

REPORT No. 2/15
CASE 12.270
MERITS REPORT
JOHAN ALEXIS ORTIZ HERNÁNDEZ
VENEZUELA
JANUARY 29, 2015

I. SUMMARY

1. On March 15, 2000, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition lodged by Edgar Humberto Ortiz Ruiz and Zaida Hernández de Arellano (hereinafter “the petitioners”)¹alleging that the Bolivarian Republic of Venezuela (hereinafter “the State” or “the Venezuelan State”) is responsible for the death of their son Johan Alexis Ortiz Hernández (hereinafter “the alleged victim” or “Mr. Ortiz”), which took place at the facilities of the Rural Commandos of Caño Negro on February 15, 1998. According to the petitioners, at the time of his death, Mr. Ortiz was in the final phase of the National Guard Training Academy (hereinafter “ESGURNAC”) of Cordero and, while he was taking part in a combat training exercise, he was hit by gunshots, which ultimately causedhis death. His parents also contended that several officers of the Venezuelan National Guard (hereinafter “the National Guard” or “the NG”) are liable and that neither the circumstances surrounding his death nor those responsible for it have been clarified before a court of law.

2. On February 25, 2005, the IACHR approved Admissibility Report No. 22/05, deciding therein to proceed to the examination of the merits of the matter as to the allegations pertaining to Articles 4, 8 and 25 of the American Convention on Human Rights (hereinafter “the Convention” or “the American Convention”), in connection with the obligations set forth in Article 1.1 of this same instrument.

3. During the merits stage, the petitioners alleged that the State is responsible for violation of the right to life and humane treatment of Johan Alexis Ortiz. They claimed that the body of their son presented signs of torture and that the evidence makes it possible to establish that the death of the alleged victim was not accidental. They argued that in the initial investigation conducted by the military authorities, a number of irregularities were committed, which contributed to impunity forthe crimes; the case had been ordered back to the investigation stage several timesby the court;and that there were errors of omission and delays in the regular investigation. Accordingly, they also argued violations of the right to a fair trial and judicial protection to the detriment of the next-of-kin of the alleged victim, as well as to humane treatment of the next-of-kin of Mr. Ortiz as a result of the suffering inflicted on them by his death and, in particular, the threats and harassment of which they became the targets as retaliation for their quest for justice.

4. The Venezuelan State submitted information on domestic proceedings to investigate the facts,as provided for under the Constitution and criminal procedural law. According to the State, its judicial and investigatory authorities have acted in keeping with due process requirements and have taken every pertinent measure to clarify the incidents, which are the subject of the petition.

5. After examining the positions of the parties, the established facts and the applicable human rightsframework, the Commission concluded in the instant report that the Venezuelan State is responsible for the violation of the rights enshrined in Article 4 and 5 of the American Convention, in connection with Article 1.1 thereof, to the detriment of Johan Alexis Ortiz Hernández. The IACHR further concludes that the State is responsible for the violation of Article 5, 8 and 25 of the Convention, in conjunction with the obligations set forth in Articles 1.1 and 2 of this same instrument to the detriment of the family members. Based on these conclusions, the Commission made the respective recommendations.

¹ In the merits stage, the Inter-American Association of Public Defenders (AIDEP) became the legal representative in the case, see *infra* II (16) “Proceedings before the IACHR subsequent to the Admissibility Report.”

II. PROCEEDINGS BEFORE THE IACHR SUBSEQUENT TO THE ADMISSIBILITY REPORT

6. On February 25, 2005, the IACHR issued Admissibility Report No. 22/05.² The parties were served a copy of this report on March 16, 2005, as provided by Article 38.1 of the Rules of Procedure in effect at the time for the Commission. Additionally, in accordance with Article 48.1.f of the Convention and Article 38.2 of IACHR Rules of Procedure, it placed itself at the disposal of the parties with a view to reaching a friendly settlement in the matter.

7. In a submission of March 29, 2005, the petitioners provided information. Likewise, on April 11, 2005, the State reported that it was willing to enter into a friendly settlement agreement. The IACHR forwarded the offer to the petitioners and asked them to report back as to whether they were interested in engaging in said process. In a communication of May 10, 2005, the petitioners voiced their consent and submitted a draft agreement. The IACHR forwarded the information it received to the State for its reply.

8. On July 6 and 14, 2005, communications were received from Mr. Edgar Ortiz containing information on the case and on attempts to reach a friendly settlement. Said communications were forwarded to the State for its response. On July 28, 2005, the State requested an extension to submit its response, which was granted and on August 24 of that year, the State announced its decision to withdraw from the friendly settlement process. This communication was forwarded to the petitioner for its observations. On October 19 and November 14, 2005, the petitioner submitted information on efforts to reach a friendly settlement, which was forwarded to the State.

9. On February 25 and March 9, 2006, Mr. Edgar Ortiz and Mrs. Zaida Hernández, respectively, submitted briefs regarding their positions on the friendly settlement process. On March 16, 2006, the petitioner submitted information on the criminal proceeding. These communications were forwarded to the State. On July 18, 2006, the State responded to the positions of the petitioners; the IACHR forwarded that information and requested comment.

10. On September 19 and 21, 2006, communications were received on the friendly settlement process from Mrs. Zaida Hernández and Mr. Edgar Ortiz, respectively, which were forwarded to the State for its reply. On October 20, and November 1 and 6, 2006, information was received from both petitioners regarding the friendly settlement process, including a draft agreement proposal. The IACHR forwarded the information to the State for it to submit a reply.

11. On March 5 and July 26, 2007 and January 20 and 21, 2008, the petitioners reported that there had been no progress in reaching a friendly settlement. The IACHR forwarded the communication to the State and requested a reply. On February 26, 2008, the petitioners submitted their arguments on the violation of the rights protected under the Convention. In a communication of April 2, 2008, the IACHR advised the parties that, in view of the petitioners' comments and in keeping with Article 41.4 and 41.6 of the Commission's Rules of Procedure, it deemed its involvement in the friendly settlement process as concluded and was proceeding to process the case.

12. On August 11, 2008, the Commission received additional comments from the State regarding the friendly settlement process and information on the criminal case, which was forwarded to the petitioners for their reply. On October 15, 2008, the petitioners' response was received and was forwarded to the State.

13. In a communication of May 5, 2009, the IACHR gave the petitioners a period of two months to submit additional observations on the merits, as provided for under Article 38.1 of the Rules of Procedure of the Commission. The petitioners submitted their observations on July 6, 2009, which were forwarded to the State for its response within the two-month time period, as provided by the rules.

² IACHR, Report No. 22/05 (Admissibility), Case 12.270, Johan Alexis Ortiz Hernández, Venezuela, February 25, 2005.

14. The Commission received additional comments from the petitioners and updated information on the criminal case on August 14 and October 12, 2009 and February 2 and March 12, 2010. The Commission forwarded said communications to the State for its response. On June 18, 2010, a communication was received from the State expressing its interest in resuming the friendly settlement process. The IACHR forwarded said offer to the petitioners setting a deadline of one month for their response. On September 16, 2010, the petitioners replied that they did not wish to reopen the friendly settlement process and requested the merits of the matter to continue to be processed. The Commission forwarded said response to the State for its reference.

15. The petitioners submitted additional information on May 16, July 19, August 6 and September 4, 2011; February 18, March 24 and 25, April 15, May 24, June 20 and 23, July 9 and 17, August 6, 13 and 14, September 28, October 9 and 14, and November 3, 2012; January 27, February 15 and 16, March 24, April 21, June 12 and 26, July 24 and September 20, 2013; and January 26, 2014. All of the communications were brought to the attention of the State, and in a communication of August 13, 2013, the IACHR requested the State to submit observations within a one-month period. As of the present date of this report, no response has been received from the State.

16. On March 14, 2014, the Commission received accreditation from the Inter-American Association of Public Defenders (AIDEF) to act as legal representative in the case.

III. POSITION OF THE PARTIES

A. Petitioners

17. Inasmuch as a detailed account of the facts will be provided in the 'Findings of Fact' section (IV) hereafter, the Commission will confine itself in this section to giving a succinct description of the alleged facts and a summary of the petitioners' arguments of law. These arguments pertain to the State's responsibility for the death of Mr. Ortiz, which was allegedly caused by an agent of the National Guard with a firearm in a combat training exercise, where the use of such weapons was banned, as well as for the failure to investigate and clarify the incidents and who was liable for them.

18. In this regard, the petitioners claimed that 19-year-old Johan Alexis Ortiz Hernández was a student at the ESGUARCAC, in Cordero, State of Táchira, and on February 15, 1998, was taken to participate in a combat training exercise at Outpost 19 of the Rural Commandos in Caño Negro, during which he was hit by gunshots, which caused his death.

19. They contended that several different versions of the facts were given as to what had happened to Mr. Ortiz. The first version, which was given to them by the military authorities on that very same day of February 15, is that their son had been "accidentally" wounded. A second version, which was released in the media, is that Johan Alexis Ortiz had committed suicide. And a third version, which they heard after interviews of allegedly involved individuals were conducted, is that Mr. Ortiz had been shot before the training exercise had begun.

20. The petitioners alleged that the death was intentionally caused by NG officers. They claimed that, the military academy authorities' version from very beginning was that Mr. Ortiz was "accidentally" shot. They further contended that they were victims of concealment of information, because the authorities refused to provide them with exact information on the incidents and they claimed that after making their own efforts to look into the incidents, they managed to ascertain that there were a number of inconsistencies in the State's version of the facts and that there were other theories, which were never investigated. These theories included, based on the information they were able to gather, that the death could have been prompted by investigations that their son had been conducting with regard to other incidents within the military institution or because of an alleged love affair he supposedly was having with the wife of an officer linked to the institution.

21. As to the inconsistencies, they claim for example that the bullet, which caused their son's death, was lodged in his right arm, despite the fact that the instructor, who was firing the shots, was located on his left side; that the bullet wound had no exit hole despite the close distance from where the instructor was firing; and that the projectiles extracted from his body are not the same ones that are on record as evidence in the investigation. They also noted that during the practice exercise, real bullets were used, which they claim amounts to a serious irregularity, particularly, because they learned that there was an advanced instruction prior to the actual combat training exercise, that live rounds of ammunition were not supposed to be used and that this instruction had been changed without any justification.

22. The petitioners also contended that there were no safety measures in place nor medical assistance available to treat emergencies at the location where the combat training exercise was held (which would be required in light of the instruction given for the exercise to use live rounds of ammunition), and that the alleged victim did not receive adequate and timely medical assistance. They also argued that their son's body showed signs of torture, which they photographed prior to burying him and provided to the authorities, who investigated the case. The petitioners alleged that Johan Alexis "was tortured, clandestinely, after being mortally wounded, with beatings, dislocation of his shoulder, while he was in the throes of death, cigarette burns" and that he did not receive the immediate medical care he needed, but was transferred instead with delay to a rural hospital, where he ultimately died.

23. They claimed that the incidents were first investigated jointly by the Judicial Technical Police of San Cristobal (hereinafter "PTJ") and the Military Court of Guasdalito, and that the court case was brought in the military courts, where consecutive judgments were vacated. They contended that trying the case in military criminal courts contributed to the impunity of the crimes and that despite the motions they filed for jurisdiction to be transferred to the ordinary civilian courts, the military authorities continued to try the case until 2002, when the Constitutional Chamber of the Supreme Court of Justice (hereinafter "TSJ") ordered the transfer of the case to the ordinary justice system. They argued that in the proceedings before the military courts, fundamental evidence was not gathered and other evidence was gathered late or with irregularities or "tampering" and that, in general, the proceedings were designed to bear out the version given by the authorities of ESGUARNAC. They noted that the military officers allegedly involved refused to give statements to the PTJ and that most of the evidence collected by the Technical Police remained in the custody of the military authorities.

24. With respect to the case before the civilian courts as of 2002, they claimed that the Ministry of Public Prosecution also engaged in improper delays; that the Office of the Prosecuting Attorney did not issued a decision to prosecute in the investigation against a national guardsman until 2012, and that the charge was dismissed on the grounds that it did not fulfill due process of the law requirements; that in 2013, the Office of the Prosecuting Attorney filed a new charging document, which once again did not fully examine the evidence on record of the 25 exhibits contained in the case file; that the preliminary hearing was postponed on a number of occasions, as of the time the second charging document was issued, and that an arrest warrant is pending execution against the only defendant.

25. They contended that thus far no person has stood trial nor have the circumstances of the crimes been elucidated yet. Consequently, they claimed that an effective judicial remedy is not available, because the investigation has not been conducted with due diligence and the reasonable period of time requirement has been infringed in the criminal proceeding for the death of their son.

26. The petitioners also claimed that the death of Johan Alexis Ortiz had a profound effect on the lives of his parents, siblings and the entire family and that the feelings of frustration and bereavement have been drawn out over an excessive length of time, thus increasing their grief over the lack of clarity and response to events.³ They alleged that they were forced to undertake part of the investigation and to move the

³ Accordingly, they single out in this case as victims of the violation of the right to psychological and moral integrity Edgar Humberto Ortiz and his wife Maritza González Cordero; Mrs. Zaida Hernández Hernández and her husband Saúl Arellano Moral, and Johan Alexis' brothers and sisters: Jackson Edgardo Ortiz González, Greisy Mariel Ortiz González, Gregory Leonardo Ortiz González, Saida Dariana Arellano Hernández and Saul Johan Arellano Hernández.

case forward at the different levels of the proceedings, file a great deal of motions and requests before different authorities without receiving any response and face the consequences of a court proceeding that was not conducted with seriousness or impartiality. They argued that, because of their actions, they and their direct family circle received threats and attempts on their lives and that their attorneys were the targets of disciplinary investigations.

27. Accordingly, they claimed that they filed complaints of threats and harassment on February 19, March 10 and November 30, 1998, June 28, 1999 and April 7, 2006. In these written complaints, Mr. Ortiz's parents identified the following individuals and family groups, who they regarded could be at risk: Mr. and Mrs. Mary Ramos and Alans Peralta (Johan Alexis' godparents), and the following families: Ortiz González, Ortiz Ruiz, Ortiz Flores, Ortiz Rivas, Gamez Ortiz, Moreno Ortiz, Hernández Hernández, Hernández Rugeles, Hernández Bustillos, Herrera Hernández, Cárdenas Hernández, Arellano Hernández.

B. State

28. During the merits phase, the State submitted several communications regarding the friendly settlement process, reporting on measures taken by it to satisfy the proposals put forward by the petitioners. Subsequently, it filed a submission with observations mentioning proceedings conducted in the domestic sphere to elucidate events pertaining to the death of Johan Alexis Ortiz and the criminal proceedings instituted for this purpose;⁴ however, it did not put forward any specific arguments on the charges alleged in the case.

29. The State noted that the domestic criminal proceeding had been instituted in the military courts under the Code of Criminal Prosecution in force at the time in 1998, and subsequently, when the Organic Criminal Procedural Code came into force, the Ministry of Public Criminal Prosecution filed charges against five military officials for crimes of "negligent homicide" and "disobeying military orders;" and that the parents of the alleged victim brought a private criminal suit (*querrela*) against nine military officials. It indicated that the charges were dismissed by the trial court and that the Court Martial of the Republic, as the "maximum court of military law," overturned said decision and ordered new charges to be brought.

30. It contended that, after the "extensive judicial activity" displayed, the parents of Mr. Ortiz appealed to the Constitutional Chamber of the Supreme Court of Justice, which on June 11, 2002, ordered the entire proceedings over the course of four years in the Venezuelan military courts to be vacated and transferred jurisdiction to the civilian courts to institute new trial proceedings.

31. The State reported on a number of steps taken in the investigation to gather evidence, before the Ministry of Public Prosecution issued a charging document regarding the acts connected to the death of Johan Alexis Ortiz. In this regard, it recounted steps aimed at "obtaining evidence to clarify the facts," such as successfully collecting the "daily log book of incidents," the "operations order" and the "anti-subversive combat training obstacle course instruction" for the First Anti-Subversive Combat Training Course for the students belonging to the class of the 28th Course of the "Major General Victor Anselmo Fernandez" National Guard Training Academy; the "service order" carried out by the Military University Institute of Technology of the National Guard; and the "Current Garrison Service Regulations" were also obtained.

⁴ This information is complementary to the information submitted during the admissibility phase, in which the State reported on the status of the domestic investigations and judicial proceedings to clarify the facts. In this regard, during the admissibility phase, the State filed two pleadings on December 12, 2002 and October 26, 2004. See: IACHR, Report No. 22/05. Petition 12.270, Admissibility, Johan Alexis Ortiz Hernández v. Venezuela, February 25, 2005, para. 7. Said reports also contain information about the actions taken by the Ministry of Public Prosecution, the body that conducted the investigation into the incidents, led by the 7th Office of the Prosecuting Attorney of the Judicial District of the State of Tachira and the 18th Office of the National Prosecuting Attorney, as noted on October 26, 2004. On said occasion, the State reported on requests made by the Ministry of Public Prosecution that same day, to the Chief of the Command of Personnel of the National Guard and to the Commanding Officers of several Military Outposts in the cities of San Antonio del Tachira, Barinas, Valera and Guasdualito, for several military officers to appear before the authorities to provide a sworn statement; as well as requests made to the Corps of Scientific, Criminal and Forensic Investigations (CICPC), to collect other pieces of evidence, including drawing up a diagram, conducting ballistic trajectory tests and on-site inspection of the location where the incidents took place.

32. The State described records of evidence collection in the case file and “compelling evidence”pertaining to the requirements and procedures for the appointment of instructors and assistant instructors, as well as the name, rank and duties of the infirm staff, who had been on duty during the anti-subversive obstacle course combat training, in which the alleged victim died, and records of interviews conducted during the investigation. It also noted that “expert soil and granule analysis” had been conducted on the obstacle course where the incidents occurred.

33. In its submission received by the Commission on August 11, 2008,⁵the State wrote that during that year, the Ministry of Public Prosecution had also gathered evidence to obtain the particulars of the members of the NG, whose testimony had proven to be useful to the investigation. It also explained that it had reenacted the events at the scene of the crime, in the presence of the Ministry of Public Prosecution, members of the NG who were present during the practice exercise in 1998, experts from the Corps of Scientific, Criminal and Forensic Investigation, and officials assigned to the Office of Technical Scientific Services of the same institution. Lastly, on said occasion, the State reported to the Commission that it had handed over a single copy of the case file to Mr. Edgar Humberto Ortiz Ruiz, in response to his request filed on September 12, 2007.

IV. FINDINGS OF FACT

C. Johan Alexis Ortiz Hernández and his death on February 15, 1998

34. Johan Alexis Ortiz Hernández was born on June 26, 1978. His mother is Zaida Hernández Hernández and his father, Edgar Humberto Ortiz Ruiz.⁶Mr. Ortiz entered the “Major General Víctor Anselmo Fernández Escobar” National Guard Training Academy (ESGUARNAC), Cordero, State of Tachira, where he was a student in the 28thCourse and was to graduate on April 3, 1998.

35. On the morning of February 15, 1998, Johan Alexis Ortiz was transported along with his classmates to the facilities of Outpost No. 19 of the Rural Commandos, Caño Negro, Municipality of Fernández Feo (State of Táchira), to participate in the combat training exercise known as the “1st Anti-Subversive Combat Training Course,” of the third and final phase of his training as a member of the National Guard.⁷The alleged victim died that same day as a result of “hypovolemic shock [,] secondary internal hemorrhaging from a bullet wound.”⁸

36. There are several versions of the circumstances surrounding his death. For example, press stories cite police sources as indicating it was a suicide⁹and a shot fired by a classmate.¹⁰

⁵ As noted *supra* II “Proceedings before the IACHR subsequent to the admissibility decision,” the IACHR did not receive any further communications from the State after August 11, 2008, despite the requests it made to this end.

⁶ Annex 1. Birth certificate of Johan Alexis Ortiz Hernández. Annex to petitioners’ submission received on June 16, 2000, page 38. In the proceedings before the IACHR, there is documentation in the case file in which reference is also made to Mrs. Zaida Hernández de Arellano to refer to his mother.

⁷ Annex 2. Report M-4. Official Letter No. 003, addressed to the Lieutenant Coronel of the Student Corps of the ESGURNAC, by the Lieutenant Commander of the First Company, Cordero, March 12, 1998. Annex to original petition of March 15, 2000. The “First Anti-Subversive Combat Training Course” (held in coordination with the Outpost of Rural Commandos No. 19 of Regional Command No. 1 of the National Guard) was to be organized, planned and executed from February 13 to 21, 1998” in order to instruct the future National Guard in areas of Military and Special Operations [...], and in non-operational actions [...],” for which, a specific “Operations Order” existed. Annex 3. Course of the MAJ GEN Víctor Anselmo Fernández Escobar National Guard Training Academy. Operations Order for the First Anti-Subversive Course ESGURNAC – Cordero. Annex Ñ of petitioners’ submission received on February 25, 2002.

⁸ Annex 4. Death certificate No. 18 of the Police Station of the Municipality of Fernández Feo. Annex to petitioners’ submission of June 16, 2000, page 39. Annex 5. Report of autopsy performed on February 15, 1998, at 4:05pm in the Office of the Coroner of San Cristóbal. According to the forensic medical report of March 2, 1998. Official Letter. No. 001128. Annex to petitioners’ submission received on June 16, 2000.

⁹ Annex 6. Press article from Diario La Nación. San Cristóbal. Tuesday February 17, 1998. Annex to original petition of March 15, 2000.

37. According to a report addressed to the Lieutenant Coronel of the Student Corps of the ESGURNAC, the combat training exercise began at 9 AM, under the supervision of Captain Eddin Villasmil Antunes, and as it was taking place, at 12:45PM, Johan Alexis Ortiz was hit by two bullets as he passed through the obstacle known as “the rabbit hole.”¹¹ The report notes that the incidents occurred “accidentally” and that in the training exercise “real gun fire from a AFAG 7.62mm caliber machine gun” was used as “harassment measure”,¹² even though the training course specifically listed the use of “blank bullets” under materials required for the training exercise.¹³

38. As was established in the military criminal proceeding, Mr. Ortiz was helped by drill instructor, Jean Carlos Malpica Calzadilla,¹⁴ and another official, who “acted as nurse” and was transported in a military vehicle to the San Rafael Hospital of El Piñal, even though the general provisions of the course included procedures for emergency evacuations and the ongoing presence of medical staff and first aid equipment in each drill.¹⁵ In this regard, there are three reports from El Piñal Hospital, which are inconsistent with regard to the individuals who accompanied Mr. Ortiz when arriving in the hospital.¹⁶

[... continuation]

¹⁰ Annex 7. Press article from Diario de Los Andes. San Cristóbal. Tuesday February 17, 1998. Annex to original petition of March 15, 2000.

¹¹ According to a report of the State Legislative Assembly, the obstacle involved “a low wire fence and you have to get through it with a low crawling technique.” According to subsequent findings, the course was “covered with dirt, mud and water, and [the] [barbed] wire fence [placed] 40 centimeters above the ground” over which an instructor was firing burst of AFAG 7.62 mm caliber machine gun projectiles. Annex 8. Report of the Standing Human Rights Committee of the Legislative Assembly of the State of Tachira on the death of Johan Alexis Ortiz Hernández, of January 16, 1999. Annex to original petition of March 15, 2000.

¹² Annex 2. Report M-4. Official Letter No. 003, addressed to the Lieutenant Coronel of the Student Corps of the ESGURNAC, by the Lieutenant Commander of the First Company, Cordero, March 12, 1998. Annex to original petition of March 15, 2000. Said report recommended that an administrative report be written to determine the reasons why these incidents occurred.

¹³ The instructions provide a description of the different drills to be performed, one of them called the “infiltration course” involving nine scenarios or obstacles. It noted “four thousand five hundred (4500) blanks” as material required for this practice drill, and as safety measures it is established that there must be a “first aid post available manned by a medic and a nurse, a stretcher and first aid equipment.” Annex 3. Course of MAJ GEN Víctor Anselmo Fernández Escobar National Guard Training Academy. Operation order for the First Anti-Subversive Combat Training Course ESGURNAC – Cordero. Annex N to petitioners’ submission received on February 25, 2002.

¹⁴ The names of “Geancarlos Malpica Calzadilla” and “Jean Carlos Malpica Calzadilla” appear in the case file of the instant petition to refer to the same person. Hereinafter, the second form of the two forms of the names will be used.

¹⁵ The general provisions of the course instructions established procedures for “evacuation and hospitalization,” including the following mechanisms: “administrative ambulance, ambulance coordinated with the Comprehensive Medical Assistance System, and Civil Defense of the State of Tachira for the most high risk training exercises.” Additionally, it is noted that the instructors of each “[obstacle] course” must: “take extreme safety precautions in any event of instruction in which special equipment, weapons and/or explosives are handled;” “verify the permanent presence of medical staff and first aid equipment at each drill [...]”; “activate any safety contingents (sentinels, patrols, command posts, etc.), which may be necessary and adequate [...] to prevent actions contrary to physical security [safety], during the execution of the [training] exercises” and “verify immediate availability on the course site or very close to it, of any means of ground or air transportation for emergency evacuations, in the event that serious injuries arise [...]”. Annex 3. Course of MAJ GEN Víctor Anselmo Fernández Escobar National Guard Training Academy. Operation order for the First Anti-Subversive Combat Training Course ESGURNAC – Cordero. Annex N to petitioners’ submission received on February 25, 2002.

¹⁶ One report establishes that he arrived in the company of Commander Villasmil Antunez Eddin (Annex 9. Medical report of the Regional Directorate of the National Health System, State of Tachira, El Piñal Hospital, dated February 15, 1998. Signed by Dr. Lucy Vega as attending physician. Annex to the certificate of judicial inspection conducted by the Court of the Parrish of the Municipality of Monseñor Alejandro Fernández Feo of the judicial district of the State of Tachira at the main building of El Piñal Hospital on August 27, 1998. Both documents attached to petitioners’ submission of June 16, 2000; another report notes that he arrived in the company of Second Lieutenant Fidel Rodríguez Barrolleta (Annex 10. Medical report of the Regional Directorate of the National Health System, State of Tachira, El Piñal Hospital, dated February 15, 1998. Signed by Dr. Lucy Vega as attending physician. Annex to petitioners’ submission of June 16, 2000; and another report establishes National Guard Private First Class (Corporal) Wilson Castillo Pedraza and Commander Villasmil Antunez Eddin as accompanying him (In the medical case history, it also appears that Johan Alexis was accompanied by Commander Eddin Villasmil Antunez. See: Annex 12. Medical history No. 15 of the Ministry of Health and Social Assistance of El Piñal Hospital, signed by Dr. Lucy Vega. In the certificate of judicial inspection, conducted on August 27, 1998, it is noted that Dr. Lucy Vega stated during the investigation interview that “that Commander never personally took charge of the body, but rather corporal Wilson Castillo Pedraza and another member of the military forces, who also claimed to belong to the National Guard, were the only ones who did. See: Annex 11. Certificate of judicial inspection conducted by the Court of the Parrish of the Municipality of Monseñor Alejandro

[continues ...]

39. According to the death certificate, Johan Alexis Ortiz died at San Rafael de El Piñal Hospital at 13:30 hours¹⁷ and his body was transferred to the morgue of the Central Hospital of San Cristóbal by officers of the Technical Judicial Police.¹⁸ According to the agent who removed the corpse, the alleged victim's body did not have clothes [on him] and this agent asked for his clothes from a military soldier present at the hospital, he [the soldier] told him that "the victim's clothes were removed at the time he was given first aid, and the whereabouts of his clothes were unknown."¹⁹

40. At around 6:00 pm on February 15, NG Lieutenant Raúl Honorio Martínez Moreno informed the alleged victim's parents about the "regrettable accident." Said officer explained to the father that the death occurred at a "combat training exercise with blanks," and when that assertion was called into question, he responded: "actually, they were not blanks but real bullets."²⁰ The explanation provided at that time was that when he went into the "rabbit hole" [obstacle], Mr. Ortiz "lifted himself above the barbed wire fence and was hit by bullet shots."²¹ However, the Office of the Military Prosecutor and the Ministry of Public Prosecution claimed during the military and civilian criminal trials, respectively, that Mr. Ortiz was hit by shrapnel, as a result of fragmentation of one of the projectiles when it smashed into another projectile or object, and when he was wounded "he stood up" and other officials came to his aid.

41. Consequently, Johan Alexis Ortiz's parents denounced that their son's death was intentional.²² Fifteen days prior to his death, Mr. Ortiz had mentioned to his father that he was having an affair

[... continuation]

Fernández Feo of the Judicial District of the State of Tachira at the main building of El Piñal Hospital on August 27, 1998. Both documents attached to the petitioners' submission received on June 16, 2000.

¹⁷See: Annex 13. Charging document of the Third Military Prosecutor's Office of San Cristóbal February 28, 2000 before the Standing Military Trial Court Judge of Guasdalito. Annex to petitioners' submission received on June 16, 2000; and Certificate of Death No. 18 of the Police Station of the Municipality of Fernández Feo of February 16, 1998. Annex to petitioners' submission received on June 16, 2000, page 39.

¹⁸Based on the information appearing in the case file, it is not possible to establish the exact time when he was transferred. In this regard, the certificate of judicial inspection conducted on August 27, 1998, at the main building of El Piñal Hospital states that "[...] it is expressly on record that in the body registry log, there appears [a name of] the PTJ officer, badge 21065, illegible signature as the person who performed the removal of the corpse and the transfer thereof but it does not have an exact time of the transfer, only that it was in late afternoon." Additionally, the report of the autopsy conducted at the morgue of the Central Hospital of San Cristóbal on February 15, 1998 asserts that it [the autopsy] was performed at 4:05pm. Said report only notes that the transfer was conducted by officers of the Technical Judicial Police. See: Coroner's forensic medical report of March 2, 1998, written by Dr. Ana Cecilia Rincón Bracho and Dr. Nelson Jesús Báez Jordan. Official Letter No. 001128. Annex to petitioners' submission received on June 16, 2000. In the sworn statement provided in 2003 by the officer of the Technical Judicial Police of Tachira, who is identified as the person who removed the body, he testifies that this was performed in the morgue of the rural coroner's office of El Piñal on February 15, 1998, at 5:30 PM. Statement of Camilo Bonilla in the record of the interview of April 28, 2003, before the Office of the Seventh Prosecutor of the Judicial District of the State of Tachira. Cited in Annex 14. Prosecution's indictment of February 27, 2013, pg. 90. Annex to petitioners' submission of April 21, 2013.

¹⁹Sworn statement of Camilo Bonilla in record of interview of April 28, 2003 before the Seventh Office of the Prosecuting Attorney of the Judicial District of the State of Táchira. Cited in Annex 14. Prosecution's indictment of February 27, 2013, pg. 90. Annex to petitioners' submission of April 21, 2013.

²⁰Annex 15. Case report written by Edgar Ortiz and Zaida Hernández. Section titled "Details pertaining to the death of Johan Alexis Ortiz", pg. 16. Annex to petitioners' submission received on June 16, 2000; and Annex 16. Complaint brought by Edgar Humberto Ortiz and Zaida Hernández with the President of the Justice Foundation, Elias Pernia, May 5, 1998. Annex to the original petition of March 15, 2000.

²¹Annex 8. Report of the Standing Committee on Human Rights of the Legislative Assembly of the State of Tachira on the death of Johan Alexis Ortiz Hernández, January 16, 1999. Summary of the facts that are the subject of the petition. Annex to the original petition of March 15, 2000.

²²There are several newspaper articles in the case file before the IACHR describing in detail the public charges made by Johan Alexis' parents regarding the death of their son. See for example: Annex 17. Press articles from Diario La Nación of March 30 and 31, 1998, and April 12, 1998 (partial copies). Annex to petitioners' submission of June 16, 2000. Additionally, a report was submitted called "Report case death of Johan Alexis Ortiz Hernández" (Annex 15) with all of the information gathered by Mrs. Hernández and Mr. Ortiz on the case. Annex to petitioners' submission received on June 16, 2000. Also see Annex 8. Report of the Standing Committee on Human Rights of the Legislative Assembly of the state of Tachira on the death of Johan Alexis Ortiz Hernández, of January 16, 1999. Annex to original petition of March 15, 2000.

with the wife of Captain Villasmil Antunez, the officer in charge of the combat training exercise, who allegedly was aware of the affair and had threatened the alleged victim.²³ The parents asserted that even though Mr. Ortiz was going through a barbed wire fence, there were no scratches on his corpse or any wound caused by the barbed wire fence; that the bullet wounds from a short range machine gun had no exit holes;²⁴ that eighty students had made it through the obstacle without any trouble and that “the shots had hit him in the upper right side of the body” when, based on the location of the machine gun and the instructor, these [shots] “should have been lodged in the left side.”²⁵ Subsequently, his parents denounced that according to the testimony of a classmate of the alleged victim, he didn’t even make it into the “rabbit hole,” but instead, when he arrived in combat training exercise, “he was holding his arm crying out: He hit me, He hit me.”²⁶

42. There a number of different forensic medical reports issued after the death of Johan Alexis. For example, one establishes that Johan Alexis entered the Hospital with a bullet wound “with an entry orifice at the level of the anterior axillar line rounded [more or less] 1 cmwide [illegible] bloody and an exit [orifice] supra supraclavicular [more or less] 3 cms long with active bleeding.” Another one is the autopsy [report], which indicates that he presented a puncture wound caused by a gunshot with an entry orifice, though with no exit orifice.²⁷

43. The body of Mr. Ortiz has was taken into the morgue of the Central Hospital of San Cristóbal at around 8:00 PM, in a clean state, without any traces of blood and with a “multicolored bathing suit on him.” His parents claimed that they were informed that they could receive the body “[... it would be] ready 15 or 20 minutes after the autopsy was performed in a condition to receive it in a closed urn and not to open it,” which they declined. They charged that the body of their son remained “exposed in a stretcher over night without the minimum conditions of preservation” and that they waited to be able to receive it until the following morning, without being given any explanation or reason why he had been left in those conditions, which was why they were only able “take him out of the morgue directly to the cemetery.”²⁸

²³See for example, Annex 16. Complaint brought by Edgar Humberto Ortiz and Zaida Hernández before President of the Justice Foundation Elias Pernia, of May 5, 1998. Annex to the original petition of March 15, 2000; and Annex 18. Submission of Mrs. Zaida Hernández, provided to the media, on the subject of the decision of the Military Trial Judge of Guasdalito. Annex 4 of petitioners’ submission of August 28, 2000.

²⁴Annex 16. Complaint brought by Edgar Humberto Ortiz and Zaida Hernández before President of the Justice Foundation Elias Pernia, of May 5, 1998. Annex to the original petition of March 15, 2000. The photographs cited in said complaint were also submitted as exhibits to the IACHR case file. Also see, Case Report written by Edgar Ortiz and Zaida Hernández. Section titled “Details pertaining to the death of Johan Alexis Ortiz,” pg. 16. Annex to petitioners’ submission received on June 16, 2000. A similar account of Mr. Ortiz was brought to the attention of the Fourth Prosecuting Attorney of the Ministry of Public Prosecution on February 17, 1998. Annex 19. Submission of February 17, 1998, addressed to Dr. Hernan Roa Contreras, Fourth Prosecuting Attorney of the Ministry of Public Prosecution, signed by Edgar Ortiz and Zaida Hernández. Annex to petitioners’ submission of June 16, 2000.

²⁵Annex 16. Complaint brought by Edgar Humberto Ortiz and Zaida Hernández before President of the Justice Foundation Elias Pernia, of May 5, 1998. Annex to the original petition of March 15, 2000. As an annex to that complaint and in the IACHR case file, there was also a picture provided with a visual explanation of the obstacle course, the location of the obstacles and the persons who took part (Annex 20). Also see letter addressed to the President of the Republic, Hugo Chavez Frias in February 1999, by Mrs. Zaida Hernández, titled “*Entreaty of a mother to President Hugo Chavez.*” The text of said letter appears verbatim in Annex 21. Book *Las calaveras tienen lengua* El asesinato de Johan Alexis, Estudiante de la GN [‘Skulls have tongues: The murder of Johan Alexis, NG student’] Pgs. 172-173 and Letter addressed to the President of the Republic, Hugo Chavez Frias, by Mrs. Zaida Hernández, dated May 23, 1999. The text of said letter has been printed verbatim in the Annex 21. Book *Las calaveras tienen lengua*. El asesinato de Johan Alexis, Estudiante de la GN, pgs. 174-180.

²⁶Annex 22. Communication of May 25, 1998, addressed to Minister of Defense, Vice Admiral Tito Manlio Rincón Bravo, by Zaida Hernández de Arellano and Edgar Humberto Ortiz. Annex to the original petition of March 15, 2000. Also see: Annex 16. Complaint brought by Edgar Humberto Ortiz and Zaida Hernández with President of Justice Foundation Elias Pernia, of May 5, 1998. Annex to the original petition of March 15, 2000.

²⁷See: Annex 9. Medical report of the Regional Directorate of the National Health System, State of Tachira, El Piñal Hospital, dated February 15, 1998. Signed by Dr. Lucy Vega as attending physician. Annex to certificate of judicial inspection conducted by the Court of the Parrish of the Municipality of Monseñor Alejandro Fernández Feo of the Judicial District of the State of Tachira in the main building of the El Piñal Hospital, dated August 27, 1998. Both documents are attached to petitioners’ submission received on June 16, 2000; and Annex 5. Forensic medical report of March 2, 1998, written by Dr. Ana Cecilia Rincón Bracho and Dr. Nelson Jesús Báez Jordan. Official Letter No. 001128. Annex to petitioners’ submission received on June 16, 2000.

²⁸Annex 15. Case report written by Edgar Ortiz and Zaida Hernández. Section titled “Details pertaining to the death of Johan Alexis Ortiz,” pgs. 16 and 18. Annex to petitioners’ submission received on June 16, 2000. Also see: Annex 16. Complaint brought by [continues ...]

[... continuation]

Edgar Humberto Ortiz and Zaida Hernández before President of the Justice Foundation Elias Pernia, of May 5, 1998. Annex to the original petition of March 15, 2000; Annex 23. Section titled “Summary of facts pertaining to the case of the death of Johan A. Ortiz,” document stamped as received by the Ministry of Defense. Date illegible.” Page 34. Annex to petitioners’ submission received on June 16, 2000; and Annex 19. Communication of February 17, 1998, addressed to Dr. Hernan Roa Contreras, Fourth Prosecuting Attorney of the Ministry of Public Prosecution, signed by Edgar Ortiz and Zaida Hernández. Annex to petitioners’ submission of June 16, 2000.

D. Evidence collection, investigations and judicial proceedings instituted over the death of Johan Alexis Ortiz Hernández

44. As a consequence of the death of the alleged victim, investigations were opened by the Technical Corps of the Judicial Police (hereinafter “CTPJ”) and in the criminal military jurisdiction under the 1962 Code of Criminal Prosecution in effect at the time and the 1998 Code of Military Justice. Additionally, other authorities, such as the Legislative Assembly and the Office of the Ombudsman of the State of Tachira, opened inquiries to elucidate these incidents. Subsequently, in 1999, a criminal investigation was opened in the ordinary criminal jurisdiction.

45. Based on the case file, in the context of the investigations and proceedings instituted in this case, Mr. Ortiz (Senior) filed a number of requests to different authorities providing copious information connected to the inquiries conducted by these authorities themselves into the circumstances in which his son died and requesting their intervention to elucidate the facts, collect evidence and denounce irregularities, as well as demand justice for the death of his son.

46. In the instant examination, the IACHR has factored in several of these requests in order to establish the appropriate legal consequences under the American Convention, though the Commission does not claim that this is an exhaustive catalogue thereof. Following this line of logic, the Commission shall make the respective determinations while taking into account that, in processing the case, partial copies of the domestic case file, among other things, were submitted and that the petitioners contended on several occasions that they were unable to gain access to all of the evidence contained in the domestic case file.

1. Investigation and proceedings in the military criminal courts

47. On February 15, 1998, PTJ detectives conducted a visual inspection of the obstacle course of the obstacle course of Outpost No. 19 of the National Guard, Caño Negro sector, Municipality of Fernández Feo, State of Táchira.²⁹ Said office opened investigation case file No. 064-715 into the death of Mr. Ortiz.

48. During the early morning hours of February 16, the father went to the premises of Caño Negro Rural Commandos. At this site, he was received by Captain Eddin Ruben Villasmil Antunez, who reiterated to him the version of the “accident” and informed him that the alleged perpetrator of the shots was National Guardsman Jean Carlos Rafael Malpica Calzadilla, inasmuch as he was acting as the instructor of the combat training exercise.³⁰ On February 17, 1998, the parents of Mr. Ortiz requested the Fourth Office of the Prosecutor of the Ministry of Public Prosecution to open an investigation into his death.³¹

49. On February 19, 1998, Mr. Ortiz, in the company of his wife and Mrs. Zaida de Arellano’s husband, travelled to the facilities of the Rural Commandos, Caño Negro section. They were received at that site by Lieutenant Coronel Alexander Florez Lamus, to whom Mr. Ortiz asked why real bullets had been used in the combat training exercise and, he replied that he trained “men for war.”³²

²⁹Visual inspection report No. 649 of February 15, 1998, signed by officers of the Technical Corps of the Judicial Police, Detective Camilo Bonilla and Agent Héctor Gámez. Cited in Annex 14. Prosecution’s indictment of February 27, 2013, pg. 6. Annex to petitioners’ submission of April 21, 2013.

³⁰Annex 16. Complaint brought by Edgar Humberto Ortiz and Zaida Hernández before Foundation Justice President Elias Pernia, May 5, 1998. Annex to the original petition of March 15, 2000.

³¹Annex 19. Communication of February 17, 1998, addressed to Dr. Hernan Roa Contreras, Fourth Prosecuting Attorney of the Ministry of Public Prosecution, signed by Edgar Ortiz and Zaida Hernández. Annex to petitioners’ submission of June 16, 2000.

³²Annex 24. Communication of February 25, 1998, addressed to Dr. Hernan Roa Contreras, Fourth Prosecutor of the Ministry of Public Prosecution, signed by Edgar Ortiz and Zaida Hernández. Annex to petitioners’ submission of June 16, 2000. Copy I Annex 3, pg. 37. Also see: Annex 16. Complaint brought by Edgar Humberto Ortiz and Zaida Hernández before Justice Foundation President Elias Pernia, May 5, 1998. Annex to original petition of March 15, 2000.

50. On February 22, 1998, the petitioners met with Lucy Vega, the doctor who had attended Johan Alexis Ortiz. She told them that Mr. Ortiz had come to the hospital in a clean state and without any scratches. The parents of the alleged victim further denounced that their son's uniform had disappeared "or at least was not handed over to the [Judicial Technical Police] for expert examination."³³

51. On February 25, 1998, Johan Alexis Ortiz's parents reiterated their request to open an investigation before the Ministry of Public Prosecution and denounced that as of February 19, they were "receiving anonymous telephone calls in which they were incited to inquire into the death of their son" and "another string of anonymous phone calls, in which they were threaten with death," in order to get them to stop investigating the death of their son. They claimed that: "they were warned that they had young children and it would be a shame that the children would be orphaned since we run the same fate as Johan Alexis."³⁴

52. The petitioners denounced before the Ministry of Defense that in one of the anonymous calls they were told that the death of Mr. Ortiz had not been an "accident"³⁵ and also that the death could be connected to the death of another student of the same Academy, which took place the previous year, and that this incident had been mentioned by the alleged victim to his parents just days before dying, because he and other classmates were conducting inquiries into the case.³⁶

53. On March 4, 1998, Johan Alexis Ortiz's parents met with NG Coronel José Rafael Villamizar Valdez, then Director of the ESGUARNAC of Cordero, who informed them that he was away on a trip at the time of that particular training exercise, but that he had left strict instructions to not use live rounds of ammunition. They also asked him whether the students of the ESGUARNAC knew the staff of the Rural Commandos who participated in the combat training exercise, to which he replied that they did not. This was because Mrs. Zaida Hernández had found some days earlier in a pair of Mr. Ortiz's pants, a slip of paper with her sons handwriting on it on which you could only make out the names of three staff members: "Captain VILLASMIL, Second Lieutenant Rodríguez and Private First Class [Corporal] MALPICA"³⁷.

54. On March 5, 1998, on the order of the Guasdalito Garrison Commander, military preliminary investigation case file No. 008-98 into the death of the alleged victim was opened before the Military Trial Court Judge.³⁸ On March 10, 1998, the petitioners requested the Office of the Attorney General of the Republic to open an investigation to elucidate the death. They also denounced threatening telephone calls and that the military authorities refused to offer sworn statements before the PTJ, despite being summoned to do so repeatedly.³⁹ On March 16 of that year, Mr. Ortiz's parents also brought a complaint before the Military Court of Guasdalito⁴⁰ and on March 27 of that year reiterated their request before the Office of the Attorney

³³Annex 16. Complaint brought by Edgar Humberto Ortiz and Zaida Hernández before Justice Foundation President Elias Pernia, May 5, 1998. Annex to original petition of March 15, 2000.

³⁴Annex 24. Communication of February 25, 1998, addressed to Dr. Hernan Roa Contreras, Fourth Prosecuting Attorney of the Ministry of Public Prosecution, signed by Edgar Ortiz and Zaida Hernández. Annex to petitioners' submission of June 16, 2000.

³⁵See: Annex 23. Case Report prepared by Edgar Ortiz and Zaida Hernández. Section titled "Summary of incidents related to the case of the death of Johan A. Ortiz," document stamped as received by the Ministry of Defense. Date illegible, pages 34-35. Annex to petitioners' submission received June 16, 2000. These complaints were also published in press articles, See for example: Annex 25. Press article of April 2, 1998. No source. Annex to original petition of March 15, 2000.

³⁶Annex 16. Complaint brought by Edgar Humberto Ortiz and Zaida Hernández before Justice Foundation President Elias Pernia, May 5, 1998. Annex to original petition of March 15, 2000.

³⁷Annex 16. Complaint brought by Edgar Humberto Ortiz and Zaida Hernández before Justice Foundation President Elias Pernia, May 5, 1998. Annex to original petition of March 15, 2000.

³⁸According to Annex 26. Official Letter No. 6122 of the Ministry of Defense, of September 22, 1998. Annex to the Report of the Standing Human Rights Committee of the Legislative Assembly of the State of Tachira on the death of Johan Alexis Ortiz Hernández, of January 16, 1999. Annex to original petition of March 15, 2000.

³⁹As the record shows in Annex 27. Communication addressed to the Attorney General of the Nation, Iván Darío Badell, signed by Edgar Ortiz and Zaida Hernández, dated March 10, 1998. Annex to petitioners' submission of June 16, 2000.

⁴⁰Based on Annex 22. Communication of May 25, 1998, addressed to Minister of Defense Vice Admiral Tito Manlio Rincón Bravo, by Zaida Hernández de Arellano and Edgar Humberto Ortiz. Annex to original petition of March 15, 2000; and Annex 28.

[continues ...]

General.⁴¹ Additionally, on March 31, 1998, the petitioners requested the Inspector General of the National Armed Forces to order an investigation into the incidents to be opened.

55. On April 1, 1998, the petitioners submitted to the authorities the slip of paper found in Johan Alexis Ortiz's clothes and stated that their son had mentioned to them that "he and another five students were looking into the death of a student, which occurred the year before." They reported that they had received an anonymous phone call in which they were told that the death of their son "was linked to the death of that student" and they requested that said information be taken into account within the investigation.⁴²

56. On April 3, 1998, the Human Rights Directorate of the Office of the Attorney General of the Republic reported to the parents that, in response to their complaint of March 10, the Ministry of Defense had been contacted to order an inquiry into the charges.⁴³

57. On April 6, 1998, the petitioners appeared in the Military Court and were informed by said authority and the Prosecuting Attorney that the case had been a "regrettable accident."⁴⁴ On this occasion, they made an oral request for the body be exhumed. However, they were informed that it was not recommendable since the body had already transitioned to the liquefaction phase and it would not longer be possible to determine the trajectory of the projectiles. Additionally, they conveyed to the Judge and the Military Prosecutor the information about the alleged affair of their son with the wife of a military officer, to which, according to Mr. Ortiz's report, he asked them "not to mention it to anyone."⁴⁵

58. On April 29, 1998, the petitioners requested the Minister of Defense to appoint an investigating magistrate and a special military prosecutor in the case, to remove the Military Prosecutor heading the case because he is an officer of the National Guard, and that, in any case, the matter should be investigated and heard in "another body and jurisdiction." In this regard, they reported irregularities in the investigation being conducted by the Military Court of Guasdalito, specifically that, "only 22 days after filing the complaint," the Court issued a ruling "without having the key and basic evidence to elucidate the case."⁴⁶

59. Based on available information, in May 1998, the body was exhumed. In the IACHR case file, there is no certificate of exhumation but only the petitioners' communications, photographs and press articles

[... continuation]

Communication of March 15, 1999, addressed to the Sector Director General of Military Justice, Brigadier General Nerio Francisco Cáceres Hernández, signed by Zaida Hernández and Edgar Ortiz. Annex to petitioners' submission of June 16, 2000.

⁴¹Annex 29. Communication of March 27, 1998, addressed to Iván Darío Badell, Attorney General of the Nation, signed by Edgar Ortiz and Zaida Hernández. Annex to petitioners' submission of June 16, 2000.

⁴²Annex 30. Communication of April 1, 1998, addressed to Lieutenant Coronel Gustavo Adolfo Henriquez, Military Judge of Guasdalito, signed by Edgar Ortiz and Zaida Hernández. Annex to petitioners' submission of June 16, 2000.

⁴³Annex 31. Official Letter No. DDH-2-J-114/98/11432 of April 3, 1998 from the Director of Human Rights of the Office of the Attorney General of the Republic. Annex to petitioners' submission of June 16, 2000.

⁴⁴Annex 15. Case report written by Edgar Ortiz and Zaida Hernández. Section titled "Details pertaining to the death of Johan Alexis Ortiz," pgs. 16 and 18. Annex to petitioners' submission received on June 16, 2000; and Annex 16. Complaint brought by Edgar Humberto Ortiz and Zaida Hernández before President of the Justice Foundation Elias Pernia, of May 5, 1998. Annex to original petition of March 15, 2000.

⁴⁵According to their account in Annex 22. Communication of May 25, 1998, addressed to Minister of Defense, Vice Admiral Tito Manlio Rincón Bravo, by Zaida Hernández de Arellano and Edgar Humberto Ortiz. Annex to original petition of March 15, 2000; and Annex 16. Complaint brought by Edgar Humberto Ortiz and Zaida Hernández before Justice Foundation President Elias Pernia, May 5, 1998. Annex to original petition of March 15, 2000.

⁴⁶They referred to: Ballistics tests, expert examination of both the weapon involved and the uniform worn by Johan Alexis, luminol testing, exhumation of body, key and contradicting testimony. Annex 32. Communication addressed to Vice Admiral Tito Manlio Rincón Bravo, Minister of Defense, signed by Edgar Ortiz and Zaida Hernández, dated April 29, 1998. Annex to original petition of March 15, 2000.

from the media, describing the act of exhumation on that date.⁴⁷ The petitioners claim that based on the exhumation, it could be established that the bullet shots on their son's body were whole, low caliber projectiles.⁴⁸

60. The Ministry of Public Prosecution's charging document, issued in 2013, refers to exhumation of cadaver certificate No. 271-98 dated May 15, 1998. It is noted that said exhumation was conducted by the PTJ Forensic Medical Office of San Cristóbal, in the presence of the Standing Court Martial Judge of San Cristóbal, the Office of the Military Prosecutor and Mr. Edgar Ortiz.⁴⁹ The verbatim transcript of said certificate reads that the findings discovered on the corpse were:

[...] perforations from two (02) different projectiles whose direction was from front to back, slightly upward, and slightly from right to left, which caused perforations in muscle mass and soft tissue in the right axillar region, of the right lung and fracture of the sixth right costal arch in posterior third, probably causing a massive right hemothorax due to perforation of the right lung, which was the cause of death, inasmuch as the other projectile, based on the characteristics observed in muscle masses in which there is noted hemorrhagic trajectory of a projectile not penetrating bone, was not mortal.⁵⁰

61. On May 25, 1998, the petitioners reiterated to the Minister of Defense the request made by them in April and voiced their concern that, even though the exhumation of the body had been carried out, the PTJ had still not been requested to conduct the ballistics test and forensic examination of the weapon and the field uniform that Johan Alexis Ortiz was wearing at the time of his death.⁵¹

62. On June 16, 1998, the Military Trial Court issued an arrest order of NG Jean Carlos Malpica Calzadilla for the alleged commission of the offense of negligent homicide, as set forth in Article 411 of the Criminal Code. This decision was appealed by the defense team and the case file was transferred to be heard by the Standing Court Martial of San Cristóbal. On July 20 of that year, the Military Court issued a release order for the officer after granting a motion for release on bond.⁵²

63. On October 15, 1998, Mr. Edgar Ortiz requested the Office of the Prosecutor to ask the Chief of the PTJ of San Cristóbal for information on steps taken regarding the expert weapon examination of the gun allegedly linked to the crime, ballistic trajectory analysis, diagraming the scene of the crime and forensic examination of the uniform that Johan Alexis Ortiz was wearing. The father denounced that "8 months later we still have not had access to the case file and at the PTJ we were informed that we will only obtain said information through the Ministry of Public Prosecution."⁵³ Said request was answered by the Fourth Office of

⁴⁷See for example: Annex 33. Press article of the daily newspaper *Diario La Nación*, *Hoy exhuman restos del alumno de Esguarnac* ["Today remains of student of Esguarnac exhumed"], May 7, 1998; and Annex 34. Press article of the daily newspaper *Diario Los Andes*, *Exhumación*, of May 8, 1998. Annex to original petition of March 15, 2000.

⁴⁸See: Annex 15. Case report written by Edgar Ortiz and Zaida Hernández. Section titled "Details pertaining to the death of Johan Alexis Ortiz," pg. 29 Annex to petitioners' submission received on June 16, 2000; and Annex 35. Appeal filed by Edgar Ortiz and Zaida Hernández, dated March 6, 2001 with the Court Martial. Annex J of petitioners' submission received February 25, 2002.

⁴⁹Exhumation of body record No. 271-98 dated May 15, 1998, conducted by forensic doctor and anatomopathologist Cuauthemoc A. Guerra, assigned to the Office of the Coroner of San Cristóbal. Cited in Annex 14. Prosecution's indictment of February 27, 2013, pg. 9. Annex to petitioners' submission of April 21, 2013.

⁵⁰Exhumation of body record No. 271-98 dated May 15, 1998. Cited in Annex 14. Prosecution's indictment of February 27, 2013, pg. 9. Annex to petitioners' submission of April 21, 2013.

⁵¹Communication of May 25, 1998, addressed to Minister of Defense, Vice Admiral Tito Manlio Rincón Bravo, by Zaida Hernández de Arellano and Edgar Humberto Ortiz. Annex to petitioners' submission of June 16, 2000.

⁵²As is stated in Annex 26. Official Letter No. 6122 of the Ministry of Defense, of September 22, 1998. Annex to Report of the Standing Human Rights Committee of the Legislative Assembly of the State of Tachira on the death Johan Alexis Ortiz Hernández, of January 16, 1999. Annex to original petition of March 15, 2000.

⁵³Annex 36. Communication addressed to Prosecuting Attorney IV of the Ministry of Public Prosecution, Belkis Angrisoría, signed by Edgar Humberto Ortiz, stamped as received in the Office of the Prosecutor on October 15, 1998. Annex to petitioners' submission of June 16, 2000.

the Prosecutor in a communication of March 17, 1999, in which he [Mr. Ortiz Senior] was told that from February to March, 1998, the Technical Corps of the Judicial Police performed the following tests and evidence gathering: diagraming of the scene, ballistic trajectory,⁵⁴ paraffin gunshot residue test, two forensic examinations, and a forensic chemical toxicology test.⁵⁵

64. On October 27, 1998, the petitioners submitted to the Standing Court Martial of San Cristóbal a number of exhibits collected as a result of their investigation to be made available in the case.⁵⁶ Additionally, they requested that an Official Letter be sent to the Office of the Inspector General of the Armed Forces to issue a report on the investigation ordered by the Ministry of Defense and on any progress made therein; as well as for other agencies, which have also been involved in the case, to do likewise.⁵⁷

65. On November 6, 1998, the parents of the alleged victim addressed a letter to the Attorney General to the same effect and made the same requests.⁵⁸ In response, on January 5, 1999, the Office of the Attorney General informed them that the information had been forwarded to the Office of the Inspector

⁵⁴With regard to the expert analysis on the ballistic trajectory conducted at the obstacle course of the Rural Commandos facilities of Outpost No. 19, both the communication of the Fourth Prosecutor's Office and the indictment filed by the Ministry of Public Prosecution in 2013, refer to this test as having been conducted on March 19, 1998, and in the charging document of the Office of the Prosecutor, it is noted that it is certified therein that in the area of the "rabbit hole" "no "physical or trigonometric evidence (impacts or orifices) were located to make it possible to establish the ballistic trajectory" (See: Expert report of ballistic trajectory No. 9700-134-LCT-0982, dated March 19, 1998, signed by Franklin Alberto García and Josefa Sierra Sánchez, experts assigned to the forensic laboratory of the Corps of Scientific, Criminal and Forensic Investigations. Cited in Annex 14. Prosecution's indictment of February 27, 2013, pg. 102). Nonetheless, said indictment mentions a second analysis of the ballistic trajectory conducted in 2004, cited *infra*, in which it is concluded that the projectile had impacted a surface and caused the fragmentation thereof.

⁵⁵See: Annex 37. Official Letter No. TA-4-201 of March 17, 1999, addressed to Mr. Edgar Ortiz, signed by Fourth Prosecutor of the Ministry of Public Prosecution, Belkis Agrinzones de Silva. Annex to petitioners' submission received on June 16, 2000. However, in the charging document filed subsequently by the Ministry of Public Prosecution, it asserts that during that year, other evidence was collected as well, which was not mentioned in the communication sent to Mr. Edgar in 1999, specifically: expert witness analysis reports on "fourteen 7.62 caliber bullet shells" (dated March 16); expert witness forensic examination (non-technical) of projectile fragments extracted from the body of Johan Alexis" (dated March 16); expert witness analysis report on luminol test performed at the Rural Commando facilities of Outpost No. 19, in the obstacle course where the obstacle known as "rabbit hole" was located, which yielded a result of positive (dated May 15); expert test of a fragment of armor plating and a fragment of lead from the 7.62 caliber bullet projectile (dated June 1); and expert forensic and physical examination of two garments of military clothing belonging to Johan Alexis (dated June 23). As for the luminol test, even though the communication from the Office of the Prosecutor of 2013 partially cites verbatim that "expert luminol test report No. 9700-134-LCT-1685" of May 15, stating that "characteristic luminescence is noted, indicating a positive [presence] [...], there is documentary evidence on record in the case file of the Commission indicating that this test was conducted in the presence of Mr. Edgar Ortiz, and that it yielded a negative result. For example, in the "case report" written by the parents of Johan Alexis providing an account of the evidence collection conducted in the criminal investigation, it asserts that: "On May 12, 1998, Johan Alexis's father personally attended the luminol testing, it was performed at 9:15pm [...] at the exact site known as "The Rabbit Hole" as pointed out by the military authorities as the location where Johan Alexis was mortally wounded and where he was taken from to receive assistance, the phosphorescence of the chemical did not react." Case report written by Edgar Ortiz and Zaida Hernández. Section titled "Details pertaining to the death of Johan Alexis Ortiz," pg. 29 Annex to petitioners' submission received on June 16, 2000. In another communication addressed to the Minister of Defense, Johan Alexis' parents claimed that "[...] the luminol test proved that the official version was false inasmuch as our son never made it into the obstacle of the course, where we were told that he died by accident [...]." Annex 38. Communication addressed to Minister of Defense José Vicente Rangel, signed by Johan Alexis's parents, with a stamp as received in the Ministry, date illegible. Annex O to petitioners' submission received on February 25, 2002.

⁵⁶Among the evidence submitted, it is noted that there appear "27 photographs" of the body of Johan Alexis, before and after the autopsy was performed, photographs from the morgue of El Piñal Hospital; photographs of the "rabbit hole;" photographs of the process of exhumation of the body; judicial inspection report of El Piñal Hospital No. 1959 dated August 26, 1998; Medical report of the El Piñal Hospital Administration Director's Office," in order to compare it all with the medical report attached to inspection report [No. 1959 in which it is noted that] the names of those accompanying Johan Alexis Ortiz, do not match the names of those accompanying him as they appear in the morbidity form, attached to the inspection report;" request for judicial inspection to be conducted in the headquarters of the Rural Commandos facilities of Regional Command Post No. 1 of the National Guard of Venezuela, "which failed to be conducted, even though it was ex officio;" copy of the slip of paper secured eight days after the death of Johan Alexis from his clothing. Annex 39. Communication addressed to the Standing Court Martial, signed by Edgar Ortiz and Zaida Hernández dated October 27, 1998. Annex to petitioners' submission received on June 16, 2000.

⁵⁷Annex 39. Communication addressed to the Standing Court Martial, signed by Edgar Ortiz and Zaida Hernández dated October 27, 1998. Annex to petitioners' submission received on June 16, 2000.

⁵⁸Annex 40. Communication signed by Edgar Ortiz and Zaida Hernández, addressed to Attorney General of the Republic Ivan Darío Badell, dated as received on November 6, 1998. Annex to petitioners' submission received on June 16, 2000.

General of the National Armed Forces and to the Sectorial General Directorate of the Military Justice system to be incorporated into the case proceedings before said jurisdiction.⁵⁹

66. Additionally, on November 30, 1998, the parents of Johan Alexis Ortiz denounced before Attorney General of the Republic that, following several newspaper and television reports released and airing on recent dates about the death of their son, the threats against them had resumed “wherein just as in the earlier ones [threats] we are asked to drop the inquiries, because our families, our lives and the safety of our children and of others who are connected to the case and who have collaborated at all times are at risk, that they are not wavering with us [...]”⁶⁰

67. On January 11 and 27, 1999, the petitioners filed a motion with the Standing Court Martial of San Cristóbal to gather evidence and conduct forensic tests in the case, including the ballistics tests, forensic examination on Johan Alexis Ortiz’s uniform, on the weapons of all military staff belonging to the ESGUARNAC and of the staff of the Rural Commandos of Outpost No. 19, among other ones; and that these tests be conducted by specialized personnel, who are not members of the National Guard.⁶¹

68. On March 5, 1999, the petitioners addressed a letter to the Standing Court Martial of San Cristóbal, wherein they recount that they had had a discussion with officer Jean Carlos Malpica and that, among other things, he had said,

That Second Lieutenant RODRÍGUEZ BARROYETA, told him that he should fire toward the ground and the center of the Rabbit Hole in the course of the drill and that he also told him to testify that he had taken Johan Alexis away from the center of the obstacle but MALPICA told us that it was not so, JOHAN ALEXIS was already wounded, [and] screaming “I was hit’ and ANTONIO LINARES, shook him by an arm and pointed to where JOHAN ALEXIS was located [...]

He also told us that on the occasion of the reenactment of events by the Office of the Inspector General of the FAN [National Armed Forces], [conducted by] Coronel [Army] FERNANDO RAMÓN BARRETO, everything that appears in the photographs was designed and planned by Second Lieutenant RODRÍGUEZ BARROYETA, Captain VILLASMIL ANTUNEZ and Lieutenant Coronel FLORES LAMUS ALEXANDER, as well as the first interrogations, since he had been interrogated by Sergeant PERDOMO SOMAZA and that Sergeant MEZA made some students sign and give finger prints on the blank sheets of paper.⁶²

69. Additionally, they claimed that this person told them that the projectiles from the gun that he was using on the day of the combat training exercise were “reddish, copper” color, unlike the ones listed in the autopsy form. Consequently, they requested that statements be taken from the persons involved in the account of officer Malpica and the forensic pathologists, who conducted the autopsy.⁶³

⁵⁹Annex 41. Official Letter No. DDH-2-J-114/98/02883 of January 5, 1999, from the Director of Human Rights in charge at the Office of the Attorney General of the Republic. Annex to petitioners’ submission received on June 16, 2000.

⁶⁰Johan Alexis’s parents identified the following individuals and family groups, whom they regarded to be at risk: Mr. and Mrs. Mary Ramos and Alans Peralta (godparents of Johan Alexis), and these families: Ortiz González, Ortiz Ruiz, Ortiz Flores, Ortiz Rivas, Gamez Ortiz, Moreno Ortiz, Hernández, Hernández Rugeles, Hernández Bustillos, Herrera Hernández, Cárdenas Hernández, Arellano Hernández. Annex 42. Complaint brought by Edgar Humberto Ortiz Ruiz and Zaida Hernández de Arellano before Attorney General of the Republic Iván Darío Badell. San Cristóbal, November 30, 1998. Annex to petitioners’ submission received on June 16, 2000.

⁶¹Annex 43. Communications signed by Edgar Humberto Ortiz and Zaida Hernández, addressed to the Presiding Judge and other members of the Standing Court Martial of San Cristóbal, State of Táchira, dated January 11 and 27, 1999. Annex to petitioners’ submission received on June 16, 2000.

⁶²Annex 44. Communication addressed to the Presiding Judge and other members of the Standing Court Martial of San Cristóbal, signed by Edgar Ortiz and Zaida Hernández, dated March 5, 1999. Annex to petitioners’ submission received on June 16, 2000.

⁶³Annex 44. Communication addressed to the Presiding Judge and other members of the Standing Court Martial of San Cristóbal, signed by Edgar Ortiz and Zaida Hernández, dated March 5, 1999. Annex to petitioners’ submission received on June 16, 2000.

70. In a letter addressed to the Commander of the Second Division and Garrison of the State of Táchira, the petitioners denounced that after submitting the communication of March 5, the father had been banned from being present at the military courthouses and that officer Jean Carlos Malpica had been summoned to the Office of the Standing Office of the Prosecutor before the Court Martial where “he was forced to sign a document [in which] he denies the interview that they held with [them] and its content.” The petitioners denounced that up until that time, they had been unable to gain access to the case file.⁶⁴

71. On April 16, 1999, the father requested information about the motion to gather evidence.⁶⁵ On April 20 of that year, the Office of the First Military Prosecutor informed Mr. Edgar Ortiz that he could not grant his request because he was not accredited in his capacity as a party to the case.⁶⁶ On April 20, 1999, the Standing Court Martial of San Cristóbal issued arrest warrants against members of the National Guard: Eddin Ruben Villasmil Antunez, Rafael Antonio Villasana Fernández and Fidel Camilo Rodríguez Barrolleta, for alleged commission of the crimes of failure to obey orders and military negligence and against Jean Carlos Malpica for the crime of negligent homicide.⁶⁷

72. On May 5, 1999, the parents of Johan Alexis Ortiz denounced before the Office of the Chief Prosecutor of the State of Tachira that irregularities were being committed in the case before the military court, that they had been denied access to information on the evidence gathered in the case file being heard before the Military Court of Guasdalito and the Standing Court Martial of San Cristóbal and asked for information to be requested from these authorities about the case.⁶⁸

73. On June 28, 1999, the father denounced before the Ministry of Public Prosecution that he felt threatened by officers of the National Guard and feared for his, his family’s and Johan Alexis Ortiz’s mother’s safety.⁶⁹ On July 6 of that year, the father denounced before the Office of the Military Prosecutor that after the arrest warrants were issued against the NG officers linked to the case, he had been “threatened, harassed and persecuted” by a Captain of the institution who was there the day of the combat training exercise when his son died, but [was] the “only one of the officers against whom no arrest warrant was issued.”⁷⁰ Both times the father made these charges, he asked for these acts to be investigated.

74. On July 22, 1999, the Court Martial upheld, at the appeals level, the arrest warrant against officer Malpica and overturned the decision with regard to the other officers on the grounds that their liability for the crimes as charged had not been determined “with certainty.”⁷¹

⁶⁴Annex 45. Communication of April 12, 1999, addressed to the Commander of the Second Division and Garrison of the State of Tachira, Army Brigadier General Gonzalo García Ordoñez, signed by Edgar Ortiz and Zaida Hernández. Annex to petitioners’ submission received on June 16, 2000.

⁶⁵Annex 46. Letter addressed to First Military Prosecutor of the Standing Court Martial of San Cristóbal Luis Vega, signed by Edgar Ortiz and Zaida Hernández. Annex to petitioners’ submission received on June 16, 2000.

⁶⁶Annex 47. Communication of April 20, 1999, addressed to Edgar Ortiz, by the First Military Prosecutor before Standing Court Martial [Navy] Lieutenant Luis Ignacio Vega Rodríguez. Annex to petitioners’ submission received on June 16, 2000.

⁶⁷See: Annex 48. Decision of the Court Martial of the Bolivarian Republic of Venezuela, May 29, 2000. Annex 1 to petitioners’ submission of August 28, 2000; and Annex 49. Decision of the Court Martial of the Bolivarian Republic of Venezuela, August 22, 2001. Annex K of petitioners’ submission received on February 25, 2002.

⁶⁸Annex 50. Letter addressed to the Chief Prosecutor of the State of Tachira, Hernan Roa Contreras, signed by Edgar Ortiz and Zaida Hernández, dated May 5, 1999. Annex to petitioners’ submission received on June 16, 2000.

⁶⁹Annex 51. Letter of June 28, 1999, addressed to the Fourth Prosecutor’s Office of the Ministry of Public Prosecution, signed by Edgar Humberto Ortiz Ruiz. Annex to petitioners’ submission received on June 16, 2000.

⁷⁰Annex 52. Letter of July 6, 1999, addressed to the Office of the Military Prosecutor of the Standing Court Martial of San Cristóbal, signed by Edgar Humberto Ortiz Ruiz. Annex to petitioners’ submission received on June 16, 2000.

⁷¹See: Annex 48. Decision of the Court Martial of the Bolivarian Republic of Venezuela, May 29, 2000. Annex 1 to petitioners’ submission of August 28, 2000; and Annex 49. Decision of the Court Martial of the Bolivarian Republic of Venezuela, August 22, 2001. Annex K of petitioners’ submission received on February 25, 2002.

75. On August 27, 1999, the Office of the Third Military Prosecutor of San Cristóbal agreed to allow the parents of Johan Alexis Ortiz to become involved in their “capacity as victims” in the case, “to review the proceedings contained” in the case file of case No. 008-98, as provided for under the Organic Criminal Procedural Code.⁷²

76. Additionally, the parents of Johan Alexis Ortiz denounced to the Office of the Prosecutor of the State of Tachira and Office of the People’s Ombudsman that on September 30, 1999, the home of the father was the target of a gunshot. As was described in the press, the father received an anonymous call on the same day that he was threatened and he was cautioned that he “would be warned.” Additionally, he denounced that the incident occurred when he was at the residence his wife and children and minor nieces and nephews.⁷³

77. On February 28, 2000, the Office of the Military Prosecutor filed charges with the Military Court of Guasdalito against National Guard officers Lieutenant Coronel Rafael Antonio Rijana Lucero, Lieutenant Coronel Alexander Flores Lamus, Captain Eddi Ruben Villasmil Antunez, Second Lieutenant Rafael Antonio Villasana Fernández and Second Lieutenant Fidel Camilo Rodríguez Barroyeta, for the crimes of “joint liability for military negligence in the negligent homicide” of Johan Alexis Ortiz and “subsidiarily” for the military crime of disobeying orders and, against National Guardsman Jean Carlos Malpica, for the crime of negligent homicide.⁷⁴

78. The basis for the prosecutorial charges is that the officers did not take adequate security and prevention measures, as directed in the instructions of the Operations Order for the combat training exercise in which Johan Alexis Ortiz died and the recklessness and negligence of the displayed by the exercise instructor in handling a flexible gas machine gun. Regarding the circumstances in which he was shot, the Office of the Military Prosecutor established that when he came to obstacle No. 5 and the instructor fired the machine gun, “the fired projectile hit one of the ones [projectiles] that had been fired into the ground and accumulated [there] breaking up and causing two fragments or pieces of shrapnel, and said fragments bounced up towards the body of the student at a distance of approximately one meter to one meter and a half from where they [the projectiles] hit, [...] causing the two wounds.”⁷⁵

79. On March 3, 2000, the Military Court notified the parents that they were to appear for the preliminary hearing set for March 28 of that year, in their capacity as victims in the case.⁷⁶ On March 17, 2000, the parents brought a private criminal complaint in the Military Court against several National Guardsman for the crime of aggravated intentional homicide, cover-up of the crime of aggravated intentional homicide, staging a criminal act and the crime of disobeying military orders.⁷⁷

⁷²As appearing in Annex 53. Official letter No. FM3-066 of August 27, 1999, addressed to Mr. Edgar Ortiz, by Third Military Prosecutor of San Cristóbal Captain [Army] Lisandro Bautista Landaeta. Annex to petitioners’ submission received on June 16, 2000.

⁷³Annex 54. Press article from the daily newspaper *Diario La Nación*, *Dispararon contra vivienda del padre de Johan Alexis* [“Johan Alexis’s father’s residence target of shooting”], of October 2, 1999. Annex to petitioners’ submission received on June 16, 2000. The IACHR does not have any information available about the steps taken in the investigation regarding these complaints.

⁷⁴Annex 13. Charging document of the Third Military Prosecutor’s Office of San Cristóbal of February 28, 2000, before the Standing Military Trial Court of Guasdalito. Annex to petitioners’ submission received on June 16, 2000. Johan Alexis’s parents were notified on that same date of the decision, according to Annex 55. Official Letter No. 178 of the Third Military Prosecutor’s Office of San Cristóbal. Annex to petitioners’ submission received on June 16, 2000.

⁷⁵Annex 13. Charging document of the Third Military Prosecutor’s Office of San Cristóbal of February 28, 2000, before the Standing Military Trial Court of Guasdalito. Annex to petitioners’ submission received on June 16, 2000.

⁷⁶Annex 56. Return receipt of notification of March 3, 2000 from the Standing Military Trial Court of Guasdalito. Annex to petitioners’ submission received on June 16, 2000.

⁷⁷As is noted in Annex 57. Motion for appeal on cassation of the private defense attorney against the decision of the Court Martial of the Republic of May 29, 2000. Annex 2 to petitioners’ submission of August 28, 2000.

80. On March 28, 2000, the preliminary hearing was put off until a later date because two of the defendants failed to appear⁷⁸ and the new date of April 4, 2000⁷⁹ was set for the hearing. On that date, the hearing was held before the Military Court, which decided to allow the charges to proceed against Jean Carlos Malpica and, taking into account that the acts performed by him were admitted by him during the preliminary hearing, he sentenced him to one year and ten months of prison for the crime of negligent homicide. With regard to the rest of the defendants, the Court dismissed the charges on the grounds that they were not “responsible for the crimes” and, with regard to the private criminal complaint, it established that the conduct of the defendants was inconsistent with the facts introduced at the preliminary hearing.⁸⁰

81. This decision was appealed by the private defense attorney and the Office of the Military Prosecutor, with the later also filing a motion to observe the grounds for recusal set forth in the COPP [Organic Code of Criminal Procedure] in view of the decision issued by the Court Martial on July 22, 1999, and for the appeals court to order a new preliminary hearing before the Military Court of San Cristóbal, inasmuch as it was the jurisdiction in which the crimes took place. On May 29, 2000, the Court Martial partially granted the motions to appeal and partially vacated the proceedings of the preliminary hearing. Accordingly, it ordered the Military Court to appoint a substitute judge to conduct a new preliminary hearing, in which a ruling would be issued as to the rest of the military personnel under indictment. The decision denied the prosecutor’s motion to transfer the case to the jurisdiction of San Cristóbal, on the grounds that there was no final ruling, and a “rebuke” was issued to the Office of the Prosecutor for filing the motion.⁸¹

82. The Office of the Military Prosecutor and the private defense attorney filed a motion to appeal on cassation to the Supreme Court against this decision contending, among other things, a failure to provide a factual basis for the ruling by the Court Martial.⁸² On July 28, 2000, the Military Attorney General, National Guard Coronel Jaiber Alberto Núñez, filed a motion before the Court Martial for the appeals on cassation to be denied.⁸³ On December 13, 2000, the Chamber for Criminal Cassations denied the appeal for cassation filed by the Military Office of the Prosecutor.⁸⁴

⁷⁸As is noted in Annex 57. Motion for appeal on cassation of the private defense attorney against the decision of the Court Martial of the Republic of May 29, 2000. Annex 2 to petitioners’ submission of August 28, 2000.

⁷⁹Annex 58. Return receipt of notification of March 3, 2000 from the Standing Military Trial Court of Guasualito. Annex to petitioners’ submission received on June 16, 2000.

⁸⁰As is noted in Annex 49. Decision of the Court Martial of the Republic of May 29, 2000. Annex 1 of petitioner’s submission of August 28, 2000.

⁸¹Annex 48. Decision of the Court Martial of the Republic of May 29, 2000. Annex 1 of petitioner’s submission of August 28, 2000.

⁸²Annex 57. Motion for appeal on cassation of the private defense attorney against the decision of the Court Martial of the Republic of May 29, 2000. Annex to petitioners’ submission of August 28, 2000; and Annex 59. Appeal of cassation filed by the Third Military Prosecutor of the city of San Cristóbal, of July 10, 2000. Annex 3 to petitioner’s submission of August 28, 2000.

⁸³Annex 60. Request of the Military Attorney General, (National Guard) Coronel Jaiber Alberto Núñez, July 28, 2000. Annex 8 of petitioner’s submission of August 28, 2000. At a later date, Johan Alexis’s parents denounced before the media that the military authorities were violating their right to know the truth about the death of their son and those responsible for it; and that the Military Attorney General was not competent to intervene in the cassation appeal to the Supreme Court. They issued a public appeal to several authorities to ensure the protection of their rights in this case. Annex 61. Communication signed by Mrs. Zaida Hernández and Mr. Edgar Ortiz, undated. Sent to the magazine Revista Primicia. Annex 9 of petitioner’s submission of August 28, 2000. Also see: Annex 62. Press clipping of the daily newspaper Diario La Nación, *Padres de Johan Alexis rechazan ingerencia (sic) del coronel Jaiber Nuñez* [‘Parents of Johan Alexis reject meddling of Coronel Jaiber Nuñez’]. San Cristóbal, September 3, 2000. Annex N of petitioners’ submission of February 25, 2002. Press clipping from the daily newspaper Diario Los Andes, *“Fiscal militar no debe intervenir en casos remitidos al Tribunal Supremo”* [‘Military prosecutor should not interfere in cases sent to the Supreme Court’], October 10, 2000. Annex N of petitioners’ submission received on February 25, 2002.

⁸⁴The decision establishes that the Court Martial denied the appeal, on the grounds that it “[...] entailed bringing the case back to the status of totally allowing the complaints brought by the prosecutor and the victims to proceed, [...] at the intermediate phase, in the preliminary hearing, [...] and] prior to holding the oral trial proceedings [...].” As can be gathered from the text of the decision, the Chamber for Criminal Cassation Appeals also took into account the appeal filed by the “accusing party.” However, the last part of the ruling establishes:

Based on the foregoing reasons this Supreme Court of Justice, in the Chamber of Criminal Cassation, in Administering Justice on behalf of the Republic and by authority of the Law, DENIES AS GROUNDLESS, the appeal of cassation filed by the prosecutor.

[continues ...]

83. The Office of the Military Prosecutor brought a new charge, which in general terms leveled the same counts as in February 2000. The parents of Johan Alexis Ortiz also filed a private criminal complaint.⁸⁵

84. On February 23, 2001, a new preliminary hearing was held before the Acting Judge of the Standing Military Trial Court of Guasdualito. During this hearing, one of the defendants, General Malpica Calzadilla, admitted to the facts of the indictment brought by the Office of the Military Prosecutor.⁸⁶ On that same date, the Acting Temporary Military Judge partially allowed the case to go forward only with regard to the crime of disobeying military orders. With regard to the private criminal complaint, the decision established that there was no “compelling evidence at this intermediate phase to make it possible to believe that the occurrence of the facts was caused in the way that the private complainants contend.”⁸⁷

85. On March 6, 2001, the petitioners filed an appeal against this decision.⁸⁸ They alleged due process violations on the grounds of the provisions of the new Constitution and Criminal Code, specifically, the violation of the guarantee of a natural judge and they reiterated that the matter should be heard in the civilian courts.⁸⁹ The Third Office of the Military Prosecutor also filed an appeal, mainly on the grounds of failure to provide a factual basis for the decision of the Acting Military Court, and the lack of definition regarding the facts and the evidence that would be the subject of the trial proceedings on the charge of disobeying military orders. The Office of the Prosecutor filed a motion once again for the case to be transferred to the Standing Military Trial Court of San Cristóbal.⁹⁰

86. On August 22, 2001, the Court Martial, acting as appeals court, overturned the decision under question and, consequently, ordered a new preliminary hearing to be held. Additionally, it dismissed the motion of the private complainant for the case to be heard in the civilian courts (under Article 123 of the Organic Criminal Procedural Code⁹¹) and ordered the case file to be transferred to the Standing Military Trial

[... continuation]

Annex 63. Decision of the Chamber of Criminal Cassation of the Supreme Court of Justice of December 13, 2000. Annex M to petitioners’ submission received on February 25, 2002.

⁸⁵Private complaint for the crime of aggravated intentional homicide against National Guard Captain Eddin Ruben Villasmil Antunez; the crime of covering up criminal offenses against NG Captain Gerardo Enrique Méndez Figueroa, General Antonio Elías Linarez Villalobos, General Gean Carlos Rafael Malpica Calzadilla and Distinguished National Guardsman Gerson Secundino Jiménez Hernández and for fabrication of a crime, brought against Captain Méndez Figueroa and General Jean Carlos Malpica Calzadilla. According to Annex 64. Order of the Standing Military Trial Court of Guasdualito of February 23, 2001 and the record of the preliminary hearing of the same date. Annex A to petitioners’ submission received on February 25, 2002.

⁸⁶Annex 65. Record of preliminary hearing of February 23, 2001. Annex A to petitioners’ submission received on February 25, 2002.

⁸⁷Annex 64. Order of the Standing Military Trial Court of Guasdualito of February 23, 2001. Annex A to petitioners’ submission received on February 25, 2002.

⁸⁸In the communication submitted to the Acting Military Trial Court Judge of Control of Guasdualito, they also requested “a certified copy of the entire case file, whereby the instant case was opened before [said] court inclusive, from the time the [...] case Military Prosecutor filed the charges against the defendants on record.” Annex 35. Motion to appeal filed by Edgar Ortiz and Zaida Hernández, dated March 6, 2001 before the Court Martial. Annex J to petitioners’ submission received on February 25, 2002.

⁸⁹Annex 35. Motion to appeal filed by Edgar Ortiz and Zaida Hernández, dated March 6, 2001 before the Court Martial. Annex J to petitioners’ submission received on February 25, 2002.

⁹⁰As is noted in Annex 49. Decision of the Court Martial of the Bolivarian Republic of Venezuela of August 22, 2001. Annex K to petitioners’ submission received on February 25, 2002.

⁹¹As the decision cites, said article establishes that military jurisdiction encompasses “3. Common crimes committed by members of the military in units, barracks, garrisons, education institutes, military facilities or at institutions of decentralized entities of the Armed Forces, on military duty, in acts of service, on commission on the occasion thereof.” Also, Article 15 of the same Code provides that: “separate trial proceedings shall not be held for a single offense even though there are several defendants, nor shall several trial proceedings be held at the same time against a person for several crimes he may have committed...” Annex 49. Decision of the Court Martial of the Bolivarian Republic of Venezuela of August 22, 2001. Annex K to petitioners’ submission received February 25, 2002.

Court of San Cristóbal, inasmuch as it is part of the jurisdiction where the events of the alleged crimes occurred.⁹²

Investigation conducted by the Human Rights Committee of the Legislative Assembly of the State of Tachira and the January 16, 1999 Report issued by it

87. On May 19, 1998, the petitioners requested the Chairman of the Standing Human Rights Committee (hereinafter “the Standing Committee”) of the Legislative Assembly of the State of Tachira, to intervene in the elucidation of the facts pertaining to the death of their son.⁹³ On May 21 of that year, the Legislative Assembly of Táchira authorized the Standing Committee to open an investigation.

88. The Standing Committee conducted several visits, interviews and sent communications and requests to different agencies and military authorities.⁹⁴ On January 16, 1999, the Standing Committee submitted to the legislative body of the State of Tachira a report on the results of its investigation, asserting that it had been “impossible to conduct” thoroughly because of the “overtly indolent attitude and lack of collaboration” by the military authorities, who “refused to provide the necessary information and allow access to its members at the facilities of the Rural Commandos of the National Guard in Caño Negro, where the events had taken place.”⁹⁵

89. The report mentions, in particular, “obstruction” and “outright refusal” by the then Minister of Defense to cooperate with the Standing Committee’s investigation⁹⁶ and the “obstructionist attitude” of the Chief of the Department of military defendants of the prison facility Centro Penitenciario de Occidente, Lieutenant Coronel (Army) Valmore Núñez, who prevented the Standing Committee from interviewing National Guardsman Jean Carlos Malpica on June 23, 1998.⁹⁷ These incidents were also denounced by the Standing Committee itself to the Commander of the Garrison of the State of Tachira and to the Minister of Defense, though no response was provided by either of these officials.⁹⁸

⁹²Annex 49. Decision of the Court Martial of the Bolivarian Republic of Venezuela of August 22, 2001. Annex K to petitioners’ submission received February 25, 2002.

⁹³Annex 66. Request filed with the Chairman of the Human Rights Committee of the Legislative Assembly of Táchira, Germán F. Contreras, of May 19, 1998. Annex to original petition of March 15, 2000.

⁹⁴Actions taken by the Standing Committee include: 1) On-site visits to the ESGUARNAC of Cordero and interviewing its Director Coronel (NG) José Rafael Villamizar, to Regional Command Post No. 1 (CORE 1) and interviewing its Commander, Brigadier General (NG) José Rafael Rosales Mendoza; to the Office of the Fourth Office of the Prosecutor of the Ministry of Public Prosecution, Hernán Roa Contreras; to the penitentiary facilities Centro Penitenciario de Occidente (Santa Ana del Tachira Jail) and interviewing Lieutenant Coronel Valmore Núñez and Jean Carlos Malpica Calzadilla; 2) Communications addressed to the Commander of Regional Command Post No. 1, to the Director of the ESGUARNAC of Cordero; on at least three occasions, the Minister of Defense, Vice Admiral Tito Manlio Rincón Bravo, the Inspector General of the Armed Forces, General Adolfo León Campos, the Commander General of the National Guard, General Félix Aquiles Loreto, the Director of Military Justice of the Ministry of Defense, the Fourth Prosecutor of the Ministry of Public Prosecution, the Commander of the Military Garrison of the State of Tachira, General Hurtado Sucre; on at least two occasions, the Judge of the Military Court hearing the case, the Commander of Operations Theater No. 1, based in La Fría; and 3) Working meetings, evidence gathering and “diverse actions” with the parents of Johan Alexis. Annex 8. Report of the Standing Committee on Human Rights of the Legislative Assembly of the State of Tachira regarding the death of Johan Alexis Ortiz Hernández, January 16, 1999. Annex to original petition of March 15, 2000.

⁹⁵The report of the Standing Committee contains as annexes the communications received from the different military authorities by the Standing Committee in response to the requests made in the course of the investigation.

⁹⁶According to communication No. 6122 of September 22, 1998, from the Ministry of Defense, stating that because the case was in the “preliminary investigation stage,” it could not “agree to providing the collaboration requested [...] in order to not hamper in any way the proper conduct of the judicial proceeding in this case with full autonomy by the military jurisdiction.” Annex to the Report of the Standing Commission on Human Rights of the Legislative Assembly of the State of Tachira regarding the death of Johan Alexis Ortiz Hernández, January 16, 1999. Finding I. Annex to original petition of March 15, 2000.

⁹⁷The report notes that the interview was successfully conducted eight days later at the Command Post of the National Guard.

⁹⁸Annex 67. Communication of June 25, 1998, addressed to the Ministry of Defense by the Chairman of the Standing Committee. Annex to the Report of the Standing Human Rights Committee of the Legislative Assembly of the State of Tachira on the death of Johan Alexis Ortiz Hernández, of January 16, 1999. Annex to original petition of March 15, 2000.

90. The Standing Committee concluded, among other things, that:

The case of the homicide of Johan Alexis Ortiz Hernández is evidence of the state of impunity with which the military corps act in the State of Tachira, the spirit de corps permeating those military institutions to cooperate with the soldiers that commit criminal acts and cover them up, the disregard and contempt with which public and private agencies and citizens defending human rights are treated in those offices and the state of defenselessness of the common citizen when facing those corps.⁹⁹

Based on the evidence-gathering, interviewing and documentation collected by the investigating Committee, it has been determined that there have been a number of irregularities at the National Guard Training Academy of Cordero, which manifested themselves as procedural errors and disregard of rules and routine procedures, which made possible the homicide of Johan Alexis Ortiz Hernández at the obstacle course of the Rural Commandos facilities of Caño Negro. An example of those irregularities is the use of real rounds of ammunition instead of blanks and the lack of availability of minimal medical assistance or first aid at the site of the incidents, in view of the risk run by the students.¹⁰⁰

Along with actual and individual responsibility for the homicide of Johan Alexis Ortiz Hernández, it follows that a group of officers assigned to the National Guard School of Cordero and the Rural Commandos of Caño Negro at the time of the crime are also subject to civil, administrative and criminal liability, beginning with the Director of the School and the Officer who ordered the use of live ammunition in the training exercise.¹⁰¹

91. The report of the Standing Commission was approved by the Legislative Assembly on January 19, 1999 and four recommendations were included therein, which were: i) to forward a copy of the report and submit a petition to the Inter-American Commission on Human Rights for the death of Johan Alexis Ortiz Hernández; ii) denounce before the Minister of Defense, the homicide of Johan Alexis Ortiz, on the grounds of the report submitted, and bring a motion before the respective military body to retry the case, bringing it back to the status of the first investigations of the Technical Corps of the Judicial Police; iii) issue public written protest over the actions of the Minister of Defense and other military officials, also forwarding it to the President of the Republic and to the Human Rights Committee of the National Congress; and iv) keep open the investigation conducted by the Legislative Assembly of the State of Tachira.¹⁰²

The request for copies of the case file from the Office of the Third Military Prosecutor of San Cristóbal

92. The case file contains copies of the requests for certified copies of the entire military criminal case file made on April 30,¹⁰³ June 7,¹⁰⁴ and August 23, 2001,¹⁰⁵ submitted by the parents of the alleged victim and his legal representative before the military authorities.

⁹⁹Annex 8. Report of the Standing Human Rights Committee of the Legislative Assembly of the State of Tachira on the death of Johan Alexis Ortiz Hernández, of January 16, 1999. Finding II. Annex to original petition of March 15, 2000.

¹⁰⁰Annex 8. Report of the Standing Human Rights Committee of the Legislative Assembly of the State of Tachira on the death of Johan Alexis Ortiz Hernández, of January 16, 1999. Finding II. Annex to original petition of March 15, 2000.

¹⁰¹Annex 8. Report of the Standing Human Rights Committee of the Legislative Assembly of the State of Tachira on the death of Johan Alexis Ortiz Hernández, of January 16, 1999. Finding II. Annex to original petition of March 15, 2000.

¹⁰²Annex 8. Report of the Standing Human Rights Committee of the Legislative Assembly of the State of Tachira on the death of Johan Alexis Ortiz Hernández, of January 16, 1999. Finding II. Annex to original petition of March 15, 2000.

¹⁰³Annex 68. Motion filed before the members of the Standing Court Martial of San Cristóbal, by attorney Helmisam Beiruti Rosales, date stamped as received on April 30, 2001. Annex G to petitioners' submission received on February 25, 2002.

¹⁰⁴As is noted in Annex 69. Official Letter No. 395 of the Office of the Third Military Prosecutor of San Cristóbal, addressed to Mr. Edgar Ortiz, dated August 23, 2002, providing a response to said request. Annex E received on February 25, 2002.

93. On August 23, 2001, the Military Prosecutor replied that he was not “empowered to grant copies based on instructions given by the Attorney General of the Republic in order to avoid “[...] external interference that could hamper [the] normal course [of the investigation] and impede the appropriate evidence from being obtained [...].” He further noted that in every instance, the sole competent authority to authorize the issuing of certified copies to private individuals was the Attorney General himself as “he deems appropriate and based on each particular concrete case.”¹⁰⁶

94. On September 4, 2001, the father requested two certified copies of the case file from the Attorney General of the Republic¹⁰⁷ and on October 30, 2001, he denounced that he had not received a reply to his request.¹⁰⁸ On the same date, the Office of the Attorney General advised the father that the request had been submitted for consideration by the Office of Legal Counsel, which then ruled that since it dealt with a request pertaining to “[...] proceedings of which it was the responsibility of the military jurisdiction to hear, [therefore] it should hear and decide thereon [...].”¹⁰⁹

95. On November 6 and 15 of that year, the father submitted a request to revisit the decision with the Office of the Attorney General, claiming that in order to exercise the right established in the Constitution to “appeal to international bodies,” he needed to have copies of the entire criminal case file in order to introduce it in the processing of the case before the IACHR.¹¹⁰ On November 14, 2001, the father submitted another request for copies from the Office of the Chief Military Prosecutor of the Ministry of Public Prosecution.¹¹¹ The Commission does not have information on the outcome of this revisiting of the issue and the new request that was filed.

Disciplinary investigation opened ex officio against attorneys of Mr. Edgar Ortiz and Mrs. Zaida Hernández in the military criminal proceeding

96. According to documentation introduced in the case file before the IACHR, after the decision of April 4, 2000 (*supra* par. 78), the mother provided to the news media a written statement questioning said decision, calling it “unfortunate, rude, unfair and gibberish.”¹¹² Subsequently, the press reported on a disciplinary investigation opened by the Disciplinary Tribunal of the Bar Association of the State of Tachira,

[... continuation]

¹⁰⁵Annex 70. Motion filed with the Chief Military Prosecutor of the Ministry of Public Prosecution, signed by attorney Helmisam Beiruti Rosales, date stamped as received August 23, 2001. Annex H1 to petitioners’ submission received on February 25, 2002.

¹⁰⁶Annex 69. Official Letter No. 395 of the Office of the Third Military Prosecutor of San Cristóbal, addressed to Mr. Edgar Ortiz, dated August 23, 2002, providing a response to the request submitted on June 7, 2001. Annex E received on February 25, 2002.

¹⁰⁷As is noted in Annex 71. Official Letter No. DSG-44.904 of the Office of the Attorney General of the Republic, signed by the Director of the General Secretariat and addressed to Mr. Edgar Humberto Ortiz, dated October 30, 2001. Annex F to petitioners’ submission received on February 25, 2002.

¹⁰⁸Annex 72. Communication submitted to the Office of the Director of Legal Services of the Office of the Attorney General of the Ministry of Public Prosecution, signed by Edgar Ortiz, stamped as received on October 30, 2001. Annex I2 to petitioners’ submission received on February 25, 2002.

¹⁰⁹Annex 71. Official Letter No. DSG-44.904 from the Office of the Attorney General of the Republic, signed by the Director of the General Secretariat and addressed to Mr. Edgar Humberto Ortiz, dated October 30, 2001. Annex F to petitioners’ submission received on February 25, 2002.

¹¹⁰Annex 73. Communications submitted to the Attorney General of the Republic, signed by Edgar Ortiz, stamped as received on November 6 and 15, 2001. Annex I3 and I4, respectively, of petitioners’ submission received on February 25, 2002.

¹¹¹Annex 74. Communication submitted to the Chief Prosecutor of the Ministry of Military Prosecution, signed by Edgar Ortiz, dated as received November 14, 2001. Annex H2 to petitioners’ submission received February 25, 2002.

¹¹²Letter from Mrs. Zaida Hernández, provided to the news media, regarding the decision of the Military Trial Court Judge of Guasdalito. Annex 4 to petitioners’ submission of August 28, 2000.

against the defense team of the parents, made up at the time of attorney Darcy Rosales and attorney Helmisan Beirut.¹¹³

97. According to attorney Darcy Rosales, she did not know the reason why the disciplinary inquiry had been opened.¹¹⁴ It was reported in the media that the disciplinary investigation was allegedly linked to statements provided to the media by the private defense attorneys of the parents of Johan Alexis Ortiz regarding the case and to a communication sent by Mrs. Zaida Hernández questioning the decision.¹¹⁵

98. On August 10, 2000, the parents submitted a communication to the Disciplinary Tribunal of the Bar Association of the State of Tachira, voicing their concern over the “total disadvantage” at which they would be if a decision were made affecting the exercise of their defense through the private attorneys. On said occasion, they also denounced that their attorneys had received death threats as a result of their involvement in the case.¹¹⁶

99. The Commission does not have any documentary support to the aforementioned disciplinary case proceedings in order to be able to establish the reasons why it was opened or the outcome thereof. The State did not submit any arguments regarding the documentation provided by the petitioners on this claim.

Promotions of military officers linked to the case

100. In the case file before the IACHR, there is documentation pertaining to promotions that were allegedly granted to military officers, who were linked to the criminal investigation into the death of Johan Alexis Ortiz. Some of these promotions were granted in July 2000, when the court proceedings were still ongoing in the military criminal court.¹¹⁷ Specifically, the press reported that National Guard Lieutenant Colonel Rijana Lucero (charged by the Military Prosecutor’s Office in February of that same year for the crime of “joint military liability in the negligent homicide”) had been promoted to the next highest rank of Colonel.¹¹⁸ Additionally, the information released mentions promotions granted to National Guard officers Méndez Figueroa, Villasana Fernández and Jiménez Hernández.¹¹⁹

101. Accordingly, Johan Alexis Ortiz’s parents denounced that, with regard to promotions, the Organic Law of the National Armed Forces in force at the time had been broken, inasmuch it establishes the following:

¹¹³Annex 75. Press articles from the daily newspaper Diario Los Andes of August 11, 2000, and Diario La Nación of August 13, 2000. Annex 5 to petitioners’ submission of August 28, 2000.

¹¹⁴Annex 75. Daily newspaper Diario Los Andes, August 11, 2000. Annex 5 to petitioners’ submission of August 28, 2000.

¹¹⁵Annex 75. Daily newspaper Diario Los Andes, August 11, 2000. Annex 5 to petitioners’ submission of August 28, 2000. Newspaper article from La Nación, August 13, 2000. Annex 5 to petitioners’ submission of August 28, 2000. Also see: Annex 76. Press article from la Nación, *Johan Alexis sigue en espera de justicia militar en Venezuela* [“Johan Alexis still awaits military justice in Venezuela”], San Cristóbal, October 19, 2000. Annex N to petitioners’ submission received on February 25, 2002.

¹¹⁶Annex 77. Communication submitted to the Presiding Officer and other members of the Disciplinary Court of the Bar Association of the State of Tachira, by Mr. Edgar Ortiz and Mrs. Zaida Hernández. San Cristobal, August 10, 2000. Annex 6 to petitioners’ submission of August 28, 2000.

¹¹⁷See: Annex 78. Communications submitted by Mr. Edgar Ortiz and Mrs. Zaida Hernández and addressed to Attorney General of the Republic Isaías Rodríguez, dated January 27, 2005; to the Chairman and other members of the State Legislative Council of Tachira, dated January 27, 2005; to the Office of the Ombudsman’s delegate in San Cristóbal, State of Táchira, dated February 3, 2005. Annexes F, G and I, respectively, to petitioners’ submission of March 29, 2005.

¹¹⁸Annex 79. Press article from daily newspaper El Nacional, July 12, 2000. Annex to petitioners’ submission of August 28. Press article from Diario La Nación, July 13, 2000. Annex to petitioners’ submission of August 28. Press article from Diario de Los Andes, July 13, 2000. Annex to petitioners’ submission of August 28, 2000.

¹¹⁹Press article from La Nación, July 13, 2000. Annex to petitioners’ submission of August 28; Press article from Diario de Los Andes, July 13, 2000. Annex to petitioners’ submission of August 28, 2000.

Article 155. A military member may not be promoted when he or she is undergoing a judicial or administrative investigation nor [may] anyone [be promoted] against whom an arrest warrant or indictment has been issued by the military or ordinary justice courts. However, if the investigation or the trial concludes with a favorable decision or a dispositive final acquittal, as the case may be, the elapsed time shall be counted as service provided at the rank and he or she may be promoted, should all other legal requirements be fulfilled.¹²⁰

102. In early 2005, the petitioners requested the Office of the Prosecutor and the Office of the Ombudsman to enforce said provision of said article and to not proceed to any further promotions.¹²¹ In response to said request, the General Directorate of Procedural Matters advised them that it [the request] had been “properly processed” and that it had been brought to the attention of the Prosecutors assigned to the investigation “for the consequent purposes.”¹²² In the case file, no supporting documentary exhibits are found regarding additional proceedings on this issue.

2. Amparo proceeding before the Constitutional Chamber of the Supreme Court of Justice and the transfer of the investigation to the ordinary criminal jurisdiction

103. On September 19, 2001, the father brought suit for constitutional relief through *amparo* against the decision of August 22, 2001 (*supra* par. 84). Therein, he alleged that the military jurisdiction had held itself competent to hear a case of the common crime of homicide; the military authorities had been hearing the case for more than three and a half years; the case had been “started over three times[...] from zero;” and that the Court Martial had once ordered to take the case back to the first stage of the proceedings.¹²³

104. The father also contended that he could not prove violations “of a proper prior investigation” because the Office of the Military Prosecutor of San Cristóbal did not grant his request for copies of the case file before that jurisdiction. The *amparo* suit was filed along with a request for an injunction for the criminal proceeding before the military court to be stayed until a decision is made on the *amparo* claim.¹²⁴ On November 9, 2001, the Constitutional Chamber granted the *amparo* petition and agreed to the request for an injunction, including staying the preliminary hearing ordered by the Court Martial on August 22, 2001.¹²⁵

105. It appears on the record in the case file that on October 5, 2001, the preliminary hearing had already been held before the Military Trial Court of San Cristóbal, wherein the private and Military Prosecutor’s criminal complaints had been allowed to proceed¹²⁶ and the order was issued to hold a public

¹²⁰Organic Law of the National Armed Forces. Official Gazette No. 4.844 of January 18, 1995.

¹²¹See: Communications written by Mr. Edgar Ortiz and Mrs. Zaida Hernández addressed to Attorney General of the Republic Isaias Rodríguez, dated January 27, 2005; and Office of the Delegate of the Ombudsman in San Cristóbal, State of Tachira, dated February 3, 2005. Annexes F and I, respectively, to petitioners’ submission of March 29, 2005.

¹²²Annex 80. Communication No. DPDF-16-PRO-42-1410 of February 16, 2005, addressed to Edgar Ortiz and Zaida Hernández, by the Director General of Procedural Affairs of the Office of the Attorney General of the Republic of February 16, 2005. Annex K to petitioners’ submission of March 29, 2005.

¹²³Annex 81. Amparo suit for constitutional relief against the court decision, filed by Edgar Humberto Ortiz Ruiz with the Constitutional Chamber of the Supreme Court of Justice, Annex B to petitioners’ submission received on February 25, 2002.

¹²⁴Annex 81. Amparo suit for constitutional relief against the court decision, filed by Edgar Humberto Ortiz Ruiz with the Constitutional Chamber of the Supreme Court of Justice, Annex B to petitioners’ submission received on February 25, 2002.

¹²⁵Annex 82. Decision of the Constitutional Chamber of the Supreme Court of Justice of November 9, 2001. Annex C to petitioners’ submission received on February 25, 2002.

¹²⁶Against (NG) Coronel Rafael Antonio Rijana Lucero, (NG) Coronel Alexander Flores Lamus, (NG) Major Eddin Ruben Villasmil Antunez, (NG) Lieutenant Fidel Camilo Rodríguez Barrolleta, (NG) Lieutenant Fidel Camilo Rodríguez Barrolleta, (NG) Lieutenant Rafael Antonio Villasana Fernández, for commission of the crime of “military joint liability for negligence in the crime of negligent homicide;” against (NG) Major Eddin Ruben Villasmil Antunez, for the crime of “masterminding and perpetrating aggravated intentional homicide;” against (NG) Captain Gerardo Enrique Méndez Figueroa, for the crime of “cover-up;” against Distinguished National Guardsman Gerson Secundino Jiménez Hernández, for the same crime; against National Guardsman Antonio Elías Linares [continues ...]

oral trial.¹²⁷ The public oral trial hearing date had been set by the Standing Court Martial for December 3, 2001¹²⁸ and was suspended under the order of November 30, 2001, as a result of the decision of the Constitutional Chamber of November 9, 2001.¹²⁹

106. On January 21, 2002, the hearing on the constitutional *amparo* relief petition was held before the Constitutional Chamber of the TSJ.¹³⁰ On June 11, 2002, the Constitutional Chamber granted the *amparo* petition.¹³¹ The examination of the Constitutional Chamber was mostly based on the provisions of the Venezuelan Constitution, which came into effect in 2000, regarding the jurisdiction of ordinary courts for “the commission of common crimes, human rights violations and crimes against humanity.”¹³² Consequently, the Chamber ordered that “all of the proceedings in the criminal case before the military court, except for those pieces of evidence that [cannot] be recreated” to be vacated and that the case file be sent to the Ministry of Public Prosecution to institute the proceeding as provided under the Organic Criminal Procedural Code.¹³³

107. The case file was transferred to the Office of the Chief Prosecutor of the Ministry of Public Prosecution of the judicial district of the State of Tachira, and this office assigned the case to the Seventh Prosecutor’s Office, under the case number No. 20-F7-1222/02. On March 7, 2003, the Office of the Seventh Prosecutor ordered the investigation to be opened.¹³⁴ In December 2003, the investigation was in the preparatory phase and the Seventh Prosecutor’s Office brought charges against National Guardsman Jean Carlos Malpica Calzadilla and “other officers” of the same institution.¹³⁵

108. The Office of the Ombudsman of the State of Tachira made a number of fact-finding efforts on the basis of the complaint filed by the father, for which an inquiry was opened on May 31, 2000, and identified as complaint hearing form No. 0043.¹³⁶ Additionally, it is on record that on May 17, 2009, the

[... continuation]

Villalobos, for the crime of “covering up criminal acts;” and against National Guardsman Jean Carlos Malpica Calzadilla for the crime of “covering up criminal acts and or staging a crime.” According to Annex 83. Official Letter No. 846 of the Standing Military Trial Court San Cristóbal, whereby the decision to proceed to trial in case No. 008-1998 is conveyed to the parents of Johan Alexis, October 8, 2001. Annex A to petitioners’ submission received on February 25, 2002.

¹²⁷According to Annex 83. Official Letter No. 846 of the Standing Military Trial Court San Cristóbal, whereby the decision to proceed to trial in case No. 008-1998 is conveyed to the parents of Johan Alexis, October 8, 2001. Annex A to petitioners’ submission received on February 25, 2002.

¹²⁸According to Annex 84. Notification issued by the Standing Court Martial of San Cristóbal to Mr. Edgar Humberto Ortiz, dated November 6, 2001. Annex L1 to petitioners’ submission received on February 25, 2002.

¹²⁹According to Annex 85. Notification issued by the Standing Court Martial of San Cristóbal to Mr. Edgar Humberto Ortiz, dated November 6, 2001. Annex L2 to petitioners’ submission received on February 25, 2002

¹³⁰Annex 86. Record of the hearing on the constitutional *amparo* relief of Monday January 21, 2001. Constructional Chamber of the Supreme Court of Justice. Annex D to petitioners’ submission received on February 25, 2002.

¹³¹Annex 87. Decision of the Constitutional Chamber of the Supreme Court of Justice of June 11, 2002. Annex A to petitioners’ submission received on August 27, 2002.

¹³²Article 261 of the Constitution of the Bolivarian Republic of Venezuela. Cited in the decision of the Constitutional Chamber of June 11, 2002. In said decision, the Chamber also ordered the provisions of the Organic Code of Military Justice assigning competence to the military jurisdiction for common crimes committed by military personnel, to not be enforced, including in the instances when the defendants are “charged simultaneously with common and military crimes [...]”.

¹³³Annex 87. Decision of the Constitutional Chamber of the Supreme Court of Justice of June 11, 2002. Annex A to petitioners’ submission received on August 27, 2002.

¹³⁴As reported by the Agent of the State for human rights before the Inter-American and international systems to Mr. Edgar Ortiz, in a communication of February 14, 2006 (Annex 88). Said communication was provided as an annex to petitioners’ submission of February 25, 2006.

¹³⁵As appears in Annex 89. Official Letter No. DP/DDET-02594-2003 addressed to the Seventh Prosecutor’s Office of the Ministry of Public Prosecution of the State of Tachira, dated December 30, 2003, by the Ombudsman of the State of Tachira. Annex D to petitioners’ submissions of April 7, 2004.

¹³⁶See, among other things: Annex 90. Official Letter No. DP/DDET-O-0231/2004 addressed to the Chief Commissioner of the Police Substation of San Cristóbal, dated February 5, 2004, by the Office of the Ombudsman of the State of Tachira. Annex E to petitioners’
[continues ...]

General Directorate for citizen service of the national level Office of the Ombudsman, notified the Office of the Ombudsman of the State of Tachira of the decision to close the investigation file pertaining to said complaint (No. P-04-000057) and instructed it to monitor the investigation being conducted by the Office of the Prosecutor.¹³⁷

109. In 2003, an investigating officer of the Corps of Scientific, Criminal and Forensic Investigations(CICPC) of the State of Tachira was assigned.¹³⁸ On December 2, 2003 the CICPC ordered him to be removed and administratively assigned to another jurisdiction.¹³⁹ On December 11, 2003, the father brought a complaint before the Office of the Ombudsman that the CICPC investigator had been removed “for no reason whatsoever,” which had caused the investigation to come to a stand still.¹⁴⁰

110. On December 30, 2003, the Prosecutor requested that the transfer order be overturned.¹⁴¹ On that same date, the Office of the Ombudsman of the State of Tachira requested information from the Prosecutor’s Office regarding the removal or transfer of the official.¹⁴² The Seventh Prosecutor’s Office responded by saying that he was unaware of the reasons why the official had been transferred.¹⁴³ On February 5, 2004, the Office of the Ombudsman voiced its concern over the possibility of “an unwarranted delay in the preparatory phase of the criminal proceeding.”¹⁴⁴ On March 3, 2004, the father brought a complaint before the Directorate of Fundamental Rights Protection of the Ministry of Public Prosecution that

[... continuation]

submission of April 7, 2004; and Annex 91. Communication of May 31, 2000, addressed to Edgar Ortiz, by Lilimar Rojas Dávila, Delegate Ombudsman of the State of Tachira. Annex to petitioners’ submission received on June 16, 2000.

¹³⁷In the case file before the IACHR, no information appears regarding evidence gathering conducted by the Office of the Ombudsman of Tachira after 2009. Annex 92. Official Letter DP/DGAC/110609 of August 17, 2009, signed by the Director General of Citizen Service of the Office of the Ombudsman. Annex A to petitioners’ submission of October 12, 2009.

¹³⁸See, among other things: Annex 93. Official Letter No. 20-FS-4320-03 addressed to the CICPC Director by the Chief Prosecutor of the Ministry of Public Prosecution of the judicial district of the state of Tachira, dated December 30, 2003. Annex B to petitioners’ submission of April 7, 2004.

¹³⁹According to communication No. 9700-104-DPT-14167 referred to in Annex 93. Official Letter No. 20-FS-4320-03 addressed to the CICPC Director by the Chief Prosecutor of the Ministry of Public Prosecution of the judicial district of the state of Tachira, dated December 30, 2003. Annex B to petitioners’ submission of April 7, 2004.

¹⁴⁰As reported by the Office of the Ombudsman of the State of Tachira itself to the Chief Commissioner of the Police Substation of San Cristóbal in Annex 90. Official Letter No. DP/DDET-O-0231-2004 dated February 5, 2004. Annex E to petitioners’ submission of April 7, 2004.

¹⁴¹Citing the provisions of the Organic Code of Criminal Procedure in force at the time, which established that “[...] when the Prosecuting Attorney so requests in writing, the administrative authority may not remove the police officer from the assigned investigation [...]” Official Letter No. 20-FS-4320-03 addressed to the Director of the CICPC by the Chief Prosecuting Attorney of the Ministry of Public Prosecution of the Judicial District of the State of Tachira, dated December 30, 2003. Annex B to petitioners’ submission of April 7, 2004.

¹⁴²Annex 89. Official Letter No. DP/DDET-02594-2003 addressed to the Seventh Office of the Prosecutor of the Ministry of Public Prosecution of the State of Tachira, dated December 30, 2003, by the Ombudsman of the State of Tachira. Annex D to petitioners’ submission of April 7, 2004. In the case file, there is a copy of an official letter from the Office of the Ombudsman of the same date, providing a response to the communication of the Seventh Prosecutor’s Office of October 4, 2003, noting that said body “[...] has the legal authority to act when there is a presumed deprivation of liberty of persons as a result of arbitrary executions committed by officials of the State [...]and that it was] the intention of [that] Office of the Ombudsman, acting at all times within the framework of the Constitution, to elucidate the facts and determine responsibility of the perpetrators, without intending at any time to interfere, much less, substitute for that Office of the Prosecutor in the proceedings in which it has been engaged in keeping with the legal authority that was granted to it by the law currently in force.” Annex 94. Official Letter No. DP/DDET-O-2595-2003, addressed to the Seventh Prosecutor’s Office of the Ministry of Public Prosecution, by the Ombudsman of the State of Tachira, dated December 30, 2003. Annex C to petitioners’ submission of April 7, 2004.

¹⁴³As reported by the Office of the Ombudsman of the State of Tachira itself to the Chief Commissioner of the Police Substation of San Cristóbal in Annex 90. Official Letter No. DP/DDET-O-0231-2004 dated February 5, 2004. Annex E to petitioners’ submission of April 7, 2004.

¹⁴⁴Annex 90. Official Letter No. DP/DDET-O-0231-2004 addressed to the Chief Commissioner of the Police Substation of San Cristóbal, by the Office of the Ombudsman of the State of Tachira itself, dated February 5, 2004. Annex E to petitioners’ submission of April 7, 2004.

the investigation was at a standstill and that the chief of the CICPC had not provided a response to the requests made by the Office of the Ombudsman and the Office of the Prosecutor.¹⁴⁵

111. On March 22, 2004, the Directorate of Fundamental Rights Protection reported that it has communicated with the CICPC in order to work out the situation that was the subject of the complaint¹⁴⁶ and on June 3, 2004, the Directorate itself advised the father that instructions had been given to overturn the detective's transfer.¹⁴⁷ The Office of the Ombudsman of the State of Tachira noted that the official was reinstated to the investigation "but not on a full time basis," in May 2004.¹⁴⁸

112. As to the steps taken by the Office of the Seventh Prosecutor after the start of the investigation in 2003, the IACHR has information before it to the effect that over the course of that year appointments were set up for interviews and requests were made to the Chief of Personnel Command of the National Guard, summoning officials to appear to provide statements, among other things.¹⁴⁹ In this regard, the Prosecutor's Office conducted interviews of several military officers and experts, who participated in the training exercises from 1998 to 1999.¹⁵⁰ Interviews included, on April 28, 2003, inspector of the Corps of

¹⁴⁵Annex 95. Communication addressed to the Directorate of Fundamental Rights Protection, by Mr. Edgar Ortiz, stamped as received on March 3, 2004. Annex J to petitioners' submission of April 7, 2004. A communication to the same effect was also addressed to the Seventh Prosecutor's Office of the State of Tachira by Mr. Edgar Ortiz (Annex 96), dated as received in the Prosecutor's Office on April 30, 2004. Annex 6 to petitioners' submission of June 7, 2004.

¹⁴⁶Annex 97. Official Letter No. DPDF-13-J-114-2835-04 addressed to Mr. Edgar Ortiz by the Directorate of Fundamental Rights Protection of the Ministry of Public Prosecution, dated March 22, 2004. Annex K to petitioners' submission of April 7, 2004.

¹⁴⁷Annex 98. Official Letter No. DPDF-13-J-114-98-6247 addressed to Mr. Edgar Ortiz by the Directorate of Fundamental Rights Protection of the Ministry of Public Prosecution, dated June 3, 2004. Annex 7 to petitioners' submission of June 7, 2004. See: Annex 90. Press article from *Diario Los Andes*, *Caso Johan Alexis sin resolver* [Case of Johan Alexis unresolved], San Cristóbal, February 12, 2004. Grouped as annex G to petitioners' submission of April 7, 2004.

¹⁴⁸Annex 100. Official Letter No. DP/DDET-O-0913-2004 addressed to the Chief Prosecutor of the State of Tachira, by the Ombudsman of the State of Tachira, dated August 10, 2004. Annex C to petitioners' submission of September 27, 2004. The Commission does not have any further information on the reinstatement of said official to the investigation. In their communication of April 7, 2004, the petitioners alleged that the Director of the CICPC still had not responded to the requests of the Office of the Ombudsman and that the case continued to be "paralyzed." In their communication of June 7 of that year, the petitioners reiterated that the investigation was still at a stand still and that the order for the immediate reinstatement of the investigator to the case on a full-time basis had not been obeyed. Additionally, several press articles appear in the case file referring to information published by the parents of Johan Alexis about the case, contending that the investigation had been brought to a halt since December 2003 and about the lack of response from the Chief of the CICPC. This information was not disputed by the State. See: Annex 101. Press article from *Diario La Nación*, *Seis años sin poder esclarecerse el crimen de Johan Alexis Ortiz* [Six years later and Johan Alexis Ortiz criminal case unsuccessfully solved], San Cristóbal, February 22, 2004. Grouped as annex G to petitioners' submission of April 7, 2004.

¹⁴⁹According to information provided by the Agent of the State for Human Rights before the Inter-American and international Systems to Mr. Edgar Ortiz, in a communication of February 14, 2006 (Annex 88). Said communication was provided as an annex to petitioners' submission of February 25, 2006.

¹⁵⁰See: Record of interviews conducted by the Seventh Prosecutor's Office on the following dates: April 22, 2003, interview of Franklin Alberto García Rivas, expert of the Technical Judicial Police; April 28, 2003, interview of Josefa Sierra de Cárdenas, expert of the Corps of Scientific, Criminal and Forensic Investigations, which issued expert's report No. 0870 of 1998; June 12, 2003, interview of (NG) Major Eddin Ruben Villasmil Antunez, who testified about, among other things, the theoretical instruction that had previously been imparted to the students of the ESCUARNAC who participated in the training exercise, wherein they were ordered to "not stand up because they could be hit by live ammo flying by" "not to stand up in obstacle No. 5 because there would be real gunshots;" and also that the case of Johan Alexis had been "widely reported by the different local and national print and television media, these actions were for the purpose of discrediting the military institution and obtain personal economic gain [...];" June 17, 2003, interview of National Guardsman Antonio Elías Linares Villalobos, who testified that he was next to instructor Malpica when the training exercise began, and that when it was Johan Alexis' turn to go through the rabbit hole the instructor said to him "new one through, new one through, in that moment when I heard that guardsman MALPICA was saying that to my classmate, it got my attention and I looked up toward where the aforementioned student was, then National Guardsman MALPICA continued firing and was saying to him new one through, new one through, at that moment my classmate crouched down and said 'Ouch my arm, ouch my arm,' I let instructor Guardsman MALPICA know, by touching his arm, because the instructor had ear protectors on, he took off the ear protectors and asked me what was happening and I told him to watch out because it seemed that he had hit my classmate [...];" June 27, 2003, interview of Víctor Alberto La Cruz Delgado, student of the National Guard in 1998; July 7, 2003, interview of Gerardo Enrique Méndez Figueroa, Deputy Officer of the Office of the Chief of the Division of Evaluation of the ESGUARNAC of Cordero in 1998; July 14, 2003, interview of Lieutenant Coronel Alexander Florez Lamus; July 28, 2003, interview of Gerson Daniel Varela Molina, classmate of the same graduating class as Johan Alexis; and December 4, 2003, interview of Edgar Gregorio Rincón Carrero, student of the ESGUARNAC of Cordero. Cited in Annex 14. Prosecution's indictment of February 27, 2013. Annex to petitioners' submission of April 21, 2013.

Scientific, Criminal and Forensic Investigation Camilo Alexander Bonilla Cárdenas, who handled the investigation conducted by what was then the PTJ, in 1998. The official claimed to not recognize the projectile fragments shown by the Prosecutor's Office as evidence in the case.¹⁵¹

113. Additionally, on May 20, 2003, the Prosecutor's Office interviewed the forensic pathologist who performed the autopsy on March 2, 1998. She asserted that the impacts on the body of Johan Alexis Ortiz were from projectiles and that he had two entry orifices with no exit orifice. In her statement, the pathologist did not recognize the two fragments collected, according to Official Letter FM3-080 from the Office of the Military Prosecutor in case investigation file 008-98.¹⁵² She noted that these [fragments] did not have "the characteristics described by [her] in the autopsy form." She claimed that the body presented four stitches, two in each wound, which were not reported on the autopsy form "because medical assistance was presumed and also they had to be pulled out in order to observe the characteristics of the entry orifice." She also reiterated that the entry orifices of the wounds on the body of Mr. Ortiz were characteristic of wounds caused by "handguns and long barrel guns like a shot gun and rifle [...]"¹⁵³ The pathologist noted that the projectiles "came from a fire arm that was being handled by a human being" and pointed out that it was unlikely that the military uniform that the Prosecutor's Office had in its possession as part of the evidence, was from the alleged victim because no traces of blood could be seen on it.¹⁵⁴

114. On June 14, 2004, the father requested the Seventh Prosecutor's Office to keep him informed in writing about the status of the investigation.¹⁵⁵ On July 1, 2004, the Prosecutor's Office replied that the

¹⁵¹Record of April 28, 2003 interview of Camilo Alexander Bonilla Cárdenas, Inspector of the Corps of Scientific, Criminal and Forensic Investigations. Cited in Annex 14. Prosecution's indictment of February 27, 2013. Annex to petitioners' submission of April 21, 2013.

¹⁵²According to expert's report No. 3489, which is not in the case file of the IACHR and which is only mentioned in the interview record by the Office of the Prosecutor in its charging document of February 27, 2013.

¹⁵³In this regard, the interview record notes:

QUESTION 8: Tell us, if the orifices of projectile entry are sutured [stitched up], was the body externally manipulated prior to arriving in your hands, and in your view, were the wounds on the body internally modified, could anyone have been able to insert other projectiles into the body, or was it internally intact, without having been manipulated? ANSWER: "Projectile entry orifices are never stitched up, the fact that they were stitched up, is indicative of the lack of experience of the doctor who attended them, [...] The body was externally manipulated by all personnel who dealt with the case from the very moment of the death. There was no internal modification of the wounds or trajectory of the projectiles. Other projectiles could not have been inserted into the body nor was there internal manipulation thereof, except for by me and the morgue attendant.

May 20, 2003 Interview record of Ana Cecilia Bracho. Cited in Annex 14. Prosecution's indictment of February 27, 2013. Annex to petitioners' submission of April 21, 2013.

¹⁵⁴May 20, 2003 Interview record of Ana Cecilia Bracho. Cited in Annex 14. Prosecution's indictment of February 27, 2013. Annex to petitioners' submission of April 21, 2013.

¹⁵⁵Mr. Ortiz also asked: On what date did the investigation come to a stand still and for what reason? Who ordered the investigation to be halted? To whom was an official letter sent in order to restart the investigation? As of what date has no investigation been conducted on the case? As of the present date, have orders to reopen the case been received? If so, state by who and on what date; If it was restarted, say what efforts have been made in the investigation since that time and on what dates; If it was ordered to be resumed and it has not resumed, state why; What interest is there in further delaying the investigation of the case? On March 26, 2003, a request was made by official letter to CAVIM (Compañía Anónima Venezolana de Industrias Militares), specifically to the Department of Materials and Ammunition, in order to examine and report on a NATO 7.62 by 41 regular projectile. State whether or not said examination was performed, and if so, state the date and if not, explain why, as it has been more than one year since it was requested; On March 26, 2003, a soil and granule examination test was also requested in order to determine the type of soil of the site where my son was gunned dead, as well as the consistency thereof. State whether this analysis was performed and, if so, on what date, and if not, explain why, being that it has been more than a year since it was requested; On March 26, 2003, a request was made to photograph and draw up a diagram of the entire obstacle course where my son was murdered, state whether or not this part of the investigation was performed, if it was, on what date and if not, what is the reason it was not; On March 26, 2003, a request was also issued to collect ordinary ballistic trajectory evidence, on the obstacle course of the Rural Commandos of Outpost No. 19 of the National Guard, [...] of the State of Táchira. State whether or not this evidence was gathered and, if so, on what date and, if not, what was the reason it was not; On March 26, 2003, a request was made to collect special ballistic trajectory evidence, in order to determine if it was possible that the projectiles, which were expelled from the left side of Obstacle No. 5 (the rabbit hole), by the Afag machine gun, could have hit the target on Johan Alexis Ortiz Hernandez, on the right side of his body, inasmuch as the student was moving through the course in the normal direction. State whether or not this examination was performed and if so, on what date and if not, explain why; I also request that other evidence examination and collection be conducted in order to expedite the case [...]; Lastly, I request to be advised of how much time is required for this Office of

[continues ...]

case was “[...] in the preparatory phase.”¹⁵⁶ Statements received over the course of 2004¹⁵⁷ included one on July 15, 2004, from a National Guardsman, who was interviewed by the Office of the Prosecutor and recounted that on February 15, 1998, he was assigned as an instructor at obstacle No. 6 of the combat training exercise held that day and he had seen how Johan Alexis Ortiz had been shot.¹⁵⁸

115. On August 10, 2004, the Office of the Ombudsman of the State of Tachira addressed a communication to the Office of the Chief Prosecutor expressing its concern over the delay in the criminal investigation and urged him to take the necessary steps to ensure that the investigation is expedited.¹⁵⁹ On August 12, 2004, the CICPC conducted a new technical inspection of the combat training obstacle course of the Rural Commandos Outpost No. 19 of the National Guard.¹⁶⁰ On August 19, 2004, the father requested the Office of the Ombudsman to send an official letter to the Attorney General and to the National Office of the Ombudsman regarding “the irregularities” in the investigation proceedings.¹⁶¹

116. On September 8, 2004, the CICPC conducted a new ballistic trajectory test based on an expert analysis report identified by No. 1968 of June 1, 1998.¹⁶² On December 15, 2004, Dr. Lucy Vega gave a statement testifying that Mr. Ortiz arrived in the Hospital with wounds, without “any other type of injury” and that she had not stitched them up because they were not bleeding.¹⁶³ The information available indicates that

[... continuation]

the Prosecutor to complete the investigation. Annex 102. Request submitted by Mr. Edgar Ortiz to the Seventh Office of the Prosecutor of the Ministry of Public Prosecution of the Judicial District of the State of Tachira, dated as received at the Office of the Prosecutor on June 14, 2004. Annex A to petitioners’ submission of July 27, 2004.

¹⁵⁶Annex 103. Official Letter No. 20F07-0798/04 addressed to Mr. Edgar Ortiz, by the Assistant Prosecutor of the Seventh Prosecutor’s Office of the Ministry of Public Prosecution of the State of Tachira, dated July 1, 2004, with a hand-written note on which is read date of receipt July 7, 2004 and the following: “I do not agree with the response because it does not explain to me what I requested and does not answer my concerns, about the [removal of the investigating] official and the halting of the case [investigation].” Annex C to petitioners’ submission of July 27, 2004.

¹⁵⁷Based on records of interviews: dated July 14, 2004, interview of Luis Eduardo Berrio Mercado, graduating classmate of Johan Alexis; dated July 20, 2004, interview of William Alexander Pereira Hernández, student of the ESGUARNAC in 1998; September 14, 2004, interview of Jovita Suárez, present in the emergency room of El Piñal Hospital when Johan Alexis was admitted; dated September 15, 2004, interview of María Aurora Gelves Chacón, present in the emergency room of El Piñal Hospital when Johan Alexis was admitted; dated September 16, 2004, interview of Ana Olga Velasco de Ramírez, present in the emergency room of El Piñal Hospital when Johan Alexis was admitted; dated September 17, 2004, interview of Sonia Margarita Márquez Rosales, nurse present in the emergency room of El Piñal Hospital when Johan Alexis was admitted, who testified that when she received him, his shirt, pants, military boots and socks were removed and were handed over “to military troops who arrived there;” dated September 20, 2004, interview of Paula Delgado de Cordero, present in the emergency room of El Piñal Hospital when Johan Alexis was admitted; dated October 11, 2004, interview of Ángel Luis Arias Escorcha, National Guard student; dated October 11, 2004, interview of Pedro Antonio Camargo Parra, Johan Alexis’s classmate; dated October 13, 2004, interview of Elizabeth Contreras, medical services assistant of the ESGUARNAC of Cordero; dated October 14, 2004, interview of Rosa Lisbeth Medina, staff of the Corps of Scientific, Criminal and Forensic Investigations, who took part in the luminol testing of the obstacle course of Outpost No. 19. Cited in Annex 14. Prosecution’s indictment of February 27, 2013, pgs. 77-78. Annex to petitioners’ submission of April 21, 2013.

¹⁵⁸Record of July 15, 2004 interview of Gersón Secundino Jiménez Fernández. Cited in Annex 14. Prosecution’s indictment of February 27, 2013, pgs. 77-78. Annex to petitioners’ submission of April 21, 2013.

¹⁵⁹Annex 100. Official Letter No. DP/DDET-O-0913-2004 addressed to the Chief Prosecutor of the State of Tachira, sent by the Ombudsman of the State of Tachira, dated August 10, 2004. Annex C to petitioners’ submission of September 27, 2004.

¹⁶⁰Technical Inspection report No. 4053 dated August 12, 2004, signed by Detective Héctor Gamez of the Technical Judicial Police. Cited in Annex 14. Prosecution’s indictment of February 27, 2013, pgs. 77-78. Annex to petitioners’ submission of April 21, 2013

¹⁶¹Annex 104. Communication addressed by Mr. Edgar Ortiz to the Ombudsman of the State of Tachira, dated August 19, 2004. Annex B to petitioners’ submission of September 27, 2004.

¹⁶²Ballistics trajectory report No. 5125 of September 8, 2004, written by the staff member of the Corps of Scientific, Criminal and Forensic Investigations Blanca Niño. Cited in Annex 14. Prosecution’s indictment of February 27, 2013, pgs. 11-12. Annex to petitioners’ submission of April 21, 2013.

¹⁶³When she examined the photos of the body of Johan Alexis, shown to her by the Office of the Prosecutor, where the stitched up wounds were visible, the doctor reiterated that she did not recall stitching up the thorax wound, and said that these stitches could have been done by the Hospital nurses or at the Morgue of the Central Hospital of San Cristóbal. Record of interview of Lucy Vega, December 15, 2004. Cited in Annex 14. Prosecution’s indictment of February 27, 2013, pgs. 95-96. Annex to petitioners’ submission of April 21, 2013.

in December 2004, the 34th Prosecutor with nationwide jurisdiction of the Ministry of Public Prosecution had also been assigned to intervene in the case investigation.¹⁶⁴

117. On April 6, 2005, the Office of the Ombudsman requested information from the Office of the Prosecutor about the case investigation, taking into account that, based on information provided by Mr. Edgar Ortiz, National Jurisdiction Prosecuting Attorney 34 “[...] only appeared in person at this federal entity on December 27 and 28, 2004, and allegedly has not return since then up until the present time.”¹⁶⁵ On April 7, 2005, the ballistics trajectory and fragment collection test, among other tests, was conducted in order to forward the samples to the CICPC laboratory for the forensic examination reports to be drawn up.¹⁶⁶

118. On June 9, 2005, the CICPC conducted a technical examination of a firearm handed over by Rural Commandos Outpost No. 19¹⁶⁷ as well as the forensic mechanical and design examination on the machine gun, FN AFAG brand, model M61, 7.62mm caliber.¹⁶⁸ On June 10, 2005, the legal representative of the victims in the case mentioned certain forensic examinations they had requested to be performed, which have still not been performed, and they stressed the prejudice that this has caused their clients.¹⁶⁹

119. In August 2005, the Office of the Prosecutor summoned two NG officers to appear and took the statements of persons connected to the case. In September 2005, the Office of the Prosecutor requested forensic examinations to be conducted and took the statement of several more persons, including Mrs. Zaida Hernández.¹⁷⁰ Then, on September 19, the CICPC conducted forensic and technical examinations of “a casing fragment” and “a core fragment” of a projectile extracted from the body of the alleged victim. On September 29, the CICPC performed forensic hematological and chemical examinations and a sweep test of the uniform of Johan Alexis Ortiz¹⁷¹ and on November 24, 2005, the Office of the Prosecutor requested a soil and granule analysis at the site of the obstacle course and the personal information of an individual.¹⁷²

¹⁶⁴According to information provided by the Office of the Ombudsman of the State of Tachira in official letter No. DP/DDET-O-00427-2005 addressed to the Seventh Prosecutor of the Ministry of Public Prosecution of the State of Tachira (Annex 105), dated April 6, 2005. Annex A to petitioners’ submission of July 6, 2005.

¹⁶⁵Annex 105. Official Letter No. DP/DDET-O-00427-2005 addressed to the Seventh Prosecutor of the Ministry of Public Prosecution of the State of Tachira, by the Office of the Ombudsman of the State of Tachira, dated April 6, 2005. Annex A to petitioners’ submission of July 6, 2005.

¹⁶⁶According to information provided to Mr. Edgar Ortiz by the Agent of the State for Human Rights before the Inter-American and International Systems, in a communication of February 14, 2006 (Annex 88). Said communication was introduced as an annex to petitioners’ submission of February 25, 2006.

¹⁶⁷Technical examination report No. 2020 dated June 9, 2005, conducted and written by staff member assigned to the CICPC of San Cristobal Julio César Contreras. Cited in Annex 14. Prosecution’s indictment of February 27, 2013, pgs. 13-14. Annex to petitioners’ submission of April 21, 2013.

¹⁶⁸Forensic mechanical and design report No. 9700-134-LCT-2020 of June 9, 2005, signed by forensic toxicological laboratory technician of the Corps of Scientific, Criminal and Forensic Investigations, Julio César Contreras. Cited in Annex 14. Prosecution’s indictment of February 27, 2013, pgs. 14-15. Annex to petitioners’ submission of April 21, 2013.

¹⁶⁹Annex 106. Communication addressed to the Seventh Prosecutor’s Office of the Ministry of Public Prosecution of the Judicial District of the State of Tachira, signed by Attorney Helmisam Beiruti Rosales, dated June 10, 2005, stamped as received in the Office of the Chief Prosecutor of the State of Tachira on June 16, 2005. Annex D to petitioners’ submission of July 6, 2005.

¹⁷⁰According to information provided to Mr. Edgar Ortiz by the Agent of the State for Human Rights before the Inter-American and International Systems, in a communication of February 14, 2006. Said communication was introduced as an annex to petitioners’ submission of February 25, 2006. In the charging document of the Office of the Prosecutor reference is only made to interview records of a September 1, 2005 interview of Micahel Randolp Ortiz Rivas, student of the ESGUARNAC; and a September 8, 2005 interview of Carlos Luis Perdomo Ortíz, graduating classmate of Johan Alexis. Additionally, it mentions a record of a January 13, 2005 interview of José Gregorio Perdomo Somaza, National Guard sergeant assigned to the ESGUARNAC. Cited in Annex 14. Prosecution’s indictment of February 27, 2013. Annex to petitioners’ submission of April 21, 2013.

¹⁷¹Forensic hematological, chemical and sweep analysis report No. 9700-134-LCT-3689 dated September 29, 2005, signed by expert Linda Villamizar, of the Toxicological Laboratory of the Corps of Scientific, Criminal and Forensic Investigations, Tachira Police Station. Cited in Annex 14. Prosecution’s indictment of February 27, 2013. Annex to petitioners’ submission of April 21, 2013.

¹⁷²According to information provided by the Agent of the State for Human Rights before the Inter-American and International Systems to Mr. Edgar Ortiz, in a communication of February 14, 2006 (Annex 88). Said communication was introduced as an annex to the petitioners’ submission of February 25, 2006.

120. Based on information provided by the State in the proceedings before the IACHR, on February 16, 2006, the Directorate of Fundamental Rights Protection assigned the Office of Prosecutor 62 of the Ministry of Public Prosecution with nationwide jurisdiction to the case.¹⁷³ On March 16, 2006, the CICPC drew up a diagram¹⁷⁴ and the Office of the Prosecutor took a number of statements.¹⁷⁵ On October 22, 2007, the CICPC conducted an intra-organ ballistics trajectory test¹⁷⁶ and it received a certified copy of the event log book from the duty chief assigned from February 13 to February 17, 1998, a copy of the Operations Order for the First Anti-Subversive Training Course of February 1998 and the names, ranks and duties of the instructors and assistant instructors who worked at the First Anti-Subversive Training Course.¹⁷⁷

121. The IACHR does not have any information about evidence gathered from 2008 to 2010. The indictment filed by the prosecutor's office made no reference either to any evidence gathered over that period. With regard to 2008, the parties reported that the events had been reenacted at the scene of the crime and the State also noted that the Ministry of Public Prosecution, National Guard officials, CICPC experts and the Directorate of Technical Legal Counsel of that body, were present at the reenactment.¹⁷⁸ In response, the petitioners contended that they were not aware of the results of said reenactment and, that after it was completed, one of the assistant prosecuting attorneys had been taken off the investigation.¹⁷⁹

122. The information available indicates that in 2011, the Ministry of Public Prosecution had not brought formal charges in the investigation proceedings and the father, in his status as victim in the case, requested the Court to urge the Office of the Prosecutor to file charges as a conclusion to the investigation, as provided for in the Organic Code of Criminal Procedure. Under an order of April 4, 2011 the Fifth Court set a deadline of 120 days to conclude the investigation.¹⁸⁰

¹⁷³State's submission of September 6, 2006.

¹⁷⁴Diagram Drawing No. 156-06 dated March 16, 2006, signed by Inspector José Luis Cordero, expert assigned to the Division of Crime Analysis and Reenactment of the Corps of Scientific, Criminal and Forensic Investigations. Cited in Annex 14. Prosecution's indictment of February 27, 2013. Annex to petitioners' submission of April 21, 2013.

¹⁷⁵According to records of interviews: February 16, 2006, interview of Luís Samir Kiwan Ramírez, Brigadier General of the National Guard in 1998; same date, interview of Jesús Harrinson Carvajal, graduating classmate of Johan Alexis; February 17, 2006, interview of Jorge Enrique Vergara Borda, who worked as an "occasional photographer" of the ESGUARNAC of Cordero in 1998; May 23, 2006, interview of Carlos Andrés Moreno Lizcano, student of the ESGUARNAC of Cordero in 1998; same date, interview of Franklin Aldúbral Parada Hernández, graduating classmate of Johan Alexis; May 24, 2006, interview of José Luis Campos Álvarez, graduating classmate of Johan Alexis; May 25, 2006, interview of Jesús Nilver Noguera Vivas, graduating classmate Johan Alexis; same date, interview of José Ignacio Abreu Vilorio, patrol techniques instructor of the students of the ESGUARNAC of Cordero; same date, interview of Víctor Manuel Rivas Mora, Lieutenant Corporal of the National Guard and weapons and explosives instructor; May 30, 2006, interview of Miguel Aquino Pabón Araque, graduating classmate of Johan Alexis; same date, interview of Jorge José Parra Superlano, graduating classmate of Johan Alexis; June 6, 2006 interview of Ángel Marcelino Quintero Méndez, National Guardsman; June 7, 2006, interview of Ramón Armando Rosales Chaparro, National Guardsman; June 8, 2006, interview of Felicitó Alfonso Pérez, graduating classmate of Johan Alexis; and June 13, 2006, interview of Luis Enrique Riera Segovia, National Guardsman. Cited in Annex 14. Prosecution's indictment of February 27, 2013. Annex to petitioners' submission of April 21, 2013.

¹⁷⁶Intra-organ trajectory report No. 632-07, dated October 22, 2007, signed by investigating agent Tany Bohórquez, assigned to the Division of Crime Analysis and Reenactment of the Corps of Scientific, Criminal and Forensic Investigations. Cited in Annex 14. Prosecution's indictment of February 27, 2013, pg. 19. Annex to petitioners' submission of April 21, 2013.

¹⁷⁷According to communication No. IMUT-GDVAFE-AYU-2079 of November 12, 2007, of the Military University Institute of Technology of the Bolivarian National Guard, sent to the Office of the Seventh Prosecutor. Cited in Annex 14. Prosecution's indictment of February 27, 2013, pg. 100. Annex to petitioners' submission of April 21, 2013.

¹⁷⁸State's submission of August 11, 2008.

¹⁷⁹Petitioners' submission of October 15, 2008.

¹⁸⁰Annex 107. Order of April 4, 2011 and record of the same date, of the special hearing to extend the time period for the conclusion of the investigation, issued by the Acting Trial Court of Control Five of the Criminal Judicial Circuit of the State of Tachira. Case SP21-P-2010-004926 Annexes to petitioners' submission of May 16, 2011.

123. On April 8, 2011, the Office of Prosecutor 62 with national jurisdiction and the Seventh Prosecutor's Office of Tachira filed an appeal against the order of April 4, 2011.¹⁸¹ On April 12, 2011, the Fifth Court of Control summoned the private attorney of the father and the father to provide an answer to the appeal.¹⁸² In his answer, the father reiterated the delay of more than 12 years of investigation and requested that the case file of the Ministry of Public Prosecution be submitted to the Court of Appeals, inasmuch as the Office of the Prosecuting Attorney had refused to "bring it before the Control Judge [...] even though it was requested to do so in each official letter."¹⁸³ On July 8, 2011, the Court of Appeals denied the motion to appeal of the Office of the Prosecutor and agreed to uphold the decision handed down on April 4, 2011.¹⁸⁴

124. In February 2012, the Ministry of Public Prosecution brought charges against Jean Carlos Rafael Malpica Calzadilla for the crime of intentional homicide with wanton disregard and improper use of a weapon of war.¹⁸⁵ On March 23, 2012, the petitioners filed a motion to set aside the indictment, charging that the Ministry of Public Prosecution had not examined the expert evidence reports to enable it to prove that Mr. Ortiz had been hit with low caliber projectiles and not with shrapnel or fragments and that these [exhibits] had been changed out during the investigation. They claimed that the charges brought against the other National Guard officers were incorrect or incomplete and that their child had been tortured prior to dying.¹⁸⁶

¹⁸¹Annex 108. Official Letter No. 62-NN-0401-2011 of April 8, 2011. Case SP21-P-2010-004926. Annex to petitioners' submission of May 16, 2011.

¹⁸²Annex 109. Notices of summons of April 12, 2011. Fifth Court of Control of the Criminal Judicial Circuit of the State of Tachira. Annex to petitioners' submission of May 16, 2011.

¹⁸³Annex 110. Answer to the motion to appeal signed by Edgar Ortiz, assisted by his legal representative. Case SP21-P-2010-004926. Annex to petitioners' submission of May 16, 2011. The Commission does not have any documentary support to this and other requests that the petitioners alleged to have made in order to secure copies of the case file before the Ministry of Public Prosecution. The information that the IACHR has before it is what was reported by means of the petitioners' submissions of March 29, 2005, wherein they claimed that "[...] as victims, we only have access to the case file [before the Office of the Prosecutor of the Ministry of Public Prosecution] and not to request copies, because we are third parties to them;" and their submission of January 21, 2008, in which they claimed that on September 12, 2007, they had requested copies of the case file before the Office of the Prosecutor of the State of Tachira, though thus far no response had been provided to them. Additionally, in the communication of August 8, 2008, the State noted that said request had been taken care of. In response to said communication, the petitioners claimed that Mr. Ortiz had decided to hand over said copies to Assistant Prosecutor No. 34 with national jurisdiction assigned to the case, in order to "expedite" the course thereof, because he had been advised that the Prosecutors' Offices assigned to the case, which was based in the city of Caracas, did not have a copy of the entire case file. He contended that subsequently that same Prosecutor had been "removed from his position." The State did not dispute this information. Additionally, a communication of January 12, 2005 (Annex 111) is on record in the case file, addressed to Mr. Edgar Ortiz, in which the General Directorate of Citizen Service of the Office of the Ombudsman advises him that the copies requested in December 2004, would be issued to him by the Office of the Ombudsman of the State of Tachira; and a memorandum of the Office of the Ombudsman of the State of Tachira in 2004 (Annex 112), which notes "the persistent refusal of the Seventh Prosecutor's Office of the Ministry of Public Prosecution to allow this delegate of the Ombudsman to become privy to the case file identified with the number 20F7-1222/02 [...]" Official Letter No. DP/DDET-0412-2004. Annexes A and E to petitioners' submission of March 29, 2005.

¹⁸⁴Annex 113. Receipt of notification of July 8, 2011. Court of Appeals of the Criminal Judicial Circuit of the State of Tachira. Annex to petitioners' submission of July 19, 2011. In the case file, there is a receipt of notification from the same Court of Appeals and the same content, dated July 25, 2011 (Annex 114). Annex to petitioners' submission of September 4, 2011.

¹⁸⁵Annex 115. Press article from *Diario La Nación*, *A 14 años del crimen de Johan Alexis sólo hay un imputado por la Fiscalía* [14 years after Johan Alexis crime only one person charged by the Office of the Prosecutor], February 14, 2012. Annex to petitioners' submission of February 18, 2012.

¹⁸⁶They contended that:

[...] clandestinely, after being mortally wounded, by beatings, dislocating his shoulder while he was agonizing, cigarette burns and, lastly, tardily transferred to a rural hospital, causing his death [...] that the body was manipulated, along with obtaining false statements in the investigation given by officers in charge of running the training exercise [...] who were threatened with death by public officials belonging to official agencies [...] and with firearm assaults against them and their family circle]

Annex 116. Motion to set aside the indictment, signed by Edgar Ortiz and Zaida Hernández, before Acting Criminal Trial Court of Control No. 5 of the Judicial District of the State of Tachira. Case SP21-P-2010-004926, stamped as received in the Office of Alguacilazgo on March 23, 2012. Annex to petitioners' submission of March 24, 2012.

125. On April 12, 2012, the preliminary hearing was postponed before the Acting Trial Court of Control of San Cristóbal until May 4, 2012, because of non-appearance of the defendant.¹⁸⁷ On May 22, 2012, the preliminary hearing was postponed once again until June 8 of that year, because of defendant's failure to appear.¹⁸⁸ On June 21, 2012, the preliminary hearing date was set, for the seventh time,¹⁸⁹ but once again it was postponed until July 6, 2012, due to non-appearance of the defendant.¹⁹⁰ The preliminary hearing continued to be postponed at least two more times, according to the postponement notices of July 6, 2012¹⁹¹ and August 14, 2012¹⁹² because the defendant failed to appear. The petitioners alleged that the preliminary hearing was postponed a total of 12 times.¹⁹³ The State did not dispute this information.

126. On October 4, 2012, the preliminary hearing was held. On that date, the Court decided to deny the motion of the Prosecution and ordered alternative measures to preventive detention for the defendant consisting of a ban on departing the country, reporting every two weeks to the pretrial services officer and attendance and participation in all hearings of the case. Additionally, the indictment was dismissed on the grounds that it did not meet the requirements set forth in Article 326 of the COPP in effect at the time and the "failure to observe jurisprudence and failure to conduct a complete investigation of the instant case." Lastly, it directed the Prosecution to issue a new conclusion to the investigation, "with a basis in a full investigation into the facts," within a period of 120 days, in accordance with Articles 281 and 283 of the COPP.¹⁹⁴

127. On February 27, 2013, the Prosecutors of the Ministry of Assistant Prosecutor 62, prosecutor 34 with nationwide jurisdiction, assistant prosecutor 34 with nationwide jurisdiction and prosecutor 20 of the Judicial circuit of Tachira, filed an indictment before the Acting First Trial Court of Control of the State of Tachira, against Jean Carlos Rafael Malpica Calzadilla for allegedly committing the crime of intentional homicide with wanton disregard and improper use of a weapon of war.¹⁹⁵

128. The Office of the Prosecutor determined that the day of the training exercise when Johan Alexis Ortiz died, National Guardsman Malpica was the person in charge of the obstacle known as "the rabbit hole" and that the officer was assigned "the 7.62 caliber series FN 130373, barrel serial number 832 machine gun fire arm," with which he made "bursts of fire inside the ramp, exactly one meter and a half ahead of the students, who crossed the obstacle." Additionally, he took into account that it was an "extremely hazardous military training drill" because of the use of armaments with live rounds of ammunition, which the students participating in it were aware of and for which they received proper training."¹⁹⁶

129. The theory claimed by the prosecution about the facts was that:

¹⁸⁷Annex 117. Notice of postponement of preliminary hearing of April 12, 2012. Acting Trial Court of Control of the Criminal Judicial Circuit of the State of Tachira. Annex to petitioners' submission of April 15, 2012.

¹⁸⁸Annex 118. Notice of postponement of preliminary hearing of May 22, 2012. Acting Trial Court of Control of the Criminal Judicial Circuit of the State of Tachira. Annex to petitioners' submission of May 24, 2012.

¹⁸⁹Annex 119. Notice of postponement of June 14, 2012, addressed to Edgar Ortiz. Case SP21-P-2010-004926. Annex to petitioners' submission of June 20, 2012.

¹⁹⁰Annex 120. Notice of postponement of preliminary hearing of June 21, 2012. Acting Trial Court of Control of the Criminal Judicial Circuit of the State of Tachira. Annex to petitioners' submission of June 23, 2012.

¹⁹¹Annex 121. Notice of postponement of preliminary hearing of July 6, 2012. Case SP21-P-2010-004926. Acting Trial Court of Control of the Criminal Judicial Circuit of the State of Tachira. Annex to petitioners' submission of July 9, 2012.

¹⁹²Annex 122. Notice of postponement of preliminary hearing of August 14, 2012. Case SP21-P-2010-004926. Acting Trial Court of Control of the Criminal Judicial Circuit of the State of Tachira. Annex to petitioners' submission of August 14, 2012.

¹⁹³Petitioners' submission of September 28, 2012.

¹⁹⁴Annex 123. Record of preliminary hearing of October 4, 2012. Case SP21-P-2010-004926. Acting Fifth Trial Court of Control of the Criminal Judicial Circuit of the State of Tachira. Annex to petitioners' submission of October 9, 2012.

¹⁹⁵Annex 14. Prosecution's indictment of February 27, 2013. Annex to petitioners' submission of April 21, 2013.

¹⁹⁶Annex 14. Prosecution's indictment of February 27, 2013, page 196. Annex to petitioners' submission of April 21, 2013.

When it came time for the turn of student JOHAN ALEXIS ORTIZ HERNÁNDEZ; as he went through obstacle number 5, [...] after taking the proper position [...] National Guard instructor MALPICA CALZADILLA GEANCARLOS RAFAEL, proceeded to fire the gas powered machine gun (AFAG 7.62), aiming the shots inside the ramp, just ahead of [Johan Alexis], with one of the projectiles hitting an object of equal or greater molecular cohesion, which gave rise to fragmentation of the bullet, and said fragments were what, in short, hit [his] body [...].¹⁹⁷

[...] we can determine without difficulty that defendant JEAN CARLOS MALPICA CALZADILLA, preferred to continue with the obviously hazardous action, which was to shoot inside the obstacle where the students were going through, and did not stop to take any safety measures to avoid that any student would be fatally shot, as indeed had happened when the victim Johan Alexis Ortiz was hit.¹⁹⁸

[...] Based on the evidence in the record, defendant JEAN CARLOS MALPICA CALZADILLA, improperly used official means meant to safeguard the security of the members of the community, (regulation weapons) which he took advantage of to arbitrarily violate, without any reason the constitutional guarantee of respect for life [...].¹⁹⁹

130. According to Prosecutors of the Ministry, Johan Alexis Ortiz was already wounded when he got up and fell back down to the ground; officer Malpica came to his aid, as did a military nurse and he was taken to the Hospital. The indictment referred to the autopsy report written by the doctors of the Forensic Medical Office of San Cristóbal of the former CTPJ and the statement of pathologist Bracho, among others ones, as compelling evidence to establish accurately “the cause of death.”²⁰⁰ Additionally, inspections conducted by the CTPJ in 1998 and 2004 of the combat training obstacle course of Outpost No. 19 of the National Guard, the exhumation and luminol test of 1998 and the ballistic trajectory test conducted in 1998 and 2004, among other ones, were taken into account.

131. The Ministry of Public Prosecution also requested the court to order the defendant to be held in preventive detention.²⁰¹ The preliminary hearing was set for April 3 and postponed until April 30 of that year because the defendant failed to appear.²⁰² Based on the information in the case file, the case was transferred on May 22, 2013, to be heard by the Acting State Criminal Trial Court of Control of San Cristóbal, as a result of a recusal brought by the Fifth Court of Control.²⁰³ On May 23, 2013, a hearing date was set for June 20.²⁰⁴

132. In the case file there are records of postponements of June 20, 2013,²⁰⁵ July 18, 2013²⁰⁶ and August 19, 2013, with this last notice also including respective orders to hold the defendant Jean Carlos

¹⁹⁷Annex 14. Prosecution’s indictment of February 27, 2013, Annex to petitioners’ submission of April 21, 2013.

¹⁹⁸Annex 14. Prosecution’s indictment of February 27, 2013, page 107. Annex to petitioners’ submission of April 21, 2013.

¹⁹⁹Annex 14. Prosecution’s indictment of February 27, 2013, page 115. Annex to petitioners’ submission of April 21, 2013.

²⁰⁰Annex 14. Prosecution’s indictment of February 27, 2013, page 67. Annex to petitioners’ submission of April 21, 2013.

²⁰¹Annex 14. Prosecution’s indictment of February 27, 2013, page 146. Annex to petitioners’ submission of April 21, 2013.

²⁰²Annex 124. Notice of postponement of April 3, 2013. Case SP21-P-2010-004926. Acting State Criminal Trial Court of Control of San Cristóbal. Annex to petitioners’ submission of April 21, 2013.

²⁰³As is noted in Annex 125. Notice of Postponement of Hearing with request for execution of arrest warrant of August 19, 2013. Case SP21-P-2010-004926. Acting First State Criminal Trial Court of Control of San Cristóbal. Annex to petitioner’s submission of September 20, 2013.

²⁰⁴Annex 126. Certificate of notification of May 23, 2012. Case SP21-P-2010-004926. Acting State Criminal Trial Court of Control of San Cristóbal. Annex to petitioners’ submission of June 12, 2012.

²⁰⁵Annex 127. Certificate of notification of June 20, 2013. Case SP21-P-2010-004926. Acting State Criminal Trial Court of Control of San Cristóbal. Annex to petitioners’ submission of June 26, 2013.

Rafael Malpica Calzadilla in preventive detention and to arrest him.²⁰⁷ The IACHR does not have supporting documentary evidence regarding the rest of the proceedings conducted in 2013 and 2014, to the effect that the State took any measures to execute the arrest warrants. The latest information available about this case was provided by the petitioner in his submission of January 26, 2014, reporting that, as of that date, the arrest warrant had not been executed.

V. LEGAL ANALYSIS

133. The main dispute in the instant case involves the circumstances in which the death of Johan Alexis Ortiz Hernandez came about. The petitioners claim that the death of the alleged victim was the result of the doings of State agents and was intentional, while thus far a number of pieces of evidence have not been elucidated nor disproven by means of the investigation or judicial proceeding. They contend, in any case, that the use of live ammunition during a combat training exercise in which such use is not stipulated, in and of itself gives rise to the State's responsibility for the death of Mr. Ortiz. In response, the State has not introduced before the IACHR any specific arguments on this claim, but based on the foregoing findings of fact, even though the domestic authorities raised several different theories, all of them revolve around the death being an "accident" or an act of "negligence."

134. In this regard, the Commission recalls that international human rights protection must not be confused with criminal justice. It is not the purpose of international human rights law to impose punishment on those persons guilty of violations thereof, but rather to protect the victims, establish States' potential responsibility and provide for reparation of any damages, which may have been caused to them by conduct attributable to the State.²⁰⁸

135. Accordingly, it is not the job of the IACHR to determine whether or not there has been individual criminal liability of public officials for the death of the alleged victim, but rather to assess based on available information and in keeping with obligations under the American Convention, and the applicable rule of the burden of proof, whether the actions displayed by said agents involved international responsibility of the State.

136. Hereafter, the Commission will first determine whether the investigation conducted by the State and the judicial proceeding –which has still not reached its final conclusion– has upheld the right to a fair trial and judicial protection. Secondly, the Commission will assess whether this incident is attributable to the Venezuelan State in view of the established facts, the context in which the death of the alleged victim came about, and the way in which the investigation was conducted. Thirdly, the IACHR will examine the right to humane treatment in terms of what Mr. Ortiz experienced just prior to his death, and the investigations into these events. Lastly, the IACHR will analyze whether the right to humane treatment of the next-of-kin of Johan Ortiz Hernandez was violated by the State of Venezuela.

A. The right to a fair trial and judicial protection with respect to the investigation and proceeding instituted over the death of Johan Alexis Ortiz Hernández

137. Guided by the consistent legal precedent of the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court"), it is possible to draw a conclusion as to whether the State upheld its duty to ensure the substantive rights protected under the Convention by examining the rights enshrined in Articles 8 (fair trial) and 25 (judicial protection) of the Convention. Additionally, these

[... continuation]

²⁰⁶Annex 128. Certificate of Notification of July 18, 2013. Case SP21-P-2010-004926. Acting State Criminal Trial Court of Control of San Cristóbal. Annex to petitioners' submission of July 24, 2013.

²⁰⁷Annex 125. Notice of postponement of hearing with request to execute arrest warrant of August 19, 2013. Case SP21-P-2010-004926. Acting State Criminal Trial Court of Control of San Cristóbal. Annex to petitioners' submission of September 20, 2013.

²⁰⁸See: I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment June 26, 1987. Series C No. 1, para. 134.

provisions provide for the right of the family members of victims of these violations to be heard throughout domestic proceedings, as well as to obtain the truth of the facts and, when appropriate, a suitable punishment for those responsible, in addition to receiving full reparation.

138. Specifically, in instances where there has been a death of an individual in violent circumstances, the Court has held that the obligation to conduct an *ex officio*, prompt, serious, impartial and effective investigation, within a reasonable period of time, emanates from Articles 8 and 25 of the Convention as a fundamental element, which is essential for the protection of the rights affected by these situations.²⁰⁹ In light of Article 1.1 of the Convention, said duty requires the State to provide for a prompt and simple remedy to successfully bring, among other results, those responsible for the human rights violations before a court of law to be tried and to obtain reparation for the damage inflicted.²¹⁰ Said remedies “must be substantiated according to the rules of due process of law.”²¹¹ For its part, Article 2 obligates the State to suppress laws and practices that imply a violation of the guarantees established in the Convention as well as to adopt laws and implement practices leading to the effective observance of the investigation required.²¹²

139. As for the rights of victims’ family members to obtain justice, the Court has said that

It is evident from Article 8 of the Convention that the victims of human rights violations or their next-of-kin should have substantial possibilities of being heard and acting in the respective proceedings, both in order to clarify the facts and punish those responsible, and to seek due reparation.²¹³

140. The Court has determined that investigations conducted by the State must be performed with due diligence utilizing all legal means available and should be oriented toward the determination of the truth.²¹⁴ Similarly, the IACHR has held that

The fact that no one has been convicted or that, despite the efforts made, it was impossible to establish the facts, does not constitute a failure to fulfill the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.²¹⁵

²⁰⁹I/A Court H.R. *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, par. 75.

²¹⁰I/A Court H.R. *Case of Loayza Tamayo. Reparations*. Judgment of November 27, 1998. Series C No. 42, par. 169; I/A Court H.R., *Case of Velásquez Rodríguez*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1. *par. 91*; I/A Court H.R., *Case of Fairén Garbí and Solís Corrales*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 2, par. 90.

²¹¹I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167, para. 124; I/A Court H.R., *Case of the Massacre of la Rochela*. Judgment of May 11, 2007. Series C. No. 163. Par. 145; I/A Court of H.R. *Case of Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160. Par. 381; and I/A Court of H.R. *Case of Dismissed Congressional (Aguado Alfaro et al)*. Judgment of November 24, 2006. Series C No. 158, Par. 106.

²¹² *Cfr.* I/A Court H.R., *Case of Almonacid-Arellano et al*. Judgment of September 26, 2006. Series C No. 154, par. 118; I/A Court H.R., *Case of Ximenes Lopes v. Brazil. Preliminary Objection*. Judgment of November 30, 2005. Series C No. 139, par. 83, and *The Last Temptation of Christ*” *Case (Olmedo Bustos et al.)*. Judgment of February 5, 2001. Series C No. 73, par. 85.

²¹³I/A Court H.R., *Case García Prieto et al v. El Salvador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168. Par. 102; I/A Court H.R., *Case of the “Street Children” (Villagrán Morales et al)*. Judgment of November 19, 1999. Series C No. 63, para. 227; and I/A Court H.R., *Case of the Serrano Cruz Brothers v. El Salvador*. Merits, Reparations and Costs. Judgment of March 01, 2005. Series C No. 120, para. 63.

²¹⁴I/A Court H.R., *Case of García Prieto et al v. El Salvador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, para. 101.

²¹⁵IACHR, 1997 *Annual Report*, Report N° 55/97, Case 11.137 (Juan Carlos Abella et al), Argentina, para. 412. On this same issue, also see: IACHR, 1997 *Annual Report*, Report N° 52/97, Case 11.218 (Arges Sequeira Mangas), Nicaragua, para. 96 and 97.

141. More specifically, in cases involving the use of lethal force by State agents, the Court has written that “the general prohibition to arbitrarily deprive someone of his life, which state officials must observe, would be ineffective without proceedings to verify the legality of the lethal use of force by state officials.”²¹⁶

142. Accordingly, the general obligation to guarantee rights “is particularly important in cases of the use of lethal force.”²¹⁷In the words of the Court:

Upon learning that firearms have been used by members of its security forces and that such use had lethal consequences, the State has the obligation to initiate, *ex officio* and without delay, a serious, independent, impartial and effective investigation.²¹⁸ This obligation is a fundamental and determining element of the protection of the right to life, which is affected in such situations.²¹⁹

143. In the same vein, the United Nations Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions has written that:

Human rights standards on the use of force derive from the understanding that the irreversibility of death justifies stringent safeguards for the right to life, especially in relation to due process. A judicial procedure, respectful of due process and arriving at a final judgment, is generally the sine qua non without which a decision by the State and its agents to kill someone will constitute an “arbitrary deprivation of life” and, thus violate the right to life”²²⁰

144. According to the holding of the Court, in order to comply with the duty to investigate a human rights violation with due diligence, States are obligated to act, as of the first stages of the proceeding, with the utmost urgency.²²¹In this regard, the Commission and the Court have taken into consideration the United Nations Manual on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Based on said Manual, the Court has specifically noted, for example, that:

[... continuation]

^[54] The Inter-American Court has held, for example, that “The American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations.” IA Court of HR, *Case of the Constitutional Court*, judgment of September 29, 1999. Series C No. 71, para. 123. Also see I/A Court HR., *Case of Blake v Guatemala*, Reparations, Judgment of January 22, 1999, Series C No. 48, paras. 65.

²¹⁶I/A Court H.R., *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 88. Citing I/A Court H.R., *Case of Montero Aranguren et al (Detention Center of Catia) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 5, 2006. Series C No. 150, paras. 79 – 83.

²¹⁷I/A Court H.R., *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 88.

²¹⁸I/A Court H.R., *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 88. Citing. I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 112. Also see: I/A Court H.R., *Case of the Miguel Castro Castro Prison*, Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, par. 256, and I/A Court H.R., *Case of Vargas Areco*, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 155, para. 77. Likewise, also see: ECHR, *Erdogan and Others v. Turkey*, paras. 88-89; ECHR, *Kakoulli v. Turkey*, Application No. 385/97. November 22, 2005, paras. 122-123, and ECHR, *Nachova and Others v. Bulgaria [GC]*, nos. 43577/98 and 43579/98, paras. 111-112, 6 July 2005.

²¹⁹I/A Court H.R., *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 88.

²²⁰*Cfr. Provisional report on the global situation of extrajudicial, summary or arbitrary executions, submitted by the Special Rapporteur Philip Alston*. United Nations General Assembly. (Doc. A/61/311), 59th Session, September 5, 2006, para. 36.

²²¹I/A Court H.R., *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 121.

The State authorities that conduct an investigation must, *inter alia*, a) identify the victim; b) recover and preserve the probative material related to the death, in order to facilitate any investigation; c) identify possible witnesses and obtain their statements in relation to the death under investigation; d) determine the cause, method, place and moment of the death, as well as any pattern or practice that could have caused the death, and e) distinguish between natural death, accidental death, suicide and murder. In addition, it is essential to search exhaustively the scene of the crime and autopsies and analysis of human remains must be carried out rigorously by competent professionals, using the most appropriate procedures.²²²

145. As for the obligation to investigate, the European Court of Human Rights (hereinafter “European Court”) has established that the death of a person, who is under the direct supervision of the State, as an inmate or a soldier subjected to a disciplinary regime, could arise in circumstances that potentially involve State liability; there exists “an obligation of the State to ensure, by all means available to it, a suitable response [...] so that the legislative framework to protect the right to life is adequately implemented and any violation of said right is suppressed and punished.”²²³

146. Additionally, in cases when the death may have been the consequence of the use of force, the Court has held that the “most careful scrutiny” must be exercised, while taking into consideration not “only the actions of agents of the State who exerted the force, but of the respective circumstances including elements such as planning and control of the actions under examination.”²²⁴ Thus, “any deficiency in the investigation, which undermines the ability thereof to establish the cause of death or the person responsible, will put compliance with this norm at risk.”²²⁵

147. As a safeguard to protect the right to life in the investigation of deaths occurring in a particular context of military life, the European Court has held that the following requirements must be fulfilled in order to ensure the effectiveness of said investigation and the judicial determination resulting from it: i) the investigation must be conducted independently, especially in cases where there are doubts about the circumstances in which the person died, so that those who may be potentially implicated in the crimes under investigation do not take part in running the investigation;²²⁶ ii) that a “legislative and administrative framework” must be in place to ensure effective protection of the right to life, adequate procedures for the collection of evidence to make it possible to determine any criminal responsibility and also any disciplinary responsibility to which it may give rise, for example, in connection with officers and commanders at different levels of the command hierarchy;²²⁷ iii) in particular, when the death has been the consequence of the use of force by members of the armed forces, the investigation must be opened as “promptly” as possible, and conducted within a reasonable length of time, and the European Court has established these requirements as “essential” in this context, as elements to ensure confidence in the armed institution, its adherence to the Rule of Law and zero tolerance of illegal or arbitrary acts by its members²²⁸ and iv) there must be assurance that the investigation and the outcome thereof are made public, and although the degree of public knowledge may vary from case to case, at a minimum the victim’s next-of-kin must be able to participate extensively in the case proceedings in order to assert their own interests.²²⁹

²²²I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, para. 149; I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, para. 383. Citing the United Nations Manual on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/12 (1991).

²²³See ECHR, *Sergey Shevchenko vs. Ukraine*, no. 32478/02, § 64.

²²⁴ECHR, *McCann and Others v. the United Kingdom*, Application no. No. 27229/95, September 1995 § 36.

²²⁵ECHR, *Milkhalkova and others v. Ukraine*, Application no. 10919/05, 13 January 2011, § 42.

²²⁶See: ECHR, *Salgin v. Turkey*, judgment of 20 May 2007 § 86.

²²⁷ECHR, *Kilinc and Others v. Turkey*, judgment of 7 June 2005 § 41.

²²⁸ECHR, *Kelly and Others v. UK*, judgment of 4 May 2001, § 97

²²⁹ECHR, *McKerr v. UK*, judgment of 4 May 2001 § 115.

148. Regarding the reasonable time criteria, the Inter-American Court has established that “the right to access to justice means that the settlement of the dispute must take place within a reasonable time, since a prolonged delay can constitute, in itself, a violation of judicial guarantees.”²³⁰ The Commission also notes that the reasonableness of the time taken to conduct an investigation is not measured in comparison to other cases presented to the Inter-American system, but rather on a case-by-case basis according to relevant criteria applied to each particular situation, which are: (a) the complexity of the matter, (b) the conduct of the judicial authorities, and (c) the procedural activity of the interested party.²³¹

149. With regard to the circumstances of the death of Johan Alexis Ortiz, the IACHR notes that over the course of the investigation and judicial proceeding, at least four different theories have been put forward as to how he was wounded: i) the first version provided by the National Guardsmen, who gave the parents the news about what had happened, was that Johan Alexis entered the obstacle “the rabbit hole” and when he was moving under the wire fence “he got up” and was hit by the bullets; ii) a second version, reported widely in the news media and based on police reports, was that Johan Alexis had committed suicide; iii) the theory used by the Office of the Military Prosecutor and the Ministry of Public Prosecution was that Johan Alexis’ body was hit by shrapnel or projectile fragments, which had bounced off another obstacle and wounded him while he was moving through the “rabbit hole;” and iv) the theory raised by his parents to the effect that the injuries presented by Johan Alexis were not from the AFAG 7.62 mm caliber weapon fire at all, nor were they caused by shrapnel and that he may not have even made it into “the rabbit hole,” but rather he was wounded “intentionally” at an earlier time. Based on the proven facts, the last two versions were the ones that were argued in the court proceedings with regard to these incidents.

150. Based on these assumptions and the circumstances in which Johan Alexis Ortiz lost his life, a criminal investigation was the only method whereby such facts could be clarified and a determination could be made as to the actions of military officers involved in carrying out the training exercise on February 15, 1998, and establish the degree of potential criminal, disciplinary or any other type of responsibility for these incidents. Consequently, the State was obligated to conduct an independent, impartial, diligent and effective investigation within a reasonable period of time.

151. In light of the standards described above with regard to the substance and the scope of the right to a fair trial and judicial protection, the Commission will examine the State’s compliance with the obligations in the following order: i) the requirement of independence and impartiality in the investigation and the actions of the military authorities, who initially conducted the investigation; ii) due diligence in the investigation and iii) reasonableness of the period of time to investigate the facts.

Requirement of independence and impartiality and the actions of the military authorities in the investigation

152. The petitioners alleged before domestic authorities and in the proceedings before the Commission, that conducting the investigation into the death of Johan Alexis Ortiz Hernandez under military criminal jurisdiction and bringing the criminal case against the persons allegedly responsible under said jurisdiction did not comply with the guarantees of independence and impartiality, required by Article 8 and 25 of the Convention. The State has not submitted any response to this contention.

²³⁰I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, para. 154; See also: I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Perú*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 25, 2005. Series C No. 137, para. 166; I/A Court H.R., *Case of Gómez Palomino v. Peru*. Merits, Reparations and Costs. Judgment of November 22, 2005. Series C No. 136, para. 85; I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 15, 2005. Series C No. 124, para. 160.

²³¹IACHR, Report on Merits No. 77/02, Waldemar Gerónimo Pinheiro and José Víctor dos Santos (Case 11.506), December 27, 2002, par. 76. See also I/A Court H.R., *Case of López Álvarez v. Judgment of February 1, 2006*. Series C No. 141, par. 132; *Case of García Asto and Ramírez Rojas* Judgment of November 25, 2005. Series C No. 137, par. 166; and *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, par. 105; UN Doc. CCPR/C/GC/32 of August 23, 2007, Human Rights Committee, General Comment No. 32, para. 35.

153. Under the legal framework regulating the military criminal jurisdiction at the time of the incidents, concretely under the Organic Code of Military Justice, the military courts were competent to hear cases of “common crimes” committed by members or officials of the Armed Forces at military establishments (Article 123). Based on said provision of the law, an investigation and court proceeding was instituted by the Office of the Military Prosecutor and the Military Court of Guasdualito in 1998. From the time the petitioners filed their first requests and motions before a number of authorities for clarification of the incidents in which their son had lost his life, they denounced that the military authorities were not moving forward in the proceeding with impartiality and that several irregularities were being committed, which prevented it from moving forward.

154. The Commission notes that in 1999, new rules of criminal procedure came into force in Venezuela, which enabled the parents to become private complainants to the criminal trial, but the case continued to be heard in the military court. Concurrently, the new Constitution approved that year, established that “the competence of military courts is confined to crimes of a military nature.”²³² The Chamber for Appeals on Criminal Cassation of the recently created Supreme Court of Justice, under said new Constitution, heard the case in 2000 in settling a motion for cassation filed by the Office of the Military Prosecutor and upheld the decision that the matter should continue to be heard in the military courts and that the case should be brought back to the stage of the preliminary hearing.

155. Additionally, on August 22, 2001, the Court Martial of the Republic upheld the jurisdiction of the Military Court and dismissed the motion filed by the parents as private complainants, for the case to be heard in the ordinary civilian jurisdiction. Subsequently, after an appeal for constitutional relief through *amparo* was filed with the Constitutional Chamber, and as provided for under the new Constitution, jurisdiction was transferred to the ordinary courts. From 1998 to 2001, and even with the new provisions of the Constitution and the law in effect, the investigation and court proceeding against the State agents identified as possibly responsible for the crimes in which the alleged victim lost his life, were conducted under the military criminal jurisdiction. In that sense, the Commission notes that the Venezuelan regulatory framework, therefore, established the obligation to prosecute acts of this nature –which may constitute human rights violations, causing the military courts to overreach their purview beyond crimes or misdemeanors committed in the course of duty that exclusively harm the juridical interests of the military system.

156. Accordingly, during the essential evidence-gathering stage of the investigation, the case was handled by members of the very institution involved in the acts for which the clarification was being pursued. What’s more, evidence gathered and examined originally by the Technical Corps of the Judicial Police, was subsequently turned over to the Military Court of Guasdualito and remained under the custody and supervision thereof. As will be explained later in the examination of the investigation, particularly significant inconsistencies in the judicial proceeding have been identified and been linked to evidence, which military authorities had in their custody.

157. Additionally, one essential piece of evidence for this type of case, which the parents of Johan Alexis Ortiz were insistent about, the exhumation of the body, was conducted under the command of the Standing Court Martial of San Cristóbal and the Office of the Military Prosecutor; in other words, even though it was conducted in the presence of Mr. Edgar Ortiz and an anatomopathologist of the Coroner’s Office of San Cristóbal, the chain of custody of said evidence was under the control of the military authorities. Likewise, during this stage of the investigation, other basic tests were not conducted such as ballistics testing, which was repeatedly requested by the parents of Mr. Ortiz in order to clarify the characteristics of the projectiles extracted from his body.

158. The legal precedents of the Inter-American system have consistently held that special jurisdictions, such as military criminal justice, must have a restrictive and exceptional scope and be aimed at

²³²Article 261 of the Constitution of the Bolivarian Republic of Venezuela.

protecting special legal interests, related to tasks incumbent upon the military entity itself. In this regard, the Court has had the opportunity to examine the structure and composition of special courts, such as military ones, in light of the *United Nations Basic Principles on the Independence of the Judiciary*. Some of the relevant factors are: i) the fact that their members are active duty officers and are subordinate to the hierarchy of their superiors on the chain of command; ii) the fact that their appointment is not contingent upon their professional competence and qualifications to perform the duties of judges; and iii) the fact that they do not have sufficient assurances of not being removed. The conclusion can be drawn from this that said courts lack independence and impartiality to hear cases of human rights violations.²³³

159. The Commission and the Court have addressed how the use of the military criminal jurisdiction to hear cases of human rights violations is incompatible with the Convention, noting how problematic it is to ensure independence and impartiality in such instances, because it is the armed forces themselves who are “in charge of trying their own peers for the execution of civilians.”²³⁴ Likewise, when special jurisdictions are involved, such as the military jurisdiction, the Court has held that active-duty personnel should be prosecuted “within the military jurisdiction for the commission of crimes or offenses, that based on their own nature, threaten the juridical rights of the military order itself.”²³⁵ Additionally, in light of the aforementioned standards in the European human rights system regarding this type of case, the European Court has stressed that the need for the persons in charge of the investigation be different from those who are implicated in the crimes, lies in the assurance of hierarchical, institutional and functional independence in the authority, who is the trier of fact.²³⁶

160. Accordingly, in the instant case, the participation of members of the Armed Forces, an institution to which the National Guard belongs, in performance of adjudicatory and investigatory duties, renders said jurisdiction unable to provide for the safeguards of independence and impartiality to hear cases that could entail human rights violations and involve international responsibility of the State. In this same vein, independently of the fact that the alleged victim and those possibly responsible for his death were all officers of the National Guard, military criminal justice must have a restrictive scope and not be used in the investigation and prosecution of potential crimes that could constitute human rights violations.

161. In the context of the instant case, the nature of the actions and evidence gathering, which had to be conducted during the time that the case remained under military jurisdiction, are elements which amount to a factor of immunity in the case, which has hampered the determination of the truth and potential punishment for those responsible.

162. As for the importance of the actions of the authorities, who conducted the initial evidence gathering in the investigation, the Court has said that:

Due diligence together with the criteria of independence and impartiality also extend to the non-judicial bodies responsible for the investigation prior to the judicial proceedings, conducted to determine the circumstances of a death and the existence of sufficient evidence. In the absence of these requirements, the State cannot exercise effectively and

²³³I/A Court H.R., *Case of Palamara Iribarne vs. Chile*. Mertis, Reparations and Costs. Judgment of November 22, 2005, Series C, No. 135. Para. 155 and 156.

²³⁴I/A Court H.R., *Case of Las Palmeras vs. Colombia*. Merits. Judgment of December 6, 2001. Series C No. 90, para. 53. Also see, for example: IACHR, Report No. 10/95, Case 10.580, Manuel Stalin Bolaños Quiñonez, Ecuador, September 12, 1995. In this regard, for more than twenty years, the Commission has been holding that victims and their next-of-kin are entitled to a judicial investigation, conducted by a criminal court designated to establish and punish responsibility for human rights violations (See, in general, reports number 28/92 (Argentina) and 29/92 (Uruguay), Annual Report (1992-93).

²³⁵I/A Court H.R., *Case of Radilla Pacheco vs. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 272.

²³⁶ See ECHR, *Sergey Shevchenko vs. Ukraine*, no. 32478/02, § 64.

efficiently its authority to bring charges and the courts cannot conduct judicial proceedings that this type of violation calls for.”²³⁷

163. It has also underscored that “the State’s obligation to carry out investigations with due diligence includes the obligation of all state authorities to collaborate in the gathering of evidence so that the objectives of an investigation may be achieved.”²³⁸ Thus, when the investigation is hampered, as was even noticed by a legislative body of the State itself in 1999, it prevents the case from being exhaustively elucidated, because the conduct stemming from the irregularities committed during the combat training exercise was not investigated along with the question of responsibility for the death of Johan Alexis Ortiz, as is explained in detail in the subsequent topic of examination hereinafter.

164. Moreover, the IACHR cannot fail to note that there was an initial official version provided by NG officials to the parents of the alleged victim, which was subsequently discarded in the judicial proceeding, though no clear explanation was provided by the authorities to make such a determination. In the same vein, available evidence –thus far unrefuted by the State- indicates that some military officials linked to the process of military criminal investigation, were promoted from their positions, even though domestic law itself would so prohibit it.

165. The Commission has also factored in that during the time the investigation was under the direction of the military authorities, and according to the case file, the parents were unable to gain access to copies of the proceedings conducted in the case, despite their ongoing efforts and the motions submitted by them for evidence to be collected and tests to be conducted.

166. Therefore, since it was not guaranteed that the proceedings in this essential stage of the case were conducted with adherence to the guarantees of independence and impartiality, the State did not offer to the next-of-kin of Johan Alexis Ortiz Hernandez in this essential stage of the case before the military criminal jurisdiction, an investigation and criminal proceeding by independent and impartial judges, in violation of Article 8 and 25 of the American Convention, in connection with Articles 1 and 2 of said instrument.

Due diligence in the investigation and reasonable time period

167. As to the content of the duty to investigate “with due diligence,” the Inter-American Court has stated that this implies that investigations must be conducted using all legal means available and should be oriented toward determination of the truth.²³⁹ By the same token, the Court has indicated that the State must adopt such measures as may be necessary to learn the truth about what happened and for those responsible to be punished,²⁴⁰ involving every State institution.²⁴¹

168. In order to fulfill the obligation to investigate a violation of the right to life, States must act from the initial stages of the proceeding with all due diligence.²⁴² In this regard, the Inter-American Court has

²³⁷I/A Court HR., *Case of Cantoral Huamaní and García Santa Cruz vs. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. Para. 166.

²³⁸I/A Court HR., *Case of García Prieto et al vs. El Salvador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168. Para. 112.

²³⁹I/A Court HR., *Case of García Prieto et al v. El Salvador*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 20, 2007. Series C No. 168. Par. 101.

²⁴⁰I/A Court HR., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100. Par. 114; IA Court of HR., *Case of the Rochela Massacre*. Judgment of May 11, 2007. Series C. No. 163. Par. 146; I/A Court H.R., *Case of Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160. Par. 382.

²⁴¹I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167. Par. 130; I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140. Par. 120; and I/A Court H.R., *Case of Huilca Tecse*. Judgment of March 3, 2005. Series C No. 121, Par. 66.

²⁴²I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166. Par. 121.

taken into consideration the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions, specifying that “State authorities that conduct an investigation must, *inter alia*, a) identify the victim; b) recover and preserve the probative material related to the death; c) identify possible witnesses and obtain their statements in relation to the death under investigation; (d) determine the cause, method, place and moment of the death, as well as any pattern or practice that could have caused the death, and (e) distinguish between natural death, accidental death, suicide and murder. In addition, it is essential to search exhaustively the scene of the crime [,] and autopsies and analyses of human remains must be carried out rigorously by competent professionals, using the most appropriate procedures.”²⁴³

169. Moreover, while the obligation to investigate is an obligation of means, rather than results, it must be taken on by the State as its own legal duty and not as a mere formality condemned beforehand to be unsuccessful²⁴⁴ or as a mere reaction to private interests, which would depend on the procedural initiative of the victim or his family or on the submission of evidentiary elements by private individuals.²⁴⁵

170. The IACHR shall consider across the board the judgments issued on the use of military criminal law in the initial stage of the proceedings, and in this aspect of the examination shall refer to the omissions and inconsistencies in the analysis of isolated areas of the process found throughout the judicial proceedings – in both in the criminal and civil courts – concerning the death of Johan Alexis Ortiz Hernández. From the analysis of the available information, the following aspects stand out:

- a. The place where Johan Alexis Ortiz was reported to have been wounded was from the very outset under the custody of members of the NG. While this was a military training exercise that had to be conducted at the installations of the Rural Commandos of Caño Negro, the case file indicates that no steps were taken to preserve the scene of the crime and ensure the chain of custody of the evidence to be gathered from the site. From the action taken by the Judicial Technical Police, it can be seen that only a visual inspection of the Outpost No. 19 obstacle course was made and that the police collected 14 shell casings and photographed the scene.
- b. There were inconsistencies with regard to the characteristics of the projectiles removed from the body of Mr. Ortiz. According the petitioners’ account, with bullets from a weapon like one used in the training exercise, the projectiles should have been “copper-colored, reddish;” however, the autopsy report indicated that the fragments found were gold-colored. The parents brought this to the attention of the Standing Court Marshal [Judge] of San Cristóbal, but from the available evidence it appears that no inquiries were made to elucidate the matter. Moreover, the pathologist who performed the autopsy declared to the Ministry of Public Prosecution that she did not recognize the fragments collected during the investigation conducted by the Office Military Prosecutor and reiterated that they did not have the same characteristics as those taken from the body of Mr. Ortiz. Analysis of the case file and, specifically, the charging document issued by the Office of the Prosecutor, shows that no action was taken to shed light on this matter. This, added to the fact that one of the repeated contentions of the parents during the judicial proceedings, which can be seen from

²⁴³ I/A Court H.R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124. Par. 149; I/A Court H.R., *Case of Miguel Castro Castro Prison*. Judgment of November 25, 2006. Series C No. 160. Par. 383. Citing the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions, Doc. E/ST/CSDHA/12 (1991).

²⁴⁴ I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4. Par. 177; I/A Court of H.R., *Case of Cantoral Huamani and García Santa Cruz v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167. Par. 131; and I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166. Par. 120.

²⁴⁵ I/A Court H.R., *Case of Velásquez Rodríguez*. Judgment of July 29, 1988. Series C No. 4. Par. 177; I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166. Par. 120.

the actions listed in that same charging document of 2013, is that ballistics testing was never done.

- c. By the same token, concerning the description of the injuries to Johan Alexis Ortiz from the projectiles, the statement by the pathologist who performed the autopsy reiterated that, given the characteristics of the bullet holes, the impact was from whole projectiles. Notwithstanding the expert's express assertion that she did not recognize the fragments submitted by the Office of the Prosecutor and that whole projectiles, not fragments, were involved, the charging document states that the injuries were caused by shrapnel from fragmented projectiles.
- d. A reading of the three medical reports issued by the same doctor at El Piñal Hospital, which differ only in the identification of the people who accompanied Johan Alexis Ortiz when he was admitted wounded, but still alive, reveals other irregularities. Although there is no way of determining the reason for three medical reports on the same incident, what also stands out is the fact that they state that the alleged victim entered the hospital at 12:45 p.m., while the report submitted to the Commandant of the ESGUARNAC student corps states that the alleged victim was hit by bullets in "the rabbit hole" at the very same time. From this, another inconsistency in the judicial inspection of August 27, 1998 emerges: it was impossible to establish the exact time that the Judicial Technical Police removed the body and transferred it to the San Cristóbal morgue, which received it at around 8:00 p.m., according to the parents' testimony.
- e. As to the content of the declaration made by the doctor from El Piñal Hospital in 2004, she stated at the time that the body of Johan Alexis Ortiz exhibited two gunshot wounds; however, the three medical reports that she submitted in 1998 indicated the presence of only one gunshot wound, with an entry and an exit hole. Dr. Vega also stated that she had sutured only one wound. However, according to the autopsy performed by the pathologist at the San Cristóbal morgue, there were two wounds with no exit holes and the body had a total of four stitches. From the charging document issued by the Office of the Prosecutor in 2013, it does not appear that the Ministry of Public Prosecution adequately elucidated these discrepancies.
- f. Another piece of evidence of particular interest from a criminal standpoint was the expert opinion about the uniform that the alleged victim was wearing on the day he was wounded and died. As has been established, there are different versions regarding the state of his clothing when he entered El Piñal Hospital, which, as his parents have repeatedly said, could have helped determine whether or not Mr. Ortiz had entered the "rabbit hole." That test was not performed until 2005, after prior denunciations by his father and mother that the clothing had been "lost" or "didn't materialize," added to the forensic pathologist's technical explanation to the Office of the Prosecutor about the questions raised about whether the uniform collected during the investigation by the Office of the Military Prosecutor was the one worn by the alleged victim at the time he was wounded.
- g. Concerning the order for the exhumation of the body, the partial information available in the transcript of the order mentioned in the charging document issued by the Office of the Prosecutor indicates that the body was exhumed after the time in which it would have been possible to "appreciate the entry holes of the projectiles described in the autopsy report." At the same time, there is no indication that other studies of the skeletal remains had been conducted using "systematic anthropological techniques"²⁴⁶ or that any study had been conducted in response to the reports that the alleged victim had been tortured prior to his

²⁴⁶ Article 12 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary, and Summary Executions. See: I/A Court H.R., *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, Pars. 92-93.

death. The issue of the duty of the State to investigate this report will be analyzed in a subsequent section.

- h. Concerning the luminol test, according to the partial transcript of the expert opinion in the charging document issued by the Office of the Prosecutor the result was positive. However, the testimony of Mr. Edgar Ortiz, who stated that he had been present when the test was performed, indicates that the result was negative. The IACHR does not have elements that would enable it to make a determination on this point but reiterates its considerations about the failure to properly preserve at least the location where Johan Alexis Ortiz was reported to have been wounded, [noting] that this test was performed almost three months after the events and that one of the points disputed by the petitioners is precisely that the alleged victim was not wounded in the “rabbit hole.”

171. Furthermore, the Commission generally observes that the lines of investigation have been steered by the official version provided by the military authorities from the outset: that is, that the death was the result of an accident. This official theory has been maintained throughout the judicial proceedings, in both the military and domestic civil courts. Since the start of the proceedings, however, Mr. Ortiz’s parents have called attention to the inconsistencies between the official version and the results of the forensic tests, the lack of other tests relevant to the investigation, and the circumstances under which the events could have occurred.

172. In any event, the IACHR observes that the use of live rounds in an exercise where the guidelines clearly call for the use of blanks and the lack of safety measures, precautions, and emergency response are instrumental elements for determining State responsibility in the case.

173. In particular, during the domestic proceedings, the possibility that Mr. Ortiz could have been wounded in his right shoulder when the instructor who was firing the rounds was to his left has been debated. The charging document issued by the Office of the Prosecutor in 2013 explores this possibility under the theory that the projectile fragmented, for example, “when it hit the ground, propelling fragments upward,” bearing in mind the position in which Mr. Ortiz was allegedly found and the analysis of the intraorganic trajectory, which was from top to bottom. From the analysis of the tests listed by the Office of the Prosecutor, it can be seen that the forensic pathologist herself confirmed this possibility, noting “it can be from bottom to top and from top to bottom depending on whether [the projectiles] hit on their ascent or free fall and can be in any part of the body.” However, as indicated, the Office of the Prosecutor did not investigate further and explore other theories of what had happened to Mr. Ortiz.

174. In addition, at no stage of the investigation and judicial proceedings was any effort made to determine why an initial version of the incident was issued by the National Guardsmen immediately linked to the events in question and why later on, while the theory about the case was based on that same presumed accident, there is a different explanation of how the accident occurred. Neither, moreover, have the proceedings taken up the matter of determining liability for the change in the operations order, which called for the use blanks on the obstacle course where Johan Alexis Ortiz is said to have been wounded, or for the failure to put the established safety and emergency assistance measures in place. In general, none of this conduct has been investigated and punished by the State.

175. This is especially problematic in a context where it is undisputed that Mr. Ortiz died from a gunshot by a State agent and where neither the investigation nor the judicial proceedings have clarified the relevant events, discrepancies, contradictions, and responsibilities. In addition, it is relevant to consider other elements related to the failure of the Venezuelan authorities to shed light on this incident, namely that: i) the elements that the parents reported could be related to his death, such as his alleged affair with the wife of a higher-ranking NG officer or the fact that he had been looking into alleged irregularities committed within the institution; and ii) the death threats and harassment that the petitioners brought to the attention of the authorities, which they directly attributed to their efforts to further the criminal proceedings against active members of the NG.

176. As to the reasonable period of time criterion, the State failed to submit arguments justifying the delay of a judicial proceeding that had still not reached at its final conclusion or the formal trial phase. Furthermore, in the instant case, only one individual was involved whose identity had been established from the outset, the facts were immediately known to the State, and the military personnel present during the training exercise could be identified the day the incident took place. In addition, the respective authorities had free access to the scene of the incident and the opportunity to perform all the relevant forensic tests. Given these circumstances, the Commission does not consider this case to be particularly complex.

177. As to the conduct of the judicial authorities, since the initial stage of the proceedings the State has been in a position to obtain the evidence, or else, order the necessary tests to shed light on the events. Hence, the failure to elucidate the events and to investigate and punish the parties responsible is due to the aforementioned negligence and omissions of the authorities charged with meeting this objective. The investigation was not initially conducted by independent and impartial authorities, and during the judicial proceedings in the special jurisdiction, the cause was the State's zero lack of response on various occasions, and it was only in 2003 that the Seventh Office of the Prosecutor launched an investigation in the civil courts.

178. As to the activity in the civil courts, the proceedings have been marked by undue delays attributable to the authorities. Lengthy periods of inactivity are observed; thus, since the Constitutional Chamber ordered the transfer of the proceedings to the civil courts it has taken a year to launch the investigation, five years to obtain a copy of the log book of incidents and the operations order for the First Anti-subversive Course, and ten years for the Office of the Prosecutor to file charges. Moreover, there were delays in performing vitally important tests once the investigation was under way, irregularities related to changes in the personnel and prosecutors assigned to the investigation, lack of response to motions by the next of kin of Johan Alexis, and in general, ten years in which the proceedings remained in the preliminary stage without reasonable justification. This situation even led to action by other authorities such as the Office of the Ombudsman, which through many avenues expressed its concern about the unjustified delay in the proceedings, and the Fifth Court, which gave the Ministry of Public Prosecution 120 days to issue a final document. Finally, the San Cristóbal Court of First Instance recognized the lack of a "comprehensive investigation," leading it in 2012 to vacate the charging document issued by the Ministry of Public Prosecution, with the consequent additional delays.

179. Following the issuance of a new charging document by the Office of the Prosecutor in 2013, the preliminary hearing has been postponed on at least four occasions because the arrest warrant for the only individual accused has not been produced. Moreover, after the numerous postponements of the preliminary hearing granted in 2012, due largely to this individual's failure to appear, when the hearing was finally held, this situation resulted in the decree of alternative precautionary measures by the Court of Control. In this regard, the case file contains no information on efforts by the State to guarantee the appearance of the accused.

180. In the circumstances of a violent death, the IACHR has consistently asserted that the responsibility for moving a proceeding forward lies with the State. In any case, concerning the family's activities with respect to the judicial proceedings, the petitioners have actively participated in the process since February 15, 1998, pushing it forward, offering their version of the events, providing relevant elements and information obtained through their own inquiries, and in general taking the legal action available to them to learn the truth about what happened.

181. In light of all this, the Commission concludes that the State did not fulfill its obligation to conduct a diligent, impartial investigation into the death of Johan Alexis Ortiz Hernández within a reasonable period of time. This implies that his family was deprived of an effective legal remedy that would establish the truth of the events, punish the material and intellectual authors, and provide adequate reparations. The State is therefore responsible for the violation of Articles 8 and 25 of the Convention.

A. The right to life

182. It is undisputed that Johan Alexis Ortiz died in the context of an exercise conducted with live ammunition at a military installation. Furthermore, there are at least two important theories about the manner in which he died. As concluded in the preceding section, the criminal investigation and judicial proceedings, which were the appropriate means for the Venezuelan authorities to elucidate what had happened, were not an effective remedy for learning the truth, causing the aforementioned violations of the American Convention.

183. The IACHR shall therefore analyze the possible violation of Article 4 of the Convention in light of the available information and indications. In this regard, the IACHR notes that there is no dispute between the parties about the following points: i) that the alleged victim participated in a combat training exercise; ii) that he was wounded in the course of the exercise; and iii) that up to the time he was taken to the hospital where he died, he was in the custody of his hierarchical superiors and other military personnel.

184. In light of this, the Commission shall conduct this analysis in the following order: i) State action with regard to the regulation and execution of combat training exercises designed for ESGUARNAC students; and ii) the lack of a satisfactory explanation for the use of live ammunition in the exercise and noncompliance with safety measures, given the obligations imposed by the right to life. Thus, the Commission shall rule on whether the State is liable for the fatal outcome of Johan Alexis Ortiz's participation in the training exercise.

Regulation and execution of the First Anti-subversive Course of ESBUARNAC in February 1998

185. The Inter-American Court has repeatedly asserted that the right to life is a basic human right, the full exercise whereof is a prerequisite for the enjoyment of all other human rights.²⁴⁷ The Court has likewise said the States have the obligation to guarantee creation of the conditions required in order that violations of this basic right do not occur and the duty to prevent its agents or others from violating it.²⁴⁸ According to the Court, the object and purpose of the Convention, as an instrument for the protection of the human person, requires that the right to life be interpreted and enforced so that its guarantees are truly practical and effective (*effet utile*).²⁴⁹

186. Concerning the right to life, the Court has repeatedly stated that compliance with the duties imposed by Article 4 of the American Convention, in connection with Article 1 (1) thereof, "does not only presuppose that no person can arbitrarily be deprived of his life (negative duty) but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction."²⁵⁰

187. This is why in the specific case of State operations in which "the use of force" that could unintentionally result in the deprivation of life is permitted, international law imposes a series of requirements deriving from the protection of the rights established by the Convention, among them, the right to life. Hence, both the European Court and the Inter-American Court have held that in State operations

²⁴⁷ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166. Par. 78; I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63. Par. 144.

²⁴⁸ I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63. Par. 144.

²⁴⁹ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166. Par. 79; I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147. Par. 83.

²⁵⁰ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166. Par. 80; I/A Court H.R., *Case of the "Street Children" (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63. Par. 144.

where “use of force” that could result in the unintentional deprivation of life is permitted, States must adopt all necessary measures to create a legal framework that deters any possible threat to this right.²⁵¹

188. Furthermore, with regard to law enforcement agents, the IACHR has established that “[F]or a police force to aspire to be respectful of human rights, it should not only be trained in human rights theory but it should organize itself, select its personnel, train constantly and perform its professional functions to ensure the observance of the human rights of the public it serves.”²⁵² The IACHR has also established that “member states have a specific obligation to provide permanent training and instruction to the members of their police forces so that when they use lethal force in their operations, they do so in strict accordance with internationally accepted standards.”²⁵³

189. The IACHR has also asserted that even though the State has the right and obligation to use lethal force on certain occasions, this capacity must be restricted to cases of strict necessity and proportionality. Otherwise, “the lethal use of force may constitute an arbitrary deprivation of life or a summary execution.”²⁵⁴ By the same token, the Court has stated that the use of force must be grounded in the existence of exceptional circumstances and should be planned and proportionally limited by the government authorities.²⁵⁵ Thus, the Court has laid down clear rules on the burden of proof when a death is alleged to have occurred as the result of the use of force due to the failure to observe these requirements; that is, “the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability, through appropriate evidentiary elements.”²⁵⁶

190. That explanation should therefore be subject to the highest standard of scrutiny, given the nature of the events alleged to be a possible arbitrary deprivation of life and the fundamental role that the Convention accords that right. For example, in cases such as *Makaratzis v. Greece*, the European Court found that under certain circumstances, even assuming that the force was clearly not used with the object of killing a person and for security purposes, if the conduct of State agents in itself generated a risk to the life of the victim, even if he or she managed to survive, it should be examined in the light of the duties deriving from protection of the right to life.²⁵⁷

191. By the same token, the Inter-American Court has indicated that during an incident in which a display of authority is deployed, “insofar as possible, the State agents should assess the situation and draw up a plan of action before intervening.”²⁵⁸ Regarding this same duty, the European Court has emphasized that “[U]nregulated and arbitrary action by State agents is incompatible with effective respect for human rights.” Therefore, policing operations “must be ... regulated ... within the framework of a system of adequate and effective safeguards against arbitrariness and abuse of force.”²⁵⁹

²⁵¹ ECHR, *Case of McCann and Others v. The United Kingdom*. Application No. 27229/95, September 27, 1995, § 148; and I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166, Par. 81; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, Par. 66.

²⁵² IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, Par. 114.

²⁵³ IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, Par. 115.

²⁵⁴ IACHR, Report No. 58/12. Case 12.606, *Brothers Landaeta Mejías v. Venezuela*, March 21, 2012, Par. 186.

²⁵⁵ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006. Series C No. 150. Par. 67.

²⁵⁶ I/A Court H.R., *Case of Zambrano Vélez et al. v. Ecuador*. Merits, Reparations, and Costs. Judgment of July 4, 2007. Series C No. 166. Par. 108; I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*, Judgment of July 5, 2006. Series C No. 150. Par. 80; I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147. Par. 120.

²⁵⁷ ECHR, *Case of Makaratzis v. Greece*. Application No. 50385/99/95, December 20, 2004, § 55.

²⁵⁸ I/A Court H.R., *Case of Nadege Dorzema et al. v. Dominican Republic*. Merits, Reparations, and Costs. Judgment of October 24, 2012 Series C No. 251, Par. 81.

²⁵⁹ ECHR, *Case of Makaratzis v. Greece*. Application No. 50385/99/95, 20 December 2004, § 58.

As developed in the jurisprudence of the Inter-American System, from the general obligation to respect and guarantee the rights established in Article 1.1 of the Convention, “determinable special rights are derived as a function of the particular necessity for protection of the holder of the right, given either by his or her personal condition or his or her specific situation.”²⁶⁰ Therefore, in cases where the State is involved in a direct custodial²⁶¹ or care²⁶² relationship, the State is in a special position to guarantee the rights of all persons in that relationship. Moreover, the IACHR has clearly established that it is “the obligation of the States to reasonably prevent, investigate, and punish actions that implicate violations of the right to life, including those committed by State agents or individuals.”²⁶³

192. Since the particular context of this case involves events in which a student from the National Guard academy was wounded and subsequently died after an exercise coordinated and conducted by Cordero ESGUARNAC authorities and was required for him to complete his training as a member of that institution, the Commission has considered several elements in this aspect of the analysis deriving from the proven facts.

193. First, there was an operations order for the First Anti-subversive Course containing guidelines for the conditions under which the exercises should be carried out. This order detailed the distribution of tasks assigned to each supervisor and instructor identified and the supervision and control protocol to be followed at each stage of the activity. Also, a reading of the instructions shows that on the one hand, strict safety conditions were required and that these were to be “extreme” when the use of “special equipment, weapons, and/or explosives” was involved, and on the other, that they called for safety and emergency support teams. Specifically, the instructions stipulated the presence of “medical staff,” “a first-aid team,” and an ambulance, in coordination with civilian health services. Finally, the order indicated which personnel were authorized to carry regulation weapons during the exercises and the rules governing the use of the various weapons and munitions that should be used to comply with the instructions. The order stipulated that “blanks” should be used for the “infiltration course,” unlike other exercises where the use of live ammunition was called for.

194. Second, contrary to the instructions in the operations order, the exercise in the “infiltration course,” and specifically, the “rabbit hole” obstacle (*supra* par. XX), was ultimately conducted with live ammunition; that is, the students crawling under the barbed wire fence were crossing a real line of fire, were not wearing protective equipment, and had to avoid being hit by the munitions. This was stated in the judicial proceedings by Major (NG) Villasmil Antunez, who, under the same operations order, had been commissioned Commandant of the current student corps. And third, the mandated emergency measures were not in place during the exercise. As has been established, Johan Alexis Ortiz was aided by an individual who “acted as a nurse” and transferred by military vehicle to a rural hospital, where he subsequently died. As the Legislative Assembly of the State of Tachira was to determine in 1999, even the “most basic medical care or first-aid” was absent during the exercise, even though it was “obviously dangerous.”

195. The Commission therefore considers it relevant to leave established that, given the noncompliance with the rules governing the operations and emergency plan, as well as the use of weapons and munitions for the First Anti-subversive Course, the particular circumstances of the case unfolded in a context in which the military authorities themselves created the risk and did not furnish the protections stipulated in the course guidelines, directly resulting in the death of the alleged victim.

²⁶⁰ I/A Court H.R., *Case of Pedro Miguel Vera Vera v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs Judgment of May 19, 2011. Series C No. 226, Par. 42; I/A Court H.R., *Case of the Pueblo Bello Massacre v. Colombia*. Merits, Reparations, and Costs. Judgment of January 31, 2006. Series C No. 140, Par. 111; I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*, *supra* note 21, Par. 243, and *Case of Vélez Loor v. Panama*, *supra* note 3, Par. 98.

²⁶¹ I/A Court H.R., *Case of Pedro Miguel Vera Vera v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2011. Series C No. 226, párr. 42.

²⁶² I/A Court H.R., *Case of Ximenes Lopes*. Judgment of July 4, 2006. Series C No. 149, Par. 125.

263 IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II. Doc. 57, December 31, 2009, Par. 108.

Lack of a satisfactory explanation for the use of live rounds in the exercise and failure to implement safety measures

196. In the context of the instant case, the parents have repeatedly contended that the use of live rounds in the exercise and the lack of appropriate safety measures and medical care are among the serious irregularities committed during the exercise in which their son was wounded, and that the Venezuelan State has not provided a reasonable explanation for these circumstances. The Commission has already established that the domestic criminal proceedings did not pursue lines of investigation to elucidate the why or reasons for the decision to use live rounds in the “rabbit hole” obstacle, when that decision was made, whether that decision was made by an officer with the authority to do so, and why extreme safety measures, including the presence of medical staff and an ambulance, had not been implemented.

197. In this regard, in the military context and situation of young recruits, the European Court has established as a general principle, that under certain circumstances, the State has a positive duty to adopt appropriate prevention measures to protect the life of the soldiers. It should therefore have a sufficient legal framework that recognizes and effectively guarantees protection of this right for persons who may be exposed to certain risks inherent to military life.²⁶⁴ Furthermore, when there is an allegation that the military authorities have failed in their obligation to protect the life of individuals under their jurisdiction, the analysis of the European Court has focused on determining whether the authorities knew or should reasonably have known that there was a real and present risk to the life of the individual in danger and, if so, whether they had implemented the safety measures necessary to protect this right.²⁶⁵

198. For example, in *Perevedentsevy v. Russia*, the European Court analyzed the situation of a 19-year old youth who was doing his compulsory military service and was found dead, allegedly by suicide. His parents contended, however, that the victim had been subjected to bullying by other, higher-ranking military personnel and that this situation was directly related to his death. In that case, the European Court examined the responsibility of military commanders to monitor all aspects of the living and working dynamics of the group under their supervision, including the physical and psychological well-being of every soldier. The Court determined that, having had knowledge of a situation involving illegal action and certain abuses by other military personnel, the authorities had failed to ascertain whether the victim was in a situation that posed a risk to his life and to take appropriate steps to prevent that risk from materializing.²⁶⁶

199. These standards have been included in the Council of Europe's *Recommendations on the human rights of members of the Armed Forces*,²⁶⁷ which establish as a general principle that, notwithstanding the characteristics inherent to military life, members of the Armed Forces, whatever their status in the institution, must be guaranteed the rights recognized in international treaties for the protection of human rights.²⁶⁸ Concerning the right to life, the recognized standard in international law is that while members of the armed forces run a particular risk of death during “dangerous operations,” that exposure should have a clear and legitimate military purpose.²⁶⁹ From this derives the specific obligation of military authorities to put

²⁶⁴ ECHR, *Case of Ataman v. Turkey*, Judgment of April 27, 2006, Par. 54; ECHR, *Case of Kiliç and Others v. Turkey*, Judgment of June 7, 2005, Par. 40.

²⁶⁵ ECHR, *Case of Osman v. United Kingdom*, Judgment of October 28, 1998, Par. 115.

²⁶⁶ ECHR, *Case of Perevedentsevy v. Russia*. Application no. 39583/05, April 24, 2014 §XX.

²⁶⁷ Based on international instruments for the protection of human rights such as the European Convention on Human Rights; the decisions of the European Court of Human Rights; the European Commission on Human Rights; and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment; Council of Europe. Directorate General of Human Rights and Legal Affairs. Human rights of members of the Armed Forces. *Recommendation CM/Rec (2010) 4 and explanatory memorandum*. Adopted by the Committee of Ministers on February 24, 2010 at the 1077th meeting of the Ministers' Deputies.

²⁶⁸ Council of Europe. Directorate General of Human Rights and Legal Affairs. Human rights of members of the Armed Forces. *Recommendation CM/Rec (2010) 4 and explanatory memorandum*. Adopted by the Committee of Ministers on February 24, 2010 at the 1077th meeting of Ministers' Deputies. General Principle No. 2.

²⁶⁹ Council of Europe. Directorate General of Human Rights and Legal Affairs. Human rights of members of the Armed Forces. *Recommendation CM/Rec (2010) 4 and explanatory memorandum*. Adopted by the Committee of Ministers on February 24, 2010 at the 1077th meeting of Ministers' Deputies, pg. 26.

reasonable measures in place to ensure that military training activities, the planning of operations, and the use of military equipment and weaponry do not pose an unnecessary risk to the life of military recruits and personnel.

200. The Commission takes into account the fact that the system under which Johan Alexis Ortiz lived, was disciplined, and punished was controlled entirely by the State by virtue of the training and military regime to which he was subject; hence, the State had an exceptional duty to protect and guarantee his rights.²⁷⁰ This duty, while exercised in a context distinct from that of civilians, is heightened when it comes to the protection of inalienable rights, such as the right to life.

201. Furthermore, concerning the duty to protect the right to life, the European Court of Human Rights has asserted that what must be examined is “not only whether the use of potentially lethal force [...] was legitimate, but also whether the operation was regulated and organized in such a way as to minimize to the greatest extent possible any risk to ... life.”²⁷¹ Concerning that duty, the Commission notes that the jurisprudence of the European Court has stated, in turn, that individuals in a vulnerable position vis-à-vis State authorities have the right to protection by the State.²⁷² In the instant case, the IACHR notes that Mr. Ortiz was a student at the National Guard Training Academy, which was under the authority and control of the military personnel who conducted the exercise (which was the final phase of his training as a member of the National Guard). Therefore, as indicated by that Court, the right to life not only obliges the State to abstain from intentionally or illegally violating this right but “also extends in appropriate circumstances to a positive obligation on the authorities to take preventive operational measures to protect an individual whose life is at risk”.²⁷³

202. In light of these considerations, the State has not provided elements to justify the terms under which the activity was conducted. According to his parents’ account, NG officers told them that the purpose of the exercise was to train “men for war,” but the only official document indicating the use of live ammunition mentions that it was a “harassment measure” (*supra* par. 37), with no further details about the relevance of its use. That is, the case file contains no explanation or justification for the use of lethal force or the State’s purpose in putting the life of Johan Alexis Ortiz in a situation of avoidable risk, against which appropriate measures were not instituted to guarantee this right.

203. Johan Alexis Ortiz was directly subordinate to State agents. Therefore, given the existence of the possible arbitrary deprivation of his right to life, the State had the duty to conduct an effective investigation that, through a judicial determination, would clarify the circumstances leading up to the death of the alleged victim in this context, in application of the standards described in the analysis on guarantees and judicial protection.²⁷⁴ This, added to the fact that no reasonable measures were in place to appropriately respond to any emergency, even though there was a real risk of a threat to the life of the students participating in the activity. This conduct has also not been investigated with a view to disciplinary action.

204. In this regard, the European Court has asserted that, given the importance accorded to the protection of the right to life in democratic societies, the examination of the events resulting in the deprivation of that right should be conducted with the most careful scrutiny, considering not only the actions of the agents who actually administer the force but also all the surrounding circumstances, including such matters as the planning and control of the actions.²⁷⁵

²⁷⁰ See also: IACHR, Report No. 84/13, Case 12.482, *Valdemir Quispealaya Vilcapoma v. Peru*, November 4, 2013, Par. 114.

²⁷¹ ECHR, *Case of Makaratzis v. Greece*. Application No. 50385/99/95, December 20, 2004, § 60.

²⁷² ECHR, *Case of Keenan v. The United Kingdom*. Application No. 27229/95, April 3, 2001, § 92.

²⁷³ ECHR, *Case of Keenan v. The United Kingdom*. Application No. 27229/95, 3 April 2001, § 92.

²⁷⁴ IA Court of HR, *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155, Par. 106.

²⁷⁵ ECHR, *McCann and Others v. the United Kingdom*, Application no. No. 27229/95, September 1995 § 150.

205. The Commission observes the actions of the NG members who conducted the activities of the First Anti-subversive Course, [noting that] they derive chiefly from noncompliance with the operations order issued for that purpose. Given the lack of justification and clarification of those actions, these facts, considered as a whole, are by any measure incompatible with any regulation or procedure governing the action of State security forces.

206. In the Commission's view, this action by members of the NG, the existence of a first official version that was later withdrawn in the judicial proceedings without any explanation, the delay and irregularities identified in the collection and examination of the evidence without meeting the minimum requirements of independence and impartiality have had a direct effect on the impunity found in the instant case and the lack of access by the parents of Mr. Ortiz to the truth, despite their many efforts to learn what happened.

207. Hence, the IACHR reiterates that it does not have additional elements to resolve the dispute over whether or not he was wounded in the "rabbit hole," but beyond this debate and in application of the standards described, the Commission finds it sufficiently credible that the military personnel acted outside the framework established for the use of force in the context of the case, doing so, moreover, under conditions that posed a high risk to the life of the victim created by their own negligence. In addition, it has been sufficiently proven that, despite the real risk to the life of the victim, the State agents did not put the necessary measures in place to protect him in the event of an emergency. Moreover, the flawed investigation conducted by the State has not validly and comprehensively elucidated the circumstances and responsibilities in his death.

208. The Commission therefore considers that, given the failure to diligently and effectively clarified the facts and the evidence provided, the State did not fulfill its obligation to guarantee the right to life of Johan Alexis Ortiz Hernández. As the Inter-American Court has stated on other occasions,²⁷⁶ reaching any other conclusion would imply allowing the State to take refuge in the negligence, ineffectiveness, and partiality of the investigation to tolerate a situation in which the truth is unknown and evade its international responsibility.

209. Hence, the Commission considers the State responsible for violating the right to life established in Article 4.1 of the American Convention in connection with the obligation of respect and guarantee established in Article 1.1 of that same instrument, to the detriment of Johan Alexis Ortiz.

B. On the events alleged to violate the personal integrity of Johan Alexis Ortiz and the investigations pursued as a result of these events

210. Below, the IACHR will proceed to conduct an analysis of the law in regard to two complaints lodged by the petitioners concerning a possible violation of the physical integrity of Johan Alexis Ortiz: the first, concerning the allegation of torture made during the judicial proceedings launched in the wake of his death; and the second, concerning the time he remained without appropriate medical care after receiving the gunshot wounds. In both cases, the Commission will also examine the complaint concerning the failure to investigate these events.

On the allegation of torture made during the judicial proceedings

211. The IACHR has stressed that the Convention prohibits the use of torture or the cruel, inhuman, or degrading treatment or punishment of persons under any circumstances. The Commission has

²⁷⁶ I/A Court H.R., *Case of Kwas Fernández v. Honduras*. Merits, Reparations, and Costs. Judgment of April 3, 2009. Series C No. 196, Par. 9; I/A Court H.R., *Case of J. v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 27, 2013. Series C No. 275, Par. 356.

indicated that an “essential aspect of the right to personal security is the absolute prohibition of torture, a peremptory rule of international law creating obligations *erga omnes*.”²⁷⁷

212. The Court has repeatedly asserted that “International Human Rights Law strictly prohibits torture and cruel, inhuman, or degrading punishment. The absolute prohibition of torture, both physical and psychological, is currently part of the domain of the international *jus cogens*.”²⁷⁸ According to the jurisprudence of the Inter-American System, the following elements must be present for an act to be considered torture: it must i) be an intentional act committed by an agent of the State or with his or her authorization or acquiescence; ii) cause severe physical or mental suffering; and iii) be committed with a given purpose or aim.²⁷⁹

213. In the instant case, the parents contend that their son was “tortured” before he died. From the account and the documents provided in the case file, the Commission understands that, when viewing the body and photos taken prior to his burial, the victim’s parents themselves found evidence of “cigarette burns,” “beatings,” and a “dislocated shoulder.”²⁸⁰ According to the transcript from a radio interview of Edgar Ortiz, Mr. Ortiz stated that he did not know why the forensic autopsy had not mentioned a “series of bruises” on the body of Johan Alexis Ortiz.²⁸¹

214. With regard to this analysis and the elements stemming from the proven facts, the Commission notes that none of the forensic medical reports issued by El Piñal Hospital or the autopsy by the Central Hospital of San Cristóbal refer to what the parents say they saw on the body. In this regard, in her declaration to the Office of the Prosecutor in 2004, Dr. Lucy Vega said she had not observed “any type of injury” other than the gunshot wounds. Only the autopsy report issued by the San Cristóbal medical examiner’s office reported the presence of an “extensive hematoma in the area around” the wound, located in the “right [illegible] clavicle area” and a “hematoma in the area” of the wound located in the right shoulder region (anterior axillar line).” The IACHR takes into account the fact that, as has been demonstrated, there were mistakes in the exhumation procedure, as well as major inconsistencies between these forensic medical reports, the statements of Dr. Lucy Vega and the pathologist, Ana Cecilia Bracho; a lack of clarity about the time it took to transfer the body from one hospital to the other; and even the fact that the time reported by the military authorities that Johan Alexis Ortiz had been wounded was the same as the time recorded on his admission to El Piñal Hospital. These elements are among the irregularities observed by the Commission, committed during a judicial proceeding that has not been conducted with the due guarantees.

215. The Commission furthermore reiterates that, primarily from the charging document issued by the Ministry of Public Prosecution in 2013, it is clear that in neither the military criminal proceeding nor the civil courts was any effort made to determine the reason for these inconsistencies or to issue a judicial determination to establish liability for these events. The State has also failed to furnish information on this specific allegation of torture, and the IACHR takes into account the fact that in cases like this one, the victim –

²⁷⁷ IACHR, Report on Terrorism and Human Rights, OEA/SER.L/V/II.116, Doc. 5 rev. 1, corr., October 22, 2002. Citing. IACHR, *Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System*, OEA/Ser.L/V/II.106, Doc. 40 rev., February 28, 2000, Par. 118.

²⁷⁸ I/A Court H.R., *Case of Bueno Alves v. Argentina*. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C No. 164, Par. 76; I/A Court of HR, *Case of Miguel Castro Castro Prison v. Peru*. Merits, Reparations, and Costs. Judgment of November 25, 2006. Series C No. 160, Par. 271; and I/A Court H.R., *Case of Baldeón García v. Peru*. Merits, Reparations, and Costs. Judgment of April 6, 2006. Series C No. 147, Par. 117.

²⁷⁹ IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martin Mejía, Peru, March 1, 1996, Section 3. Analysis, and I/A Court H.R., *Case of Bueno Alves v. Argentina*. Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C No. 164, Par. 79.

²⁸⁰ The book *Las calaveras tienen lengua* describes what was seen in the photographs of Johan Alexis’s body – that is, that it had “large hematomas on the neck, arms, and legs, clearly demonstrating that long before death [he was] tortured and savagely beaten [...the body] also showed signs, though the doctors appeared to have missed them, of evident puncture wounds, as if someone had injected something.” *Las calaveras tienen lengua*. El asesinato de Johan Alexis, Estudiante de la GN, pg. 97.

²⁸¹ Cited in Annex 21. Book *Las calaveras tienen lengua*. El asesinato de Johan Alexis, Estudiante de la GN, pp. 201-202.

who was under the care of agents of the State – does not have mechanisms to prove the alleged acts of violence against him.

216. Notwithstanding, from the findings of fact and of law in the instant report, the Commission has established that on diverse occasions and to multiple authorities, the parents have denounced the existence of torture and the failure to clarify the circumstances surrounding his death, as well as the irregularities committed from the time he was transferred from the headquarters of the Rural Commandos of Caño Negro to El Piñal Hospital. The specific issues of the State's lack of due diligence have already been examined in connection with the rights enshrined in Articles 8 and 25 of the Convention; but on this point of the examination, it is relevant to reiterate that the jurisprudence of the Inter-American System has established that once the authorities have knowledge of a human rights violation, especially the right to personal integrity, they should initiate a serious, impartial, and effective investigation of the events *ex officio* and without delay.²⁸²

217. Moreover, concerning the allegation of torture, which is strictly prohibited by International Human Rights Law, the Commission maintains that any violation of the prohibition of torture and other abuse imposes State responsibility under international law and requires the State to investigate the events. When a complaint is lodged that someone has been seriously mistreated by the police or other agents of the State in violation of the express prohibition contained in Article 5(2) of the American Convention, that provision, read in connection with the State's duty to "respect" and "guarantee" to all persons under its jurisdiction the rights and freedoms recognized in the Convention, requires that an effective official investigation be conducted. That investigation must be capable of leading to the identification and punishment of the parties responsible. In the instant case, the State did not furnish information about the investigations in this regard nor rebut the medical reports indicating irregularities and inconsistencies.

218. Concerning that investigation, the Inter-American Convention to Prevent and Punish Torture establishes that the States are obligated to adopt effective measures to "punish torture" (Articles 1 and 6) and that when there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction "the States Parties shall guarantee that their authorities will properly and immediately conduct an investigation into the case [...]".

219. In the instant case, the parents of Johan Alexis Ortiz stated in the civil court proceeding that their son had been tortured prior to his death (*supra* par. 124). However, according to the case file, it does not appear that any State authority launched a serious and diligent investigation into this complaint. The Commission therefore concludes that the omission of the Venezuelan State to investigate the possible commission of an act of torture constitutes a violation of the rights to the judicial guarantees and judicial protection established in Articles 8 and 25 of the American Convention in connection with Article 1.1 of that same instrument, to the detriment of the parents of Johan Alexis Ortiz Hernández.

220. Furthermore, bearing in mind that the Inter-American Convention to Prevent and Punish Torture entered into force in Venezuela on August 26, 1991, the Commission notes that according to the jurisprudence of the Court since that date, "the State is demandable regarding compliance with the obligations set forth in that treaty."²⁸³ The Commission therefore considers that the failure to investigate in this case also constituted a violation of the obligations set forth in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture from the time that instrument entered into force.

On the lack of timely and appropriate medical care

²⁸² I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C No. 168, Par. 101; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers v. Peru*. Merits, Reparations, and Costs. Judgment of July 8, 2004. Series C No. 110, Par. 146; I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objections, Merits, Reparations, and Costs Judgment of July 10, 2007. Series C No. 167, Par. 130.

²⁸³ I/A Court of H.R., *Tibi v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 7, 2004. Series C No. 114, Par. 159.

221. Concerning the right to physical integrity, the Inter-American Court has established that this and the right to life are also directly linked to “human health care” and that “a lack of appropriate medical care does not satisfy the minimum requirements of humane treatment due because of a person’s nature as a human being pursuant to Article 5 of the American Convention”.²⁸⁴ Thus, it has established the special duty of States to adopt measures to protect the physical integrity and inherent dignity of the human person, of persons under their direct custody or control – for example, persons deprived of their liberty²⁸⁵ or confined to specialized institutions of the public health system.²⁸⁶

222. In the instant case, the Commission has established the State’s responsibility for failing in its special duty of protection in relation to the right to life of Johan Alexis Ortiz, who, under the direction and supervision of State agents, was exposed to participation in a training activity as an ESGUARNAC student where live rounds were used in violation of the conditions indicated in the instructions for the activity, without the minimum safety conditions and medical care also required for the exercise. By the same token, in relation to the right to physical integrity, the lack of specialized medical personnel or an ambulance to provide medical care during his transfer to a medical facility (elements required in the instructions) are omissions directly attributable to the State. These omissions are especially serious, given the circumstances and isolated location of the exercise, factors that together reduced Mr. Ortiz’s possibility of surviving the gunshot wounds. In this scenario, the Commission considers it reasonable to infer that at these moments, the victim experienced severe pain, anguish, and suffering, which in itself constituted an assault on his physical, mental, and moral integrity. The Commission therefore concludes that the State violated the right to personal integrity established in Article 5 of the American Convention in connection with Article 1.1 of that same instrument, to the detriment of Johan Alexis Ortiz Hernández.

C. Right of Johan Alexis Ortiz’s next of kin to personal integrity

223. Article 5.1 of the American Convention states that “[e]very person has the right to have his physical, mental, and moral integrity respected.” This Inter-American Court has held that the next of kin of the victims of certain human rights violations can, in turn, be victims,²⁸⁷ and that their mental and moral integrity can be affected as a result of the particular circumstances endured by their loved ones and the subsequent acts or omissions of the State authorities in relation to the events.²⁸⁸

224. Specifically, the Court has established that the absence of a complete and effective investigation “constitutes a source of additional suffering and anguish for victims and their next of kin, who have the right to know the truth of what happened,” and that this right includes a “procedural determination

²⁸⁴ I/A Court H.R., *Case of Pedro Miguel Vera Vera v. Ecuador*, Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2011. Series C No. 226, Par. 44; *Case of De la Cruz Flores v. Peru*. Merits, Reparations, and Costs. Judgment of November 18, 2004. Series C No. 115, Par. 131; *Case of García Asto and Ramírez Rojas v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 25, 2005. Series C No. 137, Par. 226, and *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, *supra* note 37, Par. 102.

²⁸⁵ I/A Court H.R., *Case of Montero Aranguren et al. (Detention Center of Catia)*. Judgment of July 5, 2006. Series C No. 150, pars. 102 and 103; *Case of De la Cruz Flores*. Judgment of November 18, 2004. Series C No. 115, Par. 132; and *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, Par. 157. See also: U.N. Doc. HRI/GEN/1/Rev.7 at 176 (1992), Human Rights Committee, General Comment 21, Par. 3; European Court of Human Rights, *Case of Dzieciak v. Poland*, Application no. 77766/01, Judgment of December 9, 2008; European Court of Human Rights, *Case of Slimani v. France*, Application no. 57671/00, Judgment of July 27, 2004, Par. 28.

²⁸⁶ I/A Court H.R., *Case of Ximenes Lopes v. Brazil*, Judgment of July 4, 2006, pars. 119-122.

²⁸⁷ I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167. Par. 112; I/A Court H.R., *Case of Bueno Alves*. Judgment of May 11, 2007. Series C No. 164. Par. 102.

²⁸⁸ I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167. Par. 112; I/A Court H.R., *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155. Par. 96.

[...] of patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.”²⁸⁹

225. The Commission observes that from the time the parents learned of their son’s death, they pursued legal action, which has not ceased. This, in a context in which, from the outset, they have confronted a lack of information from the authorities responsible for guaranteeing his protection about what happened during the training exercise in which their son lost his life. Especially important is the fact that on February 15, 1998, the military authorities themselves informed Mr. Edgar Ortiz and Mrs. Zaida Hernández about a rather specific version of what had happened, which, moreover, served as the grounds for the determinations issued by the Human Rights Committee of the Tachira State Legislative Assembly in its 1999 report. However, as established, this is not the version that was subsequently used as grounds for the charging document issued by the Office of the Military Prosecutor and the Ministry of Public Prosecution in their respective proceedings, which also take into account the statements of these same military personnel. The Commission therefore reiterates that the State did not launch relevant investigations to establish the respective responsibilities, a circumstance that a legislative organ of the State itself described as a way of keeping the truth of what happened from coming out.

226. The parents must have endured acute anxiety and pain during the hours they had to wait before the body of their son was turned over to them after they arrived at the morgue of the San Cristóbal Central Hospital, because they were not told why they could not take him home right away after they had refused to receive the body “in a closed urn,” they had to witness his body “exposed” all night, and Mr. Edgar Ortiz had had to set out in the early hours of the morning in search of the death certificate, which neither the responsible hospital personnel nor the members of the military that were present had promptly issued. This, added to the fact that the parents of Johan Alexis Ortiz maintain that his body was “manhandled” and he was “tortured” before he died – circumstances that, as established in this report, were neither investigated nor clarified by the Venezuelan State.

227. In addition, the family’s pain has been increasing over the years, since, after their tireless quest for justice, the judicial proceedings have suffered undue delays that have fostered impunity for the acts. In particular, Mr. Ortiz’s parents have insisted to diverse domestic authorities through numerous communications, reports, and statements about the death of their son that they themselves prepared, that a diligent and effective investigation had not been conducted to shed light on these events, and how this, in turn, had increased their suffering at his loss, causing them intense frustration, sadness, and a sense of impotence. According to the case file, the two have worked constantly to move the investigation forward, repeatedly requesting that it be conducted with due speed and contributing elements relevant to the investigations, which – as established earlier – have not been duly considered by the Venezuelan authorities. Moreover, the Commission’s examination shows that the parents were not given effective access to the court case files, which, especially in the phase of the investigation conducted by the military authorities, led to a great deal of uncertainty and frustration about whether the proceedings were being handled in a serious and impartial manner.

228. The case file before the Commission also contains information on how the death of Johan Alexis Ortiz affected the families of Edgar Ortiz and Zaida Hernández, how it affected the alleged victim’s younger brothers and sisters, who called Saul Arellano Moral (husband of Zaida Hernández) and Maritza González Cordero (wife of Edgar Ortiz) their “adoptive mother” and “adoptive father;” and on the tremendous economic burden that seeking legal assistance for their representation in the judicial proceedings and their quest for justice imposed on them. In their own words, access to justice for them has been “a privilege,” and not “a right,” and more than sixteen years after the events in question, the circumstances under which their loved one lost his life have not been definitively clarified.

²⁸⁹ I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 192, Par. 102. Cfr. I/A Court H.R., *Case of the Rochela Massacre v. Colombia*, Judgment of May 11, 2007, Series C No. 163, Par. 195, I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988, Series C No. 4, Par. 181; I/A Court H.R., *Case of Heliodoro Portugal v. Panama*. Judgment of August 12, 2008. Series C No. 186, Par. 146, and I/A Court H.R., *Case of García Prieto et al. v. El Salvador*. Judgment of November 20, 2007, Series C No. 168, Par. 102.

229. Furthermore, the Commission takes special note of the information in the case file about the threats and harassment reported by Johan Alexis Ortiz's next of kin (including the assault on the home of Edgar Ortiz) as a result of their activities to seek justice. According to the complaint lodged by Edgar Ortiz and Zaida Hernández, several days after their son died they began receiving death threats and intimidating phone calls motivated by their inquiries into the case. Edgar Ortiz reported on one occasion that he felt "threatened, harassed, and persecuted" by members of the National Guard and feared for the safety of his family and that of Johan Alexis Ortiz's mother. In addition, the case file reveals the concern they felt on learning about possible disciplinary action against their attorneys after they questioned one of the judicial decisions handed down by the military criminal court. Under these circumstances, the fear of reprisals, fear for their lives, and the possibility that their attorneys would be unable to continue their efforts also heightened the anxiety that they had been suffering over the years. Added to this is the fact that the State has also failed to investigate these circumstances or determine their possible link with the death of Johan Alexis Ortiz.

230. In light of the above, the Commission considers the loss of a loved one in a context such as the one described in the instant case, as well as the absence of a complete and effective investigation, which in turn has led to suffering and anguish at not knowing the truth, along with the intimidation that they have experienced for demanding justice, in itself to be a violation of the mental and moral integrity of the next of kin of Johan Alexis Ortiz Hernández.

231. From the information in the case file, the Commission has identified the following family members: Zaida Hernández Hernández (mother), Edgar Humberto Ortiz Ruiz (father), Martiza González Cordero, Saúl Arellano Moral, Jackson Edgardo Ortiz González (brother), Greisy Mariel Ortiz González (sister), Gregory Leonardo Ortiz González (brother), Saida Dariana Arellano Hernández (sister), and Saul Johan Arellano Hernández (brother). The Commission therefore concludes that the State of Venezuela is responsible for violating Article 5 of the American Convention, to the detriment of these individuals.

VI. CONCLUSIONS

232. Based on the considerations of fact and of law stated throughout this report, the Inter-American Commission concludes that the State of Venezuela is responsible for:

a) violation of the right to life and personal integrity established in Articles 4 and 5.1 of the American Convention in relation to Article 1.1 of that same instrument, to the detriment of Johan Alexis Ortiz Hernández.

b) violation of the rights to the judicial guarantees and judicial protection enshrined in Articles 8 and 25 of the American Convention in connection with Articles 1.1 and 2 of that same instrument, to the detriment of Edgar Humberto Ortiz Ruiz (father) and Zaida Hernández Hernández (mother).

c) violation of the right to personal integrity, enshrined in Article 5 of the American Convention, to the detriment of Zaida Hernández Hernández (mother), Edgar Humberto Ortiz Ruiz (father), Martiza González Cordero, Saúl Arellano Moral, Jackson Edgardo Ortiz González (brother), Greisy Mariel Ortiz González (sister), Gregory Leonardo Ortiz González (brother), Saida Dariana Arellano Hernández (sister), and Saul Johan Arellano Hernández (brother).

VII. RECOMMENDATIONS

233. In virtue of the aforementioned conclusions,

THE INTER-AMERICAN COMMISSION OF HUMAN RIGHTS RECOMMENDS THAT THE STATE OF VENEZUELA,

1. Conduct a complete, impartial, and effective investigation of the human rights violations declared in this report, with the object of establishing responsibility and punishing the intellectual and material authors of the events described.

2. Put in place the respective administrative, disciplinary, or criminal measures to respond to actions or omissions by the State agents who contributed to the denigration of justice and the impunity surrounding the events in this case.

3. Provide appropriate remedies, both material and moral, for the human rights violations declared in the present report.

4. Adopt the necessary measures to ensure that the human rights of students at the National Guard Training Academy are duly protected during training courses and procedures.