

Inter-American Court of Human Rights
Case of Montero-Aranguren et al (Detention Center of Catia) v.
Venezuela

Judgment of July 5, 2006
(Preliminary Objection, Merits, Reparations and Costs)

In the Case of *Montero-Aranguren et al (Detention Center of Catia)*,

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

Sergio García-Ramírez, President;
Alirio Abreu-Burelli, Vice-President;
Antônio A. Cançado Trindade, Judge;
Cecilia Medina-Quiroga, Judge;
Manuel E. Ventura-Robles, Judge; and

Also present,

Pablo Saavedra-Alessandry, Secretary; and
Emilia Segares-Rodríguez, Deputy Secretary;

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter "the Convention" or "the American Convention") and Articles 29, 31, 53(2), 55, 56 and 58 of the Rules of Procedure of the Court (hereinafter "the Rules of Procedure",) delivers the following Judgment.

I
INTRODUCTION TO THE CASE

1. On February 24, 2005, pursuant to the provisions of Articles 50 and 61 of the American Convention, the Inter-American Commission on Human Rights (hereinafter "the Commission" or "the Inter-American Commission") filed before the Court an application against the Bolivarian Republic of Venezuela (hereinafter "the State" or "Venezuela"), originated in Petition number 11,699, received by the Secretariat of the Commission on November 12, 1996.

2. The Commission filed the application in the instant case in order for the Court to determine whether the State violated the rights embodied in Article 4 (Right to Life) and Article 5 (Right to Humane Treatment) of the American Convention as regards to Article 1(1) (Obligation to Respect Rights) of the same, in detriment of the detainees that allegedly died in an operation carried out on November 27, 1992 in the *Retén e Internado Judicial de "los Flores de Catia"* (Judicial Detention Center of the Flores of Catia) (hereinafter called "Detention Center of Catia".) Furthermore, the Commission requested the Court to determine that the State violated the rights

** Judges Oliver Jackman and Diego García-Sayán informed the Court that, due to reasons beyond their control, they would not be able to attend the deliberation and signing of this Judgment.

embodied in Article 8 (Right to Fair Trial) and Article 25 (Right to Judicial Protection) of the American Convention as regards to the obligation set forth in Article 1(1) (Obligation to Respect Rights) of the same, in detriment of the alleged victims and their next of kin. Finally, the Commission requested the Inter-American Court to declare Venezuela responsible for the compliance of the general obligation set forth in Article 2 of the American Convention, for failure to suppress from its legislation those provisions that confer military courts jurisdiction to investigate violations to human rights, and further for failure to develop policies to reform the penitentiary system.

3. The application refers to the alleged extrajudicial execution of 37 detainees at the Detention Center of Catia, located in the city of Caracas, Venezuela, at dawn, on November 27, 1992. These facts might have occurred after the second attempt of a *coup d'état* in Venezuela, causing trouble in the aforesaid Detention Center. Allegedly, the guards of the Detention Center and the troops of the *Comando Regional 5* (5th Regional Commander's Office) of the *Guardia Nacional* (National Guard) and of the *Policía Metropolitana* (Metropolitan Police) massively intervened exercising excessive force and shooting indiscriminately at the detainees lodged therein. The versions of the facts provided by some of the survivors state that the guards of the Center opened the cell doors telling the detainees that they were released, and waited for them to go out in order to shoot them. It was further alleged that the detainees were enduring inhuman detention conditions.

4. The Commission alleged that, after the facts, an investigation was carried out by the *Ministerio Público* (Prosecutor's Office) and the judicial authorities, which investigation was characterized by the obstacles and lack of collaboration showed by police, military and penitentiary authorities. As from August 1994, no action was taken to gather information, nor was any procedural act performed regarding the instant case. During almost 8 years the next of kin of the alleged victims were denied access to the records of the case. Currently, the case is in the preliminary investigation stage, which is conducted by the *Fiscalía Sexagésima Octava del Área Metropolitana de Caracas* (68th District Attorney's Office of the Metropolitan Area of Caracas) under record number 4582.

5. Furthermore, the Commission requested the Inter-American Court that, pursuant to Article 63(1) of the Convention, the State be ordered to adopt certain reparation measures requested in the application. Finally, it requested the Court to order the State to pay the costs and expenses arising from the litigation of the case in the domestic courts and in the Inter-American System for the Protection of Human Rights.

II JURISDICTION

6. The Inter-American Court has jurisdiction to hear the instant case pursuant to Article 62(3) of the Convention, given that Venezuela has been a State Party to the Convention since August 9, 1977 and accepted the contentious jurisdiction of the Court on June 24, 1981.

III PROCEEDING BEFORE THE COMMISSION

7. On March 12, 1996, the *Comité de Familiares de Víctimas de los Sucesos de Febrero-Marzo de 1989* (Committee of Next of Kin of the Victims of the Events of February-March 1989) (hereinafter "COFAVIC") and the *Centro por la Justicia y el Derecho Internacional* (Center for Justice and International Law) (hereinafter "CEJIL") filed a petition before the Inter-American Commission, which was admitted under number 11,699, regarding the "[alleged] serious events occurred in the Judicial Detention Center of Catia on November 27, 1992."

8. On October 20, 2004 during its 121st Period of Ordinary Sessions, the Commission approved the report on Admissibility and Merits N° 79/04, by means of which it concluded, *inter alia*, that the State violated the rights embodied in Article 4 (Right to Life), Article 5 (Right to Humane Treatment), Article 8 (Right to Fair Trial) and Article 25 (Right to Judicial Protection) of the American Convention, regarding Articles 1(1) and 2 of the same, for the massacre occurring in the Detention Center of Catia on November 27, 1992, and for the lack of investigation, trial and punishment of the responsible persons and of effective reparation to the victims of those violations and their next of kin. The Commission recommended the State to adopt a series of measures to repair the aforesaid violations.

9. On November 24, 2004, the Commission sent the State the Report N° 79/04 and granted it a term of two months to inform about the measures adopted in order to comply with the recommendations made. On that same date, the Commission, pursuant to Article 43(3) of the Rules of Procedure, notified the petitioners about the adoption of the report and the notice given to the State and requested them to submit their comments regarding the possible submission of the case before the Inter-American Court; such comments were submitted on January 3, 2005.

10. On January 24, 2005, the State requested an extension of the term granted for the submission of the report regarding the compliance with the recommendations of Report N° 79/04. The Commission granted the extension; however, the State did not file the requested information.

11. On February 18, 2005, the Inter-American Commission decided to submit the instant case to the jurisdiction of the Court, in view of "the failure to satisfactorily implement the recommendations stated in Report N° 79/04."

IV PROCEEDING BEFORE THE COURT

12. On February 24, 2005, the Commission filed an application before the Court regarding the instant case. The Appendixes to such application were sent on March 14, 2005. The Commission appointed Commissioners Paulo Sergio Pinheiro and Florentín Meléndez and Executive Secretariat Santiago A. Canton as Delegates before the Court and Juan Pablo Albán, Débora Benchoam and Víctor H. Madrigal as legal counsel.

13. On April 1, 2005, the Secretariat of the Court (hereinafter "the Secretariat",) after a preliminary examination of the application by the President of the Court (hereinafter "the President",) served the said application and its Appendixes on the State and also notified the State of the term within which it had to answer the application and to appoint its attorneys in the proceedings. On April 5, 2005, pursuant to Article 35(1)(d) and (e) of the Rules of Procedure, the Secretariat served notice of the application on CEJIL and COFAVIC, representatives of the alleged

victims and their next of kin (hereinafter "the representatives",) according to the terms of the application; the Secretariat further informed the said representatives that they would have a term of two months to file their brief of requests, arguments and evidence (hereinafter "brief of requests and arguments".)

14. On June 7, 2005, the representatives filed a brief of requests and arguments. In addition to the statements made by the Commission in its application (*supra* paras. 2, 3, 4 and 5), the representatives requested the Court to decide whether the State violated the "right to the truth [...] embodied in Articles 8, 13, 25 and 1(1) of the American Convention, in detriment of each of the victims identified in the application it filed on behalf of the Venezuelan society." On June 14, 2005, the representatives submitted the Appendixes to the brief of requests and arguments.

15. On July 27, 2005, the State requested "an extended period to submit the answer to the application filed by the Inter-American Commission." On July 28, 2005, the Secretariat, following instructions of the President, informed Venezuela that no extension could be granted on the basis of Article 38 of the Rules of Procedure, which establish that the period to answer cannot be extended.

16. On August 1, 2005, the State filed a brief containing preliminary objections, and it also filed an answer to the application and its comments to the brief of requests and arguments (hereinafter "answer to the application"). The preliminary objection refers to the failure to exhaust local remedies within the domestic jurisdiction.

17. On August 1, 2005, the Secretariat, pursuant to Article 37(4) of the Rules of Procedure, granted the Commission and the representatives a term of thirty days to submit their written briefs on the preliminary objections.

18. On August 19, 2005, the Commission filed its brief on the preliminary objection filed by the State and requested the Court to dismiss the same. On August 26, 2005, the representatives filed their briefs on the said preliminary objection and requested the same to be dismissed.

19. On December 9, 2005, the Commission requested the "admission of authenticated copies of 16 death records of [alleged] victims, as additional evidence" regarding the instant case. In this aspect, the Commission pointed out that "said evidence is offered in this procedural stage since it was made available to the Commission on September 15, 2005, that is to say, after the filing of the application before the Court." On December 16 and 19, following instructions of the President, the Secretariat requested the representatives and the State to submit the objections that they might consider appropriate regarding the request for admission of "additional evidence" made by the Inter-American Commission.

20. On December 22, 2005, the representatives pointed out that they "did not have any objections to the evidence furnished by the [...] Commission." On January 4, 2006, the State communicated that "it formally objected the admission of such evidence, since the same was not filed together with the application and it is not contemplated in any of the grounds that might allow its admission by way of exception."

21. On February 7, 2006, the President issued an Order requesting Pedro Ramón Castro and Carmen Yolanda Pérez-Santoya, witnesses proposed by the Commission

and the representatives, and Mireya Josefina Ayala-Gualdrón, Inocenta del Valle Marín, Nazario Ruiz, María Auxiliadora Zerpa de Moreno, Osmar Martínez, Douglas Lizano and Edgar López, witnesses proposed by the representatives, to render testimony by affidavit. The President further ordered that expert witness Pieter Van Reener, proposed by the Commission, and Expert witnesses Magdalena Ibañez, Christopher Birkbeck and Magaly Vásquez, proposed by the representatives, had to render their testimonies by affidavit. Likewise, the President convened the representatives and the State to a public hearing to be held in the Hearing Room of the Supreme Court of Justice of the Nation, in the city of Buenos Aires, Argentina as from April 4, 2006, to hear the final oral arguments regarding the preliminary and contingent objection, on the merits, reparations and costs of the instant case, as well as the testimony of witnesses and expert witnesses proposed by the Commission and the representatives. Additionally, through such order the President informed the parties that they had to file their final written arguments regarding the preliminary and contingent objections, and on the merits, reparations and costs on or before May 19, 2006. Finally, the President requested the State to submit evidence to facilitate de adjudication of the case.

22. On February 22, 2006, the Inter-American Commission informed that it would exclude the testimony of Pedro Ramón Castro, because due to "health problems" he could not comply with the request made by the President in the Order dated February 7, 2006 (*supra* para. 21)

23. On February 23 and 24, 2006, the Inter-American Commission and the representatives submitted the affidavits with testimonies and expert reports requested by the President (*supra* para. 21.) On March 10, 2006, the Inter-American Commission sent the affidavit of expert witness Pieter Van Reenen.

24. On March 23, 2006, the Commission reported that, due to reasons beyond her control, witness Ana María González, who had been subpoenaed to appear before the Inter-American Court at a public hearing (*supra* para. 21,) could not travel to the city of Buenos Aires, and therefore, she could not render testimony. For this reason, the Commission requested the Court to allow the testimony of Giovanni Gaviria-Velásquez instead. On March 27, 2006, the representatives stated their acceptance to the request of the Commission. The State did not file any objections whatsoever.

25. On March 28, 2006, the Inter-American Court issued an Order admitting the substitution of witnesses proposed by the Commission and decided to call Giovanni Gaviria-Velásquez to render testimony at a public hearing, substituting Ana María González.

26. On April 4, 2006, the public hearing was held in Buenos Aires, Argentina, and the following persons were present thereat: a) for the Inter-American Commission: Paulo Sergio Pinheiro and Santiago Canton, as Delegates; Víctor H. Madrigal, Juan Pablo Albán, Debora Benchoam, Lilly Ching and Camilo Sánchez, Legal Counsel; b) for the representatives: Liliana Ortega, Carlos Ayala-Corao and Willy Chang, on behalf of COFAVIC, and Viviana Krsticevic, Tatiana Rincón and Pedro Díaz, on behalf of CEJIL, and c) for the State: María Auxiliadora Monagas, Agent; Iskrey Pérez, Alis Boscán and Boris Bosio, Legal Counsel. Also present, Giovanni Gaviria-Velásquez, as witness offered by the Commission, and Nellys María Madriz and Arturo Peraza, witnesses offered by the representatives. During said public hearing, the State acknowledged its international responsibility for the events, and admitted the claims made by the Inter-American Commission in its application and those made by the

representatives in their brief of requests and arguments. During the public hearing, the State submitted a brief in which it made a detailed reference to its acknowledgment of international responsibility.

27. On May 18 and 19, 2006, the Commission and the representatives submitted their final written arguments, respectively. The State did not submit any final arguments whatsoever.

28. On May 25, 2006, the Secretariat, following instructions of the President of the Court, requested the representatives to submit evidence to facilitate the adjudication of the case; said representatives after an extension had been granted, submitted part of such evidence on June 13, 2006. On even date, the Secretariat requested the representatives to complete the submission of the remaining evidence to facilitate the adjudication of the case and also requested the State to submit its evidence to facilitate the adjudication of the case. On June 13 and 21, 2006, the representatives, after having been granted an extension, filed part of the requested evidence.

V

PRELIMINARY CONSIDERATIONS

29. In the application filed, the Inter-American Commission included a list of 37 alleged victims of the events dealt with in the instant case. Such list coincides with that included in its report about the admissibility and merits (*supra* para. 8). In their brief of requests and arguments, the representatives submitted a list including the names of 31 alleged victims that coincide with those reported by the Commission. Likewise, the representatives identified several of the next of kin of 12 alleged victims. Afterwards, the representatives included in their final arguments an additional alleged victim, who had not been included in the initial list filed by the Commission, and also certain next of kin of six of the alleged victims. Finally, in the two briefs filed containing the evidence to facilitate the adjudication of the case, (*supra* para. 28), the representatives identified other next of kin of some of the alleged victims.

30. The Court shall apply the following criteria to define those it would consider as alleged victims and their next of kin in the instant case: a) the procedural stage in which they were identified; b) the admission by the State, and c) the characteristics of this case.

31. In that sense, the Court shall consider as alleged victims those persons who were identified by the Commission in its application, as well as those next of kin of the alleged victims identified by the representatives in their brief of requests and arguments (*infra* para. 60(26)). All of which occurred before the answer to the petition filed by the State and before the State's admission of the facts.

32. On the other hand, the Court notices that neither the Inter-American Commission nor the representatives have identified in the application and the brief of requests and arguments, respectively, Jesús Rafael Navarro as an alleged victim. It is only in the brief containing the final arguments that the representatives identify such victim and his next of kin, which brief has been filed after the admission made by the State. The representatives have not properly justified such inclusion.

Therefore, the Court will not consider Jesús Rafael Navarro and his next of kin as victims in the instant case.

33. As regards to the next of kin of the alleged victims that had been identified by the representatives in their brief of requests and arguments and their briefs of evidence to facilitate the adjudication of the case, the Court considers that though "it was difficult for them to contact all the next of kin of the [alleged] victims,"¹ this explanation is not enough. The inclusion of new people as alleged victims or their next of kin, after the State has answered the application, must be duly justified, to preserve legal certainty and the right of defense of the State; this must be taken into account since in the instant case, the inclusion of new people has taken place during the last stage of the proceeding before the Court and after the admission made by the State. Consequently, the situation of the following next of kin shall not be analyzed in the instant case:

- a) Carlos Armando Flores, Mimina Velásquez de Flores, Josefa María Rodríguez de Velásquez, Iris Wuilmeri Flores-Velásquez, Darwir Alberto Coronado-Velásquez, Karelía Nacari Coronado-Velásquez and Deigly Yanini Flores-Pellicer, next of kin of Deyvis Armando Flores-Velásquez;
- b) Alpidia Ramos de Figueroa, Juan Cruz Figueroa, Rufino Figueroa, Sebastiana Figueroa-Ramos, Anicacio Figueroa, Rosalía Margarita Figueroa-Ramos, José Figueroa, Nicolasa Figueroa-Ramos, Calixta María Figueroa-Ramos, María Gregoria Figueroa-Ramos, Yanaiker Figueroa and Junior Figueroa, next of kin of Gabriel Antonio Figueroa-Ramos;
- c) Yudith Rizzo de Henríquez, Jaime Henríquez, Luz Marina Henríquez-Rizzo, Yutmar Azujai Ramos-Rizzo, Kachira Dayazu Ramos-Henríquez and Armando José Ramos-Henríquez, next of kin of Jaime Arturo Henríquez-Rizzo;
- d) Eladio Alexis Ayala-Gualdron and Ayari Ayala-Gualdron, next of kin of José León Ayala-Gualdron;
- e) Armanda Isabel Escobar-Rodríguez, Ramón José Peña-Escobar, Nancy Isabel Peña and Enrique José Peña, next of kin of Nancy Ramón Peña;
- f) Pastora Velásquez, José Gregorio Gaviria, José Gregorio Gavidia-Velásquez, Iraida Josefina Gavidia-Velásquez, Nancy Coromoto Gavidia-Velásquez, Zoraida del Valle Gavidia-Velásquez, Gisela Matilde Gavidia-Velásquez and Néstor Gavidia-Zulbaran, next of kin of Néstor Luis Gaviria-Velásquez, and
- g) Luis Alberto Pérez-Santoya, next of kin of Wilcon Alberto Pérez-Santoya.

34. As regards to Giovanni Alfredo Gavidia-Velásquez, brother of Néstor Luis Gavidia-Velásquez, the Court notices that even though the representatives did not mention him in the brief of requests and arguments, they proposed him as a witness

¹ Brief of requests, arguments and evidence of the representatives, page 4, footnote 5 (record of proceedings on the merits, reparations and costs, Volume I, folio 224.)

and he appeared as a witness at the public hearing held regarding the instant case, (*supra* para. 26), where the State made its admission and presented its public apology to Gavidia for the events that are analyzed in this Judgment (*infra* para 42). Therefore, the Court shall consider him as a next of kin of the aforesaid alleged victim (*infra* para 60(26)(29)).

35. On the other hand, the Court notices that the representatives did not submit all the evidence to facilitate the adjudication of the case as requested by the Court (*supra* para. 28). Therefore, there is not full evidence of the family relationship of the following next of kin of the alleged victims:

- a) Wladimir Martínez and Belkys Martínez, next of kin of Alexis Antonio Martínez-Liébano.
- b) Envidia², next of kin of Edgar José Peña-Marín.
- c) Yolanda Andrea Gallardo, next of kin of Juan Carlos Saavedra-Rincón.
- d) Alexis Pérez, José Gregorio Pérez and Yomaris, next of kin of Wilcon Alberto Pérez-Santoya.
- e) Maritza Rojas, Mireya del Carmen and Franlis Marilis, next of kin of Franklin Armas-González.
- f) Silvia Elena, next of kin of Leonel Chirinos-Hernández.
- g) Tiburcio Ayala-Gualdron and Yelitza Figueroa, next of kin of José León Ayala-Gualdron.

36. In this aspect, the Court takes into account that such persons were mentioned by the representatives in their brief of requests and arguments, before the State filed its answer to the application and admission, that is to say, they were included in such admission. Consequently, this Court shall consider them as next of kin of the alleged victims (*infra* paras. 60(26)(1), 60(26)(9), 60(26)(25), 60(26)(36); 60(26)(11), 60(26)(13) and 60(26)(22).)

IV ACKNOWLEDGEMENT OF INTERNATIONAL RESPONSIBILITY

37. The Court shall address now the acknowledgment of international responsibility made by the State (*supra* para. 26).

38. Article 53(2) of the Rules of Procedure provides as follows:

If the respondent informs the Court of its acquiescence to the claims of the party that has brought the case as well as to the claims of the representatives of the alleged victims, their next of kin or representatives, the Court, after hearing the opinions of the other parties to the case, shall decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

² According to the brief of requests, arguments and evidence, this person is referred to as Envidia and in a brief submitting evidence to facilitate the adjudication of the case, she is referred to as Eneida (record of proceedings on the merits, reparations and costs, Volume III, folio 982.)

39. The Court, exercising its powers inherent to the international judicial protection of human rights, may determine whether an acknowledgement of international responsibility made by a respondent State provides sufficient ground, pursuant to the terms of the American Convention, to proceed with the merits and the determination of the reparations and costs. To such effect, the Court shall analyze each particular case.³

40. On April 4, 2006, at the beginning of the public hearing held, the State alleged, *inter alia*, that:

The Venezuelan State has come today to this hearing to express the acknowledgement of the facts, to [...] honor the memory of those that have died, to acknowledge the truth and to seek justice. The State considers that it is its obligation to acknowledge all the facts as charged, this is a formal admission.

41. After the statements above, Venezuela, in response to the questions asked by the President, expressly stated: a) that it acknowledges its responsibility for the events as described in the application and in the brief of requests and arguments, and b) it "totally" admits without any objection, all the claims, as expressed in the application, including those related to the reparations. The State pointed out that "there is no reserve whatsoever [in the admission], since the detainees were under [its] custody."

42. Afterwards, the State offered a public apology to the next of kin of the victims in the instant case and requested the Court for a minute of silence in their memory:

Mrs. Nelly Madrid and Mr. Gavidia, the Venezuelan State wants to offer a minute of silence to the memory of your next of kin. [The State] deeply [...] regrets all the vicissitudes that might have occurred and the pain you have endured during these years [...] because you spent thirteen years waiting for justice to be done. On this day, [...] the Venezuelan State is willing to accept all the allegations that have been made and acknowledge and repair all the pain that you have suffered.

43. During said public hearing, in the submission of the final oral arguments, the Commission made reference to the acknowledgement of responsibility made by the State and stated as follows:

The Commission appreciates the acknowledgement of responsibility made by Venezuela in its declaration made on this date. The Inter-American Commission notices that Venezuela accepts all the facts of the case and the legal claims, and therefore, it requests [...] the Court to consider them proved and to include the same in the Judgment on the merits, because to establish the truth of the facts is important for the victims of human rights violations and for their the next of kin and, in the instant case, for the Venezuelan society as a whole.

44. The representatives, "like the Commission, recognized the value of the admission made by the State" and requested the Court to include in the Judgment a determination regarding "the excessive use of force" by the security forces of the State.

45. In a brief submitted by the State during the public hearing (*supra* para. 26,) Venezuela pointed out that:

³ Cf. Case of *Baldeón-García*. Judgment of April 6, 2006. Series C No. 147, para. 38; Case of *Acevedo-Jaramillo et al.* Judgment of February 7, 2006. Series C No. 144, para. 173, and Case of *Blanco-Romero et al.* Judgment of November 28, 2005. Series C No. 138, para. 55.

Regarding item "a" of the prayer for relief included in the application against the State filed before the Court by the Inter-American Commission on Human Rights, [...] though after the events occurred, the competent local authorities started an investigation, up to this date, there have not been any precise results that may lead to establish the identity of those responsible for the crimes, nor the manner in which the events occurred; there also exists a delay which the State acknowledges and regrets;

Regarding item "b" of the prayer for relief included in the application, [...] by the time the events occurred, the situation in the *Retén e Internado Judicial de "los Flores de Catia"* (Judicial Detention Center of the Flores of Catia) showed serious flaws, which became worse due to the facts occurred on November 27, 1992, when there was a civil riot extending nationwide which influenced the disorder occurred amongst the detainees. In this sense, the [...] Venezuelan State alleges that it is currently developing public policies tending to improve the situation at the penitentiaries, and points out the Executive Order on Penitentiary System Emergency; the Penitentiary System Humanization Programme and the promotion and dissemination through workshops, of the [h]uman [r]ights of persons deprived of their liberty. However, the State acknowledges that by the time the sad events occurred, the situation at the *Retén e Internado Judicial de "los Flores de Catia"* (Judicial Detention Center of the Flores of Catia) was precarious.

Regarding item "c" of the prayer for relief included in the application, [...] although it is true, there is a delay in the judicial investigation due to the criminal procedural system in force at the time the events occurred, since given the fact that the investigation was at the investigative stage, the access to the records of the case by the victims was legally limited. By that time, the *Código de Enjuiciamiento Criminal* (Code of Criminal Procedure) established the secrecy of the records, and this prevented the parties from getting information about their situation. After the *Código Orgánico Procesal Penal* (Organic Code of Criminal Procedure) was in force, this situation was corrected, as stated in section 280, by allowing the parties to freely access the records of the case [,and] (bold type omitted)

as regards to item "d" of the prayer for relief included in the application, it is admitted that by the time the events occurred, the legislation in force allowed the courts having special jurisdiction, such as the military courts, to hear cases related to the violation of human rights. Despite that, currently, after the *Constitución de la República Bolivariana de Venezuela* (Constitution of the Bolivarian Republic of Venezuela) came in force in 1999, these matters are subject to the jurisdiction of ordinary courts as stated by section 25 *eiusdem*, upon stating that regarding the violations of human rights and crimes against humanity, the same shall be investigated and prosecuted in the ordinary courts. Thus, any possibility for court of special jurisdiction to hear cases of such nature has been eliminated. This further evidences that the legislative change requested by the Inter-American Commission on human rights was taken into account.

46. On the other hand, the Court notices that the State made several statements during the pendency of this case before the Inter-American Commission, which have been considered as acts of acknowledgement of its international responsibility for the events and the violations to human rights alleged by the petitioners. In its application, the Commission requested the Court "to take into account the acknowledgement of the facts and the assumption of responsibility" made by the State, and further that the same be included in the corresponding judgment. In its final written arguments, the Commission pointed out that the admission made by the State before the Court amounts to a ratification and extension of the acknowledgement of international responsibility made by the State during the pendency of this case before the Commission on October 1, 1999, March 3, 2000 and March 27, 2003."

47. Indeed, on March 3, 2000, during the pendency of the instant case before the Commission, Venezuela acknowledged its international responsibility at a conference held between the State, the petitioners and the representatives of the Inter-

American Commission. In the friendly settlement executed by the parties on that day, the State acknowledged that "it violated the following articles of the American Convention in detriment of the victims in the instant case, to wit: 1(1), 2, 4, 5, 6, and 25; it further acknowledged that as a consequence thereof, delay and denial of justice existed regarding the determination of the circumstances, the facts, the persons who died and those responsible for this case." However, after four years of negotiations, on May 18, 2004, the State filed a brief before the Inter-American Commission by means of which it "denied and rejected such friendly settlement executed on March 3, 2000, alleging that it could not be enforceable against the State."

48. At the moment of rendering the report regarding the Admissibility and Merits (*supra* para. 8), the Inter-American Commission analyzed the attitude of the State regarding the friendly settlement executed on March 3, 2000, and considered that such attitude "was contradictory in view of the prior conduct of the State and further stated that the same disregarded the efforts that the Commission had made for years in furtherance of its conciliatory aim." Furthermore, the Commission considered that the State had "acknowledged the truth of the facts occurred at the Detention Center of Catia and its responsibility in several opportunities during the pendency of the instant case."

49. Pursuant to its prior decisions, this Court considers that, according to the *doctrine of estoppel*, a State that has adopted a certain position generating legal effects, cannot subsequently assume a different position which contradicts and changes the state of the situation relied upon by the other party.⁴ The failure of the State to acknowledge the friendly settlement previously agreed upon between the State and the petitioners on March 3, 2000, and to recognize the acknowledgement of international liability for the violations alleged during the pendency of the case before the Commission, which acknowledgement was included in the said settlement, coupled with other statements made by the State, could not be enforced due to the application of the *doctrine of estoppel*. Therefore, the acknowledgement of responsibility will have full legal force and effect.

i) Regarding the preliminary objection filed by the State

50. Upon acknowledgement of the responsibility in the instant case, the State has accepted the jurisdiction of the Court to hear the case⁵, and has impliedly waived its preliminary objection (*supra* para. 16).

ii) Acknowledgement by the State regarding the facts

⁴ Cf. *Case of Acevedo-Jaramillo et al*, *supra* note 3, para. 176; *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, para. 58; *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, para. 56.

⁵ Cf. *Case of Acevedo-Jaramillo et al*, *supra* note 3, para. 126, and *Case of the "Mapiripán Massacre"*. *Preliminary objections and acknowledgement of responsibility*. Judgment of March 7, 2005. Series C No. 122, para. 3.

51. The Court considers that there is no longer a controversy as regards to the facts alleged in the application, which are considered proved pursuant to paragraph 60 of this Judgment.

iii) Admission by the State regarding the issues of law

52. The Court considers it advisable to allow the acknowledgement of international responsibility made by the State for the violation of the rights embodied in Article 4(1) (Right to Life), and Articles 5(1), 5(2) and 5(4) (Right to Humane Treatment) of the American Convention, regarding Article 1(1) of same, in detriment of the 37 people identified in paragraph 60(26) of this Judgment, for the excessive use of force against them, for the detention conditions that they had to endure during the time they were in custody at the Detention Center of Catia, and for the failure to classify them as either convicts or detainees pending trial.

53. Likewise, this Court admits the acknowledgement of responsibility made by the State for the violation of the rights embodied in Article 5(1) (Right to Humane Treatment), Article 8(1) (Right to a Fair Trial) and Article 25 (Judicial Protection) of the American Convention, as regards to Article 1(1) of the same, in detriment of the next of kin of the victims, who are identified in paragraph 60(26) of this Judgment, for the pain and suffering they endured, for the lack of due diligence in the investigation of the events and for the difficulty they faced to get access to the domestic court records.

54. Finally, the Court admits the acknowledgement of responsibility made by the State for the failure to comply with the obligation imposed by Article 2 of the American Convention, for the failure to suppress from its legislation all the provisions that grant military courts jurisdiction to investigate violations of human rights committed by the *Guardia Nacional* (National Guard), and for the failure to develop policies tending to make the penitentiary system more professional in order to provide security to prison facilities.

55. As regards to the alleged violation of the right to the truth, the Court considers that this is not an autonomous right embodied in Articles 8, 13, 25 and 1(1) of the Convention, as it has been pointed out by the representatives. Therefore, the Court does not confirm the acknowledgement of responsibility by the State in this regard. The right to the truth is included in the right of the victim or his next of kin to get, from the competent State authorities, the truth about the wrongful acts and the identification of those responsible therefor, through an investigation and the prosecution of the responsible persons.⁶

iv) Admission by the State as regards to the claims for reparations

56. The Court considers that the admission of the State regarding the claims for reparations filed by the Inter-American Commission and by the representatives, which are stated in detail in Chapter XI of this Judgment, should be allowed.

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⁶ Cf. *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, para. 219; *Case of Blanco-Romero et al*, *supra* note 3, para. 62, and *Case of the Serrano-Cruz Sisters*, Judgment of March 1, 2005. Series C No. 120, para. 62.

57. The Court considers that the acknowledgement of international responsibility made by the State during the proceeding before this Court constitutes an important step towards the development of this process and for the enforcement of the principles that are consecrated by the American Convention.

58. The acknowledgement of the facts and the admission made by Venezuela regarding the claims about the merits and reparations made by the Inter-American Convention and by the representatives is undoubtedly one of the most complete that this Inter-American Court has notice of. Although no controversy exists regarding said facts and the corresponding claims and evidence submitted by the applicants, the Court considers it appropriate, as it has stated in prior cases⁷, for the sake of the historic memory and as a form of reparation, to include the following section to summarize the testimony of witnesses and expert witnesses rendered in the instant case (*infra* para. 59). After that, the Court will proceed to establish the facts of the instant case (*infra* para. 60) and to determine certain violations to Articles 4, 5, 8, 25, 1(1) and 2 of the Convention that have been recognized by the State (*infra* Chapters VIII, IX and X), for which purpose, the allegations of the parties shall not be summarized on the understanding that the same have been accepted by the State.

59. The Court shall hereinafter summarize the testimonies rendered in the instant case. These testimonies were submitted in the form of affidavits (*supra* para. 23) and were rendered in a public hearing held before the Inter-American Court (*supra* para. 26).

A) *Statements rendered before notary public*

a) Statement of Carmen Yolanda Pérez-Santoya, sister of Wilcon Alberto Pérez Santoya

The witness said that she "was always keeping an eye on [Wilcon Alberto]," who was imprisoned in a "horrible place, he saw many dreadful things." She visited him twice a week, on Wednesdays and Sundays; the visit lasted from eight in the morning to three in the afternoon.

She was at home when the attacks against the inmates of Catia Prison took place. She heard from a neighbor that Wilcon had been murdered, as some young men that were with her brother in Catia Prison informed had informed her neighbor. When the attack occurred, many next of kin were in the surroundings of the above mentioned prison "shouting and calling to their next of kin." The police ordered them to move away from the outskirts of the prison. The next of kin that were there could not get near because they were shot.

She confirmed the news of her brother's death when the boy who had told her neighbor shouted from inside the prison "look Yolanda, they have killed Wilcon." Afterwards, this boy told her that her brother had leaned out of the window of his cell and had been shot; he had died instantly. His mates took his body to the

⁷ Cf. *Case of the "Mapiripán Massacre"*. Judgment of September 15, 2005. Series C No. 134, para. 69, and *Case of the Plan de Sánchez Massacre. Reparations* (art. 63(1) of the American Convention on Human Rights) Judgment of November 19, 2004. Series C No. 116.

vehicles that were leaving toward the morgue to avoid that his body be dumped into the Guaire River, as they had dumped many others.

The witness started searching for his body in all the morgues of the city because she did not know the exact place where he had been taken to. A next of kin of another deceased inmate told them to go to the morgue of Los Teques, and after searching for five days they found him there. Those who inspected the body said it was swollen and had a bullet impact in the head. They received no collaboration from the State in the search.

Her brother's death affected her deeply, as she had always been keeping an eye on him. Her mother was also affected, she wanted to "jump in front of the cars and get killed." Her mother does not work any longer, two brothers support her. Wilcon had a baby girl but she does not bear his surname.

b) Statement of Nazario Ruiz, brother of Inocencio José Ruiz-Durán.

At the time he was arrested, Inocencio worked as a motorcycle messenger and lived with his mother, his common-law spouse Xiomara del Carmen Uvan and their four children. His brother Inocencio had been charged with the theft of a motorcycle. When he died he had been imprisoned for nearly two years and he already had a prison release document. Inocencio was imprisoned in a small cell with twenty other prisoners. This cell had a window overlooking the yard and had no bathroom so that most of the time the prisoners moved their bowels in bags which they dumped to the yard through the window. Her brother had been suffering from strong headaches since he was eight years old. He was not given any medicine as in the prison there was not even an infirmary. A request had been submitted so that he could be transferred to a different place, but the request was not granted.

On November 27, 1992, they got to know what had happened in the prison through the television. They travelled to the prison at once; all its surroundings were crowded with desperate men and women inquiring about their next of kin. Dead bodies could be seen in the vicinity of the prison, mostly toward the gorge that was at the back of the place, where many bodies were lying. The inmates shouted what was taking place in the inside and who had been killed.

After three days they had not been able to find the body of their deceased brother yet. Finally they found it in the morgue of Bello Monte. He and his father went inside to identify the corpse. The bodies were lying on the floor, one over the other. His father had to move several corpses to be able to identify his brother Inocencio.

They never started a criminal prosecution, an investigation or anything of the sort, "they let it fall into oblivion as if it had never happened." His mother was deeply affected by the events and started feeling ill. His mother still cries for him as he was her youngest son, the one who was with her, he was always keeping an eye on her. Thirteen years have passed, and nobody has been held responsible, which means to "live speculating on what happened there, and this means anxiety, permanent questioning and it is the cause of his mother's grief." The witness expects to be listened to, he expects real justice and "that the one that has to pay for these deaths, will pay for them."

c) Statement of Mireya Ayala-Gualdrón, sister of José Ayala-Gualdrón

Her brother José León was incarcerated in the Detention Center of Catia with her other brother, José Ángel Gualdrón, both charged with theft. She went to visit them every week with their mother and Calixta, another sister. The witness pointed out that the visit to the prison "was dreadful." In the prison there were worms even at the entrance, there was garbage outside and the bathrooms were very dirty. The women were searched, they touched their breasts and they were made to undress, and bend down while naked. The inmates received visits in the cellblock, where there was a bathroom, "but it was scary." They ate in the same cellblock. Their family used to take them cooked or uncooked food; they also took them some money for them to buy things in the prison.

They got to know what had happened in the prison on Saturday November 28, 1992 because a photograph of their brother appeared in the newspaper. Immediately after, his brother Tiburcio, Calixta and the witness traveled to the prison to see their brothers, but José Ángel had already been taken away from there. After that they visited hospitals; first the one of Magallanes of Catia, then the morgue in Bella Vista and after that, Los Teques. His brother Tiburcio went into the place where the corpses were kept and tried to identify José León, but he did not find him. Tiburcio "was feeling sick when he went out," as the bodies were "lying on the floor." Finally, they went to Victorio Santaella and there, as well as in the morgue of Los Teques, they were told that he had been buried.

Assisted by COFAVIC, in the year 2005 they went back to the morgue of Los Teques and this time they were able to identify their brother. Their brother had been shot in the leg, and he was alive when they took him away from the prison, they had thrown him onto a van where they were supposed to take him to be assisted. Up to the moment, the authorities have not given them the corpse. His mother has been deeply affected by the events. The witness still suffers on account of what has happened and regrets not to have a place where to carry a candle or a bunch of flowers.

d) Statement of María Auxiliadora Zerpa de Moreno, sister of Benjamín Eduardo Rodriguez

Her brother Benjamín was 20 years old when he died during the events that took place on November 27, 1992, in Catia Prison. Benjamín was imprisoned for two years in that penitentiary, though there was never certainty about the reason of his detention. In order to visit him, they had to stand in a line since dawn and then go through the search, which was really awful, they went into a small room where a woman ordered them to undress, bend and push.

Benjamín was in cellblock number 2. There were many inmates there, about fifteen people in a very small room. The only bathroom was inside the cell. Her brother was beaten up several times during his detention; he was also shot "pellets" and the wound developed an infection as his next of kin were not allowed to take him medicines. There were no doctors or anything of the sort there. Benjamín also suffered from an intestinal infection during his detention and did not receive medical assistance.

He got to know through some neighbors that his brother was dead. The inmates that survived, as they already knew who they were, started shouting to them "look for him in the morgue."

e) Statement of Inocencia del Valle Marín, mother of Edgard José Peña-Marín

Edgar, her son was 22 years old when he was murdered, his case was under investigative proceeding. When the witness went to visit him, she was treated very badly. She was searched completely, she was ordered to take off her underwear, push and jump.

Her son lived under "dreadful" conditions in the Detention Center of Catia. The place smelled of defecation and urine, of contaminated water. The inmates had no electric light, so they had to do the electric fittings themselves. Her son was in an observation chamber. There were "about one hundred or more men" sleeping together "packed like sardines," and they had no bathrooms. Sometimes the witness took food to her son every eight days, because the food at the prison was extremely bad. Her son suffered from amebiasis during his detention, but he received no medical assistance. Their next of kin had to provide the inmates with the medicines necessary to cure themselves.

After hearing what had happened, the witness went immediately to the prison. Once there she was told that those who wanted to know about the whereabouts of their next of kin should go to a hospital or to the morgue. She did not find her son either in the hospital or the morgue. On Wednesday December 1' 1992 she visited the prison and tried to take food and everything her son needed. One of her son's mates told her that he had been shot in the head, supposedly, by a prison official who worked there.

She went to the office of the public prosecutor with the assistance of COFAVIC. They had a list of missing people there, but her son did not appear in it. Afterwards, they called her to inform that his son had been buried in Los Teques graveyard, where she has been to take him some flowers. Anyway, in spite of all the steps they have taken, she does not know if he is really there or if his body was washed away by the Guaire River. Her life has changed since her son's death: it has been very painful. She was not able to see him, not even to give him a last farewell.

f) Statement of Douglas Rafael Liscano-Urbina, ex-inmate

He was imprisoned in the Detention Center of Catia from April 1988 to November 1992. This prison had a very cold structure, no human being should ever serve his sentence there. There were five cellblocks in one wing and five in the other, North and South. The dining rooms were in the center and also a small internment place where they put people of age and underage. There were ten cells on each floor, and fourteen bunk beds in every cell, so each cell could hold 28 inmates, but in fact it lodged 60 to 70 prisoners at least. The inmates were on the floor and they even slept in the bathroom. There was a sport field in the yard but it could not be used as it served as a rubbish dump; the inmates threw their refuse into the yard. Those who practiced sport got ill.

The cellblock where the witness was, held at least four hundred prisoners. The solitary confinement cells were in this section. These cells were small and they were kept in a terribly dirty condition. Contaminated water leaked through. The dining room was large, it had small benches and was in good condition. The kitchen was the worst part of that place, all the food they brought was horrible. They were given a "roll with bologna sausage and fororo without milk" in the morning but nobody ate it.

Their next of kin saw how the food was made there and started bringing it themselves.

In cellblock number 2 there was a chamber for attorneys. It was the only place that looked all right. There was conjugal visit on Wednesdays. The conjugal visit was in the cell. It was a cell with fourteen bunk beds, fourteen women and fourteen men. His next of kin told him that the search was bad, that they took liberties with women and forced them to immoral acts.

The staff in charge of keeping watch was formed by inmates of the Ministry of Justice. There were about twelve guards for all the prison and two for each cellblock. The disciplinary regime was bad. All the inmates had to pay every time there was somebody injured. The guards themselves grabbed and ill-treated the inmates; they took them to be punished, they hit them and poured water and salt over them after the beatings. The guards used beams, sticks, poles and posts from the beds to hit the inmates with. When the visit was over and visitors left the penitentiary, the prison officials blocked all the doors and called the roll; then they would enter the cells and break all the things that the next of kin had brought: sheets, curtains and food. The witness never had a medical check during all the time he was arrested.

On November 27, 1992, at about 5 in the morning, when the inmates were watching President Carlos Andrés Pérez on television speaking about the military revolt, the people in the cellblock started saying that the government had fallen. The policemen in the sentry box opened the cells and asked the prisoners for money to let them free. If the inmates paid, they were freed, and those that did not pay were killed. They charged to let them escape. There was a massacre there, those who put out their heads were shot in the forehead. There were snipers.

At about 10 or 11 in the morning the police saw the holes that had been dug, and many prisoners were killed so as to justify that many had attempted to escape. All this lasted nearly two days. From zone 2 they shot towards the inside to kill the inmates. As they were all terrified, they locked the door. The policemen of zone 2, the guards and the governor of the prison were killing prisoners with machine guns. The inmates shouted to their next of kin "call the human rights, they are killing us." The National Guard took over the prison when everything had already finished. They did not shoot, they were the ones that moved the inmates. Those who were wounded were killed on the stairs, they told them to go out because they would be taken to hospital, but they were taken away and killed instead. They did not want to have witnesses. Those inmates who had been injured never received assistance, only the assistance provided by the other inmates.

He could speak with his family two weeks after the events had taken place. His next of kin were in a state of confusion as they did not know who was alive and who was dead. The witness does not know about any fact-finding proceeding.

g) Statement of Osmar Guillermo Martinez-Rivas, ex -inmate

When the events took place, the witness had been in that prison for 22 months, from 1991 to May 1993. The witness was confined in a place called "observation cellblock," which was overcrowded; for example, he was in a cell where 80 other inmates lived, they all slept on the floor, on mattresses or small mats. This cellblock was about 40 by 40m large and had no cells; it was one spacious chamber, and each

inmate had his place or community. The witness slept in the bathroom. In the cell there was a large bathroom with three holes that looked like septic tanks.

All the cellblocks in the Detention Center of Catia were dangerous, because they were overcrowded and there were too many prisoners. Some inmates robbed other inmates. The cellblock I was in had four chambers, about four cells and each held about 80 prisoners.

He prepared the food himself, because the one provided at the dining room was extremely bad. There was no place to practise sports in the prison because the yard was flooded with refuse, it was revolting. There was an infirmary, even though the doctor was a prisoner. There were no periodical health controls, nor productive activities to perform, there were no workshops, nothing. There was a library but it was closed.

There has always been corruption in the prison, the police deprived the prisoners of their money for any reason whatsoever. They had to pay the police for a change of venue or to be taken to the infirmary.

On November 27, 1992, "there were bullets and teargas bombs." They opened the doors for the inmates to go out, but they did not open the front doors so, suddenly many went out by jumping over the walls, and then the "slaughter" started. It happened when they said that the inmates were free, but that was a trick, and they made a massacre. The inmates were under the custody of the Metropolitan Police, that took part by shooting from the sentry boxes. The National Guard arrived "when the gun fight had ceased the 27 at dawn." Everything had already calmed down, we were picking the corpses and putting them in the yard. The National Guard arrived and started beating and moving people to other places. All the inmates remained naked in the yard, ducking, in the middle of contaminated water and worms. They remained the whole morning squatting in the yard, from 4 in the morning to 12 pm.

h) Statement of Edgar José López-Albujas, journalist

According to the witness, every time the press has been able to enter the prisons and report what is going on inside, public opinion has reacted with abhorrence to the descriptions of deficiencies regarding infrastructure and personnel. About the former, there is an evident deterioration of buildings, which in most cases hold twice or three times their capacity. This overcrowding has led to use as cells spaces which had been originally conceived for work, study or leisure activities, therefore contributing to increase idleness. Contaminated waters and stench are habitual features and the most visible signs of extreme unhealthiness in all the prisons in Venezuela. Services such as medical attention and nutrition are in precarious state or they do not even exist.

In 1993 the witness went with a criminal judge to inspect Detention Center of Catia. Through a report the witness became aware and displayed before public opinion issues such as proliferation of drugs, the filth existing in all places, the unusual dimension of the confinement cells, just one square meter where, at the time of his visit, there were two prisoners; the lack of an infirmary and of basic medicines, and the insufficiency and incompetence of guards as well.

With regard to the events taking place on November 27, 1992 at dawn, he heard explosions coming from inside the prison. The witness narrates that there were

several tens of half-naked corpses piled together in the North wing of the prison. Many of the dead bodies had bullet marks in head and thorax. He could also see several corpses with gunfire injuries lying on the banks of the gorge called La Línea, which is situated at the back of the prison and flows into the Guaire River. The bodies were not removed immediately, as they still remained in the same place at six in the afternoon. The next of kin of the deceased did not receive either sufficient or timely information.

i) Expert opinion of Christopher Birkbeck, expert witness

The expert witness described the diverse set of rules in force in Venezuela in 1992, about use of violence, pointing out that it “makes a general reference to the use of force, without specifying the methods that could be used.” With regard to this matter, he emphasized that “many officials were incorporated into the staff of guards without a previous training about their responsibilities and the procedures to be adopted in particular cases.”

On evaluating the actions of the governmental officers during the events of November 27 and 28 1992, the expert stated that the inmates showed four categories of behavior to be considered in the restoration of order: i) to stay inside the cellblocks; ii) to go around the prison; iii) to attempt to escape (or succeed in escaping) and iv) to attack the governmental officers.

Each of those behaviors demanded specific interventions.” Those who remained inside the cellblocks were not part of the disorder and required no action from the agents.” The inmates that were walking around the prison posed the problem of being in spaces and/or gatherings where they were not allowed to be, so it was required that they return to their respective cellblocks. If the order was disobeyed, it would be necessary to proceed by other means “employing what is typically used to restore public order in the street, which is “the resource of teargas or plastic pellets at most.” “The inmates that tried to escape posed a more serious problem on account of the possibility of evading the trial against them.” Regarding to those who were still inside the prison, it was according to law to “give them oral order to return to their cellblocks, followed by the use of teargas or plastic pellets, in case they insisted in their attempt to escape.” As for the inmates that were already out of the perimeter of the prison, it was appropriate to give them “oral orders to stop in the first place, and physical capture if they insisted in escaping.” The last available resource, the fire gun, was not appropriate in this case because there is a possibility of an inmate to lose his life and “the mere act of escaping does not amount to a threat to another person’s life, and hence does not justify the use of lethal force.” With regard to the inmates who “attacked the governmental officers[,] they deserved the use of violence against them, considering the level of danger to which such officers were subject, under the principle of proportionality.”

The expert concluded that by using fire guns as a response to the situation that took place in the Detention Center of Catia and its surroundings on November 27, 1992, the governmental officers committed serious excess.

j) Expert opinion of Ms. Magdalena López-Ibáñez, expert witness

The expert witness had the opportunity to examine and interview two of the survivors of the events: Mr. Douglas Lizcano and Mr. Osmar Martínez as well as the next of kin of some victims.

According to the expert witness, the deprivation of freedom is, *per se*, a traumatic event for any human being. Particularly, confinement in the conditions existing in Detention Center of Catia constitutes a highly disturbing experience that emotionally scars not only the prisoners but also their friends and families. Physical health disorders are common as a result of overcrowding, poor hygiene, and meager, and usually contaminated, food. Emotional factors contribute to weakening the immune system, reducing its ability to protect the body, thus increasing the likelihood of psychosomatic illnesses, the most common being skin, gastrointestinal, and respiratory system diseases, insomnia, and musculoskeletal disorders.

It was observed that some relatives of the deceased prisoners suffered from chronic depression, physical disorders, and post-traumatic stress symptoms.

k) Expert of Opinion of Ms. Magaly Mercedes Vásquez-González,
expert witness

The expert witness referred, in general terms, to the rules that governed the criminal procedure in Venezuela at the time of the events giving rise to this case and the one applicable at present, in reference to the role of the State as the guarantor of the right to life, to humane treatment and to personal liberty.

She stated that, in 1992, an inquisitorial system of criminal procedure was in place in Venezuela. This model, developed in the *Código de Enjuiciamiento Criminal* (CEC) (Code of Criminal Procedure) and related statutes, was characterized by a strong concentration of functions in the judge. The Prosecutor's Office had less involvement in the proceedings and it could be replaced by the judge in many of its functions. Police authorities were investigative bodies that exercised their powers by delegation from the judges.

In 1995, there was intense debate in the Congress of Venezuela concerning the "criminal reform." After over two years of intense work, the *Código Orgánico Procesal Penal* (COPP) (Organic Code of Criminal Procedure) was enacted on January 23, 1998. This code deprived the police of their investigative powers.

The new procedure developed by the COPP was based on the rights to equal treatment, to a fair hearing, and to an oral, speedy and public trial as well as on the principles of *ex officio* prosecution and the judge's immediacy of exposure to the facts of the case. The power to institute criminal actions was vested in the Prosecutor's Office. The same Committee that prepared the COPP partially amended the laws of the Public Prosecutor's Office of the Judiciary, the Judicial Career Act, the Code of Military Justice and the law that governed police powers. Said amendments came into effect on the same date as the COPP.

The new Constitution, which embodied several principles included in the COPP, came into effect on December 30, 1999. It established due process as a guarantee, among others, applicable to all court and administrative proceedings. It further established the obligation of the State to guarantee a prison system that ensures inmate rehabilitation and respect for their human rights.

Since then, several reforms to criminal laws have been adopted, which, according to the expert witness, have led to an increase in prison population with the ensuing prison overcrowding.

I) Expert Opinion of Peter van Reenen, expert witness

The expert witness stated that the main conclusion from past evaluation experience is that, in all emergency situations, including prison riots, the quality of operations depends on the level of preparation for such emergencies.

The expert witness pointed out that "lack of preparation inevitably leads to uncoordinated and unplanned individual action on the part of prison officers." Moreover, he stated that "the most likely outcome of poor preparation is chaotic management of the riot and absence of restrictions."

According to the expert witness, planning includes the implementation of a policy and a strategy to control disturbances, riots and hostage-taking, which should include: i) the organization of operations, ii) the definition of responsibilities for action and lines of command, iii) the general principles and guidelines for operations, and iv) the guidelines and standards for the use of force. In his opinion, each one of these elements should be documented in a reference manual. Therefore, training in emergency situations increases the potential to control the situation in an effective manner.

The expert witness concludes that there is nothing in the documents made available to him to suggest that the staff within the prison service or the armed forces have developed emergency action plans; even worse, preparation and planning regarding measures to control prison riots are non-existent. "If, in fact, no action plans were developed, this would be one of the main factors shaping the way the events unfolded and the level of violence and force used" on November 27, 1992.

In addition, the fact that there were "80 officers [...] in charge of supervising 3600" inmates shows that the detention center was understaffed, and that "the use of force is probably the only way in which a small number of guards can control inmates."

Furthermore, the expert witness stated that, in his experience, the fact that access to the Detention Center facilities was denied to public prosecutors and the manner in which investigations were conducted, led him to conclude that "those involved in the conflict tried to conceal the facts."

B) Statements made at a public hearing

m) Statement of Giovanni Gavidia-Velásquez, brother of Néstor Luis Gavidia-Velásquez

On December 2, 1992, he learned that his brother had died. Before that date, he and his relatives had been relentlessly looking for his brother. They visited several hospitals in and around the capital city, and they were given no information on whether he was hurt, dead or still in prison.

The next of kin of the deceased inmates had to go through a lot of hassle to find the bodies and give them proper burial. The witness tried to obtain information from the

authorities, who told him that he should not waste his time, that his brother was a criminal and that he was already dead. At that time, it was impossible to obtain information because they were about to be buried; they were just waiting for bags to bury the bodies in a mass grave. He entered the hospital without authorization and, using a flashlight, he found an area of about 2 x 3 meters and a large pit of 2 x 1.5 meters. He saw several bodies, but not his brother's. It was a terrible ordeal; there was a very strong putrid smell. Then they opened the door of a pit where there were around fifteen bodies, among which he recognized his brother's corpse. Afterwards, the witness called his sister and his wife to tell them that they had found him. His death brought great sorrow to his next of kin.

n) Statement of Nellys María Madriz, wife of Víctor Jesús Montero-Aranguren

Detention Center of Catia was "unfit for human beings." When she learned what happened, she reported it to the public prosecutor's office, the police and even took witnesses with her, but they "would not pay heed to her complaints."

She wants "the authorities to, at least, investigate who [...] killed so many prisoners and to arrest them, no matter how long it takes [...]. They forced them to escape, the so-called *ley de fuga* (law of flight; i.e. forcing prisoners to run in order to kill them under the false pretense that they were trying to escape). The State had already indicted them [...] and they forced them, until they all began to escape. Some escaped and those who stayed were killed inside. They would run to the bathroom, to the cell, wherever they tried to hide, the metropolitan police or the guards would go after them and shoot them."

She is still deeply affected by the death of her husband. Fourteen years have gone by and she still suffers from nervous tension. At that time, she had two small children who were always sick.

o) Statement of Arturo Peraza, Jesuit priest

By the time he began his work in Detention Center of Catia, there were approximately three to four thousand inmates. He began to work in an area known as "North Hall 2," which housed the craftsmen, supposedly one of the quietest areas. However, the population in that hall was armed, there were lots of drugs, problems with stinking water, bad power supply, poor diet and malnutrition; some inmates were constantly locked up in their cells and could not go out, sit in the sun, circulate around some area or simply walk. In this area, prisoners were afraid of going out for food because they could be killed. Usually, there was one inmate in charge of bringing food, or the daily food ration, which was rather meager.

The basement area got no natural light; it was a dark and cold place. The witness recalls that the floor and walls were slippery, covered with human excrement to such an extent that it seemed to be part of the concrete. Inmates suffered from a number of diseases, most of which were parasitic or skin diseases. They were almost always half-naked.

The witness remembers that the floor was slobbery, full of excrement, just like the walls, so much that they were caked with it, i.e. it was part of the concrete of the prison. Inmates suffered from various diseases. The witness says that the prisoners insisted that he should see something they called 'the source'. At five thirty in the

afternoon, Detention Center of Catia was supplied with water. There was no water during the whole day, but at five thirty, water would start running and sewage would start leaking into these cells. The four floors had no sewer system to carry sewage into the gorge right next to the prison. The water would flow into this basement, where approximately 450 men lived; a place that could house a maximum of eighty people. Then the sewage would fill the room and they had to take all the excrement outside the hall, that is, take it to the door, forming a knee-high mound of excrement which would normally stay there for days and weeks. It is easy to imagine the smell that came from it, and the flies and all kinds of animals which surrounded that area.

Inside Detention Center of Catia "the strongest dominated the weakest." This was condoned by prison officers. In addition, this type of dominance was represented graphically by branding inmates who served as slaves. There were two types of slavery: labor slavery and sexual slavery. Labor slaves were branded with a burner, like cattle brands, which identified who owned the slave, i.e. who was the head prisoner of the hall. If they were branded on the buttocks, they were sexual slaves.

VII PROVEN FACTS

60. In accordance with the acknowledgment of liability made by the State (*supra* para. 51), the Court finds the following facts to be proven:

a) On the facts surrounding the events

60(1) The events giving rise to the instant case took place amidst extreme political unrest. On November 27, 1992, there was a second attempt at a coup d'état against the administration of the then President Carlos Andrés Pérez. The rising was carried out by a civilian-military group formed by high-ranking officers of the four branches of the Armed Forces and several civilian opponents.

60(2) The city of Caracas was particularly affected by the intense bombing targeting specific places such as the Palacio de Miraflores (the seat of government), the Helicoide and the Police Command Center. Disturbances spread across several areas of the city. The insurrection was crushed by the government on the same day, November 27, 1992, forcing the surrender, escape and subsequent asylum in Peru of over a hundred people who participated in the revolt.

b) On the "Retén e Internado Judicial de Los Flores de Catia" (Detention Center of Catia)

60(3) The "Retén e Internado Judicial de Los Flores de Catia" (Detention Center of Catia), located in the west of Caracas, was composed of a small two-story building, housing administrative offices; an area of workshops, storage rooms, a dining room and a medical facility for inmates; and a building consisting of two 5-story towers, which housed the prison cells, called North Tower and South Tower, divided by an interior yard known as 'barrio sucio' (dirty neighborhood). The towers were connected together by five corridors distributed between the second and the third floor. Each floor was referred to as a hall.

60(4) Originally, this facility had a maximum housing capacity of 600 inmates, which was then extended to 900 but, in fact, it housed four times as many. Drug, alcohol, and weapon trafficking, violence and maltreatment were common currency.

60(5) Initially, it was conceived as a provisional detention center for people that committed common crimes, whose cases were heard in ordinary criminal courts. However, in light of the growing crime rate and the insufficiency of prison facilities, this detention center began to be used as a prison, housing a criminal population of over 2000 people who were not classified into categories.

60(6) In January 1997, this detention center was completely vacated and the nearly 3000 prisoners who were cramped inside were distributed among three prisons, two of which had been recently built. On March 16, 1997, the detention center was demolished.

c) *On the detention conditions at Detention Center of Catia*

60(7) The conditions at Detention Center of Catia were part of the penitentiary system issues in Venezuela. Along with the extensive use of deprivation of liberty, the crisis in the Venezuelan penitentiary system stemmed from other factors as well, such as an inefficient court system, overcrowding, inadequate prison infrastructure, shortage and insufficient training of prison staff and the practical impossibility of providing adequate rehabilitation treatment to prisoners due to lack of specialized technical staff.

60(8) In 1992, the situation at Detention Center of Catia was characterized by hunger strikes due to the existing conditions, deaths and disappearances of prisoners, breakouts and riots resulting in many injured people. This situation, known to the public at large, prompted investigations by the Prosecutor's Office and Criminal Courts, as well as the ousting of the Warden of Detention Center of Catia, the Director of Prisons and the General Director of the Ministry of Justice.

60(9) Overcrowding was an important contributing factor to violence at Detention Center of Catia since prisoners would fight against each other for a minimum living space of their own. At Detention Center of Catia, a lot of prisoners lived in common cells that housed two or four times as many inmates as they were originally designed for. Most prisoners did not have an individual cell. The available space for each inmate was approximately 30 square centimeters. Overcrowding of cells also caused hygienic problems, such as filth, pervasive smells and insects. As cells were not allocated, dominant prisoners administered the space. The authorities had no consolidated or reliable data on the number or judicial status of the persons held in this detention facility. At Detention Center of Catia, there was not an adequate record of inmates, which contained the bare minimum of details, such as prisoners' identity, reasons for arrest, competent authority that ordered the measure, or time and date of entry and exit.

60(10) By November 26, 1992, a report provided by the Detention Center's Chief of Prison Services estimated the prison population at 3618 inmates. Another report of the Detention Center's Chief of Prison Services indicated that by November 30, 1992 the number of inmates was 2286. According to the prisoner count performed by the National Guard after a search conducted on November 30, 1992 and the transfer of prisoners to other facilities, the total number of inmates was 2540. Over 95% of the

prison population was awaiting trial and was not separated from already convicted prisoners.

60(11) Multiple violations of the prisoners' rights resulted from these conditions of severe prison overcrowding and overpopulation. The detention center was regarded by the authorities themselves as one of the worst prisons of the country, where there was drug, alcohol and weapon trafficking, and violence and maltreatment were a common occurrence, whether as a result of power struggles between internal mafias or at the hands of the guards.

60(12)The persons held at Detention Center of Catia, including the victims in the instant case, were subject to malnutrition, poor sanitary conditions and inadequate health care. For instance, prisoners were forced to defecate in the cells inside a container or on paper and to throw them out into the interior yard. Health care was extremely deficient and the chances of doing activities to maintain a quality of life according to their dignity, such as work, study or recreation were minimal.

60(13)The vexations endured by the prisoners were not only a common occurrence but also well-known to prison and law enforcement authorities. However, the appalling conditions at Detention Center of Catia remained unchanged until it was demolished.

60(14)Inadequate medical attention within prison facilities in Venezuela and lack of conservation resulted in the spread of diseases such as diarrhea, mycosis and influenza. In addition, sexually transmitted diseases were spreading at an alarming rate.

60(15)As regards to prison staff, in addition to being insufficient, it was inefficient due to lack of technical training. This had a direct negative impact on prison safety. Prison guards were underpaid, untrained and, therefore, prone to corruption. As was the case with Detention Center of Catia, because of insufficient civilian staff, military officers were required as a backup, specifically the National Guard, in order to control the prison population. This situation contributed to a climate of insecurity that stemmed from objective conditions of violence, danger, and threat, which caused anxiety, uncertainty and fear. The authorities of Detention Center of Catia did not ensure the necessary conditions for peaceful coexistence and safety to protect prisoners' rights.

d) *On the events that took place inside the "Retén e Internado Judicial de Los Flores de Catia" (Detention Center of Catia) and the surrounding area between November 27 and 29, 1992*

60(16)There are two versions of the events that took place at the Detention Center between November 27 and 29, 1992. The first version indicates that during the proceedings instituted before an ordinary court, several witnesses stated that, after the guards of the Detention Center learned the news of the attempt of coup through the media, they opened the cells and told the prisoners that they were free; when the prisoners came out they began shooting at them. Several testimonies indicate

that some prisoners sought refuge in the cells to protect their lives while others were trying to escape.

60(17) Another version is based on a report issued by the Prison Service Office of Detention Center of Catia, which states that at 6:10 am of November 27, 1992 "the Prison Guard Office was informed that the prisoners of South Wing Halls 4 and 5 were breaking the locks, inciting a riot to cause a mass breakout and that guard officers immediately shot at them."

60(18) Regardless of the two versions of the events giving rise to the violent incident, during the 48 hours of the events that unfolded within Detention Center of Catia, approximately 63 prisoners died, including the 37 victims in the instant case (*infra* para. 60(26)), 52 were injured and 28 disappeared. The investigations conducted by the authorities have failed to determine the total number of victims and the reports available are incomplete, confusing and contradictory.

60(19) It is undeniable that the situation was handled with the active intervention of the National Guard and the Metropolitan Police, who shot indiscriminately at the prisoners using firearms and tear gas. Several prisoners and prison officers' statements corroborate these facts. According to a report from the Deputy Superintendent, Chief of Public Order Division of the Metropolitan Police, which contains "the Description of Long-range Weapons delivered at the Weapons Depot of the 27th Special Brigade on November 27, 1992 and a list of the personnel (including ranks and badge numbers) who worked that day at Detention Center of Catia and the surrounding area," 485 officers of the Metropolitan Police participated in the operation, carrying 126 firearms that were identified by serial number and type of weapon. Ballistics tests conducted by the Technical Corps of the Judicial Police on the bullets found in the prisoners' bodies as well as on the entry and exit wounds in the bodies, confirmed that the deaths were caused by bullet wounds from weapons that were similar or identical to those used by the law enforcement forces.

60(20) In several autopsy reports on the bodies found at Detention Center of Catia, wound paths showed that some of the prisoners were shot in the back or side.

60(21) The State failed to adopt the necessary measures to ensure, in a timely and efficient manner, the necessary procedures and medicine to provide medical treatment to those injured as a result of the incidents.

60(22) The actions taken by the National Guard as well as by the Metropolitan Police and the prison Guard during the first 24 hours of the incidents were never verified by any civil authority. Authorities from the Public Prosecutor's Office were denied access to the Detention Center by the National Guard due to alleged safety concerns.

60(23) Between November 28 and 29, 1992, scores of prisoners were transferred from Detention Center of Catia to the following prisons: *Penitenciaría General de Venezuela* (Guárico), *Internado Judicial Capital El Rodeo* (Guatire) and *Centro Penitenciario de Carabobo* (Valencia). Transfers were made without notice to prisoners' families.

60(24) The next of kin of the prisoners who were transferred had no knowledge of their whereabouts or fate. Before this, the authorities kept the prisoners at the yards for many hours, forcing them to be naked and in uncomfortable positions.

60(25) Official reports did not specify exactly the number of prisoners who were transferred. Therefore, it was impossible to determine how many prisoners disappeared.

e) *The victims and their next of kin*

60(26) The persons that will be deemed to be the victims in the instant case, as well as their next of kin are listed below. Furthermore, the Court, based on the evidence before it and on the information provided by the representatives, regarding to which the State acquiesced, will consider the age of the victims at the time of death to be as follows:

1) Alexis Antonio Martínez-Liébano (victim).- He was 25 years old at the time of death.⁸ His mother is Berta Laureana Liébano,⁹ his siblings are Héctor Aníbal Romero-Liébano,¹⁰ Carlos Enrique Liébano,¹¹ Wladimir Martínez, Blanca Yanmelis Blanco-Liébano,¹² Belkys Martínez and Viki Yasmil Blanco-Liébano.¹³ His son is Leonard Alexander Martínez-Castillo,¹⁴ and Leida Castillo¹⁵ is his wife.

2) Ángel Francisco Aguilera (victim).- He was 23 years old at the time of death.¹⁶

3) Armando José Espejo-Álvares (victim).- He was 23 years old at the time of death.¹⁷

⁸ Cf. brief of requests, arguments and evidence filed by the representatives (record of the merits, reparations and costs, Volume I, Page 309).

⁹ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2732).

¹⁰ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 897).

¹¹ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, pages 898 and 899).

¹² Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 900).

¹³ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 901).

¹⁴ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2733).

¹⁵ Cf. copy of the marriage certificate (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2730).

¹⁶ Cf. alpha-phonetic ID card from the *Dirección de Identificación y extranjería* (Identification and Alien Registration Office) (record of Appendixes to the application filed by the Commission, Appendix 12, Volume 4, page 1058).

¹⁷ Cf. Appendixes to the petition before the Inter-American Commission (record of the process before the Inter-American Commission on Human Rights, page 1987)

4) Benjamín Eduardo Zerpa-Rodríguez (victim).- He was 20 years old at the time of death.¹⁸ His mother is María Rosenda Rodríguez-Pérez.¹⁹ His brother is Luis Alfredo Zerpa²⁰ and his sisters are Noris Margarita Zerpa-Rodríguez,²¹ Garciela Zerpa-Rodríguez²² and Maria Auxiliadora Zerpa-Rodríguez.²³ His common law spouse is Yonary Trujillo,²⁴ and Benjahirin Nazareth Trujillo²⁵ is his daughter.

5) Carlos Enrique Serrano (victim). The Court has no information regarding his age at the time of death.

6) César Gregorio Guzmán (victim).- He was 20 years old at the time of death.²⁶

7) Charly Gustavo Paiva-Reyes²⁷ (victim).- He was 21 years old at the time of death.²⁸

8) Deyvis Armando Flores-Velásquez (victim).- He was 25 years old at the time of death.²⁹

9) Edgar José Peña-Marín (victim).- He was 24 years old at the time of death.³⁰ His mother is Inocenta del Valle-Marín.³¹ His sisters are Doris Isabel

¹⁸ Cf. brief of requests, arguments and evidence filed by the representatives (record of the merits, reparations and costs, Volume I, Page 311).

¹⁹ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2715).

²⁰ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, pages 922 and 923).

²¹ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 924).

²² Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 925).

²³ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 926).

²⁴ Cf. affidavit of Luz Victoria Chávez-Flores and Tito Antonio Guerrero, dated June 20, 2006 (record of the merits, reparations and costs, Volume III, pages 989 and 990)

²⁵ Cf. affidavit of Luz Victoria Chávez-Flores and Tito Antonio Guerrero, dated June 20, 2006, *supra* note 24.

²⁶ Cf. Tisibay Guzmán's witness statement, record of the investigation of the *Tribunal Vigésimo noveno de Primera Instancia Penal* (29th Criminal Trial Court), (record of Appendixes to the application filed by the Commission, Appendix 12, Volume 3, page 1067)

²⁷ According to the application, the victim's name is Carlos Gustavo Reyes. However, the Court will take into account the copy of the death record, according to which the victim's name is Charly Gustavo Paiva Reyes (record of the merits, reparations and costs, Volume II, page 410)

²⁸ Cf. copy of the death record (record of the merits, reparations and costs, Volume II, page 410)

²⁹ Cf. closing written arguments filed by the victims' representatives (record of the merits, reparations and costs, Volume III, page 834)

³⁰ Cf. brief of requests, arguments and evidence filed by the representatives (record of the merits, reparations and costs, Volume I, page 309), and Appendixes to the initial petition before the Inter-American Commission (record of the process before the Inter-American Commission on Human Rights, page 2006)

³¹ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2696)

Peña-Marín³² and Marjorie Josefina Marín.³³ Edgly Nakary Peña-Alkala³⁴ and Envidia³⁵ are his daughters.

10) Fabio Manuel Castillo-Suárez (victim).- He was 21 years old at the time of death.³⁶

11) Franklin Antonio Armas-González (victim).- He was 28 years old at the time of death.³⁷ His mother is Ana María González.³⁸ His sisters are Mariela Rojas-Gonzalez,³⁹ Maritza Rojas and Mireya del Carmen. Franlis Marilis is his daughter.

12) Gabriel Antonio Figueroa-Ramos (victim).- He was 22 years old at the time of death.⁴⁰

13) Henry Leonel Chirinos-Hernández (victim).- He was 25 years old at the time of death.⁴¹ His mother is Ramona Hernández.⁴² His sons are Jean Chirinos⁴³ and Henry Yoel Chirinos.⁴⁴ His daughters are Angy Chirinos,⁴⁵

³² Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 904)

³³ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 905)

³⁴ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2697)

³⁵ According to the brief of requests, arguments and evidence, this alleged victim's name is Envidia and according to a response pleading to the Court's requests of evidence to facilitate adjudication of the case, her name is Eneida.

³⁶ Cf. inspection of the crime scene and medico-legal post-mortem examination of Fabio Manuel Castillo's body, dated November 30, 1992 (record of Appendixes to the application filed by the Commission, Appendix 12, Volume 3, page 804)

³⁷ Cf. brief of requests, arguments and evidence filed by the representatives (record of the merits, reparations and costs, Volume I, page 307), and Appendixes to the initial petition before the Inter-American Commission (record of the process before the Inter-American Commission on Human Rights, Page 2006)

³⁸ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2676)

³⁹ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 879)

⁴⁰ Cf. closing written arguments filed by the victims' representatives (record of the merits, reparations and costs, Volume III, page 833)

⁴¹ Cf. brief of requests, arguments and evidence filed by the representatives (record of the merits, reparations and costs, Volume I, Page 308)

⁴² Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2689)

⁴³ Cf. copy of the death record of Henry Leonel Chirinos-Hernández (record of the merits, reparations and costs, Volume III, page 896)

⁴⁴ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2692)

Mileydi Chirinos,⁴⁶ Maury Alejandra Chirinos,⁴⁷ Maiby Yhoana Chirinos⁴⁸ and Silvia Elena.

14) Inocencio José Ruiz-Durán (victim).- He was 25 years old at the time of death.⁴⁹ His mother is Maria Cristina Durán.⁵⁰ His siblings are José Ramón Ruiz-Durán,⁵¹ Nazario Ruiz-Durán,⁵² José Gregorio Ruiz-Durán⁵³ and Aura Ruiz-Durán.⁵⁴ His sons are Antony José Ruiz-Uván,⁵⁵ Danny José Ruiz-Uván,⁵⁶ Isneyvi José Ruiz-Uván⁵⁷ and Wiusleidy Xiorin Ruiz-Uván.⁵⁸

15) Iván José Pérez-Castillo (victim).- He was 31 years old at the time of death.⁵⁹

16) Jaime Arturo Henríquez-Rizzo⁶⁰ (victim).- He was 28 years old at the time of death.⁶¹

⁴⁵ Cf. copy of the death record of Henry Leonel Chirinos-Hernández (record of the merits, reparations and costs, Volume III, page 896).

⁴⁶ Cf. copy of the death record of Henry Leonel Chirinos-Hernández (record of the merits, reparations and costs, Volume III, page 896).

⁴⁷ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2694).

⁴⁸ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2693).

⁴⁹ Cf. brief of requests, arguments and evidence filed by the representatives (record of the merits, reparations and costs, Volume I, Page 310).

⁵⁰ Cf. certificate from the *Dirección de Dactiloscopia y Archivo Central, Departamento de Datos Filiatorios* (Dactyloscopy and Central Archive Office, Department of Personal Data), (record of the merits, reparations and costs, Volume III, page 909).

⁵¹ Cf. certificate from the *Dirección de Dactiloscopia y Archivo Central, Departamento de Datos Filiatorios* (Dactyloscopy and Central Archive Office, Department of Personal Data), (record of the merits, reparations and costs, Volume III, page 910).

⁵² Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 911).

⁵³ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2760).

⁵⁴ Cf. certificate from the *Dirección de Dactiloscopia y Archivo Central* (Dactyloscopy and Central Archive Office), (record of the merits, reparations and costs, Volume III, page 913)

⁵⁵ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2710).

⁵⁶ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page).

⁵⁷ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2708).

⁵⁸ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 914).

⁵⁹ Cf. medico-legal expert report (record of Appendixes to the application filed by the Commission, Appendix 12, Volume 3, page 783).

⁶⁰ According to the application, the victim's name is Jaime Arturo Henrique Rizzo and according to the copy of the death record (record of the merits, reparations and costs, Volume II, page 409) his name is Jaime Arturo Henríquez-Rizzo, therefore the Court will take into account the name in the latter document.

- 17) Jaime Ricardo Martínez (victim).- He was 25 years old at the time of death.⁶²
- 18) Jesús Eduardo Romero (victim).- He was 32 years old at the time of death.⁶³
- 19) Jimmy Antonio González-Sandoval⁶⁴ (victim).- He was 23 years old at the time of death.⁶⁵
- 20) José Durán Hernández-Daza (victim). The Court has no information regarding his age at the time of death.
- 21) José Gregorio Gómez-Chaparro (victim).- He was 34 years old at the time of death.⁶⁶
- 22) José León Ayala-Gualdrón (victim).- He was 22 years old at the time of death.⁶⁷ His mother is Romualda Gualdrón.⁶⁸ His siblings are Calixta Ayala-Gualdrón,⁶⁹ Juan Serapio Ayala-Gualdrón,⁷⁰ Tiburcio Ayala-Gualdrón, José Angel Ayala-Gualdrón,⁷¹ Mireya Josefina Ayala-Gualdrón,⁷² Víctor José Santaella-Gualdrón,⁷³ Maribel del Valle Santaella-Gualdrón⁷⁴ and Luis Elpidio Santaella-Gualdrón.⁷⁵ His niece is Yelitza Figueroa.

⁶¹ Cf. copy of the death record (record of the merits, reparations and costs, Volume II, page 409).

⁶² Cf. Appendixes to the initial petition before the Inter-American Commission (record of the process before the Inter-American Commission on Human Rights, page 2000).

⁶³ Cf. Appendixes to the initial petition before the Inter-American Commission (record of the process before the Inter-American Commission on Human Rights, page 2011).

⁶⁴ According to the application, the victim's name is Jimi Antonio González-Sandoval and according to the copy of the death record (record of the merits, reparations and costs, Volume II, page 406) his name is Jimmy Antonio González-Sandoval; therefore, the Court will take into account the name in the latter document.

⁶⁵ Cf. copy of the death record (record of the merits, reparations and costs, Volume II, page 406).

⁶⁶ Cf. copy of the death record (record of the merits, reparations and costs, Volume II, page 405).

⁶⁷ Cf. brief of requests, arguments and evidence filed by the representatives (record of the merits, reparations and costs, Volume I, page 307).

⁶⁸ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2718).

⁶⁹ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 883).

⁷⁰ Cf. certificate from the Director of the Identification Office (record of the merits, reparations and costs, Volume III, page 884).

⁷¹ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 885).

⁷² Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 886).

⁷³ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 887).

⁷⁴ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 888).

⁷⁵ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 889).

23) José Norberto Ríos (victim). He was 39 years old at the time of death.⁷⁶

24) José Rafael Pérez-Mendoza (victim).- He was 20 years old at the time of death.⁷⁷

25) Juan Carlos Saavedra-Rincón (victim).- He was 26 years old at the time of death.⁷⁸ His parents are María Teresa Rincón⁷⁹ and Jesús Saavedra.⁸⁰ His brothers are Javier Saavedra-Rincón,⁸¹ Jesús Omar Saavedra-Rincón,⁸² Ivan Sergio Saavedra-Forero⁸³ and José Ricardo Saavedra-Forero.⁸⁴ His common law spouse is Yolanda Andrea Gallardo and his daughter is Yolicar Alejandra Rincón-Gallardo.⁸⁵

26) Juan José Rico Bolívar (victim).- He was 38 years old at the time of death.⁸⁶

27) Marcos Neiro Ascanio-Plaza (victim).- He was 38 years old at the time of death.⁸⁷ His mother is Josefina Plaza.⁸⁸ His sister is Elena Ascanio.⁸⁹ His

⁷⁶ Cf. Appendixes to the initial petition before the Inter-American Commission (record of the process before the Inter-American Commission on Human Rights, page 2010).

⁷⁷ Cf. copy of the death record (record of the merits, reparations and costs, Volume II, page 405).

⁷⁸ Cf. brief of requests, arguments and evidence filed by the representatives (record of the merits, reparations and costs, Volume I, page 310).

⁷⁹ Cf. copy of the birth certificate (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2711).

⁸⁰ Cf. copy of the birth certificate (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2711).

⁸¹ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 915).

⁸² Cf. copy of the birth certificate (record of the merits, reparations and costs, Volume III, page 918).

⁸³ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 919).

⁸⁴ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 920).

⁸⁵ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 921).

⁸⁶ Cf. copy of the birth record (record of the merits, reparations and costs, Volume II, page 413).

⁸⁷ Cf. brief of requests, arguments and evidence filed by the representatives (record of the merits, reparations and costs, Volume I, Page 307), and Appendixes to the initial petition before the Inter-American Commission (record of the process before the Inter-American Commission on Human Rights, page 1979).

⁸⁸ Cf. copy of the death record (record of the merits, reparations and costs, Volume III, page 881).

⁸⁹ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 882).

wife is María Milagros León-Castillo⁹⁰ and his daughter is Jessie Berenice Ascanio.⁹¹

28) Nancy Ramón Peña (victim).- He was 40 years old at the time of death.⁹²

29) Néstor Luis Gaviria-Velásquez⁹³ (victim).- He was 25 years old at the time of death.⁹⁴ His brother is Giovanni Alfredo Gaviria-Velásquez.⁹⁵

30) Osman Simón Duarte (victim).- He was 34 years old at the time of death.⁹⁶

31) Pablo José Badillo-Garcia (victim).- He was 24 years old at the time of death.⁹⁷

32) Pedro Luis Zuloaga⁹⁸ (victim).- He was 31 years old at the time of death.⁹⁹

33) Pedro Ricardo Castro-Cruces (victim).- He was 29 years old at the time of death.¹⁰⁰ His parents are Pedro Ramón Castro-Castro and María Aura Cruces-de Castro.¹⁰¹ His siblings are María del Rosario Castro-Cruces,¹⁰²

⁹⁰ Cf. copy of the marriage record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2679).

⁹¹ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2682).

⁹² Cf. closing written arguments filed by the victims' representatives (record of the merits, reparations and costs, Volume III, page 835).

⁹³ According to the application, the victim's name is Néstor Gaviria-Velásquez and according to the copy of the death record (record of the merits, reparations and costs, Volume II, page 403) his name is Néstor Luis Gavidida-Velásquez; therefore, the Court will take into account the name in the latter document.

⁹⁴ Cf. copy of the death record (record of the merits, reparations and costs, Volume II, page 403).

⁹⁵ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 946).

⁹⁶ Cf. copy of the personal particulars form, record of the investigation of the *Tribunal Vigésimo noveno de Primera Instancia Penal* (29th Criminal Trial Court), (record of Appendixes to the application filed by the Commission, Appendix 12, Volume 3, page 759).

⁹⁷ Cf. inspection of the crime scene and medico-legal post-mortem examination of Pablo José Badillo García's body, dated November 28, 1992 (record of Appendixes to the application filed by the Commission, Appendix 12, Volume 3, page 759).

⁹⁸ According to the application, the victim's name is Luis Zuluaga-Ovelmejía and according to the copy of the death record (record of the merits, reparations and costs, Volume II, page 414) his name is Pedro Luis Zuloaga; therefore, the Court will take into account the name in the latter document.

⁹⁹ Cf. copy of the birth record (record of the merits, reparations and costs, Volume II, page 414).

¹⁰⁰ Cf. brief of requests, arguments and evidence filed by the representatives (record of the merits, reparations and costs, Volume I, Page 308).

¹⁰¹ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2686).

¹⁰² Cf. certificate from the Identification Office (record of the merits, reparations and costs, Volume III, page 890).

Aracelis Teresa Castro-Cruces,¹⁰³ Aura Marina Castro-Cruces,¹⁰⁴ Flor Ángel Castro-Cruces,¹⁰⁵ Gustavo Adolfo Castro-Cruces¹⁰⁶ and Juan Carlos Castro-Cruces.¹⁰⁷

34) Sergio José Celis (victim).- He was 20 years old at the time of death.¹⁰⁸

35) Víctor Jesús Montero-Aranguren (victim).- He was 42 years old at the time of death.¹⁰⁹ His wife is Nelly María Madriz.¹¹⁰ His children are Yamilet María,¹¹¹ Jacqueline María¹¹² and Víctor José.¹¹³

36) Wilcon Alberto Pérez-Santoya (victim).- He was 19 years old at the time of death.¹¹⁴ His parents are Luis Alberto Pérez and Ana Dolores Santoya.¹¹⁵ His siblings are Carmen Yolanda Pérez-Santoya,¹¹⁶ Yasely Mercedes Santoya,¹¹⁷ Alexis Pérez, José Gregorio Pérez and José Javier Santoya.¹¹⁸ His daughter is Yomaris.

¹⁰³ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 891).

¹⁰⁴ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 892).

¹⁰⁵ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 893).

¹⁰⁶ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 894).

¹⁰⁷ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 865).

¹⁰⁸ Cf. copy of the death record (record of the merits, reparations and costs, Volume II, page 417).

¹⁰⁹ Cf. brief of requests, arguments and evidence filed by the representatives (record of the merits, reparations and costs, Volume I, Page 309), and Appendixes to the initial petition before the Inter-American Commission (record of the process before the Inter-American Commission on Human Rights, page 1979).

¹¹⁰ Cf. affidavit of Mireya Delgado-Rengifo and Helive Palmenia Rivas-González, of June 7, 2006 (record of the merits, reparations and costs, Volume III, pages 902 and 903).

¹¹¹ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2745).

¹¹² Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2744).

¹¹³ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2741).

¹¹⁴ Cf. brief of requests, arguments and evidence filed by the representatives (record of the merits, reparations and costs, Volume I, Page 310).

¹¹⁵ Cf. copy of the birth record (record of Appendixes to the brief of requests, arguments and evidence filed by the victims' representatives, page 2698).

¹¹⁶ Cf. certificate from the *Dirección de Dactiloscopia y Archivo Central* (Dactyloscopy and Central Archive Office), (record of the merits, reparations and costs, Volume III, page 906).

¹¹⁷ Cf. certificate from the *Dirección de Dactiloscopia y Archivo Central* (Dactyloscopy and Central Archive Office), (record of the merits, reparations and costs, Volume III, page 907).

¹¹⁸ Cf. copy of the birth record (record of the merits, reparations and costs, Volume III, page 908).

37) Wilmer Benjamín Gómez-Vásquez (victim).- He was 22 years old at the time of death.¹¹⁹

60(27)After they heard about the incidents at Detention Center of Catia, a large number of prisoners' next of kin rushed to the premises in order to get information about the fate of their love ones. From the early morning hours of November 27, 1992, prisoners' next of kin, mostly women, thronged the prison's entrance trying to find out what happened, and the Metropolitan Police fired tear gas to keep them away. In light of the authorities' refusal to provide information, the next of kin of inmates decided to stay outside the penitentiary facility. This way, they could communicate with the prisoners that were inside, who were crying for help claiming that they were being killed by the authorities.

60(28)The persons who died in the incidents were transferred to different forensic facilities of the Judicial Technical Police, located in the cities of Caracas, Los Teques and La Guaria. The families of the missing prisoners visited the aforesaid facilities, who encountered great difficulty locating and identifying their relatives. After several days, some of them were able to locate the body of their relatives; however, others have continued efforts to try to find the bodies of their love ones, as is the case with the families of José León Ayala-Gualdrón and Edgar José Peña-Marín.

60(29)The steps taken by the Venezuelan authorities during the investigation of the events have been insufficient to uncover the historical truth, establish liability and convict those responsible for the massacre at Detention Center of Catia. Initially, the investigation was hindered by the law enforcement force and prison authorities' lack of cooperation in the collection and preservation of vital evidence. At a later stage, the court authorities in charge of conducting the investigation were negligent in fulfilling their duties and delivering concrete results.

f) *Proceedings before Ordinary Courts*

60(30) On November 30, 1992 the *Juzgado Vigésimo Noveno de Primera Instancia en lo Penal y de Salvaguarda del Patrimonio Público de la Circunscripción Judicial del Distrito Federal y Estado Miranda* (29th Trial Court in Criminal and Protection of Public Heritage Matters in and for the Judicial District of the Federal District and Miranda State) (hereinafter, the "29th Court") instituted a summary investigation, pursuant to the *Código de Enjuiciamiento Criminal* (Code of Criminal Procedure) (hereinafter, the "CEC"), in force at the time, regarding the crimes committed against persons, to the detriment of the prisoners of Detention Center of Catia.

60(31)The 101st, 93rd and 101st prosecutors of the Public Prosecutor's Office requested a series of measures. Thus, the Public Prosecutor's Office instituted and attempted to pursue an investigation, but it was hindered by the police and prison authorities' lack of cooperation. The information requested was provided in an untimely and incomplete fashion by the law enforcement forces involved in the events. Furthermore, the lack of cooperation on the part of the law enforcement force and prison authorities was evidenced by the repeated negligence in complying with court summonses and orders directing the production of evidence. The National

¹¹⁹ Cf. copy of the death record (record of the merits, reparations and costs, Volume II, page 404).

Guard did not send any communication to the 29th Court either; nor did any member of this armed corps testified before said Court.

60(32)Such behavior of the State, which also included the penitentiary authorities' reluctance to allow prisoners to appear in court and court officials' visits to the different penitentiary facilities, caused not only unnecessary delay in the investigation, but also the loss of vital evidence to enable court officials uncover the facts behind the incidents that took place at the Detention Center.

60(33)As a result, the 29th Court decided that "there [was] no evidence to suggest the involvement and criminal liability of any officer" and, therefore, it ordered that "the [...] investigation remain open."

60(34)On August 19, 1994, the 29th Trial Court referred the file to the Homicide Division of the Judicial Police Technical Corps for further investigation. The victims' next of kin were not able to appeal this decision since they were denied access and consequently participation in the proceedings. Since the aforesaid court's decision, the investigation has been suspended and no court authority has assessed the existing evidence or ordered production of additional evidence. Currently, the investigation is shelved in the 68th Prosecutor's Office of the Metropolitan Area at preliminary investigation stage under Case No. 4582.

g) Proceedings before Military Courts

60(35)The behavior of National Guard officers at the Detention Center gave rise to an investigation in the military criminal justice system. The victims' next of kin have had no access to the results or the evidence that may have been obtained from said investigation. The Inter-American Commission has not had access to these files either even though the State undertook to make the case record public during the unsuccessful friendly settlement process (*supra* para. 47).

h) Non-pecuniary damage suffered by the victims and their next of kin

60(36)The 37 victims identified in paragraph 60(26) of this Judgment suffered severe pain as a result of the appalling conditions they endured during their detention at the Detention Center of Catia and the violent incidents that took place between November 27 and 29, 1992 (*supra* paras. 60(16) to 60(25)), where they lost their lives. In addition, the victims' next of kin identified in paragraph 60(26) of this Judgment suffered moral distress by reason of the denial of justice that still continues, the lack of information regarding the whereabouts of their relatives' bodies, and because of the emotional trauma of their loss.

i) Representation before domestic courts and the Inter-American System for the Protection of Human Rights

60(37)The victims' next of kin, with the support of the COFAVIC have been following up the investigations instituted in domestic courts, despite considerable difficulties, on account of which said non-governmental organization has incurred expenses. In addition, the victims' next of kin have been represented by the COFAVIC and the CEJIL (Center for Justice and International Law) before the Inter-American System for the Protection of Human Rights, which has also generated expenses.

VIII
VIOLATION OF ARTICLES 4 (RIGHT TO LIFE) AND 5 (RIGHT TO HUMANE TREATMENT) OF
THE AMERICAN CONVENTION, REGARDING ARTICLE 1(1) THEREOF

61. As mentioned before (*supra* para. 57), the Court deems that the acquiescence of the State to the violation of Articles 4 and 5 of the Convention, in detriment of the victims identified in paragraph 60(26) of this Judgment, constitutes a positive contribution to the development of these proceedings and to the enforcement of the principles underlying the American Convention.

62. Notwithstanding the foregoing, and due to the disturbing circumstances surrounding the events subject matter of this case, the Court deems convenient to analyze certain aspects related to the violation of Articles 4 and 5 of the Convention. In this aspect, the Court will analyze: a) the use of force by the members of the law enforcement bodies, and b) the imprisonment conditions at Detention Center of Catia. To such end, the Court considers it is not convenient to summarize the arguments of the Commission and the representatives since the State fully acknowledged the violations alleged in said arguments.

A) Use of force by members of the security forces

i) Right to life, general principles

63. The right to life is a fundamental right, the full exercise of which is a prerequisite for the enjoyment of all other human rights.¹²⁰ If this right is violated, all other rights become meaningless. Because of its inherent nature, any restrictive approach to this right is inadmissible.¹²¹ In accordance with Article 27(2) of the Convention, this right is part of the fundamental entitlements that cannot be repealed insofar as it is regarded as one of the rights that may not be suspended in time of war, public danger, or other emergency that threatens the independence or security of the States Parties.¹²²

64. Based on the fundamental role ascribed to this right by the Convention, States have the obligation to guarantee the creation of the necessary conditions to ensure that violations of this inalienable right do not occur as well as the duty to prevent its officials, or private individuals, from violating it¹²³. The object and purpose of the Convention, as an instrument for the protection of the human being,

¹²⁰ Cf. *Case of Baldeón García*, *supra* note 3, para. 82; *Case of Sawhoyamaya Indigenous Community*. Judgment of March 29, 2006. Series C No 146, para. 150, and *Case of Masacre de Pueblo Bello*, *supra* note 6, para. 120.

¹²¹ Cf. *Case of Baldeón García*, *supra* note 3, para. 82; *Case of Sawhoyamaya Indigenous Community*, *supra* note 120, para. 150, and *Case of the "Street Children" (Villagrán Morales et al)* Judgment of November 19, 1999. Series C No. 63, para. 144.

¹²² Cf. *Case of Baldeón García*. *supra* note 3, para. 82; *Case of Sawhoyamaya Indigenous Community*, *supra* note 120, para. 150, and *Case of Masacre de Pueblo Bello*, *supra* note 6, para. 119.

¹²³ Cf. *Case of Baldeón García*, *supra* note 3, para. 83; *Case of Sawhoyamaya Indigenous Community*, *supra* note 120, para. 151, and *Case of the Pueblo Bello Massacre*, *supra* note 6, para. 120.

requires that the right to life be interpreted and enforced so that its guarantees are truly practical and effective (*effet utile*).¹²⁴

65. In prior cases, the Court has indicated that compliance with the duties imposed by Article 4 of the American Convention, regarding Article 1(1) thereof, not only presupposes that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to the 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.¹²⁵

66. Based on the foregoing, the States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; to establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals,¹²⁶ and guarantee the right to unimpeded access to conditions for a dignified life.¹²⁷ Especially, States must see that their security forces, which are entitled to use legitimate force, respect the right of life of the people under their jurisdiction.

ii) The right of individuals to avoid being victims of disproportionate use of force and the duty of the State to use such a force only reasonably and under exceptional circumstances

67. The use of force by governmental security forces must be grounded on the existence of exceptional circumstances and should be planned and proportionally limited by the government authorities. In this aspect, the Court has established that force or coercive means can only be used once all other methods of control have been exhausted and failed.¹²⁸

68. The use of firearms and lethal force against people by law enforcement officers -which must be generally forbidden- is only justified in even more extraordinary cases. The exceptional circumstances under which firearms and lethal force may be used shall be determined by the law and restrictively construed, so that they are used to the minimum extent possible in all cases, but never exceeding that use "absolutely necessary" in relation to the force or threat to be repealed.¹²⁹ When excessive force is used, any deprivation of life is arbitrary.

¹²⁴ Cf. *Case of Baldeón García*, *supra* note 3, para. 83; *Case of Hilaire. Preliminary Objections*. Judgment of September 1, 2001. Series C No. 80, para. 83, and *Case of the Constitutional Court. Jurisdiction*. Judgment of September 24, 1999. Series C No. 55, para. 36.

¹²⁵ Cf. *Case of Baldeón García*, *supra* note 3, para. 84; *Case of Sawhoyamaya Indigenous Community*, *supra* note 120, para. 120, and *Case of the Pueblo Bello Massacre*, *supra* note 6, para. 120.

¹²⁶ Cf. *Case of Baldeón García*, *supra* note 3, para. 85; *Case of Sawhoyamaya Indigenous Community*, *supra* note 120, para. 153, and *Case of the Pueblo Bello Massacre*, *supra* note 6, para. 120.

¹²⁷ Cf. *Case of Baldeón García*, *supra* note 3, para. 85; *Case of the Indigenous Community Yakye Axa*. Judgment of June 17, 2005. Series C No. 125, para. 161, and *Case of the "Juvenile Reeducation Institute"*. Judgment of September 2, 2004. Series C No. 112, paras. 152 and 153.

¹²⁸ Cf. *Matter of Yare I and Yare II Capital Region Penitentiary Center. Provisional Measures*. Order of the Court of March 30, 2006, fifteen whereas clause, and *Matter of Monagas Judicial Confinement Center ("La Pica") Provisional Measures*. Court Order of February 9, 2006, seventeenth whereas clause.

¹²⁹ Cf. ECHR, *Case of Erdogan and Others v. Turkey*. Judgment of 25 April, 2006. Application No. 19807/92, para. 67; ECHR, *Case of Kakoulli v. Turkey*. Judgment of November 22, 2005. Application

69. Pursuant to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,¹³⁰ firearms shall only be used under extraordinary circumstances such as "self-defence or defence of others, against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving a serious threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."

70. As stated in prior cases, the Court acknowledges the power, and even the duty of the State, to guarantee safety and public order, especially within prisons.¹³¹ Detention centers as Catia prison, where arms and drug trafficking, the creation of gangs and violence subculture increase under the passive conduct of the State, require the permanent protection and safeguard of the safety and life of detainees and officers that work in such centers. However, the State cannot make use of force with lethal consequences for inmates only grounded on the existence of the abovementioned situation. Otherwise, it would imply to release the State from its duty to take preventive measures and also from its responsibility for the creation of such conditions.

71. It is clear that the measures to be adopted by the State must prioritize a system of preventive measures intended, *inter alia*, to prevent arms trafficking and the increase of violence, over a repressive system.

72. In the instant case, according to the sayings of some former detainees, in the early morning of November 27, 1992, "the guards [...] opened the cell doors telling the detainees that they were released, and waited for them to go out in order to shoot them." Pursuant to other versions of the facts, a massive breakout attempt occurred but it failed due to the action of prison authorities that used excessive force to control the situation. The Prison Guards, the Metropolitan Police and, afterwards, the National Guards had all of them participated to suppress the breakout attempt. Despite the different versions about the facts, it is clearly shown by the autopsy reports submitted to the Court and by the acknowledgment of the State, that the victims died due to firearm injuries, and in many cases, the bullet trajectory show that shots were illegally made.

73. Whether the events that took place on November 27 and 28, 1992 in the Detention Center of Catia involve an action devised and planned by the government authorities to arbitrarily kill tens of inmates, or whether they are the result of a disproportionate reaction from the State to the massive breakout attempt and the

No. 38595/97, para. 107-108; ECHR, *Case of McCann and Others v. the United Kingdom*. Judgment of September 27, 1995. Series A No. 324, paras. 148-150 and 194; *Código de Conducta para Oficiales de Seguridad Pública* adopted by the General Assembly of the United Nations, Resolution 34/169, dated December 17, 1979, Article 3.

¹³⁰ Cf. *Principios Básicos sobre el Empleo de la Fuerza y de Armas de Fuego por parte de Oficiales Encargados de Hacer Cumplir la Ley* (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 Treatment of Offenders, La Habana, Cuba, August 27 to September 7, 1990, Principle 9.

¹³¹ Cf. *Matter of Yare I and Yare II Capital Region Penitentiary Center*, *supra* note 128, fifteenth whereas clause; *Matter of Monagas Judicial Confinement Center ("La Pica")*, *supra* note 128, seventeenth whereas clause, and *Case of Neira Alegría et al.* Judgment of January 19, 1995. Series C No. 20, para. 75.

breach of order and peace within the jail, is something the authorities of Venezuela must determine. In the opinion of this Court, the facts proven show that the security forces used extreme force with lethal consequences for the life of the 37 inmates of the Reten de Catia Center identified in this judgment, which clearly violated Article 4 of the American Convention.

74. In this sense, the State acknowledged that the actions of the security forces that participated in the abovementioned events were neither proportionate to the then existing threat or danger, nor the strictly necessary to keep the peace and order in the Detention Center of Catia.

iii) Creation of legal framework to regulate the use of force

75. As stated in paragraph 66 of this Judgment, the States must pass appropriate legal rules to deter any threat to life. So, domestic law must establish standards clear enough to regulate the use of lethal force and firearms by members of the State security forces. Following the "Principles on the Use of Force and Firearms by the Law Enforcement Officials", the rules and regulations on the use of firearms by enforcement officials should include guidelines that: (a) specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted; (b) ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm; (c) prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk; (d) regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them; (e) provide for warnings to be given, if appropriate, when firearms are to be discharged; (f) provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

76. Venezuela's law on the use of force by government authorities, current at the time of the events subject matter of the instant case, did not include the minimum specifications it should have included.¹³² The characteristics of the issues of fact of the instant case show that the Government armed forces and security agencies were not properly trained to face public disturbances by using means and methods that do not violate human rights.

iv) Education and training of government officials on the use of force

77. An adequate legislation would not fulfill its goal if, inter alia, the States do not educate and train the members of their armed forces and security agencies pursuant to the principles and provisions on protection of human rights and the limits to which the use of weapons by law enforcement officials is subject, even under a state of emergency.¹³³ In effect, the European Court of Human Rights held that the matter

¹³² Cf. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, *supra* note 130, Principle 11.

¹³³ Cf. *Case of the Caracazo. Reparations* (Article 63(1) American Convention on Human Rights) Judgment of 29 de agosto de 2002. Serie C No. 95, para. 127.

whether the state should resort to the use of firearms and under which circumstances, must be decided on the basis of clear legal rules and adequate training.¹³⁴

78. In this sense, the Court deems that it is essential for government officers to know the legal rules that authorize the use of firearms and to have the adequate training so that they may have the elements of judgment necessary to be able to decide whether to use them or not under certain circumstances. Moreover, the States must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces.

v) *Adequate control and verification of the legality of use of force.*

79. Likewise, the general prohibition imposed on government officers to arbitrarily kill people would be practically ineffective if there were not any procedures to verify the legality of the use of lethal force by government officers. Upon learning that member of the security forces have used firearms causing lethal consequences, the State must immediately initiate a rigorous, impartial and effective investigation *ex officio*¹³⁵.

80. Whenever the use of force caused the death or injuries to one or more people, the State should give a satisfactory and convincing explanation of the events and rebut the allegations related to its liability, by means of adequate evidence.

81. Furthermore, in this kind of cases the reasonable measures adopted by competent authorities to secure the evidence necessary for the investigation¹³⁶ are particularly important as well as the *de jure and de facto* independence of the officers involved in the incidents¹³⁷. This requires not only hierarchical or institutional independence, but actual independence.

82. On the other hand, the European Court of Human Rights held that investigations on excessive use of force must be subject to public scrutiny to secure

¹³⁴ Cf. ECHR, *Case of Erdogan and Others v. Turkey*, *supra* note 129, para. 68; ECHR, *Case of Kakoulli v. Turkey*, *supra* note 129, para. 109-110; ECHR, *Case of Kilic v. Turkey*. Judgment of March 28, 2000. Application No. 22492/93, para. 62.

¹³⁵ Cf. *Case of Baldeón García*, *supra* note 3, para. 92; *Case of the Pueblo Bello Massacre*, *supra* note 6, para. 143 and *Case of the "Mapiripán Massacre"*, *supra* note 7, para. 219. En el mismo sentido, Cf. ECHR, *Case of Erdogan and Others v. Turkey*, *supra* note 129, paras. 88-89; ECHR, *Case of Kakoulli v. Turkey*. *supra* note 129, paras. 122-123; ECHR, *Case of Nachova and others v. Bulgaria [GC]*. Judgment of 6 July 2005. Application Nos. 43577/98 and 43579/98, paras. 111-112.

¹³⁶ Cf. ECHR, *Case of Erdogan and Others v. Turkey*, *supra* note 129, paras. 89; ECHR, *Case of Kakoulli v. Turkey*, *supra* note 129, paras. 123; ECHR, *Case of Hugh Jordan v. the United Kingdom*. Judgment of 4 May 2001. Application No. 24746/94, para. 107-108.

¹³⁷ Cf. *Case of Durand and Ugarte*. Judgment of August 16, 2000. Series C No. 68, paras. 125 and 126; and ECHR, *Case of Nachova and others v. Bulgaria [GC]*, *supra* note 135, para. 112; ECHR, *Case of Isayeva v. Russia*. Judgment of February 24, 2005. Application No. 57950/00, para. 211; ECHR, *Case of Kelly and Others v. The United Kingdom*. Judgment of 4 May 2001. Application No. 30054/96, para. 95.

accountability of government officers in theory as well as in practice.¹³⁸ Furthermore, said Court has stated that the assessment on the use of force which involved use of firearms must be made taking into account all the circumstances and factual backdrop, including the planification and control of the facts under scrutiny.¹³⁹

83. Summing up, any deficiency or fault in the investigation affecting the ability to determine the cause of death or to identify the actual perpetrators or masterminds of the crime will constitute failure to comply with the obligation to protect the right to life.¹⁴⁰

84. The Court points out that in the instant case, significant omissions were made in the investigation proceedings initiated by the government authorities, due to the lack of cooperation of police forces and jail authorities in the collection and custody of vital evidence (*supra* paras. 60(30) to 60(36).) Said omissions are so significant that Venezuela has stated that the prosecution of the investigation involved in this case is "impossible from the practical point of view", which is contrary to the obligations arising out of the Convention.

B) Detention conditions at the Detention Center of Catia.

85. Section 5 of the Convention declares one of the fundamental values of a democratic society: the right to humane treatment, according to which: "Every person has the right to have his physical, mental, and moral integrity respected," and torture and cruel, inhuman or degrading punishment or treatment are expressly prohibited. As regards to persons deprived of their liberty, Article 5.2 of the Convention provides that they shall be treated regarding for the inherent dignity of the human person. Under Article 27(2) of the Convention, said right is part of the inalienable human rights, since it has been provided it cannot be suspended in case of war, public hazard or other threats to the independence or security of the State Parties.¹⁴¹ In this sense, the States cannot invoke economic hardships to justify imprisonment conditions that do not respect the inherent dignity of human beings.¹⁴²

86. Deprivation of liberty generally causes, as its unavoidable consequence, the impairment of other human rights, besides the right to personal liberty. However, said impairment of rights arising from the deprivation of liberty or as its collateral effect, must be strictly minimized.¹⁴³ Furthermore, the State must ensure that the

¹³⁸ Cf. ECHR, *Case of Isayeva v. Russia*, *supra* note 137, para. 214; ECHR, *Case of Nachova and Others v. Bulgaria*. Application nos. 43577/98 and 43579/98, para. 119; ECHR, *Case of McKerr v. the United Kingdom*. Judgment of 4 May 2001. Application No. 28883/95, para. 115.

¹³⁹ Cf. ECHR, *Case of Erdogan and Others v. Turkey*. *supra* note 129, para. 68; ECHR, *Case of Makaratzis v. Greece*. Judgment of 20 December 2004. Application No. 50385/99, para. 59; ECHR, *Case of McCann and Others v. United Kingdom*. *supra* note 129, para. 150.

¹⁴⁰ Cf. *Case of Baldeón García*, *supra* note 3, para. 97; *Case of the Pueblo Bello Massacre*, *supra* note 6, para. 144, and *Case of the "Mapiripán Massacre"*, *supra* note 7, para. 219.

¹⁴¹ Cf. *Case of the Pueblo Bello Massacre*, *supra* note 6, para. 119.

¹⁴² Cf. ECHR, *Case of I.I v Bulgaria*. Judgment of 9 June 2005. Application No. 44082/98, para. 77; ECHR, *Case of Poltoratskiy v. Ukraine*. Judgment of 29 April 2003. Application No. 38812/97, para. 148.

¹⁴³ Cf. *Case of López Álvarez*. Judgment of February 1, 2006. Series C No. 141, para. 105; *Case of the "Juvenile Reeducation Institute"*, *supra* note 127, para. 154, and *Case of the "Five Pensioners"*. Judgment of February 28, 2003. Series C No. 98, para. 116

manner and method of any deprivation of liberty do not exceed the unavoidable level of suffering inherent in detention and that the detainee is not subjected to sufferings or hardships exceeding the unavoidable suffering inherent in detention, and that, given the practical requirements of incarceration, the detainee's health and welfare are adequately warranted.

87. Besides, the State is in a special position of guarantor as to the persons deprived of their liberty, since jail authorities exercise a strong control or supervision over the persons under custody. Thus, there exists a special interaction and subordination relationship between the detainee and the State, a relationship which is characterized by the special strength the State may use to regulate their rights and duties, and by the particular circumstances of any deprivation of liberty, where the detainee cannot satisfy his/her personal basic needs by himself, though said needs are essential for the basic development of a dignified life.¹⁴⁴

88. The Court deems it convenient to point out some of the facts acknowledged by the State as a violation of the right of the victims in this case to humane treatment, during their detention at the Detention Center of Catia. Said events are related to overcrowding, health services and hygiene and medical assistance to inmates.

i) Overcrowding

89. Pursuant to the proven facts (*supra* para. 60(7) to 60(15)), persons detained in the Detention Center of Catia lived in conditions of severe prison overcrowding and overpopulation. The exact number of inmates at the time of the events of the instant case is not known with certainty due, *inter alia*, to the lack of an adequate record of the basic data of inmates. However, according to some estimates, the population of Catia Detention facilities ranged between 2286 to 3618 inmates, although its maximum capacity was 900 inmates. That is to say, the overpopulation was between 254 and 402 percent over its capacity. The available space for each inmate was about 30 square centimeters. Some cells used to house inmates during the night were designed for two persons, however, not less than six persons were held inside them.

90. The Court takes into account that, according to the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (hereinafter, the "CPT"), an overcrowded prison is characterized by non-hygienic and restricted living conditions, where privacy is absent even for the most basic activities such as the use of sanitary facilities; by the few out-of-the-cell activities due to the number of inmates that exceeded the available services; overburdened health services; increase of the climate of tension and therefore, increase of violence between prisoners and prison staff. This enumeration is not limited. Furthermore, the CPT provided that 7 square meters available for each prisoner is an approximate guideline and convenient space for a prison cell.¹⁴⁵ On the other hand, the European Court of Human Rights held that a space of about 2 square meters available for an inmate involves a level of overcrowding that is per se questionable in the light of

¹⁴⁴ Cf. *Case of García Asto and Ramírez Rojas*, Judgment of November 25, 2005. Series C No. 137, para. 221; *Case of Raxcacó Reyes*. Judgment of September 15, 2005. Series C No. 133, para. 95, and *Case of Fermín Ramírez*, Judgment of June 20, 2005. Series C No. 126, para. 118.

¹⁴⁵ Cf. CPT/Inf (92) 3 [EN], 2nd General Report, 13 April 1992, para. 43.

Article 3 of the European Convention on Human Rights,¹⁴⁶ and that it cannot be considered an acceptable standard,¹⁴⁷ and that a cell of 7 square meters for two inmates was a relevant aspect to determine the existence of a violation of said Article.¹⁴⁸ Similarly, the European Court held that a cell measuring 16.65 square meters where 10 detainees were held, involved a severe lack of space.¹⁴⁹

91. In the instant case, the space of about 30 square centimeters available for each inmate is absolutely unacceptable and involves *per se* cruel, inhuman and degrading treatment, contrary to the dignity inherent to human being and, therefore, a violation to Article 5(2) of the American Convention.

92. Likewise, large-capacity dormitories inevitably imply a lack of privacy for prisoners in their everyday lives. Moreover, the risk of intimidation and violence is high. Such accommodation arrangements are prone to foster the development of offender subcultures and to facilitate the maintenance of the cohesion of criminal organisations. They can also render proper staff control extremely difficult, if not impossible; more specifically, in case of prison disturbances, outside interventions involving the use of considerable force are difficult to avoid. With such accommodation, the appropriate allocation of individual prisoners, based on a case by case risk and needs assessment, also becomes an almost impossible exercise.¹⁵⁰

93. The Court considers that the solitary confinement cells where some inmates of the Detention Center of Catia were sent, were deplorable and extremely small.

94. The Court deems that solitary confinement cells must be used as disciplinary measures or for the protection of persons¹⁵¹ only during the time necessary and in strict compliance with the criteria of reasonability, necessity and legality. Such places must fulfill the minimum standards for proper accommodation, sufficient space and adequate ventilation, and they can only be used if a physician certifies that that the prisoner is fit to sustain it.¹⁵² The Court emphatically points out that confinement in a dark cell¹⁵³ and incommunication¹⁵⁴ are forbidden. To such end, the United Nations Committee against Torture has established that confinement cells measuring 60 x 80

¹⁴⁶ Cf. ECHR, *Case of Kalashnikov v. Russia*. Judgment of 15 July 2002. Application No. 47095/99, para. 97.

¹⁴⁷ Cf. ECHR, *Case of Ostrovar v. Moldova*. Judgment of 13 September 2005. Application No. 35207/03, para. 82.

¹⁴⁸ Cf. ECHR, *Case of Peers v. Greece*. Judgment of 19 April 2001. Application No. 28524/95, para. 70-72.

¹⁴⁹ Cf. ECHR, *Case of Karalevicius v Lithuania*. Judgment of 7 April 2005. Application No. 53254/99, para. 36

¹⁵⁰ Cf. CPT/Inf (2001) 16, 11th General Report, para. 29.

¹⁵¹ Cf. ECHR, *Case of Mathew v. The Netherlands*. Judgment of 29 September 2005. Application No. 24919/03, para. 199.

¹⁵² Cf. Standard Minimum Rules for the Treatment of Prisoners. Adopted by the First United Nations Congress on Prevention of Crime and Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council through its Resolutions 663C (XXIV) of July 31, 1957 and 2076 (LXII) of May 13, 1977, Article 32(1).

¹⁵³ Cf. Standard Minimum Rules for the Treatment of Prisoners, *supra* note 152, Article 31.

¹⁵⁴ Cf. *Case of García Asto y Ramírez Rojas*, *supra* note 144, para. 221; *Case of Raxcacó Reyes*, *supra* note 144, para. 95, and *Case of Fermín Ramírez*, *supra* note 144, para. 118.

centimeters, where no light or ventilation exists, and where the prisoner can only be standing or crouched down, "are torture instruments."¹⁵⁵

ii) *Sanitary facilities and hygiene*

95. The State has acknowledged that the Detention Center of Catia did not comply with the minimum standards required to maintain the good health of inmates. In this regard, the testimony of the Advisor of the Committee of Internal Policy of the House of Deputies¹⁵⁶ is really revealing:

[We found] some horrible barracks standing at the lower part. There were some men that lived there amidst putrid water that was running down from other floors. Refuse amid putrid water covered half leg. There was a locked room, but with a hole on its lower right corner. Through this hole, prisoners received their food, provided it is possible to call it "food." They took the food mixed with excrements. We knocked the door and heard some voices. They did not know how many persons were there. We started to dismantle the door once the welded joints had been removed, but it was not possible to open the door yet since the thick layer of excrements was even harder than the welded joints. Monsters came out of such place: the forgotten maximum-security inmates.

96. This statement is consistent with the testimony given by Arturo Peraza, at the public hearing conducted in the instant case (supra para. 59(o)).

97. This Court deems that the poor physical and sanitary conditions existing in detention centers, as well as the lack of adequate lightning and ventilation, are *per se* violations to Article 5 of the American Convention, depending on their intensity, length of detention and personal features of the inmate, since they can cause hardship that exceed the unavoidable level of suffering inherent in detention, and because they involve humiliation and a feeling of inferiority.

98. In this sense, the European Court held that the fact that a person had been forced to live, sleep and use sanitary facilities together with a great number of inmates was, *per se*, sufficient to be considered a degrading treatment.¹⁵⁷

99. In the instant case, certain inmates of the Detention Center of Catia not only had to defecate in the presence of their mates, but they also had to live amid excrements and even eat their food under such humiliating conditions. The Court considers that said detention conditions are absolutely unacceptable, they involve disdain for human dignity; cruel, inhuman and degrading treatment; high risk for health and life and a clear violation of Articles 5(1) and 5(2) of the American Convention.

¹⁵⁵ Cf. Committee against Torture's Report on Turkey, United Nations, 48th Session Term, (A/48/44/Add.1), 1994, para. 52.

¹⁵⁶ Statements made by Tahís Peñalver, Advisor of the Commission on Domestic Policy of Deputies, and member of the Trojan Horse project carried out by the company Topten C.A., upon request of the Ministry of Justice to Newspaper "El Nacional, "Las mafias carcelarias chocan desde despacho de Min-Justicia", March 25, 1996. Petition of the Commission (record on the merits and contingent reparations and indemnities, Volume I, page 17).

¹⁵⁷ Cf. ECHR, *Case of Khudoyorov v. Russia*. Judgment of 8 November 2005, Application No. 6847/02, para. 107; ECHR, *Case of Karalevicius v Lithuania*. *supra* note 149, para. 39; ECHR, *Case of I.I v Bulgaria*. *supra* note 142, para. 73.

100. Neither the Inter-American Convention, nor the representatives stated that the victims identified in this case were held in the cells referred to in the preceding paragraph. However, the Court, considering the testimonies presented before it (*supra* para.59), deems that the sanitary conditions existing on the higher floors of Detention Center of Catia, though not so bad as those described above, did not comply with the minimum standards of humane treatment. The State itself pointed out that "during many decades" the Detention Center of Catia "represented for Venezuela the idea of evil, where everything was possible, the gloomy place where society purges its misery," and all those who "suffered there and succeeded in leaving it [...] are survivors."¹⁵⁸

iii) Medical Assistance

101. Among the facts accepted by the State, it is worth noting that medical assistance provided to the inmates of Detention Center of Catia did not comply with the minimum standards. Several of the inmates injured during the events occurred between November 27 and 29, 1992, did not receive any medical assistance or the adequate medicine (*supra* para. 60(21)). Furthermore, no proper medical assistance was provided to inmates that were ill.

102. This Court has pointed out that lack of adequate medical assistance does not satisfy the minimum material requisites of a treatment consistent with the human condition as stipulated in Article 5 of the American Convention.¹⁵⁹ The State has the duty to provide detainees with regular medical checks and care and adequate treatment whenever necessary. Besides, the State must allow and facilitate medical assistance to detainees by a professional physician of their choice or selected by their legal representatives,¹⁶⁰ although this does not imply the existence of a duty to satisfy all wishes and preferences of a person deprived of liberty regarding medical assistance, but only those real needs consistent with the actual circumstances and condition of the detainee. Assistance by a physician not related to prison or detention center authorities is an important safeguard against torture and physical or mental ill-treatment of inmates.¹⁶¹

103. Lack of adequate medical assistance could be considered *per se* a violation of Articles 5(1) and 5(2) of the Convention depending on the specific circumstances of the person, the type of disease or ailment, the time spent without medical attention and its cumulative effects.

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¹⁵⁸ Oral final arguments of the State, public hearing held on April 4, 2006, *supra* para. 26.

¹⁵⁹ Cf. *Case of García Asto and Ramírez Rojas vs. Perú*, *supra* note 144, para. 226.

¹⁶⁰ Cf. *Case of García Asto and Ramírez Rojas v. Perú*, *supra* note 144, para. 227; *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, para. 122, and *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, para. 157. Likewise, the *Set of Principles for the Protection of all Persons under any kind Detention or Imprisonment*, Adopted by the General Assembly through its Resolution 3/173, dated December 9, 1988, Principle 24.

¹⁶¹ Cf. ECHR, *Case of Mathew v. The Netherlands*, *supra* note 151, para. 187.

104. In the light of the aforementioned, and taking into account the admission by the State (*supra* para.26), the Court considers that the latter violated the rights enshrined in Articles 4(1) (Right to Life) and 5(1), 5(2) and 5(4) (Right to Humane Treatment) of the American Convention, regarding Article 1(1) of same, in detriment of the 37 victims listed in paragraph 60(26) of this Judgment, due to the disproportionate use of force inflicted on them, to the detention conditions to which they were subjected during their detention at Detention Center of Catia, and to the absence of a classification of inmates under trial or already convicted prisoners. Moreover, the Court deems that the State violated Article 5(1) of the Convention, regarding Article 1(1) thereof, in detriment of the next of kin of the victims, who are identified in paragraph 60(26) of this Judgment, for the pain they endured due to the death of their beloved ones, aggravated by the failure of government authorities to give them any information on the events occurred, and by the denial of justice, (*supra* para. 60(36)).

IX
VIOLATION OF ARTICLES 8 (RIGHT TO A FAIR TRIAL)
AND 25 (RIGHT TO JUDICIAL PROTECTION) OF THE AMERICAN CONVENTION,
IN RELATION WITH ARTICLE 1(1) OF SAME

105. Article 8(1) of the American Convention provides as follows:

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.

106. Article 25(1) of the Convention provides:

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 or the [...] Convention, even though such violation may have been committed by persons acting in the course of their official duties.

107. Article 1(1) of the Convention provides that

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

108. In the instant case, the State acknowledged that the events occurred at the Detention Center of Catia, and analyzed in this Judgment, had not been duly investigated, that the security forces involved in such events had not cooperated with the investigations, and that the procedure had been excessively delayed for over 13 years. Moreover, the State also acknowledged that "by the time of the events, the law allowed courts with special jurisdictions such as the military jurisdiction to hear cases related to violation of human rights," and that "during the investigative stage of proceedings, access to the record of proceedings was legally restricted for [the next of kin of] the victims."

109. In the light of the abovementioned, and taking into account the admission by the State, the Court deems that the State violated Articles 8 and 25 of the American Convention, in relation with Article 1(1) of same, to the detriment of the next of kin of the victims identified on paragraph 60(26) of this Judgment.

X
NON-COMPLIANCE WITH ARTICLE 2 (DOMESTIC LEGAL EFFECTS)
OF THE AMERICAN CONVENTION

110. Article 2 of the Convention sets forth:

[w]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

111. As reported by the Commission and the representatives, and accepted by the State, Venezuela did not adapt its domestic legislation to the American Convention, since it did not overrule the provisions that granted military courts jurisdiction to investigate the violations of human rights, and it has not developed policies intended to change the penitentiary system so as to make it more professional, with the purpose of guaranteeing safety within said premises.

112. In this aspect, the Court takes into account and appreciates that the State has made efforts to cure such omission. Particularly, the State pointed out that

at the present time, [p]ublic [p]olicies are being developed in order to improve prison conditions, and it is worth pointing out the Executive Order on Penitentiary System Emergency, the Penitentiary System Humanization Programme and the promotion and dissemination through workshops, of the [h]uman [r]ights of persons deprived of liberty.

[...]

[A]t the present time, upon the entry into force of the Constitution of the Bolivarian Republic of Venezuela of 1999, [...] violations of human rights and crimes against humanity [...] shall be investigated and tried by the ordinary courts, which eliminates any possibility that crimes of such kind may be tried by special courts, thus proving that the legislative change requested by the Inter-American Commission of Human Rights was taken into account.

113. However, this Court points out that the issues of the instant case occurred before the efforts made by the State, and therefore it considers that the State failed in complying with the duty imposed by Article 2 of the American Convention.

XI
REPARATIONS
(APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)

114. In the instant case, the State admitted all the claims on reparations asserted by the Commission and the representatives. In view of the foregoing, the Court finds it unnecessary to summarize the claims of the parties and directly proceeds to apply them and rule on the measures aimed at redressing the damage caused.

Duty to make reparations

115. In accordance with the previous paragraphs, and in light of the full acquiescence made by the State (*supra* para. 26), the Court declared that Venezuela violated the rights acknowledged in Articles 4 and 5(1), 5(2), 5(4), 8(1) and 25 of the American Convention and failed to comply with the obligations provided for in Articles 1(1) and 2 thereof. The Court has determined, in several occasions, that all violations of an international obligation which cause damage, purports the duty to make adequate reparations.¹⁶² In this regard, Article 63(1) of the American Convention sets forth that:

[i]f the Court finds that there has been a violation of a right or freedom protected by th[e] Convention, the Court shall rule that the party harmed be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be cured and that fair compensation be paid to the injured party.

116. As stated by the Court in previous cases, Article 63(1) of the American Convention codifies a rule of custom which is one of the fundamental principles of contemporary International Law regarding the responsibility of States. This way, upon the occurrence of a wrongful act attributable to a State, the international liability of such State arises, with the consequent duty to make reparations and to have the consequences of the violation remedied.¹⁶³

117. The reparation of the damage caused by the infringement of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of the return to the state of affairs prior to the infringement. If this is not feasible, the International Court shall determine the measures to be ordered to protect the rights that were affected, as well as to make reparations of the consequences the infringements brought about and shall determine a compensation for the damage caused.¹⁶⁴ It is necessary to add the positive measures that the State must adopt to prevent repetition of the harmful events such as those that occurred in the instant case.¹⁶⁵ It is a principle of general International Law that the obligation to make reparations, that covers all issues concerned (scope, nature, methods of compliance and determination of beneficiaries) cannot be modified or unfulfilled by the State alleging its domestic laws.¹⁶⁶

118. Reparations are measures tending to eliminate the effects of the violations committed. Their nature and amount depend on both the pecuniary and non-pecuniary damage caused. Such reparations shall not result in the victims or their successors becoming richer or poorer.¹⁶⁷

¹⁶² Cf. *Case of Baldeón-García*, *supra* note 3, para. 174; *Case of Sawhoyamaxa Indigenous Community*, *supra* note 120, para. 195, and *Case of Acevedo-Jaramillo et al.*, *supra* note 3, para. 294.

¹⁶³ Cf. *Case of Baldeón-García*, *supra* note 3, para. 175; *Case of Sawhoyamaxa Indigenous Community*, *supra* note 120, para. 196, and *Case of Acevedo-Jaramillo et al.*, *supra* note 3, para. 295.

¹⁶⁴ Cf. *Case of Baldeón-García*, *supra* note 3, para. 176; *Case of Sawhoyamaxa Indigenous Community*, *supra* note 120, para. 197, and *Case of Acevedo-Jaramillo et al.*, *supra* note 3, para. 296.

¹⁶⁵ Cf. *Case of Baldeón-García*, *supra* note 3, para. 176; *Case of López-Álvarez*, *supra* note 143, para. 182, and *Case of Blanco-Romero et al.*, *supra* note 3, para. 69.

¹⁶⁶ Cf. *Case of Baldeón-García*, *supra* note 3, para. 175; *Case of Sawhoyamaxa Indigenous Community*, *supra* note 120, para. 197, and *Case of Acevedo-Jaramillo et al.*, *supra* note 3, para. 296.

¹⁶⁷ Cf. *Case of Baldeón-García*, *supra* note 3, para. 177; *Case of Sawhoyamaxa Indigenous Community*, *supra* note 120, para. 198, and *Case of Acevedo-Jaramillo et al.*, *supra* note 3, para. 297.

A) *BENEFICIARIES*

119. Firstly, the Court considers that the 37 victims in the instant case (*supra* para. 60(26)) are the "injured party" as victims of the violation of the rights set forth in Articles 4 (Right to Life) and 5 (Right to Humane Treatment) of the American Convention, in relation with Article 1(1) (Obligation to Respect Rights) thereof. Likewise, this Court considers that the victims' next of kin are the "injured party", as individualized in the instant Judgment (*supra* para. 60(26)), in their capacity as victims *per se* of the violation of the rights set forth in Articles 5(1) (Right to Humane Treatment), 8(1) (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof.

120. The victims' next of kin shall be entitled to compensation for pecuniary damage and non pecuniary damage as established by the Court in their capacity as victims *per se* of the violations to the Convention so declared, and shall also be entitled to the reparations ordered by the Court in their capacity as successors of the 37 deceased victims.

121. Regarding to the next of kin mentioned in paragraph 35 in the instant Judgment, who have not submitted any documentary evidence of their kinship, this Court rules that the compensation to which they are entitled in their capacity as victims *per se* and as successors shall be forthwith paid upon appearance before the competent authorities of the State and submission of the official information necessary to identify them and determine their kinship.

122. The distribution of compensation among the next of kin of the deceased victims for the pecuniary and non-pecuniary damage will be as follows:

a) fifty per cent (50%) of the compensation shall be distributed in equal parts between the children of the victim and the remaining fifty per cent (50%) of the compensation shall be paid to whom was the victim's spouse or common-law spouse at the time of his/her death. If there is a surviving spouse or common-law spouse but no descendant or there are descendants but no surviving spouse or common-law spouse, the entire compensation shall be distributed as the case may be, and

b) if there is no surviving spouse or common-law spouse or descendants, the entire compensation shall be distributed to the victim's parents, allowing the surviving parent, if one is dead, the entire compensation. If both parents are dead, the compensation shall be distributed in equal parts to the victim's siblings.

123. In relation to José Ayala-Gualdrón, the representatives requested that the compensation be paid to his niece Yelitza Figueroa. Since the State admitted said claims (*supra* para. 26), in executing the instant Judgment, she shall be equaled to the victim's siblings (*infra* para. 134).

124. If any next of kin entitled to the compensations declared in the instant Judgment dies before the pertinent compensation is paid, the corresponding amount shall be distributed in accordance with domestic laws.¹⁶⁸

125. Finally, as regards to the next of kin who have not submitted any documentary evidence of their kinship to the victims (*supra* para. 33) and the individuals who have been adversely affected by the events at issue in the instant case (*supra* para. 60(18)), the Court will not grant them any pecuniary reparation since they have not been declared victims. However, the Court highlights that any ruling made in connection with the violations committed against them and any pertinent compensation at this international stage does not eliminate or hinder the effective protection of their individual interests in the domestic venue.¹⁶⁹

B) PECUNIARY DAMAGES

126. The Court shall herein address the pecuniary damage, which implies the loss of, or detriment to, the income of the victim, the expenses incurred due to the events and the pecuniary consequences that may have a cause-effect link with the events in the instant case for which, if applicable, the Court fixes a compensatory amount seeking to redress the economic consequences of the violations that were determined in this Judgment,¹⁷⁰ taking into account the acquiescence of the State, the circumstances surrounding the case, the case-law of the Court, and the arguments of the parties.

a) Loss of Income

127. The amounts claimed by the representatives as compensation for loss of income, which have been admitted by the State, were calculated on the basis of the legal minimum salary in force in Venezuela, which amounts to US\$2,260.46 (two thousand two hundred sixty and forty-six cents United States Dollars),¹⁷¹ the age of the victim and the years remaining to attain the age of 73,6 years, the average life expectancy in Venezuela.¹⁷² From this amount, a percentage (25%) for expenses of a personal nature has been discounted. The Court considers that it is convenient to use the same formula to calculate the loss of income of each unrepresented victim, regarding of whom the representatives have not asserted any claim. With regard to Carlos Enrique Serrano and José Durán-Hernández-Daza, in light of the lack of sufficient evidence to assess the age of the victims at the time of their death (*supra* paras. 60(26)(5) and 60(26)(20)), this Court awards, on equitable grounds, a

¹⁶⁸ Cf. *Case of López-Álvarez*, *supra* note 143, para. 203, and *Case of Gómez-Palomino*. Judgment of November 22, 2005. Series C No. 136, para. 123

¹⁶⁹ Cf. *Case of the Pueblo Bello Massacre*, *supra* note 6, para. 250.

¹⁷⁰ Cf. *Case of Baldeón-García*, *supra* note 3, para. 183; *Case of Acevedo-Jaramillo et al.*, *supra* note 3, para. 301, and *Case of López-Álvarez*, *supra* note 143, para. 192.

¹⁷¹ Cf. Executive Order 3.628 published in the Official Gazette No. 38.174 on April 27, 2005. See: <http://www.tsj.gov.ve/gaceta/Abril/270405/270405-38174-23.html>.

¹⁷² Cf. Human Development Report 2004, made by the United Nations Development Programme (UNDP)

compensation in the amount of US\$60,000.00 (six thousand United States Dollars). Consequently, the Court grants the following compensations for loss of income:

VICTIM	AMOUNT (IN US DOLLARS)
1. Alexis Antonio Martínez-Liébanó	82,393.76
2. Ángel Francisco Aguilera	85,784.45
3. Armando José Espejo-Álvares	85,784.45
4. Benjamín Eduardo Zerpa-Rodríguez	90,870.49
5. Carlos Enrique Serrano	60,000.00
6. César Gregorio Guzmán	90,870.49
7. Charly Gustavo Paiva-Reyes	89,175.14
8. Deyvis Armando Flores-Velásquez	82,393.79
9. Edgar José Peña-Marín	84,089.11
10. Fabio Manuel Castillo-Suárez	89,175.14
11. Franklin Antonio Armas-González	77,303.73
12. Gabriel Antonio Figueroa-Ramos	87,479.80
13. Henry Leonel Chirinos-Hernández	82,393.76
14. Inocencio José Ruiz-Durán	82,393.76
15. Iván José Pérez-Castillo	72,221.69
16. Jaime Arturo Henríquez-Rizzo	77,307.73
17. Jaime Ricardo Martínez	82,393.76
18. Jesús Eduardo Romero	70,526.35
19. Jimmy Antonio González-Sandoval	85,784.45
20. José Durán-Hernández-Daza	60,000.00
21. José Gregorio Gómez-Chaparro	67,135.66
22. José Leon Ayala-Gualdron	87,479.80
23. José Norberto Ríos	58,658.93
24. José Rafael Pérez-Mendoza	90,870.49
25. Juan Carlos Saavedra-Rincón	80,698.42
26. Juan José Rico-Bolívar	60,354.28
27. Marcos Nerio Ascanio-Plaza	60,354.28
28. Nancy Ramón Peña	56,963.59
29. Néstor Luis Gaviria-Velásquez	82,393.79
30. Osman Simón Duarte	67,135.66
31. Pablo José Badillo-García	84,089.11
32. Pedro Luis Zuloaga	72,221.69
33. Pedro Ricardo Castro-Cruces	75,612.38
34. Sergio José Celis	90,870.49
35. Victor Jesús Montero-Aranguren	53,572.90
36. Wilcon Alberto Pérez-Santoya	92,565.83
37. Wilmer Benjamín Gómez-Vásquez	87,479.80

128. Said amounts shall be distributed among the victims' next of kin in accordance with paragraph 122 of the instant Judgment.

b) Indirect damages

129. Furthermore, according to the arguments of the representatives and the Commission, and as admitted by the State, the victims' next of kin incurred costs in

trying to locate the victims, gathering information on the killings, and accessing justice in the instant case. The Commission and the representatives failed to ascertain the amount of said costs; therefore, this Court awards, on equitable grounds, compensation in the amount of US\$1,000.00 (one thousand United States Dollars) to each family of the 37 victims. Said amount shall be distributed to the victims' next of kin in accordance with paragraph 122 of the instant Judgment.

C) *NON PECUNIARY DAMAGE*

130. Given that it is impossible to assess the value of the non pecuniary damage sustained in a precise equivalent in money, for the purposes of full reparation to the victim, compensation may be made effective by paying an amount of money or by delivering property or services whose value may be established in money, as the Court may reasonably determine at its judicial discretion and based on equitable standards; and on the other hand by public actions or works the effect of which, among others, be to acknowledge the victim's dignity and to avoid new violations of human rights.¹⁷³ The first aspect of the reparation of non pecuniary damage will be analyzed herein and the second aspect will be analyzed in section D) of this chapter.

131. Judgments, pursuant to repeated international precedents, constitute in and of themselves a form of reparation.¹⁷⁴ However, owing to the circumstances of the instant case, the suffering the events have caused the victims and their next of kin, the changes in their way of living and other consequences of a non pecuniary nature they have borne, the Court considers appropriate to order payment of a compensation, assessed on equitable grounds, for the non pecuniary damage sustained.

132. Bearing in mind the various aspects of the damage the Commission and the representatives allege, the Court determines, on equitable grounds, the value of compensation for non pecuniary damage according to the following standards:

- a) with regard to the inmates of the "Detention Center of Catia", the Court takes into account the conditions under which the victims lived while held in custody at said facility; and the use of disproportionate force which eventually caused their death;
- b) with regard to the next of kin of the inmates, in light of the acquiescence made by the State, the Court will take into account the fact they were denied access to justice for over thirteen years, the lack of information on the location of the dead bodies of the victims and the impact of having lost their beloved ones. Furthermore, the Court states again that the suffering caused to the victim "extends to the closest members of the family, particularly those who were in close affective contact with the victim."¹⁷⁵

¹⁷³ Cf. *Case of Baldeón-García*, *supra* note 3, para. 188; *Case of Sawhoyamaya Indigenous Community*, *supra* note 120, para. 219, and *Case of Acevedo-Jaramillo et al.*, *supra* note 3, para. 297.

¹⁷⁴ Cf. *Case of Baldeón-García*, *supra* note 3, para. 189; *Case of Sawhoyamaya Indigenous Community*, *supra* note 120, para. 220, and *Case of Acevedo-Jaramillo et al.*, *supra* note 3, para. 309.

¹⁷⁵ Cf. *Case of the Pueblo Bello Massacre*, *supra* note 6, para. 257; *Case of the Serrano-Cruz Sisters*, *supra* note 6, para. 159; *Case of the Gómez-Paquiyaury Brothers*. Judgment of July 8, 2004. s C No. 110, para. 218, and *Case of the 19 Tradesmen*. Judgment of July 5, 2004. Series C No. 109, para. 249.

133. Taking into account the different aspects of the non pecuniary damage caused, the Court awards, on equitable grounds, the following compensations:

a) For each of the 37 executed victims, the Court awards a compensation in the amount of US\$ 75,000.00 (seventy five thousand United States Dollars).

b) For the next of kin of the victims, the Court considers that the damage must be compensated by payment of the following amounts:

i) US\$25,000.00 (twenty five thousand United States Dollars) for the father, mother, spouse, common-law spouse and child of the victims;

ii) US\$1,000.00 (one thousand United States Dollars) for each brother or sister of the victims.

134. Consequently, the Court awards the following compensations for non pecuniary damage:

Victims and next of kin	Kinship	Cantidad en US Dólares
Alexis Antonio Martínez-Liébano	Victim	US\$ 75,000.00
Berta Laureana-Liébana	Mother	US\$ 25,000.00
Héctor Aníbal Romero-Liébano	Brother	US\$ 1,000.00
Carlos Enrique Liébana	Brother	US\$ 1,000.00
Wladimir Martínez	Brother	US\$ 1,000.00
Blanca Yanmelis Blanco-Liébano	Sister	US\$ 1,000.00
Belkys Martínez	Sister	US\$ 1,000.00
Viki Yasmil Blanco-Liébana	Sister	US\$ 1,000.00
Leonard Alexander Martínez-Castillo	Son	US\$ 25,000.00
Leida Castillo	Wife	US\$ 25,000.00
Ángel Francisco Aguilera	Victim	US\$ 75,000.00
Armando José Espejo-Álvares	Victim	US\$ 75,000.00
Benjamín Eduardo Zerpa-Rodríguez	Victim	US\$ 75,000.00
María Rosenda Rodríguez-Pérez	Mother	US\$ 25,000.00
Luis Alfredo Zerpa	Brother	US\$ 1,000.00
Noris Margarita Zerpa-Rodríguez	Sister	US\$ 1,000.00
Graciela Zerpa-Rodríguez	Sister	US\$ 1,000.00
Maria Auxiliadora Zerpa-Rodríguez	Sister	US\$ 1,000.00
Benjahirin Nazareth Trujillo	Daughter	US\$ 25,000.00
Yonary Trujillo	Common-Law spouse	US\$ 25,000.00
Carlos Enrique Serrano	Victim	US\$ 75,000.00
César Gregorio Guzmán	Victim	US\$ 75,000.00
Charly Gustavo Paiva-Reyes	Victim	US\$ 75,000.00
Deyvis Armando Flores-Velásquez	Victim	US\$ 75,000.00
Edgar José Peña-Marín	Victim	US\$ 75,000.00

Inocenta del Valle-Marín	Mother	US\$ 25,000.00
Doris Isabel Peña-Marín	Sister	US\$ 1,000.00
Marjorie Josefina Marín	Sister	US\$ 1,000.00
Edgly Nakary Peña-Alkala	Daughter	US\$ 25,000.00
Envidia	Daughter	US\$ 25,000.00
Favio Manuel Castillo-Suárez	Victim	US\$ 75,000.00
Franklin Antonio Armas-González	Victim	US\$ 75,000.00
Ana María González	Mother	US\$ 25,000.00
Mariela Rojas González	Sister	US\$ 1,000.00
Maritza Rojas	Sister	US\$ 1,000.00
Mireya del Carmen	Sister	US\$ 1,000.00
Franlis Marilis	Daughter	US\$ 25,000.00
Gabriel Antonio Figueroa-Ramos	Victim	US\$ 75,000.00
Henry Leonel Chirinos-Hernández	Victim	US\$ 75,000.00
Ramona Hernández	Mother	US\$ 25,000.00
Jean Chirinos	Son	US\$ 25,000.00
Henry Yoel Chirinos	Son	US\$ 25,000.00
Angy Chirinos	Daughter	US\$ 25,000.00
Mileydi Chirinos	Daughter	US\$ 25,000.00
Maury Alejandra Chirinos	Daughter	US\$ 25,000.00
Maiby Yhoana Chirinos	Daughter	US\$ 25,000.00
Silvia Elena	Daughter	US\$ 25,000.00
Inocencio José Ruiz-Durán	Victim	US\$ 75,000.00
María Cristina Durán	Mother	US\$ 25,000.00
José Ramón Ruiz-Durán	Brother	US\$ 1,000.00
Nazario Ruiz Durán	Brother	US\$ 1,000.00
José Gregorio Ruiz-Durán	Brother	US\$ 1,000.00
Aura Ruiz Durán	Brother	US\$ 1,000.00
Antony José Ruiz-Uván	Son	US\$ 25,000.00
Danny José Ruiz-Uván	Son	US\$ 25,000.00
Isneyvi José Ruiz-Uván	Son	US\$ 25,000.00
Wiusleidy Xiorin Ruiz-Uván	Daughter	US\$ 25,000.00
Iván José Pérez Castillo	Victim	US\$ 75,000.00
Jaime Arturo Henríquez-Rizzo	Victim	US\$ 75,000.00
Jaime Ricardo Martínez	Victim	US\$ 75,000.00
Jesús Eduardo Romero	Victim	US\$ 75,000.00
Jimmy Antonio González-Sandoval	Victim	US\$ 75,000.00
José Durán-Hernández-Daza	Victim	US\$ 75,000.00
José Gregorio Gómez-Chaparro	Victim	US\$ 75,000.00
José León Ayala-Gualdron	Victim	US\$ 75,000.00
Romualda Gualdron	Mother	US\$ 25,000.00
Calixta Ayala-Gualdron	Sister	US\$ 1,000.00
Juan Serapio Ayala-Gualdron	Brother	US\$ 1,000.00
Tiburcio Ayala-Gualdron	Brother	US\$ 1,000.00
José Ángel Ayala-Gualdron	Brother	US\$ 1,000.00
Mireya Josefina Ayala-Gualdron	Sister	US\$ 1,000.00
Yelitza Figueroa	Niece	US\$ 1,000.00
Víctor José Santaella-Gualdron	Brother	US\$ 1,000.00
Maribel del Valle Santaella-Gualdron	Sister	US\$ 1,000.00

Luis Elpidio Santaella-Gualdron	Brother	US\$ 1,000.00
José Norberto Ríos	Victim	US\$ 75,000.00
José Rafael Pérez-Mendoza	Victim	US\$ 75,000.00
Juan Carlos Saavedra-Rincón	Victim	US\$ 75,000.00
María Teresa Rincón	Mother	US\$ 25,000.00
Jesús Saavedra	Father	US\$ 25,000.00
Javier Saavedra-Rincón	Brother	US\$ 1,000.00
Jesús Omar Saavedra-Rincón	Brother	US\$ 1,000.00
Ivan Sergio Saavedra-Forero	Brother	US\$ 1,000.00
José Ricardo Saavedra-Forero	Brother	US\$ 1,000.00
Yolanda Andrea Gallardo	Common-Law Wife	US\$ 25,000.00
Yolicar Alejandra Rincón-Gallardo	Daughter	US\$ 25,000.00
Juan José Rico Bolívar	Victim	US\$ 75,000.00
Marcos Neiro Ascanio-Plaza	Victim	US\$ 75,000.00
Josefina Plaza	Mother	US\$ 25,000.00
Jessi Berenice Ascanio	Daughter	US\$ 25,000.00
Elena Ascanio	Sister	US\$ 1,000.00
María Milagros León-Castillo	Wife	US\$ 25,000.00
Nancy Ramón Peña	Victim	US\$ 75,000.00
Néstor Luis Gavidia-Velásquez	Victim	US\$ 75,000.00
Giovanni Alfredo Gaviria-Velásquez	Brother	US\$ 1,000.00
Osman Simón Duarte	Victim	US\$ 75,000.00
Pablo José Badillo-García	Victim	US\$ 75,000.00
Pedro Luis Zuloaga	Victim	US\$ 75,000.00
Pedro Ricardo Castro-Cruces	Victim	US\$ 75,000.00
Pedro Ramón Castro-Castro	Father	US\$ 25,000.00
María Aura Cruces de-Castro	Mother	US\$ 25,000.00
María del Rosario Castro-Cruces	Sister	US\$ 1,000.00
Aracelis Teresa Castro-Cruces	Sister	US\$ 1,000.00
Aura Marina Castro-Cruces	Sister	US\$ 1,000.00
Flor Ángel Castro-Cruces	Sister	US\$ 1,000.00
Gustavo Adolfo Castro-Cruces	Brother	US\$ 1,000.00
Juan Carlos Castro-Cruces	Brother	US\$ 1,000.00
Sergio José Celis	Victim	US\$ 75,000.00
Víctor Jesús Montero-Aranguren	Victim	US\$ 75,000.00
Nelly María Madriz	Wife	US\$ 25,000.00
Yamilet María	Daughter	US\$ 25,000.00
Jacqueline María	Daughter	US\$ 25,000.00
Víctor José	Son	US\$ 25,000.00
Wilcon Alberto Pérez-Santoya	Victim	US\$ 75,000.00
Luis Alberto Pérez	Father	US\$ 25,000.00
Ana Dolores Santoya	Mother	US\$ 25,000.00
Carmen Yolanda Pérez-Santoya	Sister	US\$ 1,000.00
Yaseli Mercedes Santoya	Sister	US\$ 1,000.00
Alexis Pérez	Brother	US\$ 1,000.00
José Gregorio Pérez	Brother	US\$ 1,000.00

José Javier Santoya	Brother	US\$ 1,000.00
Yomaris	Daughter	US\$ 25,000.00
Wilmer Benjamín Gómez-Vásquez	Victim	US\$ 75,000.00

135. The compensations awarded in the previous paragraph unto the victims shall be paid according to the provisions of paragraph 122 of the instant Judgment and the compensations awarded unto their next of kin shall be directly paid to each beneficiary.

*D) OTHER FORMS OF REPARATION
(Measures of Satisfaction and Non Repetition Guarantees)*

136. In this subparagraph the Court will determine those measures of satisfaction aimed at redressing immaterial damage that does not have a pecuniary character, as well as those other public or publicly visible measures.¹⁷⁶

a) Obligation to investigate the facts of the instant case and to identify, prosecute and punish the perpetrators

137. The Court has found that more than thirteen years after the events the impunity of those responsible for them continues to prevail. The Court has defined impunity as the overall lack of investigation, arrest, prosecution and conviction of those responsible for violations of the rights protected by the American Convention.¹⁷⁷ The State is obliged to combat such a situation by all available means, as it fosters the chronic repetition of human rights violations and renders victims and their next of kin completely defenseless.¹⁷⁸

138. To that effect, the State must, within reasonable time, remove all obstacles, *de facto* and *de jure*, that perpetuate impunity; provide adequate safety guarantees to the victims, other witnesses, judicial officers, prosecutors, and other relevant law enforcement officials; and use all means at its disposal to expedite the investigation and judicial process,¹⁷⁹ in order to identify, prosecute and punish the perpetrators of the violent events and adopt any necessary emergency measures at the Prison; of the excessive use of force and of the extrajudicial execution of several inmates.

¹⁷⁶ Cf. *Case of Baldeón-García*, *supra* note 3, para. 193; *Case of Sawhoyamaya Indigenous Community*, *supra* note 120, para. 228, and *Case of the Pueblo Bello Massacre*, *supra* note 6, para. 264.

¹⁷⁷ Cf. *Case of Baldeón-García*, *supra* note 3, para. 195 ; *Case of Blanco-Romero et al.*, *supra* note 3, para. 94, and *Case of the "Mapiripán Massacre"*, *supra* note 7, para. 237.

¹⁷⁸ Cf. *Case of Baldeón-García*, *supra* note 3, para. 195; *Case of the Pueblo Bello Massacre*, *supra* note 6, para. 266, and *Case of Blanco-Romero et al.*, *supra* note 3, para. 94.

¹⁷⁹ Cf. *Case of the Pueblo Bello Massacre*, *supra* note 6, para. 268; *Case of the "Mapiripán Massacre"*, *supra* note 7, para. 299; *Case of the Moiwana Community*, *supra* note 4, para. 207.

139. The State must secure that the victims' next of kin have full access and capacity to act in all stages and proceedings taken in the course of said investigations, according to the domestic laws and the provisions of the American Convention.¹⁸⁰ The outcome of the investigations shall be published by the State, in such a way to allow the Venezuelan society to know the truth about the events of the instant case.¹⁸¹

140. Furthermore, the above mentioned proceedings, must be specifically conducted under, among other technical rules, the provisions of the Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions.¹⁸²

141. Furthermore, as repeatedly indicated in the Court's precedents,¹⁸³ no domestic law or provision - including statutes of limitations and amnesty laws - may prevent a State from fulfilling the Court's order to investigate and punish those responsible for serious violations of human rights. In particular, the provisions on amnesty, the statute of limitations and the definition of grounds to exclude liability to hinder the investigation and punishment of those responsible for serious human rights violations are inadmissible since they affect inalienable rights protected under International Human Rights Law.

b) Location and delivery of the bodies of José León Ayala-Gualdrón and Edgar José Peña-Marín to their next of kin

142. Owing to the fact that the next of kin of José León Ayala-Gualdrón and Edgar José Peña-Marín have not received the victims' bodies yet, this Court orders the State to immediately adopt any necessary and proper measure to secure effective delivery, within a reasonable time, of the bodies of the above mentioned victims to their next of kin, so that dignified burial be carried out according to their beliefs. The State shall bear the cost of delivery of the victims' bodies to their next of kin and any burial expenses they may incur.

c) Adoption of legislative, political, administrative, and economic measures

¹⁸⁰ Cf. *Case of Baldeón-García*, *supra* note 3, para. 199; *Case of Blanco-Romero et al.*, *supra* note 3, para. 97.

¹⁸¹ Cf. *Case of Baldeón-García*, *supra* note 3, para. 199; *Case of the Pueblo Bello Massacre*, *supra* note 6, para. 267, and *Case of Blanco-Romero et al.*, *supra* note 3, para. 97.

¹⁸² Cf. *Case of the Moiwana Community*, *supra* note 4, para. 208; United Nations Manual on the Effective Prevention and Investigation of Extralegal, Arbitrary and Summary Executions. U.N. Doc. E/ST/CSDHA/12 (1991).

¹⁸³ Cf. *Case of Baldeón-García*, *supra* note 3, para. 201; *Case of Blanco-Romero et al.*, *supra* note 3 para. 98; *Case of Gómez-Palomino v. Peru*, *supra* note 168, para. 140; and *Case of "Mapiripán Massacre"*, *supra* note 7, para. 304. *Case of the Moiwana Community*, *supra* note 4, para. 206; *Case of the Serrano-Cruz sisters*, *supra* note 6, para. 172; *Case of the Gómez-Paquiyaury brothers*, *supra* note 175, para. 175; *Case of the 19 Tradesmen*, *supra* para. 175, para. 262; *Case of Molina-Theissen. Reparations*. Judgment of July 3, 2004. Series C No. 108, paras. 83 to 84; *Case of Myrna Mack-Chang*, Judgment of November 25, 2003. Series C No. 101, paras. 276 to 277; *Case of Bulacio*, Judgment of September 18, 2003. Series C No. 100, para. 116; *Case of Caracazo. Reparations*, *supra* note 133, para. 119, and *Case of Trujillo-Oroza. Reparations*. Judgment of February 27, 2002. Series C No. 92, para. 106.

143. The State must take actions to prevent further violations of human rights like the ones committed in the instant case; therefore, it must adopt any necessary measures of legal, administrative and other nature that help prevent occurrence of similar events, in compliance with its duty to foster prevention and secure the rights protected under the American Convention.

144. In particular, the State must, within a reasonable time, adapt its domestic laws to the provisions of the American Convention so that they: a) adequately conform to international legal standards on the use of force by law enforcement officers under the provisions of paragraph 75 in the instant Judgment; b) take action to implement a surveillance penitentiary service of nonmilitary nature; c) secure an efficient procedure or system to file petitions before competent, impartial and independent authorities for the investigation of complaints on human rights violations filed by inmates, in particular, on illegal use of force exerted by state agents; d) secure that the investigations of human rights violations be carried out by ordinary prosecutors and judges instead of military prosecutors and judges.

d) *Incarceration conditions to conform to international standards*

145. As ordered in other cases by the Court¹⁸⁴ and as a measure of non-repetition guarantee, the State must adopt, within a reasonable time, the necessary measures to have incarceration conditions conform to internationally accepted standards.

146. In particular, the State must guarantee that the living conditions of the inmates are the result of the respect due to their dignity as human beings; including, *inter alia*: a) bed space that meets minimum standards; b) accommodation which is ventilated and naturally lit; c) regular access to clean toilets and showers securing toilet privacy; d) adequate, timely and sufficient food and health care; and e) access to educational, employment and other opportunities to assist inmates towards a law abiding and self supporting life.

e) *Educational measures*

147. As set out in paragraphs 60(16), 60(19), 60(20) and 72 to 74 in the instant Judgment, state agents made an excessive use of force that derived in the death of the victims. Furthermore, the Court stated that in order to adequately secure the right to life, security forces must be properly educated and trained.

148. Consequently, the Court wishes to remind Venezuela of its decision in a previous case,¹⁸⁵ where it found that:

the State must take all necessary steps [...] to educate and train all members of its armed forces and its security agencies regarding principles and provisions on protection of human rights and the limits to which the use of weapons by law enforcement officials is subject, even under a state of emergency. Right to life cannot be violated to support maintenance of public order. Furthermore, the State must adjust operational plans regarding public disturbances to requirements of respect for and protection of said rights, and to this end take among other steps those required to control actions by all members of security forces

¹⁸⁴ Cf. *Case of Raxcacó-Reyes*, *supra* note 144, para. 134; *Case of Fermín Ramírez*, *supra* note 144, para. 130; *Case of Caesar*. Judgment of March 11, 2005. Series C No. 123, para. 134, and *Case of Lori Berenson-Mejía*. Judgment of November 25, 2004. Series C No. 119, para. 241.

¹⁸⁵ Cf. *Case of Caracazo. Reparations* (Art. 63(1) American Convention on Human Rights), *supra* note 133.

in the field of operations to avoid excess. And, the State must ensure that, if it is necessary to resort to physical means to face public disturbances, members of the armed forces and security agencies will use only those strictly required to control such situations in a rational and proportional manner, respecting the right to life and to humane treatment.

149. Likewise, the Court deems it appropriate that the State frame and implement a training program on human rights and international standards applied to inmates addressed to police agents and penitentiary officials.

f) *Public acknowledgment of liability*

150. The Court thinks highly of the public acknowledgment of liability made by Venezuela during the hearing held in the instant case (*supra* para. 42). However, taking into account that not all next of kin were present at said hearing, and that the public acknowledgment of liability is a guarantee of non repetition that should be known by the whole Venezuelan society, the Court orders the State to publicly acknowledge its international liability and ask public forgiveness to the victims' next of kin declared in the instant Judgment. Said acknowledgment must be made in the presence of the victims' next of kin and the highest-ranked authorities of the State within the term of six months as from the date of service of the instant Judgment.

g) *Judgment publication*

151. As ordered in previous cases and as a measure of satisfaction,¹⁸⁶ the State must publish at least once in the Official Gazette and in another national daily newspaper the chapter on the facts established in the instant Judgment, without its footnotes, as well as the operative paragraphs herein. Said publications must be made within six months as from the date of service of the instant Judgment.

E) *COSTS AND EXPENSES*

152. Costs and expenses are contemplated within the concept of reparations as enshrined in Article 63(1) of the American Convention, since the victims' efforts to obtain justice in the domestic as well as international levels lead to expenses that must be compensated when the State's international liability has been determined in a conviction judgment. With regard to their reimbursement, the Court must prudently assess their extent, which involve the expenses incurred when acting before the authorities with domestic jurisdiction as well as those incurred in the course of proceedings before the Inter-American System, taking into account the particular circumstances of the specific case and the nature of international jurisdiction in the protection of human rights. Said assessment might be made on equitable grounds and taking into account the expenses declared by the parties, provided the amounts are reasonable.¹⁸⁷

153. In the instant case, the Court notes that many of the victims' next of kin have not been identified. Therefore, it is not possible to award a compensation for

¹⁸⁶ Cf. *Case of Baldeón-García*, *supra* note 3, para. 194; *Case of Sawhoyamaya Indigenous Community*, *supra* note 120, para. 236, and *Case of Acevedo-Jaramillo et al. v. Peru*, *supra* note 3, para. 313.

¹⁸⁷ Cf. *Case of Baldeón-García*, *supra* note 3, para. 208; *Case of Sawhoyamaya Indigenous Community*, *supra* note e 120, para. 237, and *Case of Acevedo-Jaramillo et al. v. Peru*, *supra* note 3, para. 315.

costs and expenses directly to the victims' next of kin so that they assign them among those who have legally assisted them, as it has become the usual practice of this Court in many recent cases.¹⁸⁸ In light of the foregoing, the Court considers on equitable grounds that the State must reimburse the amount of US\$20,000.00 (two thousand United States Dollars) or its equivalent in Venezuelan currency, to COFAVIC for costs and expenses incurred in both the domestic and the Inter-American systems when seeking protection of human rights; and the amount of US\$10,000.00 (ten thousand United States Dollars) or its equivalent in Venezuelan currency to CEJIL for costs and expenses incurred in the international system. Said amounts must be paid directly to the above mentioned organizations.

XII METHOD OF COMPLIANCE

154. To comply with this Judgment, the State shall pay compensations for pecuniary and non pecuniary damage and reimburse costs and expenses within the term of one year as from the date of service of the instant Judgment. The State must make public acknowledgment of liability (*supra* para. 150) and proceed to the publication of the instant Judgment (*supra* para. 151), within six months as from the date of service of the instant Judgment. The remaining reparations must be complied within a reasonable time (*supra* paras. 137 to 149).

155. If the beneficiaries of compensations are not able to receive the payments within the timeframes set out in the previous paragraph, due to reasons attributable to them, the State shall deposit said amounts in an account to the beneficiary's name or draw a certificate of deposit from a reputable Venezuelan bank, in United States dollars, under the most favorable financial terms the law in force and customary banking practice allow. If after ten years compensations were still unclaimed, the amount plus accrued interests shall be returned to the State.

156. The State may discharge its pecuniary obligations by tendering United States Dollars or an equivalent amount in the currency of the State, at the New York, USA exchange rate between both currencies on the day prior to the day payment is made.

157. Payments ordered as compensation for pecuniary and non pecuniary damages and for costs and expenses shall not be affected, reduced or conditioned by tax reasons, be they present or future. Therefore, beneficiaries shall therefore receive the total amount as per the provisions herein.

158. Should the State fall into arrears with its payments, Venezuelan banking default interest rates shall be paid on the amount owed.

159. In accordance with its constant practice, the Court retains the authority emanating from its jurisdiction, and from the provisions of Article 65 of the American Convention, to monitor full compliance with this judgment. The instant case shall be closed once the State implements in full the provisions herein. Within the term of

¹⁸⁸ Cf. Case of "Mapiripán Massacre", *supra* note 7, para. 325; Case of *Yatama*. Judgment of June 23, 2005. Series C No. 127, para. 265, and Case of *Carpio-Nicolle et al.* Judgment of November 22, 2004. Series C No. 117, para. 145.

one year as from the date of service of the instant Judgment, Venezuela must submit to the Court a report on the measures adopted in compliance therewith.

X
OPERATIVE PARAGRAPHS

160. Therefore,

THE COURT,

DECIDES,

Unanimously,

1. To admit the acknowledgment of international liability made by the State for the violation of the rights embodied in Articles 4(1) (Right to Life), and 5(1), 5(2) and 5(4) (Right to Humane Treatment) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the individuals listed in paragraph 60(26) in the instant Judgment, as set forth in paragraph 52 herein.

2. To admit the acknowledgment international liability made by the State for the violation of the rights embodied in Articles 5(1) (Right to Humane Treatment), 8(1) (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention, in relation to Article 1(1), to the detriment of the victims' next of kin, who have been individualized in paragraph 60(26) in the instant Judgment, as set forth in paragraph 53 herein.

3. To admit the acknowledgment of liability made by the State for the violation of the obligation provided for in Article 2 of the American Convention, as set forth in paragraph 54 herein.

4. To declare that the State has waived the preliminary objection, according to the provisions of paragraph 50 of the instant Judgment.

DECLARES,

Unanimously that:

5. The State violated the right enshrined in Articles 4 (Right to Life), 5(1), 5(2) and 5(4) (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Judicial Protection) of the American Convention and failed to comply with the general obligations provided for in Articles 1(1) and 2 thereof, to the detriment of the individuals listed in paragraph 60(26), as set forth in paragraphs 104, 109 and 113 herein.

6. This Judgment is in and of itself a form of redress, as set forth in paragraph 131 herein.

AND RULES,

Unanimously that:

7. The State must adopt the necessary measures to identify, prosecute and punish those responsible for the violations committed against the victims in the instant case, in compliance with the right to a fair trial and within a reasonable time, as set forth in paragraphs 137 to 141 herein.
8. The State must, within a reasonable time, take the necessary and adequate actions to secure effective location and delivery of the bodies of José León Ayala-Gualdrón and Edgar José Peña-Marín, as set forth in paragraph 142 herein.
9. The State must, within a reasonable time, adapt its domestic laws to the provisions of the American Convention as set forth in paragraphs 143 and 144 herein.
10. The State must, within a reasonable time, take all necessary actions to allow prison conditions to conform to international standards, as set forth in paragraphs 145 and 146 herein.
11. The State must adequately educate and train the members of armed forces to effectively secure the right to life and avoid a disproportionate use of force. Furthermore, the State must develop and implement a training program on human rights and international standards regarding individuals held in custody aimed at police and prison agents, as set forth in paragraphs 147 to 149 herein.
12. The State must, within the term of six months as from the date of service of the instant Judgment, publicly acknowledge its international liability and ask for forgiveness to the victims' next of kin declared in the instant Judgment, as set forth in paragraph 150 herein.
13. The State must, within the term of six months as from the date of service of the instant Judgment, publish at least once in the Official Gazette and in another national daily newspaper, the chapter on the facts established in the instant Judgment, without its footnotes, as well as the operative paragraphs herein.
14. The State must pay the compensation amounts for pecuniary and non pecuniary damage, and reimburse costs and expenses within the term of one year as from the date of service of the instant Judgment.
15. The State shall monitor full compliance with this Judgment and shall consider the instant case closed upon full compliance by the State with the provisions therein. Within the term of one year as from the date of service of the instant Judgment, the State must submit to the Court a report on the measures adopted in compliance therewith.

Drafted in Spanish in San José, Costa Rica, on July 5, 2006.

Sergio García-Ramírez
President

Alirio Abreu-Burelli

Antônio A. Cançado Trindade

Cecilia Medina-Quiroga

Manuel E. Ventura-Robles

Pablo Saavedra-Alessandri
Secretary

So ordered,

Sergio García-Ramírez
President

Pablo Saavedra-Alessandri
Secretary