to the petitioners' brief received on November 14, 2007).

<sup>169</sup> Resolution of referral to the Second Transitional Judge of the Criminal Judicial Circuit of the state of Aragua de July 28, 1999 (Annex to the petitioners' brief of November 14, 2007); Communication of the First Instance Court of the Criminal Judicial Circuit of the state of Aragua of September 26, 2005 (Annex 2 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); Lodging of amparo appeal received at the bailiff's office on June 16, 2004 (Annex 3 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); Transmission Warrant to the Judge of the Municipality of Urdaneta in the state of Aragua of June 18, 1999 (Annex to the petitioners' brief received on November 14, 2007).

<sup>170</sup> Resolution of referral to the Chief Public Prosecutor of the state of Aragua of April 28, 2000 (Annex to the petitioners' brief received on November 14, 2007).

<sup>171</sup> Communication directed to the Ombudsman dated August 29, 2005 (Annex 3 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); and Communication presented to the Bailiff's Office on June 28, 2005 (Annex 3 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005).

<sup>172</sup> Communication of the Direction of Protection of Fundamental Rights of July 14, 2005 (Annex 2 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); and Communication of the Chief Public Prosecutor of the Republic of June 30, 2005 (Annex 2 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005).

<sup>173</sup> Public Prosecutor's Office for the Transitory Regime of November 1, 2005 (Annex to the petitioners' brief received on November 14, 2007).

253. On January 5, 2006 Eloisa Barrios, Jorge Antonio Barrios and Víctor Daniel Cabrera Barrios repeated their statements.<sup>174</sup> On January 16, 2006, various persons submitted statements on the alleged crimes committed by Benito Antonio Barrios.<sup>175</sup>

254. On July 10, 2006, in response to the requests made on November 1, 2005, by the Public Prosecutor for the Transitory Regime, the CICPC indicated that the photographic tests mentioned by the Prosecutor would not be carried out.<sup>176</sup>

255. On July 27, 2006, the CICPC asked the Aragua state delegation to undertake ballistic trajectory testing.<sup>177</sup> They also repeated their written request of September 7, 1998 to the Administrator of the San Francisco de Cara Municipal Cemetery asking for certified copies of the burial certificate of Benito Antonio Barrios.<sup>178</sup>

256. On July 28, 2006, the CICPC requested from the Medical College of the state of Aragua the presence of the doctor on duty at the outpatient clinic of Barbacoa for August 28, 1998.<sup>179</sup>

257. On August 14, 2006, the CICPC searched for certain witnesses and served summonses. At this stage of the investigation Mrs. Elvira Barrios, Benito Antonio Barrios' sister, was asked to indicate where the facts had occurred in order to take a photographic record, to which she replied that the building had been demolished.<sup>180</sup> In spite of this, on August 31, 2006, a police forensic inspection took place at the site and photographs were taken,<sup>181</sup> and on September 1, 2006, the resulting 3-D reconstruction plan was submitted.<sup>182</sup>

258. On August 16 and 17, 2006, a series of statements on the death of Benito Antonio Barrios, some of which had been sent before, were received.<sup>183</sup>

259. On August 28, 2006, the CICPC requested an expert hematology report from the Head of the Crime Laboratory of Aragua, on evidence sent in a memorandum of September 15,

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<sup>174</sup> Interview of Eloisa Barrios before the CICPC on January 5, 2006 (Annex to the petitioners' brief received on November 14, 2007); Interview of Víctor Daniel Cabrera Barrios before the CICPC on January 5, 2006 (Annex to the petitioners' brief received on November 14, 2007); and Interview of Jorge Antonio Barrios before the CICPC on January 5, 2006 (Annex to the petitioners' brief received on November 14, 2007). The interview of Víctor Daniel Cabrera Barrios is illegible.

<sup>175</sup> Interview of Héctor Enrique Machuca Arriechi before the CICPC on January 16, 2006 (Annex to the petitioners' brief received on November 14, 2007); and Interview of Mauro Apolinario Morales before the CICPC on January 16, 2006 (Annex to the petitioners' brief received on November 14, 2007).

<sup>176</sup> Criminal Investigation of the CICPC of July 10, 2006 (Annex to the petitioners' brief received on November 14, 2007).

<sup>177</sup> Memorandum of the CICPC of July 27, 2006 (Annex to the petitioners' brief received on November 14, 2007).

<sup>178</sup> Office of the CICPC of July 27, 2006 (Annex to the petitioners' brief received on November 14, 2007).

<sup>179</sup> Office of the CICPC of July 28, 2006 (Annex to the petitioners' brief received on November 14, 2007).

<sup>180</sup> Criminal Investigation of the CICPC of August 14, 2006 (Annex to the petitioners' brief received on November 14, 2007).

<sup>181</sup> Technical Police Inspection of August 31, 2006 (Annex to the petitioners' brief received on November 14, 2007). The document is incomplete.

<sup>182</sup> Theodolite survey of September 1, 2006 (Annex to the petitioners' brief received on November 14, 2007).

<sup>183</sup> Interviews before the CICPC on August 16 and 17, 2006 of Carmen Elena Colorado, Antonio José Ojeda, Eloisa Barrios, Lilia Ysabel Solórzano Barrios, Jorge Antonio Barrios Ortuño and Darelbis Carolina Barrios (Annex to the petitioners' brief received on November 14, 2007).

1998.<sup>184</sup> This report was completed on September 6, 2006, indicating that it was not possible to determine the blood group from the samples sent due to the "minute traces of material present".<sup>185</sup>

260. On September 4, 2006, a report on the analysis and reconstruction of facts was issued by an expert appointed to establish the ballistic trajectory.<sup>186</sup>

261. On December 22, 2006, the memorandum of September 1, 1998 was re-sent to the Head of the Lofoscopic Division of the CICPC so that he would send at the earliest possible opportunity the results of the identification of Benito Antonio Barrios, from the necro-fingerprinting samples performed on the body.<sup>187</sup>

262. On February 1, 2007, a request was made as a matter of urgency to the Chief Commissioner of the Central Police Station "Antonio José Sucre" of the state of Aragua, for a copy of the police station logbook of the Police Station of Zone No. 31 of the SPOC on August 28, 1998, including those police officers on duty.<sup>188</sup> On February 15, 2007, the latter entity replied that the requested books could not be found in the archives.<sup>189</sup>

263. On February 7, 2007, the Public Prosecutor for the Transitory Regime requested information from the SPOC of the state of Aragua on two vehicles connected with the investigation.<sup>190</sup> On the following day, this latter entity informed the Prosecutor that one of the vehicles did not belong to the institution and requested more information in order to be of further assistance.<sup>191</sup>

#### *The Conclusive Indictment and the Impossibility of Holding a Preliminary Hearing*

264. On April 17, 2007, the Public Prosecutor for the Transitory Regime issued the conclusive indictment of the investigation, formally accusing police officers Alexis José Amador Mujica, Amilcar José Henríquez Cedeño, Carlos Alberto Sandoval Valor and Rizzon Vicente Superlano Rojas of the crime of simple intentional homicide in the degree of co-complicity. The principal consideration of the conclusion is the act cannot be justified as a confrontation. In the same part of the indictment it is established that the statute of limitations applied to illegal use of a firearm.<sup>192</sup>

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<sup>184</sup> Office of the CICPC of August 28, 2006 (Annex to the petitioners' brief received on November 14, 2007).

<sup>185</sup> Expert Hematology Report of September 6, 2006 (Annex to the petitioners' brief received on November 14, 2007).

<sup>186</sup> Analysis and reconstruction of the facts of September 4, 2006 (Annex to the petitioners' brief received on November 14, 2007). The results of the expert report shows that Benito Antonio Barrios was facing his assailant and that the gun barrel with respect to the two gunshot wounds was pointing down at him.

<sup>187</sup> Warrant of the Unit of Investigations and Technical and Scientific Advice of December 22, 2006 (Annex to the petitioners' brief received on November 14, 2007).

<sup>188</sup> Warrant of the Public Prosecutor's Office for the Transitory Regime of February 1, 2007 (Annex to the petitioners' brief received on November 14, 2007).

<sup>189</sup> Warrant of the SPOC of the state of Aragua of February 15, 2007 (Annex to the petitioners' brief received on November 14, 2007).

<sup>190</sup> Warrant of the Public Prosecutor's office for the Transitory Regime of February 7, 2007 (Annex to the petitioners' brief received on November 14, 2007)

<sup>191</sup> Warrant of the SPOC of the state of Aragua of February 8, 2007 (Annex to the petitioners' brief received on November 14, 2007).

<sup>192</sup> Indictment of the Public Prosecutor for the Transitory Regime of April 17, 2007 (Annex to the petitioners' brief received on November 14, 2007).

265. On April 23, 2007, the Ninth Court of Control of the criminal judicial circuit of the state of Aragua agreed to convene a preliminary hearing for May 22, 2007.<sup>193</sup> On this day, the Ninth Court of Control adjourned the preliminary hearing due to the non-appearance of the Public Prosecutor of the Transitory Regime. A new date of October 23, 2007 was set.<sup>194</sup> In some of the documents of service on the accused the date of October 22, 2007 was written in.<sup>195</sup> The hearing was adjourned once again until March 6, 2008, a date on which it could not take place either due to the non-appearance of those summoned, and was fixed for May 28, 2008.<sup>196</sup> On this date the hearing was adjourned due to the non-appearance of the defense for the four accused, due to the fact that on this day those persons were present at different proceedings.<sup>197</sup> In its brief on the provisional measures before the Inter-American Court on October 29, 2009, the State indicated that the preliminary hearing set down for May 28, 2009 could not be held due to the non-appearance of the accused and their defense.<sup>198</sup> The available information indicates that on that date the preliminary hearing did not take place.<sup>199</sup>

#### *The Constitutional Amparo Remedy and Requests before other State Authorities*

266. On June 18, 2004,<sup>200</sup> Eloisa Barrios lodged a constitutional amparo action against the Chief Public Prosecutor of the state of Aragua for breach of constitutional guarantees due to this entity's refusal to "decide on the completion of the preparatory stage in relation to the 'ajusticiamiento' killing of Benito Antonio Barrios".<sup>201</sup> After a series of proceedings, on April 27, 2006, the amparo action was definitively rejected.<sup>202</sup>

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<sup>193</sup> Warrant of the 9th Court of Control of April 23, 2007 (Annex to the petitioners' brief received on November 14, 2007).

<sup>194</sup> Warrant of the 9th Court of Control on May 22, 2007 (Annex to the petitioners' brief received on November 14, 2007).

<sup>195</sup> Service Document of Carlos Alberto Sandoval Valor of May 22, 2007 (Annex to the petitioners' brief received on November 14, 2007).

<sup>196</sup> Public Prosecutor's Office General de la República of April 25, 2008 (Annex 75 of the petitioners' brief received on December 4, 2009).

<sup>197</sup> Report of the State before the Inter-American Court of Human Rights in the provisional measures proceedings dated March 3, 2009 (Annex 76 of the petitioners' brief received on December 4, 2009).

<sup>198</sup> Report of the State of Venezuela before the Inter-American Court of October 2, 2009 sobre implementación de medidas provisionales (Annex 7 of the petitioners' brief received on February 16, 2010).

<sup>199</sup> petitioners' brief received on December 4, 2009. This information was not contested by the State.

<sup>200</sup> The account of the initial petition presented on December 30, 2005 as well as the receipt stamp of the document lodging the amparo appeal have the date June 18, 2004, however, the decision of the court of appeals indicates that it was lodged on June 18, 2004, 2005.

<sup>201</sup> Lodging of an *amparo* remedy at the Bailiff's Office on June 16, 2004 (Annex 3 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); and Decision of the Court of Appeals of the Criminal Judicial Circuit of the state of Aragua of August 26, 2005 (Annex 1a of the initial petition on Benito Barrios and his next of kin presented on December 30, 2005). In this decision the actions in the amparo process are summarized the details of which are added by the petitioners as Annex 2 and 3 of their initial petition on Benito Barrios and his next of kin presented on December 30, 2005.

<sup>202</sup> petitioners' brief received on December 4, 2009; Lodging of appeal to the Bailiff's Office on June 25, 2005 (Annex 3 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); Decision of the Court of Appeals of the Criminal Judicial Circuit of the state of Aragua of August 26, 2005 (Annex 1a of the initial petition of Benito Barrios and his next of kin presented on December 30, 2005); Communication of the First Instance Court of the Criminal Judicial Circuit of the state of Aragua of September 26, 2005 (Annex 2 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); and Decision of the Sixth Court of the Criminal Judicial Circuit of the state of Aragua of October 13, 2005 (Annex 2 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005).

267. On June 29, July 13, August 29 and September 2 2005, Mrs. Eloisa Barrios sent communications to the Ombudsman, the General Prosecutor of the Republic, the Interior and Justice Ministry, the Commission of Human Rights of the National Assembly, the Vice President of the Republic, and the President of the Republic, in order to denounce the murder of her brother at the hands of the Aragua state police, the procedural delays and impunity prevailing in the investigation of the facts.<sup>203</sup>

### **12.1.2 The Commission's Considerations**

268. An analysis of the entire evidence supplied on the investigation relating to the death of Benito Antonio Barrios shows that almost 12 years have passed since the facts, the circumstances surrounding it have not been clarified, and, therefore, the appropriate punishment in this case has not been imposed. The Commission considers this delay to be unreasonable in itself, and there is no evidence in the case file to justify the delay. In particular, the investigation is not particularly complex since it involves a sole victim and those possibly responsible were identified from the first day of the investigation. On the other hand, the omissions and long periods of inactivity demonstrate that the authorities responsible have not acted with the necessary diligence in these cases, and have not provided adequate mechanisms quickly enough to establish if the lethal use of force was strictly necessary and proportional to the risk allegedly presented by the victim.

269. From reading the elements of the case file that the Commission has had access to, it is possible to determine a series of omissions and irregularities, described in the following paragraphs.

270. Throughout the proceedings, and especially in the opening stages of the investigation, particular relevance was placed on Benito Antonio Barrios' criminal record.

271. Between April 28, 2000, and November 1, 2005, i.e., in five and a half years, no progress in the investigatory steps was made, the investigation being reactivated as a consequence of the family's request and the *amparo* remedy.

272. Crucial preliminary investigatory steps requested in 1998, were again requested before the authorities involved in 2006, without any follow-up having taken place for eight years on the part of the officials in charge of the investigation.

273. In relation to the foregoing, the replies from the majority of these authorities to the official requests made in 2006 show the harmful effects of the passage of time. For example, the photographic reconstruction of the site had no effect because the building where the facts occurred had been demolished.

274. Another example is that when requesting the police logbooks of the stations involved for the first time in 2007, nine years after the facts occurred, the response obtained was that the files were not available. Given this reply, the investigatory authorities did no follow-up nor requested the SPOC of the state of Aragua to indicate where they could obtain the information.

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<sup>203</sup> Communications presented at the Ombudsman's Office, the General Prosecutor of the Republic and the Ministry of the Interior and Justice on June 29, 2005 (Annex 3 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); Communications filed before the Human Rights Commission of the National Assembly, the Vice Presidency on July 13, 2005 (Annex 3 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); and Communication filed before the Presidency of the Republic on September 2, 2005 (Annex 3 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005); and Communication addressed to the Ombudsman's Office on August 29, 2005 (Annex 3 to the initial petition on Benito Barrios and his next of kin presented on December 30, 2005).

275. It was only recently in 2006 that an expert's reconstruction of the facts and the ballistic trajectory report were compiled, both of obvious relevance in cases in which there is a dispute as to the possibility of a confrontation. To have any use, these steps must be carried out in the first stages of the procedure, something that did not happen in the present case. As stated above, the majority of the initial steps were geared towards establishing the victim's alleged criminal past.

276. At the time when the conclusive indictment was issued on April 17, 2007, the Public Prosecutor had given no follow-up to the outstanding steps in the proceedings, due to a lack of a complete response from the entities involved such as the police logbook, and the expert report on the vehicles.

277. Since April 23, 2007, almost three years ago, the proceedings remain paralyzed awaiting the start of the preliminary hearing, which has been successively adjourned to date, without counting on information on the application of the available legal mechanisms against individuals, including officials of the Public Prosecutor and of the court-appointed defense, that have obstructed the trial's advancing at this stage.

## **12.2 On the Raids, Destruction and Theft in the Homes of Justina Barrios, Elbira Barrios, Luís Alberto Barrios, Orismar Carolina Alzul and Brígida Oneida Barrios between November 28 and 30, 2003**

### **12.2.1 Facts relating to the Proceedings**

278. Between December 2, and 4, 2003, Brígida Oneida Barrios, Luís Alberto Barrios and Orismar Carolina Alzul complained about the raids on their homes and the theft of their belongings.<sup>204</sup>

279. On December 12, 2003, the criminal investigation was initiated and the CICPC was ordered to undertake the following investigatory steps: a technical police inspection of the site where the facts occurred, the interviewing of potential witnesses, a request for documentation of the stolen articles, identification of the police officers assigned to the police stations of Guanayen and Barbacoa, interviews with all the victims, a technical police inspection of the daily police logbook between November 27 and 29, 2003 and a reasonable evaluation.<sup>205</sup>

280. On December 9, 2003, the Ombudsman for Boys, Girls and Young Persons visited the home of Luís Alberto Barrios and Orismar Carolina Alzul, where they confirmed the damages.<sup>206</sup>

281. On December 16, 2003, the CICPC requested from the SPOC of the state of Argaua certified copies of the police logbooks covering November 27 to 29, 2003.<sup>207</sup>

282. On March 1, 2004, the Chief Public Prosecutor of the judicial circuit of the state of Aragua received a brief in which the petitioners complained of the raids on their homes. The crimes denounced were "entry and search of a dwelling house without a court order", "taking the law into

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<sup>204</sup> Complaints of Brígida Oneida Barrios, Luís Barrios, Orismar Carolina Alzul filed between December 2 and 4, 2003 (Annex to the petitioners' brief received on February 16, 2010).

<sup>205</sup> Warrant Commencing the Investigation of December 12, 2003 (Annex to the petitioners' brief received on February 16, 2010).

<sup>206</sup> Report of the visit conducted by the Ombudsman for Boys, Girls and Young People of December 9, 2003 (Annex to the petitioners' brief received on February 16, 2010).

<sup>207</sup> Office of the CICPC of December 16, 2003 (Annex to the petitioners' brief received on February 16, 2010).

one's own hands", "abuse of authority", "simulation of offenses", "inappropriate use of a firearm", "incitement to commit a crime", and "aggravated burglary".<sup>208</sup>

283. On February 21, 2005, the CICPC went to Orismar Carolina Alzul's house (at that point her partner Luís Alberto Barrios had been killed) in order to conduct an interview and undertake an inspection.<sup>209</sup> On the same day, the identification of policeman José Gregorio Peña Clavo was placed on record as an accused in relation to the facts.<sup>210</sup>

284. On February 28, 2005, an interview was conducted with Mrs. Brígida Oneida Barrios who repeated her allegations made in the initial complaint and indicated those responsible were Inspector Wilmer Bravo and Sergeant Sargento José Gregorio Clavo, who had come looking for her brother Narciso Barrios.<sup>211</sup>

285. The petitioners produced photographs of Luís Alberto Barrios' home and to demonstrate their authenticity, they requested that appropriate legal verifications be carried out on them.<sup>212</sup>

286. On May 30, 2005, the 20th Public Prosecutor of the state of Aragua requested the CICPC to undertake the following procedural steps: widening of the interviews with the victims, coordinating a proceeding to review photographs by the material witnesses, requesting a copy of the indictment document naming and charging the officials involved, as well as a copy of the police logbook, service record and police reports of the proceedings. This dispatch was repeated on August 22, 2005.<sup>213</sup>

287. On August 23, 2005 the 20th Public Prosecutor of the state of Aragua requested from the Ombudsman for Boys, Girls and Young People information on the social study conducted at Luís Alberto Barrios' home on December 9, 2003.<sup>214</sup>

288. On September 20, 2006, the officials José Gregorio Clavo Peña and Wilmer Bravo were summoned as witnesses before the SPOC of the state of Aragua.<sup>215</sup> This summons was repeated on November 6,<sup>216</sup> and December 5, 2006.<sup>217</sup> On December 12, 2006, the officer Wilmer

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<sup>208</sup> Communication presented to the Chief Public Prosecutor of the state of Aragua on March 1, 2004. (Annex A to the petitioners' brief dated May 3, 2004).

<sup>209</sup> Investigation of the CICPC of February 21, 2005 (Annex to the petitioners' brief received on February 16, 2010).

<sup>210</sup> Investigation of the CICPC of February 21, 2005 (Annex to the petitioners' brief received on February 16, 2010).

<sup>211</sup> Interview of Brígida Oneida Barrios of February 21, 2005 (Annex to the petitioners' brief received on February 16, 2010).

<sup>212</sup> petitioners' brief to the CICPC attaching photographs (Annex to the petitioners' brief received on February 16, 2010).

<sup>213</sup> Warrants of the 20th Public Prosecutor of the state of Aragua of May 30, and August 22, 2005 (Annex to the petitioners' brief received on February 16, 2010).

<sup>214</sup> 20th Public Prosecutor's Office of the state of Aragua, of August 23, 2005 (Annex to the petitioners' brief received on February 16, 2010).

<sup>215</sup> Summons of the officials José Gregorio Clavo Peña and a Wilmer Bravo of September 20, 2006 (Annex to the petitioners' brief received on February 16, 2010).

<sup>216</sup> Summons of the officials José Gregorio Clavo Peña and a Wilmer Bravo of November 6, 2006 (Annex to the petitioners' brief received on February 16, 2010).

<sup>217</sup> Summons of the officials José Gregorio Clavo Peña and a Wilmer Bravo of December 5, 2006 (Annex to the petitioners' brief received on February 16, 2010).

Bravo appeared, and he was formally charged with the offences of breaking and entering a home and common theft.<sup>218</sup>

289. On October 3, 2006, Mrs. Onedia Barrios appeared to make a statement and repeated her version of the events.<sup>219</sup>

290. On December 5, 2005, a copy of the police logbook from the Guanayen station for the relevant dates was requested from the SPOC of the state of Aragua.<sup>220</sup>

291. On January 16, 2007, José Gregorio Clavo Peña was formally presented with a report.<sup>221</sup> On the same date, the interview of official Wilmer Bravo was held but he did not refer to the facts alleged by the victims. He referred to the theft of a submachine gun and stressed the alleged criminal conduct of the Barrios family.<sup>222</sup>

292. On January 24, 2007, the SPOC of the state of Aragua submitted documentation concerning the police logbook corresponding to the required dates.<sup>223</sup>

293. Between February and April 2007, the 20th Public Prosecutor of the state of Aragua repeated the request for the police logbook from the Guanayen station, including that corresponding to November 30, 2003 and issued various summonses, without attesting that the individuals concerned actually appeared to be interviewed nor whether more logbooks or other official documentation were submitted.<sup>224</sup>

294. In the proceedings before the Commission, and in the observations in the briefs on the provisional measures before the Court, the petitioners have indicated that in this investigation important steps have been left out such as a judicial determination to quantify the damages caused.<sup>225</sup>

295. On February 3, 2008, the Public Prosecutor in charge once again repeated its request from the Ombudsman for Boys, Girls and Young People for information on the results of the social study undertaken at the victims' homes. On the same date, the attendance of two police officers was again requested from the SPOC of the state of Aragua. On February 29, 2008, the Public Prosecutor in charge repeated its request to the SPOC of the state of Aragua for a certified

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<sup>218</sup> Indictment of December 12, 2003 (Annex to the petitioners' brief received on February 16, 2010).

<sup>219</sup> Interview of Brígida Oneida Barrios of October 3, 2006 (Annex to the petitioners' brief received on February 16, 2010).

<sup>220</sup> 20th Public Prosecutor's Office of the state of Aragua, of December 5, 2006 (Annex to the petitioners' brief received on February 16, 2010).

<sup>221</sup> *Acta de acto de imposición de actas* of January 16, 2007 (Annex to the petitioners' brief received on February 16, 2010).

<sup>222</sup> Interview of Wilmer Bravo of January 16, 2007. (Annex to the petitioners' brief received on February 16, 2010).

<sup>223</sup> Warrant of the SPOC of the state of Aragua on January 24, 2007 (Annex to the petitioners' brief received on February 16, 2010).

<sup>224</sup> Warrants of January, February, March and April 2007 of the 20th Public Prosecutor of the state of Aragua (Annex to the petitioners' brief received on February 16, 2010).

<sup>225</sup> The petitioners' brief received on February 16, 2010; Brief of Observations of the petitioners before the Inter-American Court on the provisional measures of August 1, 2007 (Annex 1 to the petitioners' brief received on February 16, 2010).

copy of the police logbook and the duty roster of the police stations of Barbacoa and Guanayen corresponding to November 27 to 30, 2003.<sup>226</sup>

296. On November 13, 2008, the 20th Public Prosecutor of the state of Aragua gave notice of the archiving of the case. The Commission does not have a copy of the decision archiving the prosecutor's file.<sup>227</sup> The available information shows that this archiving was ordered without the official entities having responded to each one of the Public Prosecutor's requests, and without having performed the investigatory steps referred to by the petitioners, in particular, the assessment on the damages to the homes.

### **12.2.2 Considerations of the Commission**

297. From a reading of the elements in the case file held by the Commission, it concludes that there are a series of omissions and irregularities outlined in the following paragraphs.

298. Throughout the procedure, fundamental procedural steps requested by those affected were not taken, such as a reconstruction of the facts or an expert report on the damages caused to the four dwellings. It is worth noting that in a case such as the present, it was of supreme relevance to undertake these investigatory steps expeditiously, at the beginning of the investigation, due to the fact that it was foreseeable that the scene of the facts would alter in the face of the family's need to rebuilt their homes and carry on with their daily activities.

299. Only the Ombudsman for Boys, Girls and Young People visited Luís Alberto Barrios' house to undertake a social analysis of the damages caused, with no information available on the reasons why they did not undertake the same steps at the other three remaining houses. Neither is anything known about the follow-up made to this investigation.

300. The available information shows that between December 2003 and February 2005, no progress was made with any investigatory steps.

301. The first time that the police logbook and other official documentation were requested from the Security and Public Order Corps of the state of Aragua was on December 16, 2003. After five years, in 2008, the Public Prosecutor in charge continued to request the same documentation. There is no information on the use of coercive measures to compel the police authority to respond expeditiously to the requests.

302. Despite identifying those potentially responsible in the first complaint presented by the victims, the first time these individuals were summoned to make a statement was almost three years later, on September 20, 2006. Only one of these individuals appeared to make a statement, with there being no information on whether the official Peña Clavo submitted to an interview.

303. The available information shows that the Public Prosecutor's archiving of the case was ordered five years after the facts, without having the pieces of evidence required. It cannot be said that the facts analyzed in this section are of such particular complexity so as to justify the time expended in the investigation.

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<sup>226</sup> Report of the State before the Inter-American Court of Human Rights in the provisional measures proceedings dated April 29, 2008 (Annex 4 to the petitioners' brief received on February 16, 2010).

<sup>227</sup> Report of the State before the Inter-American Court of Human Rights in the provisional measures proceedings dated October 2, 2009 (Annex 7 of the petitioners' brief received on February 16, 2010).

## **12.3 The Extrajudicial Execution of Narciso Barrios on December 11, 2003, and the Threats Against Néstor Caudi Barrios**

### **12.3.1 Facts on the Procedure**

#### *The Beginning of the Investigation Into the Death of Narciso Barrios and the Complaint on the Threats Against Néstor Caudi Barrios, in the Context of this Investigation*

304. The Commission makes it clear that to evaluate the available evidence on the investigations into what happened to Narciso Barrios, special consideration will be given to the petitioners' allegations both before the Inter-American Commission well as at the domestic level on the repeated difficulties of obtaining copies of the case file.<sup>228</sup> Because of this, coupled with the State's failure to present the aforementioned copies, the IACtHR will accord probatory relevance to the petitioners' account of the internal proceedings, an account on which - as indicated- is based on a direct assessment of the case file. The State has not controverted this account.

305. On December 11, 2003, the same day on which Narciso Barrios died, the CICPC began its investigation.<sup>229</sup>

306. On March 1, 2004, a brief was presented before the Chief Public Prosecutor of the state of Aragua in which the petitioners denounced the murder of Narciso Barrios at the hands of police officers of the state of Aragua. A formal complaint was lodged against José Gregorio Clavo and another officer surnamed Chávez, as being responsible for Narciso Barrios' death. In the same communication a request to undertake a series of investigatory steps to clarify the facts was made, and protective measures requested in favor of Juan Barrios, Oscar José Barrios, Jorge Antonio Barrios and Pablo Solórzano, due to the threats received by the Barrios family from the police officers of Aragua.<sup>230</sup>

307. On April 21, 2004, the petitioners presented a brief before the 14 Public Prosecutor of the judicial circuit of the state of Aragua in which they provided witness evidence on Narciso Barrios' death.<sup>231</sup>

308. On June 1, 2004, the petitioners presented a brief to the 14 Public Prosecutor of the state of Aragua, in which they complained that the official of the CICPC charged with the

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<sup>228</sup> Between May 21, and June 17, 2004, the petitioners complained before the Chief Public Prosecutor of the state of Aragua, before the First Instance Criminal Court with Control Functions, and before the General Direction of the CICPC, the lack of access to the case file of Mrs. Eloisa Barrios, and they requested the initiation of administrative investigations. In this respect see, Communication presented to the Chief Public Prosecutor of the state of Aragua of May 21, 2004 (Annex C to the petitioners' brief received on June 7, 2004); and Communication presented to the Office of the Bailiff on June 14, 2004 (Annex I to the petitioners' brief received on August 9, 2004). In their submissions before the IACtHR the petitioners have repeated that they have had no access to the file and that their allegations are based upon a transcription of the chronology of the proceedings.

<sup>229</sup> petitioners' brief received on August 9, 2004.

<sup>230</sup> Communication presented to the Chief Public Prosecutor of the state of Aragua on March 1, 2004. (Annex A to the petitioners' brief dated May 3, 2004). Among the investigatory steps requested are: i) a line-up with all the officers present who participated in the operation resulting in Narciso Barrios' death; ii) a line-up with all the officers present who were involved in the raids and destruction of the homes of Brígida Oneida Barrios, Justina Barrios, Elbira Barrios and Luís Barrios; iii) warrant to the 14 Public Prosecutor located in the city of Villa de Cura, requesting them to issue summonses requiring Pablo Solórzano, Terelis Colorado, Yelitza Lugo Pelaes and Néstor Barrios to make statements.

<sup>231</sup> Communication presented at the 14th Public Prosecutor's Office of the judicial circuit of the state of Aragua on April 21, 2004 (Annex A of the petitioners' brief received on June 7, 2004). The witnesses proposed in the communication are: Wilfredo Antonio Cerezo, Yelitza Lugo, Caudi Barrios, Bennedanis La Rosa, Jorge Barrios, Pablo Solórzano, Elbira Barrios, Yarelis Caldero, Inés Josefina Barrios and Orismar Carolina Alzul. The petitioners have provided the addresses of the proposed witnesses.

investigation, Leopoldo Zapata, threatened Néstor Caudi Barrios on May 26, 2004, telling him that he might remain in custody and be sent to the Judicial Detention Center in Tocorón for his part in the theft on a farm. An express request was made for a series of identifications of all the officers who were on duty on November 30 and December 11, 2003, so that they could be identified by the victims. The removal of the official Leopoldo Zapata from the investigation into Narciso Barrios' death was also requested.<sup>232</sup>

309. On July 23 and 28, 2004, the petitioners complained of the procedural delays in the investigations.<sup>233</sup>

310. On July 28, 2004, the petitioners complained before the Chief Public Prosecutor of the state of Aragua who had decided to protect Néstor Caudi Barrios' life by moving him to a different location.<sup>234</sup>

311. On July 29 and 30, 2004, two communications were received at the Chief Public Prosecutor of the state of Aragua and at the Office of the Ombudsman of the state of Aragua from the petitioners reporting that they had reviewed the case file and had come across a series of irregularities in the investigation.<sup>235</sup> On the same day, they complained before the General Public Prosecutor of the Republic of the procedural delays in the investigations undertaken by the CICPC, La Villa Subdivision.<sup>236</sup>

312. On December 7, 2004, the petitioners complained of new threats against Néstor Caudi Barrios and Oscar José Barrios to the Chief Public Prosecutor of the judicial circuit of the state of Aragua.<sup>237</sup>

313. The petitioners maintained that the investigation stage had concluded without crucial evidence being taken to clarify the facts. In their view, an indictment without sufficient evidentiary material may conceivably lead to a final judgment of acquittal. Among the evidence not taken in July 2004 are: an expert report on the police officers' guns who participated in the facts; a expert report on the bullets found in Narciso Barrios' body; the investigatory steps in order to reconstruct the acts; steps for theodolite and ballistic trajectory measurements; evidence of trace analysis on

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<sup>232</sup> Communication presented at the 14th Public Prosecutor's Office of the state of Aragua on June 1, 2004 (Annex B of the petitioners' brief received on June 7, 2004).

<sup>233</sup> Communication presented at the Bailiff's Office on July 23, 2004 (Annex C to the petitioners' brief received on August 9, 2004); and Communication presented to the Chief Public Prosecutor of the state of Aragua on July 28, 2007 (Annex F to the petitioners' brief received on August 9, 2004); and Communication presented at the Ombudsman's Office of the state of Aragua on July 28, 2004 (Annex L to the petitioners' brief received on August 9, 2004).

<sup>234</sup> Communication presented to the Chief Public Prosecutor of the state of Aragua on July 28, 2004 (Annex 44 to petitioners' brief of December 4, 2009).

<sup>235</sup> Communication presented to the Chief Public Prosecutor of the state of Aragua on July 29, 2004 (Annex G to the petitioners' brief received on August 9, 2004); and Communication presented at the Ombudsman's Office of the state of Aragua on July 30, 2004 (Annex M to the petitioners' brief received on August 9, 2004). Among the said irregularities they point out: the lack of expert ballistic report on two bullets taken from the body of Narciso Barrios, according to the autopsy protocol of December 22, 2003; the lack of a theodolite measurement, although ordered through warrant No. 7837 of December 17, 2003, all omissions due to the joint responsibility of an official of the La Villa Subsection of the CICPC, named Leopoldo Zapata; not sending the firearms of the police officers for an expert comparative ballistic report, although requested on June 24, 2004 through warrant No. 3937; absence of a ballistic trajectory report; absence of a request for a factual reconstruction by the 14 Public Prosecutor of the state of Aragua; absence of a request for a certified copy of the police logbooks and the duty roster, despite Mrs. Eloisa Barrios' requesting them on April 28, 2004.

<sup>236</sup> Communication presented to the Public Prosecutor of the Republic on July 29, 2004 (Annex H to the petitioners' brief received on August 9, 2004).

<sup>237</sup> Communication presented to the Chief Public Prosecutor of the state of Aragua (Annex 45 to petitioners' brief received on December 4, 2009).

the shots fired by the police officers who participated in the facts; the statements of eyewitnesses Wilfredo Cerezo and Yelitze Páez; and the request for a certified copy of the police logbook and duty roster of the Guanayen police station.<sup>238</sup> This information on the omissions - at least in the initial stage of the investigation - was not contested by the State.

*The Indictment and the Impossibility of Holding the Oral Public Judicial*

314. On March 6, 2005, the 20th Public Prosecutor of the state of Aragua issued a final indictment against the police officers Marco Antonio Moreno Dorta, Leomar José Rovira Mendoza and José Luis Riasco León, assigned to the SPOC of the said state, for the crime of homicide in the degree of co-complicity, before the Second Trial Court of First Instance of the criminal judicial circuit of the state of Aragua.<sup>239</sup> The conclusive indictment was issued without any of the investigatory steps requested by the family being undertaken, such as the reconstruction of the facts.<sup>240</sup>

315. On May 25, 2005, the preliminary hearing was held, in which the Fifth Control Judge of First Instance of the criminal circuit of the state of Aragua admitted the charges in the public indictment, ordering alternative preventative measures against the accused. Therefore they remained subject to a periodic reporting before the above Court and were suspended from duty on full pay.<sup>241</sup>

316. Taking into account the nature of the offense, at the start of the oral public trial the formation of a mixed jury tribunal was undertaken.<sup>242</sup>

317. The available information shows that various hearings were held to form the court and after various failed attempts, finally, on June 6, 2006, it was agreed to hold a trial without a jury. The trial was set down for December 7, 2006. Nevertheless, on this day it was not possible to hold the public oral judicial procedure since this had been adjourned on seven occasions, the last of these on November 19, 2009. Among the reasons for the adjournments were the Public Prosecutor's failure to appear, then the accused's and the defenders' failure, and the lack of a court room for the trial.<sup>243</sup> The petitioners mentioned that the State even stressed that on a few occasions the reason was the non-appearance of the victim; but they mention this is not accurate since Mrs. Eloisa Barrios did not receive any summons to attend.<sup>244</sup> The State did not respond to this argument.

*Requests and Complaints before other State Authorities*

318. On March, 2004, and April 6, 2004, the Governor of the state of Aragua and the Presidency of the Republic received communications complaining about searches, damage and theft

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<sup>238</sup> petitioners' brief received on May 8, 2006.

<sup>239</sup> Public Prosecutor's Office General de la República of April 25, 2008 (Annex 75 of the petitioners' brief received on December 4, 2009); and State's brief received on June 21, 2006.

<sup>240</sup> petitioners' brief received on May 8, 2006; and State's brief received on June 21, 2006.

<sup>241</sup> State's brief received on June 21, 2006.

<sup>242</sup> State's brief received on June 21, 2006.

<sup>243</sup> Public Prosecutor's Office General de la República of April 25, 2008 (Annex 75 of the petitioners' brief received on December 4, 2009); Report of the State before the Inter-American Court of Human Rights in the provisional measures proceedings dated March 3, 2009 (Annex 76 of the petitioners' brief received on December 4, 2009); Report of the State of Venezuela to the Inter-American Court of October 2, 2009 son the implementation of provisional measures (Annex 7 of the petitioners' brief received on February 16, 2010). See also: petitioners' brief received on May 8, 2006.

<sup>244</sup> The petitioners' brief received on February 16, 2010.

in the homes members of the Barrios family, as well as the death of Narciso Barrios, later, and pointing to the responsibility of members of the police of Aragua.<sup>245</sup>

319. On June, 2004 the Ombudsman received a communication in which the petitioners complain about the delay in the investigations on the death of Narciso Barrios and the obstacles in accessing the file of the case. They also requested that information be required from the Direction of Control and Discipline of the CICPC, that and administrative information be requested from the agent in charge of the investigation, for non compliance of legal duties, and the Chief of Administrative Investigations of the Police for violating the Criminal Procedural Code<sup>246</sup>.

### **12.3.2 Considerations of the Commission**

320. The Commission observes that the file has a number of omissions and irregularities referred to below.

321. Procedural steps crucial to the determination of whether what happened to Narciso Barrios was a confrontation or an extrajudicial execution were not carried out in an opportune manner. There was no evidence produced to verify the necessity and proportionality of the lethal use of force against the victim.

322. There was a long period of time (a year and a half) between the indictment and the first oral judicial hearing, due to procedural attempts to form a mixed jury court, without the State having justified the delay in arranging a trial before a single judge.

323. Especially serious is the passage of almost three and a half years from the oral and public judicial hearing in December 2006 to date, without the said judge being able to commence the respective hearing. During this time, the trial was adjourned on numerous occasions for reasons mainly due to the state authorities, and the State did not use the legal avenues at its disposal to avoid the hurdles at that stage and ensure the fulfillment of expected deadlines.

324. The Commission points out the facts set out above on the threats made to Néstor Caudi Barrios in the context of this investigation, including several emanating from an official of the CICPC in charge of certain enquiries. As explained, Néstor Caudi Barrios is the only eyewitness to Narciso Barrios' death and principally in 2004, a number of threats and acts of harassment and intimidation started against him. All these threats were denounced before the Public Prosecutor in charge of the investigation, without any enquiries progressing in this direction, despite indications in the complaint highlighting that the CICPC itself may have intimidated the witness as part of a cover up. The Commission considers that the absence of an investigation into the threats against the principal witnesses to the facts contributes to the denial of justice and to impunity.

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<sup>245</sup> Communication filed before the Presidency of the Republic on April 6, 2004 (Annex N of the petitioners' brief received on August 9, 2004); and Communication filed before the Governor of the state of Aragua on March 24, 2004 (Annex N of the petitioners' brief received on August 9, 2004). In this last communication the Governor of the state of Aragua was asked: i) to order the suspension of the police officers until the end of the criminal investigation; ii) to order the start of an administrative investigation against the said officers; iii) to order an investigation to determine the damages caused to the homes, repair them, and replace the stolen items. For its part, the communication to the President of the Republic contains the following requests: i) a warrant to the Governor of the state of Aragua, requiring him to order the renovation of the burnt homes and the replacement of all the stolen items; ii) a warrant to the Ministry of Interior Relations and Justice requiring him to open an administrative inquiry on the actions of the police officers, as well as their suspension until the end of the criminal investigation; and iii) a warrant to the Director of the CICPC ordering him to investigate the delay on the part of the Sub delegation La Villa of the CICPC, of the state of Aragua.

<sup>246</sup> Communication filed before the Ombudsman's Office on June 17, 2004 (Annex K to the petitioners' brief received on August 9, 2004).

## **12.4 The Illegal and Arbitrary Detention of Rigoberto Barrios and Jorge Antonio Barrios on March 3, 2004**

### **12.4.1 Facts on the Proceedings**

325. On the day following the victims' arrest while they were under State custody, on March 4, 2004, the petitioners filed a complaint before the Chief Public Prosecutor of the state of Aragua relating to the detention and the "physical and psychological torture" committed by the police officers of the state of Aragua against Jorge and Rigoberto Barrios.<sup>247</sup>

326. On March 11, 2004, Rigoberto Barrios and Jorge Antonio Barrios appeared before the CICPC to make a statement including a detailed account of their detention, mistreatment and movements between police stations.<sup>248</sup>

327. On March 5, 2004, an official medical examination was performed on Rigoberto Barrios.<sup>249</sup>

328. On February 21, 2005, the CICPC went to the El Roble farm to investigate a vehicle with similar characteristics to the one described. They found that the said vehicle belonged to the government of the state of Aragua.<sup>250</sup> On February 22, 2005, an El Roble farm worker was interviewed. He provided information about a theft of cattle in March 2004 and the complaint lodged with the Guanayen police.<sup>251</sup>

329. The State also made clear that it had requested certified copies of the police logbooks for March 3 and 4, 2004 from the Guanayen and Barbacoa police stations.<sup>252</sup>

330. On March 27, 2006, the 16 Provisional Public Prosecutor of the state of Aragua requested the Control Judge to dismiss the case due to the trivial injuries and the evident time bar.<sup>253</sup> On November 22, 2006, the 10th Control Judge of the criminal judicial circuit of the state of Aragua ordered a dismissal for the lapse of more than one year from the date that the facts had occurred, this being the time limit established by law.<sup>254</sup>

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<sup>247</sup> Communication filed before the Chief Public Prosecutor of the state of Aragua on March 4, 2004. (Annex B of the petitioners' brief dated May 3, 2004). In this complaint they asked for i) the immediate release of the detainees; ii) the performance of a medical examination; iii) the opening of a criminal enquiry against Inspector Wilmer Bravo for committing the crime of the illegal deprivation of liberty, physical torture and abuse of authority; and iv) the speeding up of the request for protective measures.

<sup>248</sup> Request for Dismissal of the 16 Provisional Public Prosecutor of the state of Aragua (Annex 37 to petitioners' brief received on December 4, 2009); and Statement of Jorge Antonio Barrios Ortúñoz before the CICPC on March 11, 2004 (Annex 36 to petitioners' brief received on December 4, 2009).

<sup>249</sup> Request for Dismissal of the 16 Provisional Public Prosecutor of the state of Aragua (Annex 37 to petitioners' brief received on December 4, 2009); and official medical examination of March 5, 2004 (Annex 40 to petitioners' brief of December 4, 2009)

<sup>250</sup> Request for Dismissal of the 16 Provisional Public Prosecutor of the state of Aragua (Annex 37 to petitioners' brief received on December 4, 2009).

<sup>251</sup> Request for Dismissal of the 16 Provisional Public Prosecutor of the state of Aragua (Annex 37 to petitioners' brief received on December 4, 2009).

<sup>252</sup> State's brief received on June 21, 2006.

<sup>253</sup> Request for Dismissal of the 16 Provisional Public Prosecutor of the state of Aragua (Annex 37 to petitioners' brief received on December 4, 2009).

<sup>254</sup> Resolution of the 10th Control Court of the Criminal Judicial Circuit of the state of Aragua of November 22, 2006 (Annex 41 to petitioners' brief received on December 4, 2009).

#### **12.4.2 Considerations of the Commission**

331. The elements in the case file before the Commission reveal a series of omissions and irregularities explained in the following paragraphs.

332. Among the investigatory steps undertaken the official medical examination of Rigoberto Barrios is the only one to appear. An official medical examination was not performed on Jorge Antonio Barrios as part of this process, even though the complaint was presented a few days after the detention. Within the case file there is no explanation for the lack of this investigatory step with regard to Jorge Antonio Barrios.

333. The only evidentiary steps undertaken were the victims' statements and the medical examination of one of them. There is no information on the analysis of the police logbooks from either the police stations or the reasons why officials involved did not appear to make statements on the set dates.

334. Between March 2004 and February 2005, a year passed without any investigatory steps. Between March 2005 and March 2006, another year passed with the case file inactive. The steps undertaken in February 2005 were directed towards the alleged theft about which the police questioned the victims on the day of the facts, and were not aimed at the officials involved in the detention and physical injuries.

335. The request and order of dismissal were based solely on the limitation period for the offense of personal injuries and made no reference to the victims' deprivation of liberty, even though the offense of unlawful deprivation of liberty appears in Venezuelan criminal law.

#### **12.5 The Deprivation of Liberty, the Threats and Injuries Caused to Luisa del Carmen Barrios, Gustavo Ravelo, Jesús Ravelo, Elbira Barrios, Oscar José Barrios and Jorge Antonio Barrios on June 19, 2004**

##### **12.5.1 Facts on the Proceedings**

336. On June 28, 2004, the complaint about these acts was submitted to the 14 Public Prosecutor of the state of Aragua. A request to open an investigation and to start investigatory steps was made.<sup>255</sup> On July 23, 2004, the 20th Public Prosecutor of the state of Aragua ordered the start of the investigation.<sup>256</sup> On the same day, the CICPC requested the SPOC of the state of Aragua to provide information about the police officers Oswaldo Blanco, Félix Ramos and Giselo Ramos.<sup>257</sup>

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<sup>255</sup> Complaint filed before the 14th Public Prosecutor of the state of Aragua on June 28, 2004 (Annex 48 to petitioners' brief received on December 4, 2009). The investigatory steps requested were an expert report on Jesús Ravelo's car, a ballistics report on the bullet taken from the said vehicle, police logbook of the Guanayen and Barbacoa stations corresponding to the respective dates and a ballistic comparison of the guns carried by the police officers. Lastly, they requested protective measures in favor of Jesús Ravelo and Gustavo Ravelo and Mrs. Luisa del Carmen Barrios de Ravelo.

<sup>256</sup> Order to initiate the investigation of July 23, 2004 (Annex 58 to petitioners' brief received on December 4, 2009).

<sup>257</sup> Office of the CICPC of July 23, 2004 (Annex 60 to petitioners' brief received on December 4, 2009).

337. On July 27, 2004, the 20th Public Prosecutor of the state of Aragua requested the Direction of Internal Affairs of the police of the state of Aragua to launch an internal administrative enquiry on the facts complained of.<sup>258</sup> The results of this investigation are not known.

338. On August 9, 2004, the 20 Public Prosecutor of the state of Aragua went to Elbira Barrios' home where she gave an interview explaining the facts. On this occasion, Elbira Barrios related the facts of Narciso Barrios' death on December 11, 2003 as a result of his actions to defend Jorge Antonio Barrios from the raid being undertaken by police officers "Wilmer Bravo, El Clavo and Giselo Tovar".<sup>259</sup> On August 10, 2004, Jesús Ravelo made a statement before the 20th Public Prosecutor of the state of Aragua. He stated what had happened and handed over a bullet that had struck his vehicle on the day of the facts.<sup>260</sup>

339. On February 21, 2005, the CICPC requested a copy of the police logbook of the Guanayen police station from the SPOC of the state of Aragua corresponding to June 21, 2004.<sup>261</sup>

340. On February 22, 2005, Oscar José Barrios made a statement to the CICPC on the facts complained of.<sup>262</sup>

341. On the same day, Elbira Barrios - Lusia del Carmen Barrios' sister and Jorge Antonio Barrios' aunt - made a statement before the CICPC and recounted the same facts and stated that the policemen she identified "wanted to kill Jorge and my son Oscar", as they were "angry with them".<sup>263</sup>

342. On February 23, 2005, the CICPC ratified the request made to the SPOC of the state of Aragua on July 23, 2004, on the information of the police officers involved.<sup>264</sup>

343. On February 23, 2005, Gustavo Ravelo - Jesús Ravelo's son and Luisa del Carmen Barrios' husband – made a statement before the CICPC. He added that when they were released, the officers threatened him, stating that if they saw him again, they would "give him a slapping to remind him of day he was born".<sup>265</sup>

344. On the same day, Lusia del Carmen Barrios made a statement before the CICPC. She recounted the facts and identified the police officers.<sup>266</sup> On February 24, 2005, Jesús Ravelo

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<sup>258</sup> 20th Public Prosecutor of the state of Aragua, July 27, 2004 (Annex 62 to petitioners' brief received on December 4, 2009).

<sup>259</sup> Interview of Elbira Barrios before the 20th Public Prosecutor of the state of Aragua of August 9, 2004 (Annex 56 to petitioners' brief received on December 4, 2009).

<sup>260</sup> Interview of Jesús Eduardo Ravelo before the 20th Public Prosecutor of the state of Aragua of August 9, 2004 (Annex 57 to petitioners' brief received on December 4, 2009).

<sup>261</sup> Office of the CICPC of February 21, 2005 (Annex 63 to petitioners' brief received on December 4, 2009).

<sup>262</sup> Interview of Oscar José Barrios before the CICPC on February 22, 2005 (Annex 49 to petitioners' brief received on December 4, 2009).

<sup>263</sup> Interview of Elbira Barrios before the CICPC on February 22, 2005 (Annex 50 to petitioners' brief received on December 4, 2009).

<sup>264</sup> Office of the CICPC of February 23, 2005 (Annex 61 to petitioners' brief received on December 4, 2009).

<sup>265</sup> Interview of Gustavo José Ravelo before the CICPC on February 23, 2005 (Annex 51 to petitioners' brief received on December 4, 2009).

<sup>266</sup> Interview of Luisa del Carmen Barrios before the CICPC on February 23, 2005 (Annex 51 to petitioners' brief received on December 4, 2009).

made a statement before the CICPC and recounted the facts.<sup>267</sup> On the same day an inspection was carried out on the car belonging to Jesús Ravelo.<sup>268</sup>

345. On May 30, 2005, the 20th Public Prosecutor of the state of Aragua requested the CICPC to undertake various investigatory steps, including expanding the interviews with the victims, locating eyewitnesses, coordinating a judicial act of inspection with the Direction of Internal Affairs of the SPOC of the state of Aragua, requesting copies of the list of names of the officers and the police logbooks, and transmitting the results of the expert report on the bullet handed in by Mr. Jesús Ravelo.<sup>269</sup>

346. On the same day, this Public Prosecutor communicated with the 14th Public Prosecutor of the state of Aragua asking for his assistance in the investigation.<sup>270</sup> On August 22, 2005, the 20th Public Prosecutor of the state of Aragua asked the 14th Public Prosecutor of the state of Aragua for a copy of the proceedings under its control and requested information on whether a bullet handed over by the victims had been logged.<sup>271</sup>

347. On August 22, 2005, the request made to the CICPC on May 30, 2005 was confirmed.<sup>272</sup> On the same day, the 20th Public Prosecutor of the state of Aragua requested the SPOC of the state of Aragua to transmit the police logbooks of the Barbacoa and Guanayen stations for June 20, and 21, 2004, a copy of the document listing the names of the officers then on duty, and a copy of the firearms assignment order.<sup>273</sup>

348. On September 27, 2006, the 20th Public Prosecutor of the state of Aragua requested a copy of the police logbooks from the stations at Guanayen, Barbacoa and Camatagua for the dates June 1, 23, and 23, 2004.<sup>274</sup> This dispatch was ratified on December 1, 2006.<sup>275</sup>

349. On December 12, 2006, the appearance of the officials Valente Secundino Tovar Ramos and Félix Marcelino Ramos before the 20th Public Prosecutor of the state of Aragua to make a statement was recorded. The indictment was scheduled for January 11, 2007, due to the absence of a swearing-in of the defense lawyers.<sup>276</sup>

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<sup>267</sup> Interview of Jesús Eduardo Ravelo before the CICPC on February 24, 2005 (Annex 51 to petitioners' brief received on December 4, 2009).

<sup>268</sup> Report of the Technical Police Investigation of the CICPC of February 24, 2005.

<sup>269</sup> Warrant of the 20th Public Prosecutor's Office of the state of Aragua of May 30, 2005 (Annex 64 to petitioners' brief received on December 4, 2009).

<sup>270</sup> Warrant of the 20th Public Prosecutor's Office of the state of Aragua of May 30, 2005 (Annex 68 to the petitioners' brief received on December 4, 2009)

<sup>271</sup> Warrant of the 20th Public Prosecutor's Office of the state of Aragua of May 30, 2005 (Annex 68 to petitioners' brief received on December 4, 2009).

<sup>272</sup> Warrant of the 20th Public Prosecutor's Office of the state of Aragua of August 22, 2005 (Annex 69 to petitioners' brief received on December 4, 2009).

<sup>273</sup> Warrant of the 20th Public Prosecutor's Office of the state of Aragua of August 22, 2005 (Annex 66 to petitioners' brief received on December 4, 2009).

<sup>274</sup> Warrant of the 20th Public Prosecutor's Office of the state of Aragua of September 27, 2006 (Annex 71 to petitioners' brief received on December 4, 2009).

<sup>275</sup> Warrant of the 20th Public Prosecutor's Office of the state of Aragua of December 1, 2006 (Annex 72 to petitioners' brief received on December 4, 2009).

<sup>276</sup> Record of compliance with Summons of December 12, 2006 (Annex 70 to petitioners' brief received on December 4, 2009).

350. On January 18, 2007, the formal indictment of Valente Secundo Tovar Ramos for various offenses took place.<sup>277</sup>

351. On February 28, 2003 a request was made to the Chief of the Forensic Office of the CICPC to inform whether Jesús Ravelo and Gustavo Ravelo had been subject to an official evaluation when the facts occurred. On March 10, 2008, a police officer assigned to the Barbacoa Police station on the day of the facts made a statement. By April 25, 2008, the Public Prosecutor continued to undertake the remaining investigatory steps.<sup>278</sup>

352. On November 25, 2008, the Public Prosecutor in charge of this case requested the Control Judge of First Instance of the state of Aragua to dismiss the case for considering that there did not appear to be elements sufficient to identify those responsible. On October 2, 2009, the judge's decision remained pending on the request for a dismissal.<sup>279</sup>

#### **12.5.2 Considerations of the Commission**

353. The elements in the case file at the Commission's disposal reveal a number of omissions and irregularities recounted in the following paragraphs.

354. On July 23, 2004, information on the police officers involved was requested from the police station and only in May 2005, in the absence of a response, was the request repeated. Facing new failures to comply, further requests were issued on August 22, 2005 and in September and December of 2006.

355. Despite the evident failure in their duty to provide information on the police's part, the officials in charge of the investigation did not use coercive means to demand the timely presentation of information.

356. Notwithstanding that all the victims coincided in their statement that they were able to identify their attackers, there is no information on whether line up identification took place on the police officers on duty at the time of the facts. This failure is directly related to the lack of official information on the police's part mentioned in the previous paragraph.

357. Neither was the Sergeant mentioned by the victims in their interviews summoned to make a statement as the individual who intervened to halt the violence of the police officers and afterwards who took away Oscar and Jorge Antonio Barrios under arrest.

358. Even though the Public Prosecutor officially sent a request to the Aragua state police to launch an administrative enquiry into the facts, nothing is known about whether this investigation has been completed or whether the Prosecutor who ordered it has made some kind of follow-up.

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<sup>277</sup> Indictment of January 18, 2007 (Annex 74 to petitioners' brief received on December 4, 2009).

<sup>278</sup> General Prosecutor of the Republic, April 25, 2008 (Annex 75 of the petitioners' brief received on December 4, 2009).

<sup>279</sup> Report of the State before the Inter-American Court of Human Rights in the provisional measures proceedings dated March 3, 2009 (Annex 76 of the petitioners' brief received on December 4, 2009).

## **12.6 The Murder of Luís Alberto Barrios on September 20, 2004**

### **12.6.1 Facts on the Procedure**

359. On September 21, 2004, the CICPC began an investigation in which the following investigatory steps were completed:

- Technical police inspection conducted on September 21, 2004, on the dwelling located in the Las Casitas sector in the town of Guanayen, in the state of Aragua, where the lifeless body of Luís Alberto Barrios was observed and from which various pieces of evidence were taken.
- Technical police inspection carried out on September 21, 2004, at the location of the CICPC mortuary, where Luís Alberto Barrios' body was located.
- Statement of Orismar Carolina Alzul García given on September 21, 2004.
- Theodolite survey of September 21, 2004.
- Expert Hematology Report and official examination of the objects removed from Luís Alberto Barrios' body on November 10, 2004.
- The post mortem performed on September 21, 2004.
- The ballistic trajectory report of August 25, 2005
- The expanded statement of Orismar Carolina Alzul García of August 30, 2005.
- Certified copy of the death certificate issued on October 20, 2005
- Report of the Chief of the Barbacoa Police Station of October 7, 2005, which showed the assignment of weapons to the police officers on the date of the facts resulting in Luís Alberto Barrios' death.
- Expert's Report dated February 7, 2006, on the official examination of make and design of four firearms.
- Certified copy of the experts report on the official hematology examination performed on October 18, 2004, from samples gathered at the scene of the facts.
- Expert's comparative ballistics report of May 17, 2006, of four firearms with samples gathered at the scene of the facts. This report could not be undertaken due to the lack of physical characteristics singling out the gun, which actually discharged the fragments into the surrounding outside area.
- Experts Report dated May 18, 2006, on the official examination of make, design, and ballistic comparison of a firearm of the shotgun type. This report could not be undertaken due to the lack of physical characteristics singling out the gun, which actually discharged the fragments into the surrounding outside area.
- Statement of Elbira Barrios given on February 22, 2005, that linked the acts with what happened to her other brothers Benito Antonio Barrios and Narciso Barrios.
- Statement of Oscar José Barrios given on February 22, 2005.
- Expansion of the ballistic trajectory report of May 25, 2006.<sup>280</sup>

360. On May 25, 2006, the 20th Public Prosecutor of the state of Aragua ordered the archiving of the file. Among the arguments for this decision was the absence of evidence identifying those responsible. It concluded with the uncertainty of the participation of police officers of the SPOC of the state of Aragua, and that it was impossible to describe the facts as police harassment. Reference was made in the decision that the ballistic comparisons could not be undertaken due to the absence of physical characteristics capable of showing the source of the evidence found in Luís Alberto Barrios' body. This, together with the absence of eyewitness evidence at the moment of his death, constitutes an obstacle to the possible linking of police officers. It also indicated that even though the statements of Orismar Carolina Alzul García, Elbira

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<sup>280</sup> Final Report of the 20th Public Prosecutor of the state of Aragua of May 25, 2006 (Annex D to the State's brief received on June 21, 2006). In this decision an account was made of the steps undertaken during the investigation.

Barrios and Oscar José Barrios included references to prior acts of police harassment, intimidation and threats, in particular against Luís Alberto Barrios, such acts might equate to the offence of making threats, which, in accordance with Venezuelan legislation, can only be initiated at the instance of a party.<sup>281</sup>

### **12.6.2 Considerations of the Commission**

361. Due to the fact that the decisions to archive the cases of Luís Alberto Barrios and Rigoberto Barrios were issued by the same judicial authority and for similar reasons, the Commission's observations on these cases will be given jointly, *infra* 372 - 375.

### **12.7 The Attack and Subsequent Death of Rigoberto Barrios between January 9 and 20, 2005**

#### **12.7.1 Facts on the Proceeding**

##### *Investigation into what occurred on January 9, 2005*

362. On January 13, 2005, the petitioners complained before the Chief Public Prosecutor of the state of Aragua, that Rigoberto Barrios was in a serious condition in the Central Hospital of Maracay, as a result of eight gunshot wounds caused by police officers.<sup>282</sup>

363. As a result of this complaint, the CICPC commenced an investigation, undertaking the following investigatory steps:

- Statement of Rigoberto Barrios given on January 13, 2005 before the 20th Public Prosecutor of the state of Aragua<sup>283</sup>
- Statement of Genesys Carolina Martínez given on January 26, 2005.<sup>284</sup>
- Witness statements received on January 26, 2005.<sup>285</sup>
- Statement of Maritza Barrios, received on January 26, 2005.<sup>286</sup>
- Technical police inspection carried out on January 20, 2005, at the location of the CICPC mortuary, where Rigoberto Barrios' body was located
- The post mortem on Rigoberto Barrios' body performed on January 22, 2005
- Technical police inspection performed on January 25, 2005 in the Las Casitas sector, finding a fired 9mm caliber shell casing.
- Certified copy of the police logbook and of the assignment of firearms corresponding to January 9 and 10, 2005 taken by the Barbacoa and Guanayen police stations of SPOC of the state of Aragua.

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<sup>281</sup> Final Report of the 20th Public Prosecutor of the state of Aragua (Annex D to the State's brief received on June 21, 2006).

<sup>282</sup> Complaint before the Chief Public Prosecutor of the state of Aragua of January 13, 2005 (Annex 79 to petitioners' brief received on December 4, 2009); and Final Report of the 20th Public Prosecutor of the state of Aragua of May 25, 2006 (Annex B to the State's brief received on June 21, 2006). This decision refers to the complaint at the root of the investigation.

<sup>283</sup> Interview of Rigoberto Barrios of January 13, 2005 (Annex 80 to petitioners' brief received on December 4, 2009).

<sup>284</sup> Interview of Genesys Carolina Martínez of January 26, 2005 (Annex 81 to petitioners' brief received on December 4, 2009).

<sup>285</sup> Interviews of January 26, 2005 (Annex 82 to petitioners' brief received on December 4, 2009).

<sup>286</sup> Interview of Maritza Barrios of January 26, 2005 (Annex 83 to petitioners' brief received on December 4, 2009).

- Ballistic trajectory report of March 10, 2005.
- Theodolite survey of March 18, 2008.
- Expert Report of February 5, 2005, on the identification of a shell casing.
- Expert Report on March 4, 2005, on the identification of other objects.
- Request of May 18, 2006, for a ballistic expert's report on five firearms together with fragments taken from Rigoberto Barrios body. This could not be undertaken due to the lack of evidence of physical characteristics to single out that weapon which actually discharged into the surrounding outside area.
- Expert's Report dated May 19, 2006, on the official examination of make, design and ballistic comparison of 22 firearms and shell casing recovered from the scene of the facts.
- Expansion of the ballistic trajectory report of May 25, 2005.<sup>287</sup>

364. On May 25, 2006, the 20th Public Prosecutor with competence in fundamental rights of the state of Aragua ordered the archiving of the file. Among the arguments for this decision was the absence of evidence identifying those responsible. It concluded that the participation of police officers of the SPOC of the state of Aragua was uncertain, and that it was not possible to describe the facts as police harassment. Reference was made in the decision to the Barrios family's request that the ballistic comparisons be made on the weapons assigned to the Barbacoa and Guanayen police stations, with fragments taken out of Rigoberto Barrios' body. It was impossible to undertake one of them and no relevant information was obtained from the other. It also indicated that even though Maritza Barrios' statement included references to previous acts of police harassment against her and her son, such acts might equate to the offence of making threats, which, in accordance with Venezuelan legislation, can only be initiated at the instance of a party.<sup>288</sup>

#### *Investigation into possible medical malpractice*

365. On January 21, 2005, the 20th Public Prosecutor of the state of Aragua started the investigation after receiving a complaint presented by the petitioners. On January 25, 2005, the petitioners requested the said prosecutor to undertake investigatory steps such as the request for the medical history of the Central Hospital of Maracay, the request for the personal details and registered number of the medial personnel who performed the surgical treatment on Rigoberto Barrios on January 15, 2005, the request of a copy of the blood bank registry, the request for the register of the emergency room for January 10, 2005, the request for information on certain medicines available and the request for personal details of the nurses caring for Rigoberto Barrios. In their brief they indicated that these investigatory steps were relevant to establish the death of Rigoberto Barrios as a consequence of medical negligence.<sup>289</sup>

366. On the same day, the 20th Public Prosecutor of the state of Aragua addressed a request to the Central Hospital of Maracay asking for the above information. On January 28, 2005, the said hospital transmitted the information requested.<sup>290</sup>

367. On January 28, 2005, Doctor Rodolfo Antonio Pérez Cordova appeared of his own accord before the CICPC, in order to supply information on the treatment given to Rigoberto Barrios.<sup>291</sup>

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<sup>287</sup> Final Report of the 20th Public Prosecutor of the state of Aragua of May 25, 2006 (Annex B to the State's brief received on June 21, 2006). This decision gives an account of the investigatory steps undertaken.

<sup>288</sup> Final Report of the 20th Public Prosecutor of the state of Aragua of May 25, 2006 (Annex B to the State's brief received on June 21, 2006).

<sup>289</sup> Items of the case file brought by the petitioners in the brief of February 16, 2010.

<sup>290</sup> Items of the case file brought by the petitioners in the brief of February 16, 2010.

368. On March 16, 2005, the 20th Public Prosecutor of the state of Aragua sent official notification to the CICPC requesting the transmission of the following items: the technical police report at the scene of the events, the technical police report of the body, witness interviews and interviews with the deceased's family, evidence of criminal interest and technical expert evaluations, the autopsy report, death certificate, burial certificate and interviews with the doctors intervening and the medical staff on duty. This request was repeated on August 22, 2005.<sup>292</sup>

369. On June 20, 2006, Mr. Rodolfo Antonio Pérez Cordova made a statement before the 20th Public Prosecutor of the state of Aragua.<sup>293</sup>

370. A report of "the criminal investigator" dated October 27, 2006, appears in the case file, analyzing the treatment received by Rigoberto Barrios since his admittance to the Central Hospital of Maracay. This report contains the following conclusions: "The citizen Rigoberto Barrios was admitted to the Central Hospital of Maracay for treatment for multiple gunshot wounds. The treatment received at that point was immediate. Rigoberto Barrios underwent an operation on January 15, 2005, five days after being admitted, with no notes in the medical history justifying the delay for which the patient was operated on so late. Even when the wounds the patient Rigoberto Barrios presented were of a serious nature and the appropriate medications - of a gastric-erosive nature - may have contributed to aggravate the health symptoms of the same, it is also certain that there was a delay in the care provided. There was no care given to citizen Rigoberto Barrios in the nurses' duty shift and the shift that covered 1:00pm until 7:00pm on January 19, 2005. The forensic autopsy did not indicate the cause of death. The clinical history does not indicate the cause of death of Rigoberto Barrios either. There is a clear link between the actions performed by the medical and nursing personnel of the Central Hospital of Maracay."<sup>294</sup>

371. On April 25, 2008, this investigation was pending revision of the 20th Public Prosecutor of the state of Aragua to issue the corresponding final Report.<sup>295</sup> On October 2, 2009, the State stated that the situation of this case file was the same.<sup>296</sup>

### **12.7.2 Considerations of the Commission**

372. As indicated above, the Public Prosecutor files issued in these cases on the deaths of Luís and Rigoberto Barrios are very similar.

373. Both decisions recognize the existence of complaints on a wider context respecting the Barrios family, but ignore this when it comes to evaluating the elements in the case file. In effect, these decisions do not only show that the investigating authorities abstained from analyzing the facts in the context presented, but expressly declared that the threats, intimidation and harassment could not be investigated *de oficio*, since the law establishes that this could only be initiated at the instance of a party.

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<sup>291</sup> Interview of Rodolfo Antonio Pérez Cordova before the CICPC on January 28, 2005 (Annex 84 to petitioners' brief received on December 4, 2009).

<sup>292</sup> Items of the case file brought by the petitioners in the brief of February 16, 2010.

<sup>293</sup> Interview of Rodolfo Antonio Pérez Cordova before the 20th Public Prosecutor of the state of Aragua of June 20, 2006 (Annex 85 to petitioners' brief received on December 4, 2009).

<sup>294</sup> Items of the case file brought by the petitioners in the brief of February 16, 2010.

<sup>295</sup> General Prosecutor's Office, April 25, 2008 (Annex 75 of the petitioners' brief received on December 4, 2009).

<sup>296</sup> Report of the State before the Inter-American Court of Human Rights in the provisional measures proceedings dated March 3, 2009 (Annex 76 of the petitioners' brief received on December 4, 2009).

374. On the other hand, although there was a need to determine if the deaths were imputable to police officers, the only avenue used to do this was the ballistic comparison of the guns officially assigned to these officers with the evidence recovered from the bodies. Nevertheless, no alternative possibility was explored that the officers did not use assigned firearms, which is foreseeable on any reasonable view. In other words, in theory there were indications that it was necessary to determine the involvement of the police, but in practice, logical lines of investigation were not pursued on the possible actions of those officers.

375. Finally, despite those making threats in Luís Alberto Barrios' case being identified, they were not even summoned to make statements in the investigation. Neither were the threats made by police officers prior to Rigoberto Barrios' death investigated, as mentioned by his mother Maritza Barrios in the context of this investigation. An enquiry into this point may have been able to shed light on those possibly responsible.

376. Regarding the investigation into possible medical malpractice respecting Rigoberto Barrios, the available information shows that the reasons why the operation was only carried out five days after his admittance to hospital was not diligently investigated, nor whether the absence of a timely blood transfusion was related to the death of the victim. Although a report exists showing the delays in medical care and the possible facts linking the medical personnel with Rigoberto Barrios' death, there is no information on any follow-up given to the case. This process has been delayed for more than 5 years during which there have been long lapses of procedural inactivity. The case is not especially complex since there is information on the patient's clinical history and on the personnel on duty at the hospital. The procedural steps undertaken to date do not reveal a justification for the delay.

## **12.8 The Murder of Oscar José Barrios on November 28, 2009**

377. As mentioned above, and without prejudice to the violation of the right to life, the Commission does not possess sufficient evidence to express an opinion on the investigations undertaken with respect to this fact.

## **12.9 Conclusion**

378. All the procedures analyzed in the present section permit the conclusion that the investigations were not conducted with due diligence, nor within a reasonable time. To date, the acts of violence directed at the Barrios family continue in an atmosphere of impunity and in the absence of rigorousness, seriousness and impulse to the investigations. This is the common factor in all the cases. The observations outlined in each one of the paragraphs of the present section permit the conclusion that the State has not granted the victims effective means to clarify the facts, to identify those responsible, and to impose appropriate punishment. This has resulted not only in the failure to fulfill the duty to guarantee the rights to life, personal integrity and personal liberty, but also a denial of justice contributing to an ongoing sense of vulnerability, defenselessness, and a lack of protection surrounding the Barrios family.

379. By virtue of the foregoing, the Commission concludes that the State has violated the right to judicial guarantees and judicial protection enshrined in Articles 8.1 and 25.1 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of the direct family members of Benito Antonio, Narciso, Luís, Rigoberto and Oscar José Barrios (parents, brothers and sisters, sons and daughters, and life partners), i.e. : Justina Barrios, Pablo Solórzano, Eloisa Barrios, Elbira Barrios, Maritza Barrios, Brígida Oneida Barrios, Inés Barrios, Luís Alberto Barrios, Lilia Isabel Solórzano, Narciso Barrios, Luisa del Carmen Barrios, Juan Barrios, Jorge

Antonio Barrios, Carlos Alberto Ortúño, Dalila Ortúño, Annarys Alexandra Barrios, Benito Antonio Barrios, Junclis Rangel, Ronny David Barrios, Roniel Alberto Barrios, Luís Alberto Alzul, Orismar Carolina Alzul, Wilmer José Flores Barrios, Genesis Andreina Navarro Barrios, Víctor Tomas Navarro Barrios, Heilín Alexandra Navarro Barrios, Néstor Caudi Barrios, Darelvis Carolina Barrios, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Michael José Barrios Espinosa and Dinosca Alexandra Barrios Espinosa

380. The Commission also concludes that the State has violated the right to judicial guarantees and judicial protection enshrined in Articles 8.1 and 25.1 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of the victims of the other violations, that is, the raids, detentions, physical injuries and the threats described above. These individuals are: Justina Barrios, Brígida Oneida Barrios, Elbira Barrios, Luís Alberto Barrios, Orismar Carolina Alzul, Jorge Antonio Barrios, Rigoberto Barrios, Oscar José Barrios, Néstor Caudi Barrios, Luisa del Carmen Barrios, Gustavo Ravelo and Jesús Ravelo. Although some of these individuals have lost their lives, the Commission has included them since from the acts against them occurred up until the time of their deaths, they were victims of a denial of justice.

## V. CONCLUSIONS

381. The Commission considers that the international responsibility of the State of Venezuela is aggravated in the present case for the following reasons: i) the persecution of the family, produced by serious breaches of human rights against its members, emanating from the security forces of the State which, as such, generates state responsibility for their actions and omissions; ii) the State became aware of these facts from a variety of sources, including official complaints before the Public Prosecutor, the public complaints in the media, and the requirements of provisional and protective measures from the Inter-American Commission and Court respectively; iii) despite this, many years passed without the State employing all possible measures to eliminate the source of the risk and protecting the Barrios family facing constant threats coming from its own agents; iv) to date, almost 12 years have gone by since the first extrajudicial execution without any of the facts complained of resulting in a judicial clarification of what occurred, and, consequently, without establishing appropriate punishment; and v) the entirety of the facts reveals a pattern of cover up which starts with the distortion of what happened by the perpetrators, continues with the absence of judicial clarification and includes employing various types of threat and intimidation aimed at avoiding the determination of the truth and finding those responsible. All the foregoing permits the conclusion that the police persecution and cruelty against the Barrios family was tolerated at diverse levels of the State.

382. Based on the considerations of fact and law expressed throughout this report, the Inter-American Commission concludes that the State of Venezuela is responsible for:

- a) The violation of the rights to life, personal integrity and personal liberty enshrined in Articles 4.1, 5.1 and 5.2, 7.1, 7.2, 7.3, 7.4 and 7.5 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Benito Antonio Barrios.
- b) The violation of the rights to the protection of private and family life, and to private property, set out in Articles 11 and 21 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Justina Barrios, Brígida Oneida Barrios, Elbira Barrios, Luís Alberto Barrios and Orismar Carolina Alzul.
- c) The violation of the right to life enshrined in Article 4.1 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Narciso Barrios.
- d) The violation of the rights to personal integrity, personal liberty and special protection of children, enshrined in 5.1, 5.2, 7.1, 7.3, 7.4, 7.5 and 19 of the

- American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Jorge Antonio Barrios and Rigoberto Barrios.
- e) The violation of the rights to personal integrity, personal liberty, enshrined in Article 5, 7.1, 7.2, 7.3, of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Elbira Barrios, Luisa del Carmen Barrios, Gustavo Ravelo and Jesús Ravelo; and the rights to personal integrity, personal liberty and special protection of children, enshrined in 5.1, 5.2, 7.1, 7.3, 7.4, 7.5 and 19 of the American Convention to the prejudice of Jorge Antonio Barrios and Oscar José Barrios.
- f) The violation of the rights to personal integrity, and the special protection of children, enshrined in 5.1 and 19 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Néstor Caudi Barrios and Oscar José Barrios.
- g) The violation of the right to life enshrined in Article 4.1 of the Inter-American Convention in relation to Article 1.1 of the same instrument to the prejudice of Luís Alberto Barrios.
- h) The violation of the rights to life, personal integrity, and the special protection of children, enshrined in Articles 4.1, 5.1, 5.2 and 19 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Rigoberto Barrios.
- i) The violation of the right to life enshrined in Article 4.1 of the Inter-American Convention in relation to Article 1.1 of the same instrument to the prejudice of Oscar José Barrios.
- j) The violation of the right to free movement and residence enshrined in Article 22.1 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Justina Barrios, Eloisa Barrios, Beatriz Adriana Cabrera Barrios, Víctor Daniel Cabrera Barrios, Luimary Carolina Guzmán Barrios, Luisaidy Yulianni Guzmán Barrios, Elbira Barrios, Darelvis 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 Oneida Barrios, Marcos Antonio Díaz Barrios, Sandra Maribi Betancurt Barrios, Junior José Betancurt Barrios, Wilneidy Betania Pimentel Barrios, Wilkar Felipe Pimentel Barrios, Inés Barrios, Daniel Yoselin Ortiz Barrios, Edinson Alexander Ortiz Barrios, Johjan Ramón Perozo Barrios, Luisa del Carmen Barrios, Gustavo Ravelo, Luisiani Nazareth Ravelo Barrios, Carolina Orismar Alzul, Ronny David Barrios Alzul, Roniel Alberto Barrios Alzul, Luís Alberto Alzul, Dalila Ordalys Ortúñoz, Jorge Antonio Barrios, Carlos Alberto Ortúñoz, Junclis Rangel, Annarys Alexandra Barrios, Benito Antonio Barrios, Juan Barrios, Orianny Nazareth Pelae and Orina Nazareth Pelae, Pablo Solórzano, Beneraiz de la Rosa and Danilo David Solórzano de la Rosa. With respect to the children, the Commission concludes that the State has violated Article 19 of the American Convention.
- k) The violation of the right to personal integrity enshrined in Article 5.1 of the American Convention in relation to Article 1.1 of the same instrument, to the prejudice of Justina Barrios, Pablo Solórzano, Eloisa Barrios, Elbira Barrios, Maritza Barrios, Brígida Oneida Barrios, Inés Barrios, Luís Alberto Barrios, Lilia Isabel Solórzano, Narciso Barrios, Luisa del Carmen Barrios, Juan Barrios, Jorge Antonio Barrios, Carlos Alberto Ortúñoz, Dalila Ortúñoz, Annarys Alexandra Barrios, Benito Antonio Barrios, Junclis Rangel, Ronny David Barrios, Roniel Alberto Barrios, Luís Alberto Alzul, Orismar Carolina Alzul, Wilmer José Flores Barrios, Genesis Andreina Navarro Barrios, Víctor Tomas Navarro Barrios, Heilín Alexandra Navarro Barrios, Néstor Caudi Barrios, Darelvis Carolina Barrios, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Michael José Barrios Espinosa and Dinosca Alexandra Barrios Espinosa

- l) The violation of the right to personal integrity enshrined in Article 5.1 of the American Convention in relation to Article 1.1 of the same instrument to the prejudice of all the members of the Barrios family named in the family tree annexed to the present report.
- m) The violation of the rights to judicial guarantees and judicial protection in Articles 8.1 and 25.1 of the American Convention in relation to Article 1.1 of the same instrument to the prejudice of Justina Barrios, Pablo Solórzano, Eloisa Barrios, Elbira Barrios, Maritza Barrios, Brígida Oneida Barrios, Inés Barrios, Luís Alberto Barrios, Lilia Isabel Solórzano, Narciso Barrios, Luisa del Carmen Barrios, Juan Barrios, Jorge Antonio Barrios, Carlos Alberto Ortuño, Dalila Ortuño, Annarys Alexandra Barrios, Benito Antonio Barrios, Junclis Rangel, Ronny David Barrios, Roniel Alberto Barrios and Luís Alberto Alzul, Orismar Carolina Alzul, Wilmer José Flores Barrios, Genesis Andreina Navarro Barrios, Víctor Tomas Navarro Barrios, Heilín Alexandra Navarro Barrios, Néstor Caudi Barrios, Darelvis Carolina Barrios, Elvis Sarais Colorado Barrios, Cirilo Antonio Colorado Barrios, Lorena del Valle Pugliese Barrios, Michael José Barrios Espinosa and Dinosca Alexandra Barrios Espinosa.
- n) The violation of the rights to judicial guarantees and judicial protection enshrined in Articles 8.1 and 25.1 of the American Convention in relation to Article 1.1 of the same instrument to the prejudice of Justina Barrios, Brígida Oneida Barrios, Elbira Barrios, Luís Alberto Barrios, Orismar Carolina Alzul, Jorge Antonio Barrios, Rigoberto Barrios, Oscar José Barrios, Néstor Caudi Barrios, Luisa del Carmen Barrios, Gustavo Ravelo and Jesús Ravelo.

## **VI. RECOMMENDATIONS RECOMENDACIONES**

383. In accordance with the above conclusions,

### **THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS RECOMMENDS TO THE STATE OF VENEZUELA,**

1. To undertake a complete, impartial and effective investigation within a reasonable time into the violations of human rights outlined in the present report, with the object of establishing and punishing the instigators and perpetrators of each one of the facts described.

2. These investigations must be conducted so that they are capable of establishing the connections between the facts described in the report, as well as between those facts and the more general context of extrajudicial executions in Venezuela and persecution against the family members of the victims.

3. Order the appropriate administrative, disciplinary or penal measures for the actions or omissions of the state officials who either contributed to the denial of justice and impunity surrounding the facts of this case, failed to fulfill their duties of reply faced with the situation complained of or who took part in the measures to obstruct the procedures aimed at identifying and punishing those responsible.

4. Adequately compensate for the violations of human rights outlined in the present report both in the material and psychological aspects.

5. Adopt the necessary measures to identify the source of the risk suffered by the Barrios family and use all necessary efforts to eradicate it. In the meantime, the State of Venezuela should give strict compliance to the provisional measures issued by the Inter-American Court of Human Rights.

6. Provide for means for non-recurrence, which should include, at least: i) education and training programs on the international standards of human rights in general, and with respect to boys, girls and young people in particular, aimed at the Police of the state of Aragua; and ii) legislative, administrative and other kinds of measures to investigate with due diligence and in accordance with relevant international standards, the necessity and proportionality of the lethal use of force when deployed by police officers, so that there are adequate and effective protocols allowing for the implementation of measures of control and accountability.

**BRÍGIDO SOLÓRZANO**

(fallecido el 2 de septiembre de 1998)

