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REPORT No. 80/17
CASE 12.662
REPORT ON MERITS

ROBERT IGNACIO DÍAZ LORETO, DAVID OCTAVIO DÍAZ
LORETO, OCTAVIO IGNACIO DÍAZ ÁLVAREZ AND FAMILY
MEMBERS
VENEZUELA

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INDEX

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I. SUMMARY

1. On March 14, 2007, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) received a petition lodged by Luis Aguilera in his capacity as Secretary General of the Commission for Human Rights Justice and Peace (Comisión de Derechos Humanos de Justicia y Paz) of the State of Aragua and by Mrs. Juana Emilia Díaz Loreto (hereinafter “the petitioners”) alleging international responsibility of the Bolivarian Republic of Venezuela (hereinafter “the State,” “the Venezuelan State” or “Venezuela”) for the death of brothers Robert Ignacio and David Octavio Díaz Loreto, as well as their father, Octavio Ignacio Díaz Álvarez (hereinafter “the alleged victims”), on January 6, 2003, reputedly committed by police agents of the Security and Public Order Force of the State of Aragua, Venezuela. It was also alleged that these acts and the suffering endured by the family members as a consequence thereof remain in impunity. The petitioners claimed that the instant case took place in a context of extrajudicial executions in Venezuela.

2. In response, the State contended that domestic court cases were prosecuted with strict adherence to due process protections and in keeping with Venezuelan law, as well as with international instruments. It argued that several officers of the security force allegedly involved were investigated and prosecuted for the incidents. The State alleged that the investigation was conducted within a reasonable period of time and that, because of the complexity of the case; the proceedings were not marred by any unwarranted delay. It claimed that it had respected the principles of effective judicial protection. Lastly, the State contended that its right to a defense was violated because of several procedural issues relating to the admissibility of the petition.

3. After examining the positions of the parties, the Inter-American Commission concluded that the Venezuelan State is responsible for the violation of the rights established in Articles 4.1, 5.1, 7.1, 8.1 and 25.1 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in connection with the obligations set forth under Article 1.1 of said instrument, to the detriment of the Diaz Loreto family, who are named throughout the instant report. The IACHR further makes the attendant recommendations hereafter.

II. PROCEEDINGS

4. The petition was received on March 14, 2007 and the Commission approved admissibility report No. 51/08 on July 24, 2008.¹

5. On July 30, 2008, the Commission notified the parties of said report and placed itself at their disposal in order to reach a friendly settlement. Additionally, the petitioners were granted a two-month period to submit their additional observations on the merits, which were received on May 9, 2012. In said written submission, they expressed their interest in pursuing a friendly settlement.

6. On May 16, 2012, the IACHR forwarded said communication to the State and granted it a three-month period to submit its additional observations on the merits. On August 17, 2012, The State’s

¹ IACHR, Report No. 51/08. Petition 299-07. Roberto Ignacio Díaz Loreto et al (Venezuela). July 24, 2008. Available at: <http://www.cidh.oas.org/annualrep/2008sp/Venezuela299-07.sp.htm>

additional observations on the merits were received, though it did not take a position on possibly engaging in the friendly settlement process. Subsequently, additional written submissions were received from both parties and were duly forwarded to the opposing party.

III. ARGUMENTS OF THE PARTIES

A. Arguments of the petitioners

7. The petitioners allege that the instant case takes place in a grave context of cases of extrajudicial executions in the State of Aragua and in other states of the country, under a particular *modus operandi* whereby these and other human rights violations are made to look like confrontations or armed engagements with law enforcement officials. They contend that most of these cases go unpunished.

8. As regards the facts, the petitioners claim that on March 6, 2003, brothers Robert Ignacio and David Octavio Díaz Loreto, and their father, Octavio Ignacio Díaz Álvarez, died violent deaths in separate circumstances from gunshot wounds. They assert that officers of the Security and Public Order Force of the State of Aragua (hereinafter “the CSOPEA” from the Spanish initials for Cuerpo de Seguridad y Orden Público del Estado Aragua) were involved in the crimes. They contend that there are two versions of events. One official version maintains that the alleged victims confronted a detail of officers of the CSOPEA, who identified them as allegedly responsible for a robbery reported on that same day.

9. A second version is based on the statements of several witnesses, claiming that uniformed and armed officers of the CSOPEA, without any arrest or search warrant, burst into the family residence and arrested Robert Ignacio Díaz Loreto in the presence of his family members, who were threatened to not come to his aid. It is alleged that while he was being taken from his residence, Robert Ignacio sustained a wound from a gunshot fired by an officer and was then transferred to an unknown location by the police detail. They allege that while he was in the custody of the officers, he was subjected to acts of torture. They claim that after dying, the alleged victim was taken to a public hospital of the city of Cagua, where he was admitted without any displaying vital signs and was “abandoned” by the officers. It was also contended, as part of this second version of events, that following the arrest of Robert Ignacio, his father and brother set out to search for him and along the way, they were intercepted by the same police detail. The petitioners claim that after ordering them to get out of the car “with their hands on their necks,” the officers shot Octavio Diaz and his son, both of whom immediately died. It is asserted that their bodies were transferred by the CSOPEA detail to Corposalud Hospital in the city of Cagua, where they were “abandoned” by the officers.

10. As a result of the events recounted above, the petitioners allege that the State of Venezuela is responsible for violations of Articles 4, 5 and 7 of the American Convention, in connection with Article 1.1 thereof.

11. As to the investigation and domestic judicial proceedings, the petitioners argue that authorities breached their duty of due diligence from the early stages of the investigation, which they regard as a form of complicity in the crimes that took place. They claim that investigations were opened against 7 officers of CSOPEA, giving rise to two trials. The first trial culminated in an acquittal and the second one had not concluded. It is contended that irregularities in said cases included: failure to prosecute the offenses of trespassing and illegitimate deprivation of liberty; protracted periods of procedural inactivity; recusals by provisional judicial authorities; and failure to process to the private complaint brought by Mrs. Juana Emilia Loreto in conjunction with the first trial. It is additionally alleged that the custody order against the officers charged in the case was improperly lifted on one occasion and was served to them at the headquarters of the CSOPEA, and that the officers remained on active police duty during the criminal proceedings.

12. The petitioners argue that during the course of the investigation they were unable to obtain statements from several witnesses to the events of the case because the witnesses feared retaliation from the officers. As to the alleged victims’ next of kin, the petitioners recount several incidents, which took place subsequent to January 6, 2003, wherein several members of the Díaz Loreto family were subjected to harassment, threats and intimidation by police officers in order to hamper their persistent efforts to obtain

justice. It is contended that even though the family reported this situation to the Office of the Prosecutor, no adequate measures were taken to ensure their safety and avoid further retaliation or to investigate these incidents.

13. Specifically, the petitioners allege that on April 10, 2003, state police officers attempted, without a court order, to enter the residence of the Díaz Gualdrón family (made up of Jairo Alexis Díaz Loreto, Octavio Díaz's son and his wife Alexandra Gualdrón), and on the following day, after reporting the incident to the Office of the Prosecutor, they were "visited" again by the officers, who also interrogated their neighbors about the personal information of the family.

14. It is claimed that on the April 26 of that year, the family received death threats with a firearm from police officers of the State of Aragua. It is alleged that during this incident, Mrs. Dinorah María Díaz Loreto and Mrs. Alexandra Gualdrón de Díaz were assaulted and threatened with death by officers at gunpoint; and 19 year-old Miguel Ángel Díaz Loreto and his 12 year-old nephew José Rafael Ocopio Díaz were also assaulted, the former being illegally deprived of his liberty. Regarding said detention, the petitioners contend that the family was initially unaware of where Miguel Ángel Díaz had been transferred to and that after being released he reported that he had been interrogated about the investigative steps taken into the deaths of the other alleged victims, while he was beaten by police agents and received threats against the Díaz Loreto family.

15. Lastly, it is alleged that on June 4, 2003, Mr. Jairo Alexis Díaz Loreto was intercepted on a public road by a police detail and was held at the location for approximately one hour, until he managed to show the agents a copy of the oversight court decision granting him protection measures. The petitioners claim as well that Bladimir Lenin Díaz Loreto was illegally and arbitrarily arrested by police officers and that he was held in custody, without access to food or water, and was not allowed to contact his family members or his trusted family attorney, until the following day.

16. Based on the foregoing, the petitioners allege the violation of Article 5 to the detriment of the family members of the alleged victims, because of the suffering caused by their deaths and the denial of justice, as well as the alleged acts of threats and intimidation cited above. The violation of Article 7 is also alleged in connection with the reported incidents of arbitrary detention, as well as the violation of Articles 8 and 25 of the Convention stemming from the impunity for all the crimes of the case.

B. Arguments of the State

17. At the present stage of the proceedings before the Commission, the State submitted arguments regarding admissibility of the petition, which will not be addressed in this section, inasmuch as said aspects were previously ruled on by the Commission in Admissibility Report No. 51/08. The State also argues that the petitioners are responsible for "abandonment" of the case for a four-year period from the time of the admissibility decision until submission of additional observations on the merits. The State contends that this situation gives rise to legal uncertainty and an inability to mount a defense. It further argued that after the admissibility decision, domestic judicial proceedings were still ongoing and, therefore, the State was precluded from securing certified copies of all the evidence in the case file and submit its arguments.

18. As to the merits of the matter, the State claims that since the time it learned of the deaths, the respective investigations were opened. It argues that in the context of said inquiries, formal charges were brought against seven police officers and that the Ministry of Public Prosecution sought orders for their deprivation of liberty. It also asserted that on January 18, 2007, trial proceedings were instituted against the agents charged with the crimes and they were later acquitted. It claims that this decision was overturned by the Supreme Court on cassation and a retrial in public oral proceedings was ordered, which culminated in another judgment of acquittal. In its last communication, the State reported that as of this time, a hearing before the Court of Appeals entertaining a challenge filed by the Ministry of Public Prosecution against this second decision to acquit was pending. According to the contention of the State, said hearing had been scheduled for October 4, 2007, but as a result of "several postponements," it was set for August 22, 2012. As to said proceedings, the State argues that due process of the law, and that the right to effective judicial

protection, were respected, and that the investigations were conducted under the Minnesota Protocol on the Investigation of Potentially Unlawful Death.

19. The State claims that there was no unwarranted delay in the cases either. As to complexity, it argues that the matter was not a “simple case,” firstly, in light of the fact that the officers allegedly involved belonged to a “special operations force of the police department,” that “acted in a situation of *in flagrante delicto*” in identifying the perpetrators of an aggravated robbery, who in reply “to the shout of halt” gave “an armed response that led to a confrontation.” And secondly, the State claims that the complexity stems from the fact that “the version of [the petitioners] is not solidly backed by testimony, that is to say, it does not have eye witnesses,” while the official version is backed by the person who reported the robbery and another person who witnessed the alleged confrontation. As regards the decision on the appeal, which was still pending at the time the IACHR issued Report No. 51/08, the State alleges that it is not responsible for an unwarranted delay, inasmuch as the procedural steps in said proceeding are contingent upon having proper execution of the summons of the parties and, therefore, it would be “imputable to the parties [that] they are not at their residence and cannot consummate the service of summons.” Likewise, the State contends that it cannot be held responsible for the recusals of the judges in the case.

20. The State claims that under Venezuelan law, human rights violations are not subject to a statute of limitations and, consequently, can be investigated “without limits over time.”

21. Regarding the facts relating to Miguel Ángel Díaz Loreto, Jairo Alexis Díaz Loreto and Bladimir Lenín, it reported that the Office of the Twentieth Prosecutor of the Ministry of Public Prosecution had been assigned to investigate the complaints of illegal and arbitrary detention and bodily injury committed by law enforcement agents, and that summonses had been issued through the Scientific and Forensic Crime Investigation Unit (hereinafter “the CICPC,” standing for the Spanish language initials of Cuerpo de Investigaciones Científicas, Penales y Criminalísticas) to appear in court to provide a statement, being that no formal complaint had been filed regarding these acts.

IV. FINDINGS OF FACT

A. The context of extrajudicial executions in Venezuela

22. In the instant case, the petitioners contend that the deaths of the alleged victims reflect a broader context of extrajudicial executions in Venezuela. The Commission, through its various mechanisms, has identified a context of extrajudicial executions in the country for several years. The Inter-American Court has also referred to this context in its analysis of cases that exemplify it.

23. From the time of its country visit of 2002, the Inter-American Commission verified the existence of a serious issue of extrajudicial executions committed by members of state police forces and/or para-police or “extermination” groups (death squads) with the acquiescence or collaboration of state police forces, following different patterns of conduct. Both in its 2003 country report, and in its Annual Reports of 2004 and 2005, the IACHR examined the profile of these types of cases and voiced its concern over the continuation of this phenomenon, as well as over the grave situation of impunity existing in these cases.²

² See: IACHR. 2005 Annual Report. Chapter IV on Venezuela. Section on the situation of impunity, in particular, regarding the case of extrajudicial executions; IACHR. 2004 Annual Report. Chapter V. *Follow-Up Report on Compliance by the State of the Bolivarian Republic of Venezuela with the Recommendations Made by the IACHR in its Report on the Situation of Human Rights in Venezuela* (2003), para. 144; and IACHR. *Report on the Situation of Human Rights in Venezuela*, October 24, 2003, paras. 321 – 343. In subsequent years, the IACHR continued to follow up on this serious issue in both its report on *Democracy and Human Rights in Venezuela* in 2009 and through public hearings, in its annual reports and individual cases, verifying that as of the present time, complaints of the existence of this phenomenon in Venezuela persist. See: IACHR: CIDH. *Democracy and Human Rights in Venezuela*. December 30, 2009, paras. 35, 756 and 789; IACHR, 2016 Annual Report. Chapter IV on Venezuela. Section on the Situation of Citizen Security; IACHR. 2015 Annual Report. Chapter IV on Venezuela. Section on the situation of violence and citizen security; IACHR, 2013 Annual Report. Chapter IV on Venezuela. Section on Alleged Violence by Members of the Government Forces.

24. As for the *modus operandi*, the IACHR has identified that, in some instances, deaths are staged as confrontations or armed engagements during routine procedures, in the course of carrying out either arrest warrant or search warrant operations. In these cases, the victim is killed at the site of the operation and under the pretext of an armed confrontation of a criminal with the police forces.³ In other cases, the executions take place once the victims have been illegally and/or arbitrarily detained and are under state custody. In other circumstances, after illegal raids are conducted by hooded or unidentified individuals, the victims are murdered by them.⁴

25. Based on information documented by Venezuelan civil society organizations, the Commission also has established that this phenomenon more commonly affects the “more humble sectors,” in the context of preventive operations or plans aimed at the detection, detention and retention of citizens for allegedly criminal conduct. Thus, “[...] the alleged persons involved are arrested and without taking the appropriate measures for *in fraganti* commission of crimes. Or while they are being arrested, they are brutally apprehended, by beating [...] and in many instances, [they are] shot at point blank range in the presence of witnesses, brought to the police unit wounded, they appear dead later in an abandoned site or are admitted to a hospital or medical facility with no vital signs.”⁵

26. Other elements have also been identified as part of said *modus operandi* such as: threats against and murder of eye witnesses to the crimes, who because of this situation “generally are not part of the investigation into the crimes that the Ministry of Public Prosecution is conducting;” “moving of the location of the event” including tampering with or altering evidence, and criminalization of the victims in the eyes of public opinion to justify their deaths “as an effective response given by the authorities after an act of crime has taken place (generally theft or robbery) with the victim being the main perpetrator.”⁶ Separately, the 2001 Annual Report of the Office of the Ombudsman of the People identified as one of the “common elements favoring impunity” in these cases, “[...] acceptance of the discourse of police confrontation by law enforcement agencies and by the citizenry itself, by virtue of which such acceptance leads to a failure to conduct the respective criminal investigations.”⁷

27. In the case of the *Barrios Family v. Venezuela*, the IACHR determined the existence of a broad context of extrajudicial executions by regional police forces in Venezuela with a significant incidence of it in the State of Aragua.⁸ In the case of the *Landaeta Mejías Brothers et al v. Venezuela*, the IACHR found that “the problem is structural in nature, resulting from numerous factors, and revealed serious flaws in the institutional design of the police forces, the absence of independent and effective oversight mechanisms, and the acute situation of impunity of this type of case.”⁹ The Inter-American Court also determined in this case

³ IACHR. *Report on the Situation of Human Rights in Venezuela*, October 24, 2003, para. 333. Citing: COFAVIC/Venezuela, Democracy and Human Rights, Mid-Year Report: January – August 2002. Also see: Provea, Annual Report N° 14, Caracas, Venezuela; COFAVIC/Parapolice groups in Venezuela, 2005. Pgs. 29 to 33; Human Rights Watch, Annual Reports 1998 and 1999.

⁴ See: IACHR. *Report on the Human Rights Situation in Venezuela*. October 24, 2003, paras. 321 – 343.

⁵ Balance de la Situación de los Derechos Humanos en el Estado Aragua entre julio de 1996 y marzo de 2003 [Taking stock of the Situation of Human Rights in the State of Aragua from July 1996 to March 2003], authored by the Commission on Human Rights, Justice and Peace of the State of Aragua. Citing: IACHR. Report No. 58/12. Case 12.606. Merits. *Landaeta Mejías Brothers*. Venezuela. March 21, 2012.

⁶ See: Annex 1. COFAVIC/Los grupos parapoliciales en Venezuela [Para-police groups in Venezuela], 2005, pgs. 28-33. Available at: https://issuu.com/ddhhcofavic/docs/grupos_parapoliciales_en_vzla_cofavic

⁷ Annex 2. Office of Ombudsman of the People of Venezuela. Report: *Ajusticiamientos y Desapariciones Forzadas*. Anuario [‘Executions and Forced Disappearances. Annual Report’] 2001. Available at <http://www.defensoria.gob.ve/lista.asp?sec=1404080002> Citing: IACHR. Report No. 11/10. Case 12.488. Merits. *Members of the Barrios Family*. Venezuela. March 16, 2010.

⁸ See: IA Court of HR. *Case of Barrios Family v. Venezuela*. Merits, Reparations and Costs. Judgment of September 24, 2011. Series C No. 237, para. 38.

⁹ See: IA Court of HR. *Landaeta Mejías Brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 47.

there was “an acute problem of police abuse in various states, including the state of Aragua.”¹⁰ Regarding the general scope of said context, the Court determined in the case of *Uzcátegui et al v. Venezuela*, pertaining to events occurring in 2001, that at that time “extrajudicial killings and other abuses were committed in the State by the police, particularly by the state and local police forces.”¹¹

28. The determination about the existence of said context and the characterization of the issue in the aforementioned cases was examined by both the Commission and the Court, taking into account, *inter alia*, reports of state authorities¹² and international¹³ and national¹⁴ non-governmental organizations. The timeframe of said sources encompasses the alleged facts in the instant case.

29. Likewise, in several of his reports, the United Nations Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions has issued an alert due to complaints of extrajudicial executions at the hands of security agents that are committed in Venezuela, and the threats received by family members of victims to keep them from reporting the crimes.¹⁵ Furthermore, in its final conclusions on Venezuela of April 26, 2001, the United Nations Human Rights Committee expressed its serious concern about “numerous reports of extrajudicial executions and the lack of response to them by the State.”¹⁶

B. The Díaz Loreto Family

30. David Octavio Díaz Loreto was born on August 2, 1979, and Robert Ignacio Díaz Loreto was born on March 4, 1981. Both of the boys were the sons of Octavio Ignacio Díaz Álvarez and Juana Emilia Loreto Pérez.¹⁷ At the time of the events of the case, the family resided in Sector 01, vereda 40, No. 05, Urbanización La Segundera, Cagua, State of Aragua.¹⁸

¹⁰ See: IA Court of HR. *Landaeta Mejías Brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 55.

¹¹ IA Court of HR. *Case of Uzcátegui et al v. Venezuela*. Merits and Reparations. Judgment of September 3, 2012. Series C No. 249, para. 35.

¹² Annex 2. Office of the Ombudsman of the People of Venezuela. Report: Ajusticiamientos y Desapariciones Forzadas [‘Executions and forced disappearances’]. Annual Report 2001. Available in Spanish only at: <http://www.defensoria.gob.ve/lista.asp?sec=1404080002>; 2001 Annual Report of the Office of the Ombudsman of the People of the Bolivarian Republic of Venezuela; 2003 Annual Report of the Office of the Ombudsman of the People of the Bolivarian Republic of Venezuela; 2006 Annual Report of the Office of the Ombudsman of the People; Speech of the Attorney General of the Republic on the occasion of the submission of the Annual Report of Administration of 2005. April 25, 2006; National Commission for Police Reform (CONAREPOL). Características de la Policía Venezolana [‘Profile of the Venezuelan Police’] 2007 Annual Report of the Attorney General of the Republic.

¹³ Amnesty International. Venezuela. LA PROTECCIÓN DE LOS DERECHOS HUMANOS. UNA TAREA INCONCLUSA [‘HUMAN RIGHTS PROTECTION. UNFINISHED BUSINESS’] <http://www.amnesty.org/es/library/asset/AMR53/008/2000/es/2f84ad73-de10-11dd-a3e1-93acb0aa12d8/amr530082000es.html>; Amnesty International Annual Report. <http://www.unhcr.org/refworld/country.COLAMNESTY.ANNUALREPORT.VEN.483e27bd3c.0.html> Human Rights Watch <http://www.hrw.org/es/world-report-2010/venezuela-0>

¹⁴ See: PROVEA. Annual Reports available at: <https://www.derechos.org/ve/>; Annex 1. COFAVIC/Los grupos parapoliciales en Venezuela, 2005, pgs. 28-33. Available at: https://issuu.com/ddhhcofavic/docs/grupos_parapoliciales_en_vzla_cofavic; Annex 3. Balance de la Situación de los Derechos Humanos en el Estado Aragua entre julio de 1996 y marzo de 2003 [‘Taking stock of the Situation of Human Rights in the State of Aragua from July 1996 to March 2003’], authored by the Commission on Human Rights, Justice and Peace of the State of Aragua. Comisión de Derechos Humanos, Justicia y Paz del Estado Aragua; and Annex 2. Report written by the National Commission for Police Reform (CONAREPOL). Características de la Policía Venezolana [‘Profile of the Venezuelan Police’]. 2007. Citing: See: IA Court of HR. *Landaeta Mejías Brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, paras. 47-55.

¹⁵ United Nations Special Rapporteur on Extrajudicial, Summary and Arbitrary Executions. Reports to the Human Rights Commission: E/CN.4/1994-7; E/CN.4/1998/68/Add.1; E/CN.4/1999/39/Add.1; E/CN.4/2001/9/Add.1; E/CN.4/2003/3/Add.1; E/CN.4/2004/7/Add.1. Reports to the United Nations General Assembly, see: A/55/288, of August 11, 2000. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N00/604/84/PDF/N0060484.pdf?OpenElement>.

¹⁶ See: <http://www.acnur.org/biblioteca/pdf/1373.pdf>

¹⁷ Annex 4. Certified copy of the birth certificate of David Octavio Díaz Loreto, issued by the Civil Registry of the Municipality of Libertador Capital Palo Negro of the State of Aragua, on November 15, 2005. Annex to initial petition of March 14, 2007; and Annex 5. [continues ...]

31. In the instant case, violations of the rights of the following family members of the Díaz Loreto family have also been alleged: Miguel Ángel Díaz Loreto (17 years of age at the time of the events, residing at the above-cited address), Dinorah María Díaz Loreto, Jairo Alex Díaz Loreto, Bladimir Lenin Díaz Loreto, Octavio Antonio Díaz Loreto, all of whom are siblings of David Octavio and Robert Ignacio. Other alleged victims listed are: José Acopio, Alexandra Gualdrón de Díaz, Luz Marina Ledesma de Díaz and José Rafael Acopio (15 years of age at the time of the events), who are also relatives of the Díaz Loreto family. The petitioners also allege that, as a consequence of the violations of the rights of David Octavio Díaz Loreto, reparation should be granted to his children, for whom the Commission has the name of Arianna.¹⁹

C. The death of Octavio Ignacio Díaz Álvarez and his sons David Octavio and Robert Ignacio Díaz Loreto on January 6, 2003

32. David Octavio Díaz Loreto, 23 years of age, Octavio Díaz Álvarez, 58 years of age and Robert Ignacio Díaz Loreto, 21 years of age, at the time of the events of the case, died on January 6, 2003 in La Segundera, city of Cagua, State of Aragua.²⁰

33. The autopsy report of Robert Ignacio Díaz Loreto indicates that he presented: “[...] finely granulated, black inorganic material on ocular conjunctiva, oral mucosa, respiratory tract, lungs and digestive tract, without signs of asphyxiation and three wounds by single firearm projectile, with the mortal wound penetrating to thorax which perforates the heart from side to side, producing massive hemothorax. Cause of death: cardiac wound from single firearm projectile.”²¹

34. The autopsy report of David Octavio Díaz Loreto indicates that he presented: “[...] three single firearm projectile wounds, penetrating to thorax, two of them cause severe cardiac injury with passive hemothorax which leads to death. Cause of death: massive hemopneumothorax from single firearm projectile wound.”²²

35. The autopsy report of Octavio Ignacio Díaz Álvarez indicates that he presented: “[...] a firearm projectile wound, it penetrates to thorax causing cardiac injury which leads to death by hypovolemic shock. Cause of death: hypovolemic shock from firearm projectile wound.”²³

[... continuation]

Certified copy of the birth certificate of Robert Ignacio Díaz Loreto, issued by the Civil Registry of the Municipality of Libertador Capital Palo Negro of the state of Aragua, on November 15, 2005. Annex to initial petition of March 14, 2007.

¹⁸ See: Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on the date of June 13, 2003. Annex to initial petition of March 14, 2007.

¹⁹ See: Annex 7. Certified copy of the death certificate issued by the Civil Registry of the Municipality of Sucre of the State of Aragua, date of December 7, 2005, No. 392970. Annex to initial petition of March 14, 2007.

²⁰ Death certificates No. 012417, No. 0124413, and No. 0124418, all dated January 7, 2003. Cited in: Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document submitted to the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on the date of June 13, 2003, pg. 12. Annex to initial petition of March 14, 2007.

²¹ Autopsy Report No. 0147. Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document submitted to the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on the date of June 13, 2003, pg. 12. Annex to initial petition of March 14, 2007.

²² Autopsy Report No. 0177. Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document submitted to the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on the date of June 13, 2003, pg. 13. Annex to initial petition of March 14, 2007.

²³ Autopsy Report No. 0146. Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document submitted to the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on the date of June 13, 2003, pg. 13. Annex to initial petition of March 14, 2007.

36. The official records indicate that the day of the events, Robert Ignacio Díaz Loreto was admitted to the Seguro Social de Corinsa hospital in the city of Cagua “at approximately 07:30 PM.”²⁴ While, Octavio Ignacio Díaz Álvarez and David Octavio Díaz Loreto were admitted to José María Vargas Hospital of the city of Cagua.²⁵ The IACHR does not have information about the time they were admitted to said healthcare facility and, based on information in the case file, the three alleged victims were left at said health care facilities by police agents.

37. The certificates of death issued by the Civil Registry of the Municipality of Sucre of the State of Aragua, based on the statement given by Dinora María Díaz Loreto, indicate that Robert Ignacio and Octavio Díaz died on January 6, 2003 “in la Segundera on Tenería Road and ‘1ero de octubre’ of [said municipality],” and Octavio Díaz Álvarez died “on the same day at the same location.”²⁶

38. The Commission notes that there are two versions of the circumstances surrounding the death of the alleged victims. Hereunder, the IACHR summarizes the evidentiary support available for each of these versions.

1. Official version of the Security and Public Order Force of the State of Aragua (CSOPEA)²⁷

39. Based on several police records and interviews of CSOPEA officers, appearing in the case file, it is established that on January 6, 2003, at approximately 6:30PM, a police operation was carried out to respond to a report of robbery from a person who reported that “three armed subjects had robbed him” of a sum of cash [...] incident occurring in sector 01 of la Segundera de Cagua.”²⁸ In the case file there appears two police reports of March 14, 2003, in which CSOPEA officers Saúl Ricardo Ramos and Luis Dicamillo, assigned to the police station of La Segundera, in Cagua, State of Aragua, recount the same version of the events in said operation.²⁹

40. Specifically, in the description given by Officer Ramos, he says:

²⁴ According to Police Technical Inspection No. 021 conducted by members of the CICPC, Cagua sectional office, at the Morgue of the Seguro Social de Corinsa hospital of Cagua, the alleged victim was wearing “a blue jean-type pair of pants, [...] and a white T-shirt [...]”. The record notes that he presented wounds in the region of the ‘right intercostal, left ilium fossa, left side thorax, posterior left deltoid.’ See: Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document submitted to the Fifth Oversight Judge of the State of Aragua on the date of June 13, 2003. Annex to the initial petition of March 14, 2007.

²⁵ According to Police Technical Inspections No. 019 and No.20 conducted by members of the CICPC, sectional office of Cagua, at the Morgue of José María Vargas Hospital, Octavio Ignacio Díaz was wearing “a blue jean type pair of pants and a light green and white, short sleeve shirt” and in the front left pants pocket” he had “an unfired shotgun cartridge.” While, David Octavio Díaz Loreto was wearing “a multicolored striped chemise type polo shirt and under it a red T-shirt.” The record indicates that he presented wounds in the “right infraclavicular area, anterior face of the right forearm, posterior face of the right forearm and two wounds in the left pectoral region.” See: Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document submitted to the Fifth Oversight Judge of the State of Aragua on the date of June 13, 2003. Annex to the initial petition of March 14, 2007.

²⁶ See, respectively: Annex 8. Certificate of death issued by the Civil Registry of the Municipality of Sucre of the State of Aragua, on January 16, 2003, page 117. Annex to the initial petition of March 14, 2007; Annex 9. Certificate of death issued by the Civil Registry of the Municipality of Sucre of the State of Aragua, on January 16, 2003, page 115. Annex to the initial petition of March 14, 2007; and Annex 7. Certified copy of certificate of death issued by the Civil Registry of the Municipality of Sucre of the State of Aragua, dated December 7, 2005, No. 392970. Annex to the initial petition of March 14, 2007.

²⁷ According to CSOPEA Organic Decree issued on August 30, 1974, said security force is under the executive branch of the State of Aragua in the organizational structure. See: Initial petition of March 14, 2007, pg. 2.

²⁸ Annex 10. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Police record of interview of officer Saúl Ricardo Ramos Mora, of March 14, 2003, page 207. Annexed to the initial petition of March 14, 2007.

²⁹ Annex 10. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Police record interview of officer Saúl Ricardo Ramos Mora, of March 14, 2003, pages 207-208; and Annex 11. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Police record interview of officer Luis Dicamillo Colmenares, of March 14, 2003, pages 209-210. Annexes to initial petition of March 14, 2007.

[...] I suggested to the citizen [who had reported the robbery of money] to get into unit RP-358, driven by second corporal DICAMILO LUIS, with assistant inspector JESUS FRANCO present as support [in passenger's seat], as well as the abovementioned offended party and myself, we drove to sector 01 in La Segundera of Cagua, the location where the incidents had occurred, when we arrived in the above-referenced location the offended party pointed out three subjects who were gathered on the street in front of *vereda* (district) No. 44, and consequently we proceeded to stop the unit and shout loudly 'Stop Police' to the subjects pointed out by the offended party, with these subjects opting to pull out and show their fire arms and firing them on the police detail who arrived on the scene as well as on the motorized brigade that was engaged in the operation with us, finding ourselves with the compelling need to repel said action which originated with the exchange of gunfire, where two of the subjects managed to flee along adjacent districts and one of them fell down seriously wounded on the pavement, who at the time was wearing a white T-shirt, blue jeans, whose predominant characteristic was that his body was all covered with mud, that was when we immediately proceeded to provide aid to the wounded subject, transferring him in unit Rp-358, to the closest health care facility in this case the Seguro Social de Corinsa Cagua, in the company of the offended party himself, who witnessed the events which occurred not without asking for the identification of a citizen taxi driver who was at the scene of the incidents, who claimed to be called TEODORO ARELLANO [...].³⁰

41. According to this version, the operation continued, "in order to try to capture the other two subjects who confronted the police detail and fled." Officer Saúl Ricardo Ramos Mora testified that, after learning over the radio transmitter, that the other two men had boarded "a small apple green color vehicle and were trying to exit the locality," the police detail combed the area and managed to "spot a green Fiat Palio vehicle that was riding down the main thoroughfare [of] La Segundera Downtown Cagua at high speed [...]." In his account, the officer described that the automobile "ignored" the "command to stop" and therefore "a chase" was ensued, during which "one of the subjects was shooting through the window at the detail," until the officers managed to "shoot the right rear tire [of the vehicle...]." Hereunder the officer describes that:

[...] when they noticed that action unit 116 which was coming from Downtown Cagua to block the roadway was going to intercept him, is when the driver of the aforementioned vehicle got out of it and got down on the ground when he noticed the police details, but simultaneously, on the right side of (sic) a white-skinned, thin subject with a mustache gets out and on the left side where the driver had previously gotten out was another subject, Caucasian approximately 50 years of age, these men were carrying firearms and firing them repeatedly on action unit 116, which was driven by the Distinguished Private JOSE MALDONADO and commanded by Second Corporal ERICK TORREALBA, successfully hitting the unit of said detail, giving rise again to an exchange of gunfire out of the compelling need to defend our lives from imminent danger caused by these unknown subjects, with the two subjects who got out of the vehicle carrying firearms being gravely wounded, they were

³⁰ Annex 10. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Police record interview of Saúl Ricardo Ramos Mora, of March 14, 2003, page 207. Annex to initial petition of March 14, 2007. In the case file before the IACHR there appears a statement from this person to the CICPC in which he says that "[...] when I was arriving [in La Segundera neighborhood, sector 01, Cagua he saw three persons in the parking lot [and then he went back the same way] it was when he saw a Uniformed Police Unit of the State of Aragua, [...] in said unit there were three officers and a person wearing civilian clothes, at that time the persons who were in the parking lot fired several shots and the officers also fired, then he squatted down to observe again he saw that the officers were putting a person into the unit and it was one of the persons who [...] he had seen earlier in the company of the other two, covered in mud and wounded." In his statement he also responded that "[...] THIRD: Tell us, you managed to observe the exchange of gunfire? REPLY: Yes and also I heard several shots and then the officers were coming to the aid of a person [...] SEVENTH: Tell us, did you manage to see the person wounded carrying any firearm? REPLY: When I went by I first saw them I did not see them, but when he was confronting the police I did see he was armed [...]. NINETH: Tell us, did you manage to observe other persons shooting at the police detail? REPLY: Yes the three of them fired, but I don't know where they caught the other two persons." Annex 12. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. Scientific and Forensic Crime Investigation Unit (CICPC). Aragua Region, Cagua Sectional Office. Statement of Teodoro Arellano Vivas, of February 27, 2003. Annex to initial petition of March 14, 2007.

transferred to the closest health care facility to the scene of the incidents [adjacent area to Tenería de Cagua] in this case the José María Vargas Hospital de Cagua [...].³¹

42. In the record, it is noted that on the same date and after the events took place, there was collected³² in “sector 01 of la Segundera in front of district 44 and in front house number No. 05”, a black revolver type weapon, and in the area adjacent to Tenería de Cagua, two firearms “one 380mm caliber, black pistol-type and a 12mm caliber shotgun.”³³ Officer Dicamillo Colmenares provided the same identification of the weapons collected noting that they were the ones that were carried by the persons who engaged the police detail.³⁴

43. In statements provided a few days later to the CICPC and in subsequent interviews conducted by the Ninth Assistant Prosecutor of the Ministry of Public Prosecution, in May 2003, CSOPEA officers Saúl Ramos Mora,³⁵ Rafael Barreto Araque,³⁶ Jorge Luis Alvarado Hernández,³⁷ Jesús Franco Martínez,³⁸ Luis Dicamillo Colmenares,³⁹ Jesús Maldonado Archila⁴⁰ and Erick Torrealba Urbina,⁴¹ all linked at

³¹ Annex 10. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Police record interview of Officer Saúl Ricardo Ramos Mora, of March 14, 2003, pages 207-208. Annex to initial petition of March 14, 2007.

³² According to subsequent statements provided by several officers who took part in the operation, the collection of the weapons was conducted by officers of the CICPC. See: Annex 13. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Record of statement of officer Saúl Ramos Mora, of May 28, 2003. Annex to initial petition of March 14, 2007; Annex 14. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Jorge Luis Alvarado Hernández, of May 28, 2003, page 225. Annex to initial petition of March 14, 2007; and Annex 15. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Jesús Franco Martínez, of May 28, 2003, page 227. Annex to initial petition of March 14, 2007.

³³ Annex 10. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Police record interview of officer Saúl Ricardo Ramos Mora, of March 14, 2003, page 208. Annex to initial petition of March 14, 2007.

³⁴ Annex 11. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Police record of interview with officer Luis Dicamillo Colmenares, of March 14, 2003, page 210. Annex to initial petition of March 14, 2007.

³⁵ Annex 13. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Saúl Ramos Mora, of May 28, 2003. Annex to initial petition of March 14, 2007.

³⁶ This officer testified that “after the events took place, the firearm was identified in one of the hands of the wounded citizen.” Annex 16. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Rafael Antonio Araque, of May 28, 2003, page 223. Annex to initial petition of March 14, 2007. Also see: Annex 17. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Rafael Antonio Barreto Araque, of March 11, 2003. Annex to initial petition of March 14, 2007.

³⁷ See: Annex 14. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Jorge Luis Alvarado Hernández, of May 28, 2003, page 225. Annex to initial petition of March 14, 2007; Annex 15. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Jesús Franco Martínez, May 28, 2003, page 227. Annex to initial petition of March 14, 2007; Annex 18. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Luis Dicamillo Colmenares, of May 28, 2003, page 228. Annex to initial petition of March 14, 2007. Also see: Annex 19. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Jorge Luis Alvarado Hernández of March 11, 2003. Annex to initial petition of March 14, 2007.

³⁸ Annex 15. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Jesús Franco Martínez, of May 28, 2003, page 227. Annex to initial petition of March 14, 2007. Also see: Annex 20. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Jesús Ramón Franco Martínez, of March 11, 2003. Annex to initial petition of March 14, 2007. This officer also testified that “the first wounded subject, when he was put into the unit, was covered with mud over his whole body.”

³⁹ Annex 18. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Luis Dicamillo Colmenares, of May 28, 2003, page 228. Annex to initial petition of March 14, 2007.

⁴⁰ Annex 21. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Jesús Maldonado Archila, of May 28, 2003, page 230. Annex to initial petition of March 14, 2007.

⁴¹ Annex 22. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Erick Torrealba Urbina, of May 28, 2003, page 231. Annex to initial petition of March 14, 2007. Also see:

[continues ...]

that time to the investigation as defendants, similarly supported the version of the confrontation with three “heavily armed” subjects during the police operation of January 6, 2003. The Chief of the Aragua-Center Region of CSOPEA also reported, based on information that he heard about the operation over radio broadcast, that there was a confrontation with three subjects accused of committing a robbery.⁴²

44. Another officer of the CSOPEA, who did not participate in the police operation but provided a statement in the investigation conducted by the CICPC, testified that “[...] he lived near the area where the crimes had occurred and that he didn’t know the persons that had been shot in the procedure, but that he knew second hand about the area [that] one of them was nicknamed “DAVISITO”, and he had a reputation as trouble, and on several occasions the drivers of the transportation line Luxor, had reported him for armed robbery, but [...] he didn’t know them.”⁴³

45. The formal charging document filed by the Ministry of Public Prosecution subsequently (see *infra* D) includes the statement of the person who allegedly reported the cash robbery. In this regard, he testifies that when he was heading in the company of the police officers to the site where he had been “held up” they saw:

[...] the subjects who committed the crime, when they arrived there a shootout ensued, because when the subjects spotted the police they started to fire and then [he got down] on the ground and shortly afterwards a police officer asked him if he was hurt to which [he answered he wasn’t, and] he indicated that they were putting one wounded man in the patrol car to transfer him to the hospital and then they took him out, they informed him that they had located the other two subjects and that they had gotten into a car and, therefore, they proceeded again to drive down via la Segundera and they spotted a green vehicle, a palio and then the officers said that it was the vehicle in which the other two subjects were riding and when the officers called out to stop, the two subjects got out of the interior of the vehicle shooting and there [...he jumped down] on the ground and it was then when the gunfire exchange took place.⁴⁴

2. Available information on the version that the three alleged victims were extrajudicially executed

46. The IACHR notes that a resident of the neighborhood of La Urbanización La Segundera made a statement to the CICPC as follows:

I was in the outside area of my house when suddenly about 20 uniformed police officers arrived and ordered everyone to get inside their houses, I ran inside of my house with my son, but I was so nervous I stood paralyzed inside my house, with the gate locked but with the door open and that is when I saw that the policemen had gone inside of the house of [...] the Loreto family and the took Roberth out and the police officer, without uttering a word shot him twice, the police officers continued inside Roberth’s house and shortly after when

[... continuation]

Annex 23. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Erick Gilberto Torrealba Urbina, of March 14, 2003. Annex to initial petition of March 14, 2007.

⁴² Annex 24. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Gustavo José Illas Chacón, Commissioner and Chief of Aragua Center Region, of the Security and Public Order Force of the State of Aragua, of June 6, 2003. Annex to initial petition of March 14, 2007.

⁴³ Annex 25. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region, Cagua Sectional Office. Statement of officer Freddy José Pimentel Lugo, First Corporal assigned to the Rafael Urdaneta Police Station of the Security and Public Order Force of the State of Aragua, of June 6, 2003. Annex to initial petition of March 14, 2007.

⁴⁴ Statement of Reinaldo Díaz Portillo to the CICPC of Cagua. Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua dated June 13, 2003, pg. 9. Annex to initial petition of March 14, 2007.

the police officers came out Roberth was lying on the ground wounded and he was constantly calling his dad, Mr. Octavio (now deceased) who did not come out, I guess the police officers would not let him go out and that was when the two police officers grabbed Roberth threw him into the patrol car saying that they were going to take him to the hospital, but once Roberth (now deceased) was inside the patrol car they fired another shot at him to get him to put his legs inside because he did not want to get into the patrol car. The police left with Roberth and to take him to the hospital but they didn't because I saw it when the patrol car that was carrying Roberth was passing by over and over with the siren on, when Roberth was taken away, (now deceased) Mr. Octavio (now deceased) his dad and David (now deceased) his brother, they ran outside like crazy men trying to help for them to be taken to the hospital, they got a ride with a man named Mario who has a green Fiat Palio and they went there I didn't find out anything more until people gave me the news that David and Mr. Octavio had been killed at the intersection of Tenería Primero de Octubre, and even so we still didn't know the whereabouts of Roberth, in other words, we first found out that Mr. Octavio and David were the ones who went to search for Roberth.⁴⁵

47. Additionally, the person who allegedly drove Octavio Díaz and his son David Octavio in his vehicle when they left to search for Robert Ignacio, made the following statement to the CICPC:

[...] I was inside my residence located in [urbanización Rafael Urdaneta neighborhood, sector 01, 21st Street, house No. 04, la Segundera, Cagua, state of Aragua], when suddenly, I heard shots fired and I decided to go outside to see what is going on and I see two male individuals who told me to take them to the hospital, to which I replied that I couldn't and they continued to insist and, consequently, I opted to drive them, when we were driving at the intersection of tenerías [and] 1^o de octubre, several state police motorcycles were coming from the opposite direction, I mean, they were going toward la Segundera and then they came back and shot at one of the tires of my vehicle and I had to stop, they called out for me to stop and indicated for me to get out of the vehicle, an order that I followed and subsequently I quickly got out with my hands up, I leapt to the ground and I started to hear several shots fired, I am not aware of the exact time there (sic), but afterwards the same police officers picked me up and put me in a patrol car and drove me to the police headquarters of Cagua.⁴⁶

48. At least three other statements of persons who were near the scene of the crimes were in the case file, all of whom claimed that several armed police officers entered the house of the Díaz Loreto family, took out Robert Ignacio, shot him several times and put him into a police patrol car, preventing his family members from coming to his aid. There were also statements that after this, his father and brother David

⁴⁵ Statement of María Teresa Cañizales Peña to the CICPC of Cagua. Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on June 13, 2003, page 10. Annex to the initial petition of March 14, 2007. Appearing as well in the case file of the IACHR is the statement of Viathnne Alejandra Lozada Paredes, who testified that she saw "when Mr. Octavio and his son David asked Mr. Mario, who owns his green Fiat Palio make vehicle, to do them the favor of taking them to the hospital because his other son named Roberth had been wounded, they got in and the three of them drove off in the car [...]". See: Annex 26. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. Scientific and Forensic Crime Investigation Unit (CICPC). Aragua Region, Cagua Sectional Office. Statement of Viathnne Alejandra Lozada Paredes of February 28, 2003. Annex to the initial petition of March 14, 2007. And the statement of Elio Johan Urbina Méndez who testified that Mr. Octavio had mentioned to him the day of the events "at about 1:00 pm [...] several police officers of La Segundera of Cagua had showed up at his house [...]who they told them they were looking for some hoodlums and then left the location [...]". See: Annex 27. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. Scientific and Forensic Crime Investigation Unit (CICPC). Aragua Region, Cagua Sectional Office. Statement of Elio Johan Urbina Méndez of February 3, 2003. Annex to the initial petition of March 14, 2007.

⁴⁶ Statement of Mario Sciortino Zambrano to the CICPC of Cagua. Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on June 13, 2003, page. 9. Annex to the initial petition of March 14, 2007.

Octavio left to look for Robert, and later there was news that they had died.⁴⁷ In the investigation case file of CICPC (see *infra* D), also appearing on the record is the statement of the medical surgeon of José María Vargas Hospital, who was on duty when David Octavio and his father were admitted and asserted that both of them arrived without displaying any vital signs.⁴⁸

49. The statements and complaints of the family members of the alleged victims recount the lack of accurate information about the whereabouts of the Díaz Loreto brothers and their father Octavio Díaz. In this regard, Bladimir Lenín Díaz Loreto testified that after learning the news that Robert had been wounded, he headed to José María Vargas Hospital of Cagua, and when he arrived there he found out that it was his father and his brother Octavio who were there and that they had died, and that Robert Ignacio had been transferred to another medical facility.⁴⁹ Dinora María Díaz Loreto testified that when she arrived in the same hospital searching for Robert Ignacio, she saw “uniformed police officers, two motor cycle troopers and one patrol car, then [...] one of them [shouted to her] husband to help take out the two wounded men and when [they looked] they realized that one of the wounded men was his dad and the other was his brother named David Díaz.” In the statement, she claimed that “both of them were admitted dead to the hospital, after two hours” and that when she asked an officer about their other brother, she was told that they had taken the other “wounded man” to the public hospital (el seguro social). She also reported that several residents of the sector, told her about how the facts had unfolded matching the version recounted in this section.⁵⁰

50. Separately, Mrs. Alexandra Teresa Gualdron Pernia testified that after learning that “the police had wounded Robert” they went to the police headquarters of la Segundera, “in order to verify the information because the residents were saying that Robert was being held inside a patrol car and that they were driving around.” She claimed that the officer that received them told them: “that [police] detail did not belong to that headquarters and that they had heard something over the radios but they could not do anything.” She also testified that when they saw Robert Ignacio’s body they noticed “two shots in the chest and one in the belly, in addition to being all wet from sewage and mud around his eyes and ears.”⁵¹ Her husband, Jairo Alexis Díaz Loreto, also reported the death of his brothers and his father and about how he had learned through the accounts of neighbors who witnessed the events, and the investigative steps that had been conducted to locate his whereabouts after Robert Ignacio was taken from his house by police officers. He also said in his statement that when he saw his body, it “had the T-shirt around the neck and his face was

⁴⁷ See: Statement of Maray Normeidy Serrano Jiménez to the CICPC of Cagua. Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on June 13, 2003, page 10. Annex to the initial petition of March 14, 2007; Statement of Deiby José Rodríguez to the CICPC of Cagua. Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on June 13, 2003, page 11. Annex to the initial petition of March 14, 2007; and Annex 28. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region – Cagua Sectional Office. Statement of César Ramón Salazar Díaz of February 3, 2003. Annex to the initial petition of March 14, 2007.

⁴⁸ See: Annex 29. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region – Cagua Sectional Office. Statement of Norca Morillo, medical surgeon of the José María Vargas Hospital of Cagua, of February 13, 2003. Annex to the initial petition of March 14, 2007.

⁴⁹ Statement cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on June 13, 2003. Annex to the initial petition of March 14, 2007.

⁵⁰ Statement of Dinora María Díaz Loreto to the CICPC of Cagua. Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on June 13, 2003, pages 11-12. Annex to the initial petition of March 14, 2007.

⁵¹ Statement of Alexandra Teresa Gualdron Pernia to the CICPC of Cagua. Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on June 13, 2003, page 14. Annex to initial petition of March 14, 2007.

all covered with mud, he had mud inside his eyes, mouth, nose and all of his clothes were covered in mud, actually sewage.”⁵²

D. Investigations and judicial proceedings instituted into the death of the Díaz Loreto Brothers and their father Octavio Díaz Álvarez

1. Case file No. G-282.677 of the Scientific and Forensic Crime Investigation Unit (CICPC)

51. Based on available information in the case file, the death of the alleged victims was investigated as a single case. The petitioners alleged, and it was not refuted by the State, that the inquiry was opened on the basis of the reputed shooting confrontation reported by CSOPEA. The IACHR does not have a copy of the order to open the investigation. Notwithstanding, the case file contains an evidence submission form with a reference on record that the investigation of case No. G-282.677 was opened for the crime of “confrontation,” naming as the offended party the “Venezuelan State” and, as defendants, Octavio Díaz Álvarez, David Octavio Díaz Loreto and Robert Ignacio Díaz Loreto.⁵³

52. Based on the available documentation about this investigation, several investigative steps were ordered, including collecting the records of the previously referenced sworn statements about each of the two versions of the facts. Below, the additional investigative steps that were ordered are described.

53. On January 7, the following investigative steps were requested: i) expert inspection of legal recognition, recovery of serial number and ballistic comparison of three firearms, two bullets and thirteen percussioned shotgun cartridge shells and a non percussioned shotgun cartridge;⁵⁴ ii) drawing of a survey diagram of the Cagua-La Segundera Highway, Cagua, State of Aragua;⁵⁵ and iii) expert ballistics trajectory test at the scene of the crime identified as “La segundera, public roadway.”⁵⁶

⁵² Statement of Jairo Alexis Díaz Loreto to the CICPC of Cagua. Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Criminal Judicial Circuit of the State of Aragua on June 13, 2003, page 15. Annex to initial petition of March 14, 2007. Also in the case file is the statement of Enmaria Dayana Cava (Robert Díaz Loreto’s fiancée) in which she also claimed that when she saw his body, she noticed that “it was wet with sewage, he did not have his garments on, his eyes were full of dirt and his shirt was tied around his neck.” During said interview, she was asked whether she was aware of Robert Ignacio ever being arrested previously “by any police force in particular” to which she replied “never [...] I hold the officers named above accountable should anything ever come to happen to me [...].” See: Annex 30. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region – Cagua Sectional Office. Statement of Enmaria Dayana Cava Orozco of January 24, 2003. Annex to initial petition of March 14, 2007.

⁵³ See: Evidence submission form of seven firearms recorded in case file No. G-282.677 by the CICPC. Annex 31. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region – Cagua Sectional Office. Evidence submission form. Cagua, February 19, 2003. Annex to initial petition of March 14, 2007.

⁵⁴ See: Annex 32. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Forensic Crime Laboratory– Aragua Region. Official Letter No. 9700-064-LC-0280.03, of February 15, 2003. Annex to initial petition of March 14, 2007. On the following February 15, an expert’s report was received confirming that the shells provided had been fired respectively, by the three firearms on the record. Regarding the shotgun cartridge, the report indicates: “it was recorded in the physical repository of [said] Department in order to conduct firing tests to obtain a standard shell.” See: Annex 32. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Forensic Crime Laboratory– Aragua Region. Official Letter No. 9700-064-LC-0280.03, of February 15, 2003. Annex to initial petition of March 14, 2007.

⁵⁵ On the following February 26, the chief of the Forensic Crime Laboratory submitted the expert’s report requested by the Chief of the Cagua Sectional Office. See: Annex 33. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Forensic Crime Laboratory– Aragua Region. Official Letter No. 9700-064-LC-0240.03 of February 26, 2003. Annex to initial petition of March 14, 2007/It is also on the record in the case file that on these same dates another expert’s report of a topographical map of urbanización Rafael Urdaneta, sector 01 vereda 40, Cagua, State of Aragua, was requested and submitted. Annex 34. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Forensic Crime Laboratory– Aragua Region. Official Letter No. 9700-064-LC-0237.03 of February 26, 2003. Annex to initial petition of March 14, 2007.

⁵⁶ See: Annex 35. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Forensic Crime Laboratory– Aragua Region. Official Letter No. 9700-064-LC-239.2003, of February 4, 2003. Annex to initial petition of March 14, 2007.

54. Regarding the ballistics trajectory expert analysis, the record shows that it was submitted on the February 4 of that year and it concluded that “no impact or orifice (on a fixed object) caused by crash or grazing of a projectile shot by a firearm were located at the scene of the crime.” As for the “evidence of a forensic medical nature,” the expert’s report refers to the reports of the autopsy performed on Octavio Díaz⁵⁷ and David Díaz Loreto,⁵⁸ and in this regard, it is noted that the Octavio Díaz presented “wound by single firearm projectile...in the right pectoral region 3rd right intercostal space with mid clavicular line, with exit orifice in left 7 intercostal [...] INTRAORGANIC TRAJECTORY: From top to bottom. From right to left. From front to back.” Regarding the other autopsy, David Octavio presented three firearm projectile wounds, located in: “A. Entry orifice in the precordial region left 4th intercostal space with mid parasternal line (sic)...with exit orifice in left 5th intercostal space para-scapular ...B. Entry orifice in the precordial region left 5th intercostal space with parasternal line (sic)...exit orifice in left 7th intercostal space with posterior axillary line...C. Entry orifice right 4th intercostal space with anterior axillary line...with exit orifice in right posterior thorax right 6th intercostal space...” Regarding the intraorganic trajectory, it indicates: “A. From top to bottom, from right to left, from front to back. B. From top to bottom, from right to left, from front to back. C. From top to bottom, from front to back, from left to right.”⁵⁹

55. As regards Octavio Díaz, the expert’s report notes that “at the time of receiving the single projectile impact shot from a firearm, which cause the wound described in autopsy report No. 40 dated 07-01-2003 [January 7, 2003], it is located on the same plane as the shooter with his front facing in the direction of the shooter. 2. At the time of firing the shot with the firearm originating the wound described in autopsy report No. 40, the victimizer [incomplete].” The expert’s report concludes that the shots which impacted both [of the victims’] bodies were fired at a distance.”⁶⁰

56. In the case file, there is a reference to an expert report on the ballistic trajectory, which taking into account the autopsy report performed on Robert Ignacio Díaz Loreto,⁶¹ establishes that he presented “three projectile wounds...located on A. Left shoulder posterior face...with exit orifice on the right side right 6th intercostal space with anterior mid axillary line...B. Entry orifice in epigastric region...exit orifice in right lumbar region...C. Entry orifice in the left lumbar region with posterior axillary line...no exit orifice.” Said expert’s report establishes that the shots that impacted him “were fired at a distance.” As for the intraorganic trajectory, it is noted that the wound identified with the letter A, was “from back to front, from left to right and from top to bottom,” regarding wound B, “front to back, left to right and top to bottom,” and with respect to wound C, “slightly from front to back. It is noted that at the time of “receiving the single projectile impact shot from a firearm, [...] he is located on the same plane with respect to the shooter and with his back facing eastward” and “the victimizer at the time of shooting the firearm [...] is located diagonally (toward the left side of the victim) and with the barrel nozzle of the firearm aiming downward and in the direction of the target [...].”⁶²

57. On January 14, 2003, it was requested to conduct a legal recognition and ballistic comparison test of four projectiles.⁶³

⁵⁷ Autopsy Report No. 40-03 dated 07-01-2003 [January 7].

⁵⁸ Autopsy Report No. 39-03 dated 07-02-2003 [February 7].

⁵⁹ Annex 35. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Forensic Crime Laboratory– Aragua Region. Official Letter No. 9700-064-LC-239.2003, of February 4, 2003. Annex to initial petition of March 14, 2007.

⁶⁰ Annex 35. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Forensic Crime Laboratory– Aragua Region. Official Letter No. 9700-064-LC-239.2003, of February 4, 2003. Annex to initial petition of March 14, 2007.

⁶¹ Autopsy Report No. 38-03 dated January 7, 2003.

⁶² Annex 36. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Forensic Crime Laboratory– Aragua Region. Official Letter No. 9700-064-LC-700.2003, of February 23, 2003. Annex to initial petition of March 14, 2007.

⁶³ The expert report was submitted on February 22 that same year identifying two weapons, each one of which had fired each pair of projectiles. See: Annex 37. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Forensic Crime Laboratory– Aragua Region. Official Letter No. 9700-064-LC-0519.03, of February 22, 2003. Annex to initial petition of March 14, 2007.

58. On February 20, 2003, the CICPC requested that an expert legal, mechanical and design and serial number recovery test be conducted on seven firearms and three magazines recorded as evidence in the investigation;⁶⁴ and on the following February 25, a request was made to conduct the drawing of a diagram of white vehicles belonging to the police force of the State of Aragua⁶⁵ and a ballistic trajectory thereof.⁶⁶

59. It is also on record that a technical inspection was carried out in sector 1, vereda 40, urbanización Rafael Urdaneta in which attestation was made that “in front of the residence marked with the No. 5 there was located a reddish brown stain of a substance, [and] at a distance of 20 centimeters away a revolver-type firearm was noticed, [...] .38 caliber, no apparent serial number on it, loaded inside with five percussed shells of the same caliber.”⁶⁷

60. Another inspection was conducted “on the Cagua-Rafael Urdaneta neighborhood highway, public road, Cagua, State of Aragua,” the record of which reflected the presence of an “automotive vehicle, fiat make, palio model, green color, tag numbers DAH-13E, with the front facing northward,” and “the right rear tire out of air.” Additionally, it is noted that “a pistol-type firearm” and “three 380 caliber bullet shells,” two state police [vehicle] units with impacts produced by “an object with high molecular cohesion,” “three percussed bullet shells,” and “a shotgun-type firearm,” were all located.⁶⁸

61. On June 3, 2003, the Office of the Ninth Assistant Prosecutor of the Ministry of Public Prosecution requested the CICPC of the Aragua Region, Cagua Sectional Office, to conduct several investigative steps, including the following ones: i) determine the firearm that shot the projectile extracted from the body of Robert Ignacio Díaz Loreto, ii) determine to what officer of those that had acted in the operation did said weapon belong, and iii) summon and interview a doctor of the Cagua Medical Center, two officers of the Aragua Police Force and the sister of the person who reported the robbery.⁶⁹

62. The IACHR notes that the petitioner also listed several investigative steps taken by the family members of the alleged victims, consisting mainly of complaints filed with the Office of the Ninth

⁶⁴ On the following February 27, the recorded evidence was submitted along with the respective report in which it was concluded that: i) the weapons were in “proper working order,” ii) that one shot test was performed on each one to obtain “the standard pieces (shells and projectiles);” and iii) that the firearm revolver-type model 10-8 presented filed down serial numbers and that these were recovered. See: Annex 38. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. Scientific and Forensic Crime Unit. Aragua Region. Forensic Crime and Toxicology Laboratory. Official Letter No. 9700-064-LC-0949.03 of February 27, 2003. Annex to initial petition of March 14, 2007.

⁶⁵ On February 25 of that year, the expert report requested from the Chief of the Cagua Sectional Office of the CICPC was submitted. See: Annex 39. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region. Official Letter No. 9700-064-LC-0987.03 de February 26, 2003. Annex to initial petition of March 14, 2007.

⁶⁶ According to the expert’s report, one of the vehicles had: i) a bullet impact in the glass of the front windshield, the projectile that originated said orifice continues a trajectory downward impacting on the dashboard [...] following its downward trajectory on the front seat passenger’s seat back [...]; ii) on the front windshield glass, the projectile originating said orifice continues a descending trajectory being projected into the inside of the vehicle, impacting on the back seat of the [incomplete] side;; iii) on the left fender, the projectile originating said orifice continues a rising trajectory impacting on the base of the shock absorber of the same side, originating a dent [...]; iv) on the driver’s side door, the projectile originating said orifice continues a descending trajectory projecting itself toward the space; v) on the driver’s side door, said projectile projecting itself toward the outside middle. And, the other vehicle had an orifice in: i) the front windshield glass, the projectile originating said orifice continues an ascending trajectory impacting the headrest of the front passenger’s seat [...] following its trajectory (sic) downward impacting on the seat back of the back rest; ii) on the front windshield glass, [incomplete]. The report concludes that “[...] according to the characteristics that the orifices and impact (dent) present, it is established that the shots were fired at a DISTANCE.” See: Annex 40. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region. Official Letter No. 9700-064-LC-982.2003, of February 25, 2003. Annex to initial petition of March 14, 2007.

⁶⁷ Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Crminal Judicial Circuit of the State of Aragua on the date of June 13, 2003, pg. 8. Annex to initial petition of March 14, 2007.

⁶⁸ Cited in Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. de oficio 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Crminal Judicial Circuit of the State of Aragua on the date of June 13, 2003, pg. 8. Annex to initial petition of March 14, 2007.

⁶⁹ Annex 6. Bolivarian Republic of Venezuela. Ministry of the Interior and Justice. CICPC. Aragua Region – Cagua Sectional Office. Record of investigation of June 3, 2003. Annex to initial petition of March 14, 2007.

Prosecutor of the Ministry of Public Prosecution of the State of Aragua in order for the events occurring on January 6, 2003 to be elucidated and to conduct several investigative steps in the investigation; as well as other acts of harassment committed subsequently and to the detriment of other members of the family. Specifically, the initial petition referred, inter alia, to a complaint lodged on May 2, 2003 filed by Alexandra Gualdron and Enmary Dahiana Cava for the “constant harassment and hounding to which they were subjected” by the police force involved, and the incidents which occurred on April 26, 2003, where they were the targets of unlawful entry into their residence, verbal assault, threats with firearms and the illegal deprivation of liberty of Miguel Ángel Díaz Loreto.⁷⁰ In this regard, the petitioners claimed that no response was provided to said complaints. The State did not refute said information.

2. First judicial proceedings

63. On June 13, 2003, the Office of the Ninth Assistant Prosecutor of the Ministry of Public Prosecution of the Judicial District of the State of Aragua, filed charges against the seven officers of the Security and Public Order Force of the State of Aragua (CSOPEA).⁷¹ On this occasion, the Prosecutor’s Office requested that orders for their deprivation of liberty, prohibition from leaving the country, and removal from performance of their duties as police officers be decreed against the seven officers.⁷²

64. The charging document of the Office of the Prosecutor established that “[...] the police officers [charged] overstepped their limits by violating the right to life, and [...] could have applied mechanisms of peaceful deterrence and not disproportionately and therefore [...] their conduct [constituted] flagrant viola[tion] of Article 3 of the universal declaration of human rights [...] as well as Article 43 of the Constitution of the Republic [...] they violated the fundamental human right enshrined in Article 19 and 55 of the Constitution [...]”.⁷³

⁷⁰ Likewise, the following complaints are mentioned: i) May 5, 2003, filed by Dinorah María Díaz Loreto, Bladimir Lenin, Miguel Ángel, Jairo Alexis, Alexandra Gualdron and Enmary Cava in which they denounce the acts which took place on January 6, 2003 and that they were unable to gain access to the case file; and ii) May 16, 2003, filed by Luis Aguilera, in which he requests that several investigative steps be taken, including the reenactment of events, taking of testimony of witnesses and experts who were involved in the case, and the failure to conduct an investigation into the events which occurred on April 26, 2003. See: initial petition of March 14, 2007, pgs. 20-23.

⁷¹ In this regard, the charging document indicts the officers for the following crimes: 1) Saúl Ricardo Ramos Mora, Chief Inspector of the Police Station of la Segundera of Cagua, for the crime of the intentional homicide of Robert Díaz Loreto, “which is proven by the result of the expert witness’s ballistics comparison test, the finding of which was that the bullet provided as incriminating evidence and which was extracted from the body of the deceased [...] was fired by the firearm: 9 millimeter caliber pistol Glock make, serial number EMS616 and which [...] is the reglamentary weapon issued [to the officer] and with which he acted on the day the crimes occurred. As well as the crime of complicity to the intentional homicide” of David Octavio Díaz Loreto and Octavio Díaz Álvarez; 2) Rafael Antonio Barreto Araque, Chief Inspector assigned to the Motorized Brigade, for the crime of “immediate collaborator in the intentional homicide” of Robert Ignacio Díaz Loreto, and the crime of “complicity to the intentional homicide” of David Octavio Díaz Loreto and Octavio Díaz Álvarez; 3) Luis Dicamillo Colmenares, Second Corporal of the Police Station of Cagua, for the crime of “immediate collaboration in the intentional homicide” of Robert Ignacio Díaz Loreto, and the crime of “complicity to intentional homicide” of David Octavio Díaz Loreto and Octavio Díaz Álvarez; 4) José Francisco Maldonado Archila, Distinguished Private of the Security and Public Order Force detailed to the Police Station of Cagua, for the crime of “immediate collaboration in the intentional homicide” of Robert Ignacio Díaz Loreto, and the crime of “complicity in the intentional homicide” of David Octavio Díaz Loreto and Octavio Díaz Álvarez; 5) Jorge Luis Alvarado Hernández, First Corporal assigned to the Motorized Brigade of Cagua, for the crime of “immediate collaboration in the intentional homicide” of Robert Ignacio Díaz Loreto, and the crime of “complicity in the intentional homicide” of David Octavio Díaz Loreto and Octavio Díaz Álvarez; 6) Erick Gilberto Torrealba Urbina, First Corporal, for the crime of “immediate collaboration in the intentional homicide” of David Octavio Díaz Loreto and Octavio Díaz Álvarez; and 7) Jesús Ramón Franco Martínez, Assistant Inspector assigned to the Police Station of la Segundera, for the crime of “immediate collaboration in the intentional homicide” of Robert Ignacio Díaz Loreto, and the crime of “complicity in the intentional homicide” of David Octavio Díaz Loreto and Octavio Díaz Álvarez. Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Crminal Judicial Circuit of the State of Aragua on the date of June 13, 2003. Annex to initial petition of March 14, 2007.

⁷² Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Crminal Judicial Circuit of the State of Aragua on the date of June 13, 2003. Pg. 40. Annex to initial petition of March 14, 2007.

⁷³ Annex 6. Bolivarian Republic of Venezuela. Ministry of Public Prosecution. Office of the Ninth Prosecutor of the Judicial District of the State of Aragua. Official Letter No. 05-F9-1304-03. Charging document filed with the Fifth Oversight Judge of the Crminal Judicial Circuit of the State of Aragua on the date of June 13, 2003. Pg. 40. Annex to initial petition of March 14, 2007.

65. The IACHR will list hereunder the major judicial proceedings for which documentary evidence was available, as well as the information provided by the parties that was not refuted.

66. On August 6, 2003, Mrs. Juana Emilia Loreto, wife of David Díaz and mother of Robert and David Díaz Loreto, filed a complaint with the Fifth Oversight Court of the Criminal Judicial Circuit of Aragua (hereinafter “Fifth Oversight Court”) in conjunction with the case file identified with case No. 5C-2868-03, against officers of the CSOPEA identified by the Office of the Prosecutor, and requested for several pieces of evidence to be collected and for the custody order to deprive them of their liberty to be enforced against them.⁷⁴

67. On August 7, 2003 the Fifth Oversight Court found probable cause for the charges leveled by the Ministry of Public Prosecution in their entirety, issued preventive detention measures against the charged police officers, and instituted oral and public trial proceedings.⁷⁵ The petitioners alleged that said decision did not refer to the private complaint and the evidence introduced therein. The State did not refute this information.

68. Additionally, the IACHR finds as established fact that the information available in the case file shows that throughout the proceedings, several judges recused themselves from the case, a fact also recognized by the State.

69. On January 18, 2007, the trial proceedings got underway at the Acting Fifth Trial Court of the Criminal Judicial Circuit of the State of Aragua (hereinafter “Fifth Trial Court”).⁷⁶

70. The public trial hearings terminated on April 25, 2007, and a judgment of acquittal was issued for the defendants.⁷⁷ The Commission does not have a copy of said decision; nonetheless, based on subsequent decisions it can be surmised that the Fifth Trial Court made the following finding of fact:

[...] there was no indication at all to determine, that the defendants had entered the residence of the (Deceased persons) and had shot them, that on the way to la segunda, these officers had fired on the vehicle where citizens OCTAVIO DÍAZ ÁLVAREZ and DAVID OCTAVIO DÍAZ LORETO were located, and had shot them without the two of them actuating any firearm and, therefore, it is found that the defendants acted in performance of their duty as police officers given the fact that a complaint was received on the day the events occurred, from a citizen who had been held up; it is also found, that these officers acted in their own self defense, in response to illegitimate aggression by those now deceased, based on the statements of the witnesses who were present during the events and based on the result of the items seized at the aforementioned locations of criminal forensic interest, inasmuch as the only eye witnesses who testified in trial, both asserted that during these events, these officers were shot by these persons, with an exchange of gunfire taking place, having the need to use the means to repel said action, with the unfortunate act that was the death of the now (Deceased) ROBERT IGNACIO DÍAZ LORETO, DAVID OCTAVIO DÍAZ LORETO and

⁷⁴ Specifically, it was requested for the doctor on duty at the José María Vargas Hospital the date and time when the bodies of Octavio Díaz Álvarez and David Octavio Díaz Loreto were admitted to be called to testify; for the forensic chemical inspection of the Robert Ignacio’s articles of clothing be conducted; the “forensic physical inspection in order to determine the origin of solution of continuity” and “a sweep in order to collect adherences;” and the incorporation as an exhibit of evidence a certified copy of the log book for January 6, 2003 of the Hospital del Seguro Social de Corinsa, Cagua. See: initial petition of March 14, 2007. pgs. 24-25. This information was not refuted by the State.

⁷⁵ State’s submission received on February 28, 2008.

⁷⁶ Even though in its submission, the State noted that the date was January 18, 2006, based on the available information in the case file, the Commission finds that it is a material error and that the correct date is 2007. State’s submission received on February 28, 2008.

⁷⁷ State’s submission received on February 28, 2008.

OCTAVIO DÍAZ ÁLVAREZ having taken place, finding it non-punishable, on behalf of the defendants who acted under the grounds for exoneration of liability established in Article 65 ordinal numbers I and III and sections 1 and 2 of the Criminal Code. Accordingly, this court finds them INNOCENT and ACQUITS them of the crimes with which they were charged by the Ministry of Public Prosecution.⁷⁸

71. The Ministry of Public Prosecution filed an appeal of the judgment on July 19, 2007.⁷⁹

72. The Commission does not have the documentary evidence about the investigatory steps taken in the context of the processing of the appeal from the date of the filing thereof until the decision of the Court of Appeals mentioned hereunder. The IACHR notes that in a submission from the petitioners of July 1, 2008, it was reported that the case had been suspended as of November 20, 2007, because the judge who was hearing the case had recused herself and no replacement judge had been appointed. The State did not refute this information.

73. On April 1, 2009, Temporary Chamber No. 34 of the Court of Appeals of the Criminal Judicial District of the State of Aragua denied the appeal and upheld the acquittal.⁸⁰ Based on available information, on May 6, 2009, the Ministry of Public Prosecution filed an appeal for review of judgment via cassation with the Criminal Chamber of the Supreme Court of Justice.⁸¹

74. On May 11, 2010, the Chamber of Criminal Cassation granted the appeal for cassation and ordered the case to be sent back to the Chief Judge of the Criminal Judicial Circuit of the State of Aragua to be assigned to a different Chamber of the Court of Appeals of the Criminal Judicial Circuit of the State of Aragua. The Cassation Chamber ruled that the appealed judgment was flawed by a “failure to provide reasoning” and ordered that a new judgment be issued “dispensing with the causes that originated said annulment.” Specifically, the decision held that the judgment of appeal “did not provide a reasoned decision why it found that the Trial Court had correctly established the grounds for acquittal on legitimate defense and performance of duty, inasmuch as the Court of Appeals did not set forth through what pieces of evidences was each ground proven, stating only the facts established by the trial judges which constituted such grounds for justification.” Additionally, it established that the Appellate Court failed to examine an allegation of failure of the trial court to call a CICPC forensic crime laboratory official to testify.⁸²

75. On January 12, 2011, Temporary Chamber No. 66 of the Court of Appeals was constituted in order to hear the appeal pursuant to the decision of the Criminal Cassation Chamber of the Supreme Court.⁸³

76. On December 14, 2011, judgment No. 064 was issued granting the appeal and a new oral trial was ordered.⁸⁴ This decision held that “the sentencing judge did not do everything required of him in order to examine all of the evidence introduced by the parties;” he did not conduct an analysis “of all of the exhibits incorporated into the oral proceedings;” nor did he put on the record the reason why some pieces of

⁷⁸ See: Annex 42. Supreme Court of Justice. Criminal Cassation Chamber. Case File No. C09-318. Judgment No. 134 of May 11, 2010. Available at: <http://www.tsj.gob.ve/es/web/tsj/decisiones#5>

⁷⁹ State’s submission received on February 28, 2008.

⁸⁰ See: Annex 42. Supreme Court of Justice. Criminal Cassation Chamber. Case File No. C09-318. Judgment No. 134 of May 11, 2010. Available at: <http://www.tsj.gob.ve/es/web/tsj/decisiones#5>

⁸¹ See: Annex 42. Supreme Court of Justice. Criminal Cassation Chamber. Case File No. C09-318. Judgment No. 134 of May 11, 2010. Available at: <http://www.tsj.gob.ve/es/web/tsj/decisiones#5>

⁸² Annex 42. Supreme Court of Justice. Criminal Cassation Chamber. Case File No. C09-318. Judgment No. 134 of May 11, 2010. Available at: <http://www.tsj.gob.ve/es/web/tsj/decisiones#5>

⁸³ State’s submission of April 10, 2003. Annex 43. Official Letter No. 1530-12. Court of Appeals. Criminal Judicial Circuit of the State of Aragua. October 18, 2012. Annex to State’s submission of April 10, 2013.

⁸⁴ Annex 44. Decision of Temporary Chamber No. 66 of the Court of Appeals of the Criminal Judicial Circuit of the State of Aragua. Case No. 1As/6691-01. December 14, 2011. Annex to State’s submission of April 10, 2013.

evidence “despite being introduced in a timely fashion, were not examined.” Based on the foregoing, it determined that the judgment was flawed, therefore, because of a “failure to provide reasoning.”⁸⁵

3. Second judicial proceedings

77. The IACHR does not have any information about the status of said case as of the date of the drafting of the instant report. Based on the latest information provided by the State, on April 10, 2013, it was noted that the case is before the Second Trial Court of the Criminal Judicial Circuit of the State of Aragua, under case file No. 2J-1706-12 and no record appears of any challenge to the Court of Appeals of this same judicial district.⁸⁶ Based on the available information, the Commission will now carry out its analysis with the understanding that this process is still pending.

V. LEGAL ANALYSIS

78. The Commission shall analyze the positions of the parties and the facts established in the following order: (A) The rights to life, humane treatment, and to personal liberty, with respect to the events that occurred on January 6, 2003; (B) The rights to a fair trial and judicial protection with respect to the domestic proceedings; and (C) The right to humane treatment with respect to the relatives of the three alleged victims.

A. The rights to life,⁸⁷ humane treatment,⁸⁸ and personal liberty⁸⁹

1. General considerations on the use of force by agents of the state and the rights to humane treatment and personal liberty

79. The Commission has repeatedly asserted that the right to life is a prerequisite for the enjoyment of all other human rights, without the respect thereof, all other rights are meaningless.⁹⁰ As such, compliance with Article 4, in connection with Article 1.1 of the American Convention, does not only presuppose that no person can be arbitrarily deprived of his or her life, but also requires that the States adopt any and all necessary measures to protect and preserve the right to life, pursuant to their obligation to guarantee the full and free exercise of human rights of all individuals under their jurisdiction.⁹¹ For its part, the European Court has highlighted the importance that the right to life be interpreted and applied so as to make its safeguards practical and effective.⁹²

⁸⁵ Annex 44. Decision of Temporary Chamber No. 66 of the Court of Appeals of the Criminal Judicial Circuit of the State of Aragua. Case No. 1As/6691-01. December 14, 2011. Annex to State’s submission of April 10, 2013.

⁸⁶ State’s submission of April 10, 2003. Annex 43. Official Letter No. 1530-12. Court of Appeals. Criminal Judicial Circuit of the State of Aragua. October 18, 2012. Annex to State’s submission of April 10, 2013.

⁸⁷ Article 4(1) of the American Convention provides that: 1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

⁸⁸ Article 5(1) of the American Convention provides that: 1. Every person has the right to have his physical, mental, and moral integrity respected.

⁸⁹ Article 7 of the American Convention states: 1. Every person has the right to personal liberty and Security.

⁹⁰ IACHR, Case 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, par. 185.

⁹¹ CIDH, Case 12.270, Report No. 2/15, Merits, Johan Alexis Ortiz Hernández, Venezuela, January 29, 2015, par. 186. Also, see: IA Court of HR. *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 80.

⁹² ECHR, Case McCann and others v. The United Kingdom. Application No. 27229/95, 27 September 1995, § 146.

80. Both the Inter-American Commission and Court have held that the use of force must be examined in any case in which force has been deployed, wherein State agents have killed or injured anyone.⁹³ As such, the Commission will examine the facts of the case in light of Inter-American legal precedent on the right to life, in connection with the obligations to respect and ensure, and on the subject of the use of force. For this purpose, the IACHR will take note of different international instruments on the subject matter and, in particular, the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the Code of Conduct for Law Enforcement Officials (hereinafter, “Principles on the Use of Force” and “Code of Conduct,” respectively).

81. When allegations are made that a death was the result of the use of force, both the IACHR and the Inter-American Court have established clear rules on the burden of proof. In the words of the Inter-American Court:

Whenever the use of force [by state agents] results in the death or injuries to one or more individuals, the State has the obligation to give a satisfactory and convincing explanation of the events and to rebut allegations over its liability, through appropriate evidentiary elements.⁹⁴

82. Similarly, the UN Human Rights Committee has held that in cases where further clarification depends on information exclusively in the hands of the State, allegations may be considered substantiated in the absence of satisfactory evidence or explanation to refute the claims of the petitioners.⁹⁵ This is very much in line with the holding of the European Court to the effect that in cases of death as a consequence of the use of deadly force, the strictest test must be used on the compelling nature of said use of force.⁹⁶

83. As such, in order for an explanation of the use of deadly force to be deemed satisfactory, it must be the fruit of an investigation that is compatible with guarantees of independence, impartiality and due diligence and, additionally, must meet certain requirements under Inter-American legal precedent in order to justify the use of force, which are:

- i. Legitimate purpose: the use of force must be aimed at achieving a legitimate purpose. (...)
- ii. Absolute necessity: it is necessary to verify whether other less harmful means exist to safeguard the life and integrity of the person or situation that is sought to protect, according to the circumstances of the case. (...)
- iii. Proportionality: the level of force used must be in accordance with the level of resistance offered, which implies striking a balance between the situation that the agent is facing and his response, considering the potential harm that could be caused.⁹⁷

⁹³ IA Court of HR. *Case of the Landaeta Mejías Brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281. Par. 123; IACHR, Case 11.442, Report No. 90/14, Merits, Luis Jorge Valencia Hinojosa, Ecuador, November 4, 2014, par. 123.

⁹⁴ IA Court of HR. *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 108; *Case of Cruz Sánchez et al v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of April 17, 2015. Series C No. 292, par. 291; and *Case of Landaeta Mejías Brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, par. 132.

⁹⁵ UN, Human Rights Committee. *Case of Irene Bleier Lewenhoff and Rosa Valiño de Bleier v. Uruguay*. Communication No. 30/1978, UN Doc. CCPR/C/OP/1, of March 29, 1982, par. 13.3; *Case of Albert Womah Mukong v. Cameroon*. Communication No. 458/1991, UN Doc. CCPR/C/51/D/458/1991, of July 21, 1994, par. 9.2, and *Case of Turdukan Zhumbaeva v. Kyrgyzstan*. Communication No. 1756/2008, UN Doc. CCPR/C/102/D/1756/2008, of July 29, 2011, par. 8.7.

⁹⁶ ECHR, *Case McCann and others v. The United Kingdom*. Application No. 27229/95, 27 September 1995, § 149.

⁹⁷ IA Court of HR. *Case of the Landaeta Mejías Brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, par. 134.

84. It follows from the aforementioned criteria that legitimate purpose, absolute necessity and proportionality of the use of force must be substantiated by the State in light of the particular circumstances of the specific case involved. Additionally, as a consequence of these principles, the Commission recalls that state agents who intervene in such operations must apply the criteria of “differentiated and progressive use of force, determining the degree of cooperation, resistance or violence of the subject against whom the intervention is intended and, on this basis, employ negotiating tactics, control or use of force, as required.”⁹⁸

85. The Commission also notes that the Principles on the Use of Force provide for the use of firearms in “order to arrest a person presenting such a danger and resisting their authority.”⁹⁹ Notwithstanding, as part of the requirements to authorize the use of force in said hypothetical situation, the Principles establish that: i) it may only be used only when other less extreme means are insufficient to achieve this purpose; ii) it must be used “when strictly unavoidable in order to protect life;” iii) officers must give a clear warning of their intent to use firearms;” and iv) this warning must be given with sufficient time for the warning to be observed, except when such a warning would unduly place the officer at risk or create a risk of death or serious harm to other persons.

86. In addition, with regard to the right to personal liberty, the Inter-American Court has indicated that, pursuant to Article 7.1 of the Convention, the protection of liberty safeguards “both the individuals’ physical liberty and their personal safety, in a context in which the lack of guarantees may result in the subversion of the rule of law and the deprivation of the minimum forms of legal protection for the detainees.”¹⁰⁰

87. In regard to the duty to guarantee the right to personal liberty, the Court has emphasized that the State must ensure that the individuals’ liberty is not compromised by the actions of state agents or third parties, and must investigate and punish acts which violate this particular right.¹⁰¹ With regard to the rights enshrined in Articles 5.1 and 5.2 of the Convention, the Court has repeatedly held that “International Human Rights Law strictly prohibits torture and cruel, inhuman or degrading punishment or treatment.”¹⁰² Regarding the duty to guarantee under Article 5 of the American Convention, the Court has held that this embodies the duty of the State to investigate possible acts of torture or other cruel, inhuman or degrading treatment.¹⁰³ In order to find a breach of both the duty to respect and to ensure the right enshrined in Articles 5.1 and 5.2 of the Convention, the IACHR must take into account, *inter alia*, factors such as: i) the fact that the victim was under the custody of law enforcement agents of the State without any judicial oversight and following an illegal and arbitrary detention, ii) the absence of an investigation in order to determine the cause of potential injury to the body of the victim; and iii) the deep fear caused by the anticipation of his likely fate under the circumstances of his deprivation of liberty.¹⁰⁴

2. Analysis of the case

⁹⁸ IA Court of HR. *Case of Nadege Dorzema et al v. Dominican Republic*. Merits, Reparations and Costs. Judgment of October 24, 2012 Series C No. 251, par. 85.

⁹⁹ Principles 9 and 10 of the UN Basic Principles on the Use of Force and Firearms adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, in Havana, Cuba, August 27 to September 7, 1990.

¹⁰⁰ I/A Court HR, *Case of García Asto and Ramírez Rojas*. Judgment of November 25, 2005. Series C No. 137, paragraph 104; *Case of Acosta Calderón*. Judgment of June 24, 2005. Series C No. 129, paragraph 56; *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, paragraph 97; and *Case of the Gómez Paquiyauri brothers*. Judgment of July 8, 2004. Series C No. 110, paragraph 82.

¹⁰¹ I/A Court HR, *Case González and others “Campo algodonero”*. Judgment of November 16, 2009, paragraph 297. See also: IACHR Report No. 11/10. Case 12.488. Members of the Barrios Family. Venezuela. March 16, 2010, para. 84.

¹⁰² I/A Court HR. *Bueno Alves Case*. Judgment of May 11, 2007. Series C, No. 164. para. 76; I/A Court HR., *Miguel Castro Castro Prison Case*. Judgment of November 25, 2006. Series C, No. 160. para. 271; and I/A Court HR., *Baldeón García Case*. Judgment of April 6, 2006. Series C, No. 147. para. 117.

¹⁰³ I/A Court HR. *Escué Zapata v. Colombia Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C, No. 165. para. 73; I/A Court HR. *Bueno Alves Case*. Judgment of May 11, 2007. Series C, No. 164. para. 88.

¹⁰⁴ See: IACHR Report No. 58/12. Case 12.606. Merits. Landaeta Mejías Brothers. Venezuela. March 21, 2012, para. 242.

88. In the instant case, the Commission has deemed to be proven fact that Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez lost their lives on January 6, 2003 as a consequence of gunshots fired by officers of the CSOPEA, the police force of Aragua state. Additionally, the IACHR explained that there are two versions of these events. The version of the police officers claiming that there were two confrontations triggered when a police detail identified them as allegedly responsible for a crime reported that day. According to this version, when Robert Ignacio Díaz Loreto was wounded, they proceeded to take him to a health care facility and continued to chase his father and brother, which gave rise to a second confrontation. Nonetheless, there is another version from several witnesses and the family claiming that the three family members were extrajudicially executed, at two different points in time. The first point in time was when Robert Ignacio Díaz Loreto was allegedly taken from his residence by a police detail, being wounded at that point, after which he was arrested in that condition and deliberately driven around the area without immediately being taken to a health care facility. When he was finally taken to one, he was admitted without displaying any vital signs. The second point in time of execution was when his brother David Octavio Díaz Loreto and his father Octavio Díaz set off to search for him aided by a neighbor, being intercepted by police officers, who fired on them and transferred them to another hospital where they too were admitted without displaying any vital signs.

89. Based on the foregoing, the IACHR notes that there is no dispute that the individuals who killed the three alleged victims were state police officers. It must be examined whether or not these events constituted an illegitimate use of lethal force and, consequently, whether the deprivation of life was arbitrary or not as provided under Article 4 of the Convention. For this purpose and based on the above-cited standards, the Commission will first examine whether the State met its burden to provide a reasonable explanation about what took place. As was noted earlier, said explanation, cannot be based on the version of the officers themselves who were involved, but must be the result of a diligent and effective investigation.

90. As of the present date, after more than 14 years have elapsed, the two diametrically opposing versions about the facts still exist and there has not been any final elucidation of the case by the courts. Even though the judgments of acquittal, one overturned and the other challenged on appeal, established that there were applicable grounds to relieve the officers of their liability, the investigation that gave rise to said decisions is characterized by many irregularities and deficiencies including the fact that it was opened against the alleged victims, regarding the Venezuelan State as the offended party, as well as serious omissions in the collection and evaluation of evidence, which was recognized by domestic authorities themselves. For example, the determinations of lack of analysis regarding certain testimonial evidence promoted but not evacuated, as well as the lack of motivation as to why “self-defence” and “compliance with duty” were considered based on the available evidence. These aspects will be thoroughly examined in the section on the rights to a fair trial and judicial protection. As respects the relevant aspect to this point in the report, the Commission finds that the State has not provided a satisfactory explanation on the use of lethal force in order to justify the use thereof in keeping with the principles of legitimate purpose, strict necessity and proportionality. In accordance with the Inter-American legal precedents described above, in the absence of said explanation from the State, it is appropriate to presume illegitimate use of lethal force.

91. Notwithstanding the foregoing considerations, the Commission will make some points about the use of lethal force to the detriment of the alleged victims in light of said principles taking into account both versions of the facts and based on the information available in the case file.

92. From what is described in the facts proven, the Commission notes that regarding the second version of events consisting of the absence of confrontations and that what occurred were extrajudicial executions, there are many pieces of evidence, all consistent with each other, as well as consistent with the context and specific modus operandi in effect at the time of the events.

93. So for example, in the case file there appear many statements not only from family members but from other eye witnesses and these are consistent with facts such as: i) Robert Ignacio Díaz Loreto was taken from his residence by police officers and was wounded at the time by a firearm; ii) that his family members were prevented from coming to his aid and that in those conditions he was put into the patrol car

that drove him around the area without taking him immediately to the hospital; iii) that his brother David Octavio Díaz Loreto and his father Octavio Díaz asked a neighbor to drive them to look for Robert Ignacio and that the automobile was hit with a bullet by the police officers, which caused them to get out of the car immediately before their deaths; and iv) that the three alleged victims were left lifeless by the police officers at two different health care facilities.

94. Another aspect which consistently appears in the testimonies and that the State has been unable to explain involves the body of Robert Ignacio Díaz Loreto: at the time of his admittance to the hospital, he was covered with mud and “sewage” even in his eyes, mouth and nose. One of the police officers gave an unsatisfactory explanation of this fact by mentioning that, at the time of the alleged confrontation, Robert Ignacio’s shirt was stained with mud. The circumstances in which the body was observed pursuant to several statements was not pursued as a line of investigation, thus rendering it an unexplained aspect that constitutes further evidence of State responsibility.

95. The Commission also underscores that the descriptions in this set of statements are consistent with the context and *modus operandi* described in patterns of fact such as, that extrajudicial executions had been occurring: i) in the context of irregular actions of state security forces, with special incidence in the state of Aragua; ii) under the justification of citizen security and the characterization of victims who are automatically incriminated as responsible for crimes; iii) in the form of staged confrontations even through tampering with the scene of the crime or planting evidence that would prove such a confrontation; and iv) followed by the abandonment of the lifeless corpses of the victims at hospital facilities without any follow-up by the police institution. Another element of said context is the situation of impunity in which such crimes usually remain, partly because the hypothesis of the confrontation is assumed to be true. This is consistent with the findings of the domestic rulings about the careless manner in which the evidence was collected and evaluated to conclude that there were grounds to exonerate criminal liability and the consequent acquittals.

96. As for the official version, as was noted above, it involves a police operation designed and executed with the purpose of capturing the persons allegedly responsible for the armed robbery reported on the same day. In this regard, the Commission notes that at the time of the events, Venezuelan law established that:

1. No person may be arrested or detained except under a court order, unless he is caught *in flagrante delicto*. In this instance, he shall be brought before a judicial authority within a period of time no longer than forty-eight hours from the time of his arrest. He shall be tried on release, except for the reasons determined by the law and assessed by the judge in each case.¹⁰⁵

97. Based on the information available, it is obvious that the police officers did not have any court order. According to the State, what took place was a situation of *flagrante delicto*. However, based on the official version, the judicial authorities did not witness any robbery – which would have triggered the constitutionally provided ability to arrest the persons allegedly responsible – but rather they received a complaint and launched an operation so that the complainant could identify subsequently the persons who allegedly had robbed him. The Commission finds that these circumstances cannot in any way be interpreted as or be comparable to a situation of *flagrante delicto*. To conclude otherwise would entail extending the concept of being caught in the act of the commission of a crime to situations, such as the one described, in which based on the statements of a person who reports a crime, police officers are empowered to arrest the person accused without any court order and without having actually been present during the criminal acts.

98. Accordingly, the Commission finds that since it was launched, the police operation was pursuing a purpose which runs afoul to the applicable provisions in the area of personal liberty and, consequently, illegal detention under the American Convention. This situation is even more evident when,

¹⁰⁵ Article 44 of the Constitution of the Bolivarian Republic of Venezuela.

according to the official version itself, after mortally wounding Robert Ignacio Díaz Loreto, the police continued with an illegitimate operation, as explained above.

99. On this point, the Commission emphasizes its holding in the case of *Valencia Hinojosa vs. Ecuador* to the effect that moderation in the use of force must always be adjusted during an operation to differences in specific circumstances in each particular case and respect the criteria of necessity and proportionality and, this way, the use of force against persons who don't represent a danger is not considered authorized "even when the failure to use force results in the loss of the opportunity to capture."¹⁰⁶ Regarding this obligation to protect the right to life, the European Court of Human Rights has held that it must be assessed "not only whether the potential use of lethal force against the applicant was legitimate, but also whether the operation was regulated and organized in such a way to minimize to the extent possible any risk to life."¹⁰⁷

100. Based on the statements thus far, the Commission established that even accepting the version of the police officers, the death of the three members of the family took place in the context of a police operation jeopardized the right to life, not only because it pursued unconventional purposes, as examined above, but because at the time of launching the operation, there was not an imminent threat to persons, the only hypothesis that could justify said use of force.

101. Based on the foregoing considerations thus far, the Commission concludes that the Venezuelan State did not provide a satisfactory explanation about the legitimacy of the use of lethal force in light of the principles of legitimate purpose, strict necessity and proportionality. Additionally, the Commission concludes that even accepting the official version and conducting an analysis thereof, the State is clearly responsible, inasmuch as the police operation in and of itself and its continuation pursued purposes contrary to the Convention and created the risk of confrontations and, therefore, lead to the deaths that occurred. Lastly, the Commission concludes that there is consistency between statements and with the context among the statements of the family members and of other witnesses, who point to these incidents as being extrajudicial executions.

102. All of the abovementioned evidence taken all together enable the Commission to establish that the State of Venezuela is responsible for the violation of the right to life established in Article 4.1 of the American Convention in connection with the obligations set forth in Article 1.1 of the same instrument, to the detriment of Robert Ignacio and David Octavio Díaz Loreto, as well as their father Octavio Ignacio Díaz. Additionally, taking into account the specific circumstances relating to the death of Robert Ignacio Díaz Loreto, the IACHR establishes that the Venezuelan State is also responsible for the violation of the rights to humane treatment and personal liberty, to his detriment, as provided for in Articles 5 and 7 of the American Convention.

B. Rights to a fair trial¹⁰⁸ and judicial protection¹⁰⁹

103. Preliminarily, the IACHR notes that in the instant case it is alleged that after the events occurring on January 6, 2003, the Díaz Loreto family was subjected to acts of harassment and threats because of the efforts it undertook to obtain justice for the deaths of Robert Ignacio and David Octavio Díaz Loreto,

¹⁰⁶ ECHR, *Caso Kakoulli Vs. Turquía*, Application No. 385/97. November 22, 2005, § 108.

¹⁰⁷ ECHR, *Case Makaratzis v. Greece*. Application No. 50385/99/95, 20 December 2004, § 60.

¹⁰⁸ Article 8(1) of the American Convention states: 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

¹⁰⁹ Article 25(1) of the American Convention provides that: 1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

and their father Octavio Díaz Álvarez. Specifically, the petitioners contended that on April 10, 2003, members of the state police attempted to enter the residence of Jairo Alexis Díaz Loreto and his wife Alexandra Gualdron. On April 26, 2003, members of the state police allegedly assaulted and threatened Mrs. Dinorah María Díaz Loreto and Mrs. Alexandra Gualdron, and Jairo Alexis Díaz Loreto. It is claimed that Miguel Ángel Díaz Loreto and his 12 year-old nephew Rafael Acopio Díaz were also threatened, and Miguel Angel was illegally deprived of his liberty. It is argued that during the detention, Miguel Ángel Díaz Loreto received threats against his family and was beaten by the police agents. Lastly, it is contended that on June 4, 2003, Mr. Jairo Alexis Díaz Loreto was held by police officers on a public roadway, and on July 4 that year, Bladimir Lenin Díaz Loreto was illegally and arbitrarily arrested by police officers. Regarding his detention, the petitioners alleged that he was not permitted to get in touch with his family or with his trusted attorney.

104. As to these incidents, the State reported that the Office of the 20th Prosecutor of the Ministry of Public Prosecution was assigned to investigate the complaints of illegal and arbitrary detention and bodily harm by law enforcement officers, and a summons was issued through the CICPC for the victims to appear to provide statements before the Office of the Prosecutor. The Commission also notes the points established in the proven facts section, on the information provided by the petitioners, and not refuted by the State, regarding the complaints filed by the Díaz Loreto family about their security situation and that it is alleged that these complaints were not properly addressed by the Ministry of Public Prosecution.

105. The Commission finds that in light of the information available in the case file at the time of the approval of the instant decision, it does not have enough evidence to be able to rule on these allegations as autonomous potential violations of the American Convention. Notwithstanding, the IACHR will take into account these allegations and the response thereto offered by the State as part of the analysis of the rights to a fair trial and judicial protection done next.

106. In cases of violent deaths and injuries the Inter-American Commission and Court have held that States are obligated under Article 8 (fair trial) and Article 25 (judicial protection) of the American Convention to conduct an *ex officio*, prompt, serious, impartial and effective investigation, as an essential element and requirement for the protection of the rights affected in such situations.¹¹⁰ In light of Article 1.1 of the American Convention, this duty obliges the State to provide a prompt and simple recourse so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered.¹¹¹

107. In cases of deaths, which may have been the consequence of the use of deadly force by state agents, the European Court has held that the “most careful scrutiny” must be used, taking into consideration not “only the actions of the State agents who actually administered the force but also all the surrounding circumstances, including such matters as the planning and control of the actions under examination.”¹¹² 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.”¹¹³

108. The Commission shall evaluate whether in domestic proceedings the Venezuelan State provided the victims effective judicial remedies that are in keeping with the guarantees of due process as regards the death of three victims by police officers. This analysis will be conducted with respect to two points: (i) due diligence; and (ii) the reasonable timeframe.

1. Due diligence in the investigation

¹¹⁰ IACHR, Report No. 85/13, Case 12.251, Admissibility and Merits. Vereda la Esperanza, Colombia, November 4, 2013, para. 242; IA Court of HR. *Case of Kawas Fernández v. Honduras*. Merits, Reparations and Costs. Judgment of April 3, 2009 Series C No. 196, para. 75.

¹¹¹ IA Court of HR., *Case of Loayza Tamayo v. Peru*. Reparations. Judgment of November 27, 1998. Series C No. 42, par. 169; *Case of Velásquez Rodríguez v. Honduras*. Preliminary Objections. Judgment of June 26, 1987. Series C No. 1. par. 91.

¹¹² ECHR, *McCann and Others v. the United Kingdom*, Application no. No. 27229/95, September 1995, § 36.

¹¹³ ECHR, *Milkhalkova and others v. Ukraine*, Application no. 10919/05, 13 January 2011, § 42.

109. Both the Commission and the Inter-American Court have held that, in keeping with the duty to investigate a person's death with due diligence, states have the obligation to act with all diligence from the very first stages of a proceeding.¹¹⁴

110. In analyzing whether an investigation has been conducted with due diligence from the initial stages of proceedings, the Commission and the Inter-American Court have taken into consideration the United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. As the Court has specified:

At a minimum, state authorities conducting an inquiry shall seek, inter alia: (a) to identify the victim; (b) to recover and preserve evidentiary material related to the death in order to aid in any potential prosecution of those responsible; (c) to identify possible witnesses and obtain statements from them concerning the death; (d) to determine the cause, manner, location and time of death, as well as any pattern or practice that may have brought about the death; and (e) to distinguish between natural death, accidental death, suicide and homicide. The Court further notes that: (a) the crime scene must be exhaustively investigated and (b) autopsies, as well as analyses of skeletal remains, must be rigorously performed by competent professionals, employing the most appropriate procedures.¹¹⁵

111. Furthermore, as regards due diligence in the course of the investigation, the Inter-American Court has determined that "each State act that composes the investigation proceeding, and the entire investigation in itself, should be oriented at a specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events."¹¹⁶ In that regard, the State must show that it carried out an immediate, exhaustive and impartial investigation,¹¹⁷ and it must be aimed at exploring all the possible lines of inquiry.¹¹⁸ The State may be liable for a failure to order, practice or evaluate evidence that may have been essential for a proper clarification of the facts.¹¹⁹

112. Legal precedent has also established that in cases where there are contradictory versions involving deprivation of the right to life, beyond taking specific steps to gather evidence, "due diligence in the investigation must be evaluated in relation to the need to determine the veracity of the versions considered within the process of what happened, that is, if such process allowed a judicial clarification of the facts and a possible legal qualification of the same according to what happened."¹²⁰

¹¹⁴I/A Court H.R., *Case of Zambrano-Vélez et al. C. Ecuador*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, par. 121, and IACHR. Case 11.442. Report No. 90/14. Merits. Luis Jorge Valencia Hinojosa. Ecuador. November 4, 2014, para. 140.

¹¹⁵I/A Court H.R., *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, par. 149; I/A Court H.R., *Case of the Miguel Castro-Castro Prison v. Peru*. Judgment of November 25, 2006. Series C No. 160, par. 383. Citing the Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Doc. E/ST/CSDHA/.12 (1991). The Commission has relied on United Nations documents to evaluate basic procedures to be carried out in such cases in previous matters. See IACHR. *Report 10/95, (Manuel Stalin Bolaños Quiñonez)*. Case 10.580 Ecuador. September 12, 1995, par. 53. The Commission notes that this Manual has been updated and is available in English at: <http://www.ohchr.org/Documents/Issues/Executions/MinnesotaProtocolInvestigationPotentiallyUnlawfulDeath2016.pdf>

¹¹⁶I/A Court H.R., *Case of Cantoral-Huamaní and García-Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, par. 131.

¹¹⁷IACHR, Report on Merits No. 55/97, *Juan Carlos Abella et al. (Argentina)*, November 18, 1997, par. 412.

¹¹⁸IACHR, Report No. 25/09, Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, par. 109. See, too, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 41.

¹¹⁹I/A Court H.R., *The "Street Children" Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, par. 230. See, too, IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 41.

¹²⁰I/A Court H.R., *Case of García Ibarra et al. v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 17, 2015. Series C No. 306, para. 143.

113. In the instant case, the Commission first notes that the basic assumption used in the initial investigation of the case before the CICPC was the version of the confrontations, which was evident not only in the way evidence was ordered and gathered – as will be examined hereunder – but particularly in the fact that the Venezuelan State appeared in the case as the offended party and the three deceased victims, as the perpetrators.

114. Secondly, in view of the existence of two radically different versions of the facts, the competent authorities had the obligation to seriously and impartially address both lines of investigation and order any evidence that may be necessary and relevant to elucidate the facts based on the details of each of the versions. The way things played out in this case, the opposite occurred. The evidence gathered was focused on buttressing the official version, that is, in establishing that the patrol vehicles were hit by bullet impacts and the firearms were found at the scene of the crime, as well as the trajectory of the bullets based on the wounds that the bodies presented. Even though these are relevant aspects in an investigation of a violent death, in the particular circumstances of the case, these aspects are enough to overcome the contradiction between the versions. At the same time, the petitioners alleged and the State did not refute that no investigative steps were taken to verify several aspects of the version of the family members and other witnesses, such as reenactment of the events, forensic expertise on the clothing of the victims, to the blood found in the police patrol where Robert Diaz Loreto was taken and the evidence on the mud in his body, the summoning other witnesses singled out by them to testify, among others.

115. The foregoing was also upheld in the ruling on the cassation appeal of May 11, 2010 in which the Chamber of Criminal Cassation determined that during the trial proceedings adequate reasoning was not laid out as to why the “grounds for acquittal on legitimate defense and performance of duty” were found applicable. Additionally, both in this decision on cassation and in the ruling of the Court of Appeals on December 14, 2011, said judicial authorities recognized that relevant evidence was not ordered to be taken in the investigation, even though it was requested throughout the case proceedings. They also recognized that no proper reasoning was provided for the way in which the evidence that was indeed gathered had been evaluated to lead to an acquittal. On this score, the IACHR recalls that in this type of cases the investigatory steps that are taken from the very beginning of the investigation have a significant impact on the ability to adequately elucidate the facts sooner in the proceedings. As such, recognition of these omissions more than eight years after the events, though relevant, is too late now.

116. Thirdly, the Commission notes that the record in the case file does not show that authorities followed a line of investigation relating to the potential link of the incidents to the context of extrajudicial executions in Venezuela, with particularly high incidences thereof existing in the State of Aragua. Not only was the State aware of this context, but the Attorney General of the Republic, as the highest investigative authority in Venezuela, had issued public statements recognizing this problem. This being the case, not only the existence of a version differing from the official one, but the consistency of this second version with the fact pattern of said context, made it imperative to exhaust a line of investigation in this direction particularly taking into consideration that one of the elements of the aforementioned context is staging of confrontations to make it look like victims had engaged in a confrontation with police.

117. Though several of the foregoing omissions were recognized, thus far, none have been cured more than 14 years after the events took place. This course of action taken by the Venezuelan State has dimmed prospects for the family members of the victims to find out the truth and obtain justice.

118. Additionally, the Commission underscores the lack of response to the complaints made by the next of kin about the lack of access to the file, the possibility of being effectively heard during the process and, in general, the prospects of access to justice in the case. In this context, the IACHR empathizes that the State also failed to conduct a serious and diligent investigation into the crimes reported subsequently by the family members of the three deceased victims and the potential interconnection between them all, which contributes to the denial of justice and has constituted one of the elements of impunity in the instant case. In this regard, the IACHR recalls the particular gravity resulting from the lack of an adequate response, protection and investigation, in the face of acts of violence committed against the same family group,

inasmuch as this creates a general impression of tolerance toward the acts of abuse, which reproduces more acts of violence against them, leaving them defenseless and unprotected.¹²¹

2. Reasonable time

119. The Commission recalls that Article 8(1) of the Convention establishes as one of the guarantees of a fair trial that tribunals must reach a decision on cases submitted for their consideration within a reasonable time. The Inter-American Court has found that a prolonged delay may constitute, in itself, a violation of the right to a fair trial,¹²² and that, therefore, it is for the State to explain and prove why it has required more time than would be reasonable to deliver final judgment in a specific case.

120. In that respect, a reasonable time must be understood in regard to the total duration of the criminal proceedings.¹²³ According to the terms of Article 8.1 of the American Convention, the Commission shall take into consideration, in the light of the concrete circumstances of the case, those elements that bodies of the Inter-American System have taken into account, namely: i) the complexity of the case; ii) the procedural activity of the interested party; and iii) the conduct of judicial authorities; and iv) the impact arising from the legal situation of the person involved in the proceedings.¹²⁴

121. As for these elements, the State alleged that the instant case is complex because of the events, which took place in the context of a confrontation; the victims were caught in a situation of *flagrante delicto*; and that the versions of the family members are not supported by other testimony. On this score, the IACHR reiterates firstly the considerations described above regarding the way in which the criminal investigation and trial proceedings were conducted, particularly, the value attached to the official version of the confrontation without exhausting the lines of investigation connected to the version of the family members and other witnesses.

122. Secondly, the IACHR finds that the elements of fact argued by the State to support the complexity of the case are totally unrelated as far as causality to the delay in the proceedings. Thus, for example, the Commission fails to see how the situation of *flagrante delicto* the victims were allegedly caught in is relevant or connected to the complexity of the investigation into their deaths. Similarly, the evidence in the case file does not support the claim that the version of the family members is not supported by other testimony, as born out in the proven facts section. In addition to the elements of fact invoked by the State not being relevant to establishing complexity, the Commission underscores that other elements of fact prove the opposite. Such as, from the beginning, the security force involved in the incidents was identified and an investigation was opened in order to be able to get to the bottom of them. Moreover, the victims were fully identified and the authorities had access, from the very beginning, to all exhibits of criminal forensic interest in order to conduct the necessary expert witness tests. In said context, the Commission finds that, while the instant case was about the decision on legitimate use of force, for which the State should have implemented the necessary mechanisms of due diligence, it did not involve a degree of complexity so as to justify a delay of more than 14 years since the events took place to elucidate and establish the respective liability for them.

¹²¹ IACHR, Report No. 11/10, Case 12.488, Merits, Barrios Family Members, Venezuela, March 16, 2010, para. 232.

¹²² I/A Court H.R., *Case of García Asto and Ramírez Rojas v. Peru*. Judgment of November 25, 2005. Series C No. 137, par. 166; *Case of Gómez Palomino v. Peru*. Judgment of November 22, 2005. Series C No. 136, par. 85; *Case of the Moiwana Community v. Suriname*. Judgment of June 15, 2005. Series C No. 124, par. 160.

¹²³ I/A Court H.R., *Case of López-Álvarez v. Honduras*. Judgment of February 1, 2006. Series C No. 141, para. 129; *Case of Acosta-Calderón v. Ecuador*. Judgment of June 24, 2005. Series C No. 129, para. 104; and *Case of Tibi v. Ecuador*. Judgment of September 7, 2004. Series C No. 114, para. 168. See also: IACHR, Report No. 77/02, Case 11.506, Merits, Waldemar Gerónimo Pinheiro and José Víctor dos Santos, Paraguay, December 27, 2002, para. 76.

¹²⁴ IACHR, Report No. 111/10, Case 12.539, Merits, Sebastián Claus Furlan and Family, Argentina, October 21, 2010, para. 100. I/A Court H.R., *Case of the Santo Domingo Massacre v. Colombia*. Preliminary Objections, Merits, and Reparations. Judgment of November 30, 2012. Series C No. 259, para. 164.

123. Thirdly, the Commission finds that it is sufficiently proven that there were protracted periods of procedural inactivity during the court case, which was annulled on at least one occasion, and that this inactivity has not been justified by the State. In this regard, the available evidence shows that after the charges were brought by the Ministry of Public Prosecution on June 13, 2003, the case entered the public oral trial stage, after almost four years had elapsed, that is, on January 18, 2007. The IACHR determined that during at least seven months, the case was suspended because of a recusal of the judge hearing the case, and the final decision on the appeal was issued almost two years after it was filed, that is, on April 1, 2009. After the filing of the cassation appeal with the Supreme Court, the Criminal Cassation Chamber took approximately two additional years until it handed down its ruling on December 14, 2011. Lastly, taking into account the available information as to whether the second proceedings have been completed or not as of the present date, the Commission finds as proven fact that the investigation and criminal proceedings have been stretched out unreasonably over time with no evidence of fact to justify any such delay.

124. Lastly, as to the actions of the family members, although the procedural impulse is the responsibility of the State, in any case the evidence in the case file shows that they have been actively involved over the course of the proceedings endeavoring to contribute to the elucidation of the incidents.

125. Based on the considerations put forth throughout this section, the Commission concludes that the Venezuelan State is responsible for the violation of the rights to a fair trial and judicial protection established in Articles 8.1 and 25.1 of the American Convention in connection with the obligation set forth in Article 1.1 of the same instrument, to the detriment of the family members identified in the instant report.

C. Right to humane treatment with respect to Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez's relatives

126. Article 5.1 of the American Convention establishes that "Every person has the right to have his physical, mental, and moral integrity respected." With regard to the next of kin of victims of certain human rights violations, the Inter-American Court has reiterated that such family members can, in turn, be considered victims.¹²⁵ In this regard, the Court has considered that their right to mental and moral integrity can be infringed as a consequence of the particular circumstances of the violations perpetrated against their loved ones and of subsequent acts or omissions of domestic authorities in relation to these events.¹²⁶

127. In this case the Commission has concluded that Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto and Octavio Ignacio Díaz Álvarez lost their life under circumstances in which state agents used lethal force unnecessarily and disproportionately without pursuing a legitimate aim and with no justification for such action.

128. In addition to these circumstances, which in and of themselves are a source of suffering and powerlessness, the Commission has further concluded herein that in this case there was no investigation conducted by due diligence. In this type of circumstances, the Court has written that:

[...] the absence of a complete and effective investigation into the facts 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. This right to the truth requires a procedural determination of the most complete historical truth possible, including the determination of

¹²⁵ IA Court of HR. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 112; and *Case of Bueno Alves v. Argentina*. Merit, Reparations and Costs. Judgment of May 11, 2007. Series C. No. 164. par. 102. See also: IACHR. Report No. 58/12. Case 12.606. Merits. Brothers Landaet Mejias. Venezuela. March 21, 2012, para. 256.

¹²⁶ IA Court of HR. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. par. 112; and *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006. Series C No. 155. par. 96.

patterns of collective action and of all those who, in different ways, took part in the said violations, as well as their corresponding responsibilities.¹²⁷

129. The Commission therefore takes into account that the pain and suffering of the relatives of the three victims who were extrajudicially executed, have also been increased by the lack of response to the actions they have taken to find justice, particularly, in a context in which there were also reports of threats and harassment against them by said actions and the impulse they have given to the process. In these circumstances, the fear of reprisals, for their lives and personal integrity, has also aggravated the feelings of anguish they have suffered over the years.

130. Pursuant to the foregoing, the Commission considers that the loss of a loved one under circumstances like those described in this report, in addition to the absence of truth and justice, caused Robert Ignacio Díaz Loreto, David Octavio Díaz Loreto y Octavio Ignacio Díaz Álvarez's family suffering and anguish in violation of their right to psychological and moral integrity set forth in Article 5(1) of the American Convention in connection with the obligations provided for in Article 1(1) thereof.

VI. CONCLUSIONS AND RECOMMENDATIONS

131. Pursuant to the findings of fact and law laid out above, the Inter-American Commission concludes that the Venezuelan State is responsible for the violation of the rights established in Articles 4.1, 5.1, 7.1, 8.1 and 25.1 of the American Convention in connection with the obligations set forth in Article 1.1 of said instrument, to the detriment of the members of the Díaz Loreto family who are named throughout the instant report.

132. Based on the foregoing conclusions,

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

1. To provide full reparation for the human rights violations declared in the instant report both in the material and the moral aspect. The State shall adopt measures of economic compensation and satisfaction for the moral damages; as well as rehabilitation for any family members who may so wish.

2. To continue with the criminal investigation diligently, effectively and within a reasonable period of time in order to thoroughly elucidate the facts, identify all potential liability and impose the appropriate punishments for the human rights violations declared in the instant report. In compliance with this recommendation, the Venezuelan State must incorporate into the investigation the relevant elements of context as described in the instant report. Likewise, the State must investigate the other incidents alleged by the family members of the deceased victims and the potential interconnection of them to the victims.

3. To order the appropriate administrative, disciplinary or criminal measures in response to actions or omissions of state officials who contributed to the denial of justice and impunity in which the crimes of the case have remained.

4. To order mechanisms of non-repetition to be put into place, which include: i) training programs on international human rights standards in general, in particular, targeting the Police Force of the State of Aragua, and justice operators; ii) measures to ensure effective accountability in criminal, disciplinary or administrative jurisdictions, in cases of alleged abuse of power by law enforcement agents of the State; and iii) legislative, administrative and other types of measures to ensure the investigation with due diligence and

¹²⁷ IA Court of HR. *Case of Valle Jaramillo et al v. Colombia*. Merits, Reparations and Costs. Judgment of November 27, 2008. Series C No. 192, par. 102; *Case of the Massacre of la Rochela v. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007, Series C No. 163, par. 195; and *Case of Heliodoro Portugal v. Panama*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, par. 146.

in keeping with relevant international standards, the need and proportionality of the use of lethal force by police agents.