

OEA/Ser.L/V/II.170  
Doc. 182  
7 December 2018  
Original: Spanish

**REPORT No. 160/18**  
**CASE 12.805**  
REPORT ON MERITS

JIMMY GUERRERO, RAMÓN MOLINA PÉREZ AND FAMILY  
VENEZUELA

Approved by the Commission at its session No. 2143 held on December 7, 2018  
170 Regular Period of Sessions

**Cite as:** IACHR, Report No. 160/18. Case 12.805. Merits. Jimmy Guerrero, Ramón Molina and Family. Ecuador. December 7, 2018.



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## I. SUMMARY

1. On March 10, 2008, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the IACHR”) received a petition submitted by the Committee of Families of the Victims of the Events of February – March, 1989 (*Comité de Familiares de Víctimas de los Sucesos de Febrero – Marzo de 1989*) (COFAVIC), and Mr. Carlos Guerrero and Mr. Carlos Ayala Corao (hereinafter “the petitioners”)<sup>1</sup> alleging the international responsibility of the Bolivarian Republic of Venezuela (hereinafter “the State of Venezuela, “the State” or “Venezuela”) to the detriment of Jimmy Guerrero, Ramón Molina Pérez and their families.

2. The Commission approved its admissibility report No. 4/11 on February 19, 2011.<sup>2</sup> On February 23, 2011, the Commission notified such report to the parties, being at their disposal in order to reach a friendly settlement. The parties were provided statutory deadlines to present their additional observations about the merits. On April 4, 2016, the IACHR held a public hearing regarding the merits of the case. All the information received was duly distributed between the parties.

3. The petitioners alleged that the State is responsible for the extrajudicial executions of Jimmy Guerrero and Ramón Molina, which occurred on March 29, 2003, in Falcón state, Venezuela. They alleged that before the events, Jimmy Guerrero and his family had been subjected to threats, harassment and arbitrary detentions. The petitioners added that despite the multiple complaints filed, the Venezuelan authorities did not adopt effective measures to assist the risk situation he was facing. Moreover, they held that the State has not complied with its duty to duly investigate these events, as well as to try and penalize the perpetrators, affecting the victims’ families right to justice. The petitioners held that the present case is framed in a context of extrajudicial executions in Venezuela.

4. The State held that the investigations have been diligent, and that the participation of security forces agents in the reported events has not been confirmed. The State also questioned the alleged pattern or context of extrajudicial executions in Venezuela. The State highlighted before the IACHR, in several occasions, that the alleged victim had criminal records and that the complaints that he filed before his death aimed at avoiding the authorities and his criminal responsibility. Notwithstanding the foregoing, in the most recent investigation provided by the State, it informed that in the internal investigation, a superintendent of the Armed Forces of Falcón state had been identified as a presumed perpetrator, against whom an arrest warrant had allegedly been issued.

5. Based on factual and legal determinations, the Inter-American Commission resolved that the Colombian State is responsible for the violation of Articles 4.1 (right to life), 5.1 (right to humane treatment), 8.1 and 25.1 (rights to fair trial and judicial protection) of the American Convention on Human Rights (hereinafter “the American Convention” or “The Convention”) in relation to Article 1.1 of the same treaty, and with Articles 6 and 8 of the Inter-American Convention to Prevent and Punish Torture (hereinafter “the IACPTT”). The Commission elaborated the respective recommendations.

## II. THE PARTIES’ POSITIONS

### A. The petitioners

6. The petitioners alleged that the events of the present case are framed in a context of harassment, excessive use of force, arbitrary detentions, forced disappearances and extrajudicial executions on the part of the Armed Forces of Falcón state and “parapolice groups” in Venezuela. They argued that such pattern is characterized by having victims such as young men belonging to economically vulnerable social sectors and with an specific *modus operandi* that includes: the presentation of the facts as a confrontation; the public

<sup>1</sup> Subsequently, the Center for Justice and International Law (*Centro por la Justicia y el Derecho Internacional*) (CEJIL) incorporated as a petitioner.

<sup>2</sup> IACHR. Report No. 4/11. Admissibility. Case 12.805. Jimmy Rafael Guerrero Meléndez, Ramón Antonio Molina Pérez and Families. Venezuela. February 19, 2011. Articles 4, 5, 7, 8, and 25 of the American Convention and Articles 2,6 and 8 of The Inter-American Convention to Prevent and Punish Torture were declared admissible.

disqualification or criminalization of a victim, highlighting him or her as a person who has resisted authority or who has criminal records; and threats and aggressions against witnesses and relatives; among other elements, as well as the impunity in which they are in the majority of the cases. They held that such context remains until now, referring information regarding the actions of alleged “extermination groups.”

7. They highlighted that on March 29, 2003, Jimmy Guerrero displaced in the evening hours from the city of Coro to Punto Fijo, in Falcón state, accompanied by his uncle Ramón Molina and José Hernández, after a family gathering. He claimed that while they were travelling, they were intercepted by a vehicle without licenses driven by alleged police officers dressed in black. According to the description of the events, when Jimmy Guerrero got off the vehicle, he was shot several times and, despite being seriously injured and vulnerable, the aggressors had beaten him severely on the ground. The petitioners indicated that when Ramón Antonio Molina tried to help his nephew, the alleged officials shot at him several times, provoking his death. According to the version of Mr. José Hernández –who was severely wounded and survived– and an eyewitness, the aggressors had tied the body of Jimmy Guerrero, still with life, to a vehicle to subsequently drag him through the pavement.

8. They indicated that, prior to his death, Jimmy Guerrero had reported aggressions and threats against him in multiple occasions, as well as illegal and arbitrary detentions on the part of officials of the same security body allegedly involved. He claimed that despite requesting specific protection measures to safeguard his life and personal integrity, the State did not adopt any security measures to prevent what happened. The petitioners held that after the events, the relatives of the alleged victims continued being subjected to harassment and threats.

9. Regarding the investigation and internal judicial proceedings, the petitioners stressed that the death of the alleged victims was publicly presented by the authorities as a “confrontation between gangs,” and that the Head of the Delegation of the Body of Scientific, Criminal and Forensic Investigations (*Delegación del Cuerpo de Investigaciones Científicas, Penales y Criminalísticas*) (hereinafter “the CICPC”) in charge of the investigation, declared to the local press that Jimmy Guerrero registered criminal records and that he was a “highly dangerous” subject. They alleged that the criminal investigation for the death of presumed victims has not been carried out with due diligence and some unjustified delays have occurred.

10. They alleged that these events and the lack of justice have caused serious grief and distress in the relatives of Jimmy Guerrero and Ramón Antonio Molina.

## **B. The State**

11. It alleged that the actions of the Public Ministry in the investigation have been diligent, notwithstanding the fact that it has not been possible to identify the perpetrators and questioned the fact that Jimmy Guerrero had been “deliberately dragged” on the street. In turn, it held that since his lifeless body was found in the middle of the street, “it was accidentally struck and dragged” by a vehicle. It highlighted that the driver, when realizing what had happened, managed to remove the corpse of the alleged victim from under the vehicle with the help of other people, and abandoned it in front of a service station nearby.

12. Initially, it held that it is not responsible for the violation of the right to life, humane treatment and freedom of the alleged victims given that after carrying out the investigation, the participation of police officers was not verified. It indicated that the participation of police officers cannot be inferred from the statements of the witnesses who affirmed that the perpetrators were dressed in “dark clothes and boots” and highlighted that there were inconsistencies in the statements provided by the surviving witness José Hernández. Moreover, it argued that Jimmy Guerrero was never deprived of liberty or arbitrarily arrested.

13. It alleged that the families of the alleged victims were heard during the internal investigation and that they were guaranteed the access to simple and rapid appeals, alleging that the rights to judicial guarantees and protection had not been violated. It claimed that the investigation carried out at the internal level has been diligent and impartial, and that the right of the alleged victims to the obtention of justice has

been guaranteed. It explained that if an irrevocable criminal judgment is not obtained, the mechanisms of civil compensation for damages cannot be activated.

14. It highlighted that the criminal procedural law in Venezuela does not establish a specific period to individualize possible perpetrators after the investigation by the Public Prosecutor's Office has been initiated, and that in some cases it is not possible to do so despite the execution of evidence and proceedings. Therefore, the lack of a trial, despite the time that has passed, is not a violation to its international obligations.

15. It questioned the alleged existence of a context of extrajudicial executions in Venezuela with the pattern described by the petitioners. It claimed that in the specific case, concealment actions that favor the impunity of the events or the direct participation of state agents have not been demonstrated. Following the same line, it claimed that stigmatization nor discrimination had been intended, but that from the internal records it follows the existence of open criminal proceedings against Jimmy Guerrero, which allegedly "were sufficient proof to confirm his relations with other persons who break Venezuelan laws."

16. Regarding the alleged harassment on the part of police officers of the Falcón state, it argued that the prior complaints filed by the alleged victim against police forces were lodged in order to prevent them from carrying out monitoring activities to Jimmy Guerrero, and that it is not "unusual" that his death had been a result of a "settling of scores between gangs, which is frequent when belonging to the criminal world." In such context, the State justified a search warrant to Jimmy Guerrero's house and mentioned other measures that the alleged victim could have lodged to request protection.

17. Subsequently, in its communication from June 9, 2016, the State informed that an arrest warrant has been issued against an officer who worked as a superintendent and chief of the Police Zone 2 of the Armed Police Forces of Falcón state, for the events related to the death of the alleged victims.

### III. FACTUAL ANALYSIS

#### A. Context

18. In the present case, the petitioners alleged that the death of the presumed victims is a result of the context of extrajudicial executions in Venezuela, specifically in Falcón state. By means of its different mechanisms, the Commission has identified a context of extrajudicial executions in the country that started several years ago. Moreover, the Inter-American Court has referred to said context in its analysis of cases that exemplifies it. The determination over the existence of said context and the characterization of the problem in the abovementioned cases was analyzed by the Commission as well as by the Court, considering reports from state authorities<sup>3</sup> and international<sup>4</sup> and national<sup>5</sup> non-governmental organizations. The time frame of said sources encompasses the events alleged in the present case.

19. The United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions has also referred to said context in several of his reports, of extrajudicial complaints filed on the hands of security agents that take place in Venezuela, and on the threats received by relatives of the victims to prevent them

<sup>3</sup> Annex 1. Public Ministry. Annual Report 2006. Presentation of the General Prosecutor of the Nation, General Prosecutor's Office. Annex to the initial petition. See also: Ombudsman of Venezuela. [Report: Execution and Forced Disappearances](#). Annual report 2001; Annual Report 2002 of the Ombudsman of the Bolivarian Republic of Venezuela; Annual Report 2003 of the Ombudsman of the Bolivarian Republic of Venezuela; Annual Report of the Ombudsman, Annual Report 2003; Ombudsman's report, Annual Report 2006; Speech of the General Prosecutor of the Nation due to the presentation of the Annual Report on Management of the year 2005. April 25, 2006; National Commission for the Police Reform (CONAREPOL). Characteristics of the Venezuelan Police, Annual Report of the General Prosecutor of the Republic of 2007.

<sup>4</sup> International Amnesty. Venezuela. [HUMAN RIGHTS PROTECTION. AN UNFINISHED TASK](#).

<sup>5</sup> PROVEA. Annual Reports available at: <https://www.derechos.org/ve/>; Annex 1. [COFAVIC/Parapolice groups in Venezuela, 2005, pages 28-33](#); Annex 3. Assessment on the Human Rights Situation in the State of Aragua between July 1996 and March 2003, prepared by the Commission on Human Rights, Justice and Peace of the State of Aragua; and Annex 2. Report prepared by the National Commission for the Police Reform (CONAREPOL). Characteristics of the Venezuelan Police. 2007. Quoted in: I/A Court of H.R. *Case Landaeta Mejías Brothers and others Vs. Venezuela*. Preliminary objections. Merits. Reparations and Costs. Judgment of August 27, 2014. Series C No. 281. para. 47-55.

from filing complaints for the events<sup>6</sup>. In effect, the Commission observes that in 2001, the Human Rights Committee, on its final observations regarding Venezuela, expressed its serious concern for the “several complaints filed regarding extrajudicial executions and [...] the lack of response from the State.”<sup>7</sup>

20. In the case of the IACHR, since its visit on site carried out in Venezuela in the year 2002, it confirmed the existence of a problem of extrajudicial executions committed by state police agents and/or parapolice or “extermination” groups under their acquiescence or collaboration, by means of different patterns. In its reports of the years 2002, 2003, 2005, 2009, as well as in its country report of 2017, the IACHR analyzed the characteristics of these types of cases and expressed its concern regarding the continuity of this problem, as well as for the serious situation of impunity registered in said cases.<sup>8</sup>

21. Regarding the *modus operandi* of the executions, the IACHR has identified that, in some cases, these are carried out in the context of simulated confrontations during routine procedures (for example, resistance to arrest), or when the victims have been illegally and/or arbitrarily arrested and are under state custody. In this way, in other circumstances, it has been identified that the attacks are carried out after illegal searches of hooded or non-identified persons that proceed the murder of the victims.<sup>9</sup>

22. Based on the information registered by organizations of the Venezuelan civil society, the Commission has established that this phenomenon commonly affects the “poorest sectors,” in the context of operations or preventive plans aimed at the detection, arrest and retention of citizens of an alleged criminal behavior. In this way, “[...] persons presumed to be involved are arrested without taking the corresponding measures *in fraganti* in the perpetration of crimes or being arrested, and these persons are brutally apprehended, through blows [...] and in many cases are shot in the presence of witnesses, introduced wounded to the police unit, and they subsequently appear dead in some abandoned place or are admitted to a hospital or medical center without vital signs.”<sup>10</sup> According to the petitioners, the victims in Falcón state are “young men (...) who belong to the most vulnerable socio-economic sectors.”<sup>11</sup>

23. Moreover, the *modus operandi* includes: the threats and the murder against witnesses, including eye-witnesses of the events, who due to this situation “generally do not participate in the investigation of the events carried out by the Public Ministry;” the “modification of the place of the events” including the modification or alteration of the evidence, and the criminalization of the victims before the public opinion justifying their death “as the effective response from the authorities after the perpetration of criminal event (generally theft or robbery), carried out by the victim.”<sup>12</sup> For its part, in its annual report of the year 2001, the Ombudsman identified within the “common elements that favor impunity” in these cases, “[...] the acceptance

<sup>6</sup> United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions. Reports before the Commission on Human Rights: 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 before the United Nations General Assembly see: A/55/288, August 11, 2000](#). Dis.

<sup>7</sup> UN CCPR. Final observations of the Human Rights Committee. VENEZUELA. CCPR/CO/71/VEN. April 26, 2001. Para. 7.

<sup>8</sup> See: IACHR. Annual Report from 2005. Chapter IV regarding Venezuela. Section about the situation of impunity, particularly before the case of extrajudicial executions; IACHR. Annual Report from 2004. *Chapter V. Monitoring report on the compliance of the Bolivarian Republic of Venezuela with the recommendations provided by the IACHR in the Report on the Human Rights Situation in Venezuela* (2003), Para. 144; IACHR. *Report on the Human Rights Situation in Venezuela*. October 24, 2003. Paras. 321 – 343. In the subsequent years, the IACHR has continued monitoring this serious problem in its report about *Democracy and Human Rights in Venezuela* of the year 2009, as well as by public hearings, in its annual reports and individual cases, confirming that until now, complaints are still being filed for the existence of this problem in Venezuela. See: IACHR. *Democracy and Human Rights in Venezuela*. December 30, 2009. paras. 35, 756 and 789; IACHR. Annual Report from 2016. Chapter IV regarding Venezuela. Section regarding the situation of public safety; IACHR. Annual Report from 2015. Chapter IV regarding Venezuela. Section regarding the situation of violence and public safety; IACHR. Annual Report from 2013. Chapter IV regarding Venezuela. Section regarding alleged violence by members of the Public Force; and the IACHR. *Democratic Institutionalism, Rule of Law and Human Rights in Venezuela*. Country report. December 31, 2017.

<sup>9</sup> See: IACHR. *Report on the Human Rights Situation in Venezuela*, October 24, 2003. Paras. 321 – 343.

<sup>10</sup> Assessment on the Human Rights Situation in the State of Aragua between July 1996 and March 2003, prepared by the Commission on Human Rights, Justice and Peace of the State of Aragua. Quoted in: IACHR. Report No. 58/12. Case 12.606. Merits. *Landaeta Mejías Brothers*. Venezuela. March 21, 2012.

<sup>11</sup> See: [COFAVIC/Parapolice groups in Venezuela, 2005, page 25](#).

<sup>12</sup> See: [COFAVIC/Parapolice groups in Venezuela, 2005, pages 28-33](#).

of the speech of police confrontation on the part of organisms in charge of enforcing the law and on the part of the citizenship, given that it implies that the respective criminal investigations are not being carried out.”<sup>13</sup>

24. In this sense, without stopping from recognizing the problem at a national scale, the context described has been proven and appointed by the IACHR and the Court in the cases *Barrios family vs. Venezuela*<sup>14</sup> and *Landaeta Mejías Brothers and others Vs. Venezuela*<sup>15</sup> for the action of the regional police in the state of Aragua. Likewise, in the case *Uzcátegui and others vs. Venezuela*, the Commission recognized the impact of the context in Falcón state from the public information from bodies of the Venezuelan State in the same time frame than the events of the present case<sup>16</sup>. On its judgment regarding the same case, the Inter-American Court determined that by that time “extrajudicial executions and other abuses on the part of police forces were taking place in the State, particularly by the state and local police,” appointing said context to Falcón state.<sup>17</sup> The petitioners indicated that according to their investigation in Falcón state, a process of police reconstruction was carried out. In the year 2000, two “elite brigades” were created, and since then, more deaths for police confrontations were reported in the municipalities of Coro and Punto Fijo. The deaths under the above-mentioned modalities increased, always being characterized by contradictory narratives between police forces and the families of the victims<sup>18</sup>, as well as by the lack of investigation. Near 2005, the petitioners counted 200 cases that related to the pattern, out of which 180 did not go over the investigation stage.

## **B. Available information about the alleged victims and their families**

25. Jimmy Guerrero was born on April 19, 1976, in Falcón state, Venezuela. At the time of the events he was 26 years old. In the report before the IACHR, the following relatives have been identified: Nieves Guerrero (father), Emilia Meléndez (mother); his brothers and sister: Franklin, Yarelis and Jean Carlos, all of the surname Guerrero; and his sons and daughters, María Guadalupe Guerrero, Francisco Guerrero, Yimmi Eliécer Colina, Jiannibeth Stephanny Colina, and Diana Colina, who were 8, 7, 6, 5 and 4 years old when the initial petition was filed. His niece, Fraily Guerrero<sup>19</sup>, and his partner Anny Colina, who was pregnant at the time of the events, were also identified.<sup>20</sup>

26. Ramón Molina was Jimmy Guerreros's uncle and at the time of the events he was 49 years old.<sup>21</sup> In the report before the IACHR, the following relatives of Mr. Molina have been identified: his wife Soledad Morillo; and his children Alexander Ramón Molina, Jeannacary Molina, Yazmín Molina, Endy Molina and Ramón Molina, who at the time of the events were 28, 25, 23, 21 and 15 years old, respectively.<sup>22</sup>

## **C. Events prior to the deaths of Jimmy Guerrero and Ramón Antonio Molina**

27. In the record before the Commission there appears documentation related to events prior to Jimmy Guerrero's death, specifically complaints filed for death threats, harassment and arbitrary detentions in the Public Ministry, the Ombudsman and the public opinion by means of social media.

28. On August 16, 2001, Jimmy Guerrero reported “police harassment” before the Senior Prosecutor's Office of the state of Falcón (hereinafter the “Senior Prosecutor's Office”). He highlighted that the night of August 13, 2001, a “motorized person approached me and threatened me with death, warning me to always

<sup>13</sup> See: [Ombudsman of Venezuela. Report: Executions and forced disappearance of persons. Annual Report 2001](#); IACHR. Report No. 11/10. Case 12.488. Merits. Barrios Family. Venezuela. March 16, 2010.

<sup>14</sup> IACHR. Report No. 11/10. Case 12.488. Merits. Barrios Family. Venezuela. March 16, 2010.

<sup>15</sup> I/A Court. H.R. *Landaeta Mejías Brothers and others Vs. Venezuela*. Preliminary objections. Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281. Para. 47.

<sup>16</sup> IACHR. Report No. 88/10. Case 12.6661. Merits. Néstor José, Luis Uzcátegui and others. Venezuela. July 14, 2010. Para. 95 and ss.

<sup>17</sup> I/A Court. H.R. *Case Uzcátegui and others vs. Venezuela*. Merits, Reparations and Costs. Judgment of September 3, 2012. Series C No. 249. Para. 35.

<sup>18</sup> [COFAVIC/Parapolice groups in Venezuela, 2005](#).

<sup>19</sup> Initial petition from March 10, 2008. pages 19,56.

<sup>20</sup> Initial petition from March 10, 2008. pages 20.

<sup>21</sup> Annex 2. CICPC. Police case file. Falcón Region. Delegation of Punto Fijo. March 30, 2003. Annex to the initial petition.

<sup>22</sup> Initial petition from March 10, 2008, page 30.

be accompanied because if he saw me alone he was going to kill me.”<sup>23</sup> On August 19, 2002, the Senior Prosecutor’s Office opened the case No. 2202-02, for the crime of threats uttered by alleged police officers<sup>24</sup>, however, on September 13, 2002, the record was remitted to another Prosecutor’s Office “because in such representation there is an open investigation against him, and his complaint is precisely related to such case, given that the police officers taking part in said proceeding are highlighted by the accused of having subjected him to harassment and death threats.”<sup>25</sup> No more diligences are registered.

29. The second criminal complaint was filed on September 27, 2002. Jimmy Guerrero lodged another complaint before the Senior Prosecutor’s Office and reported new events of “police harassment,” referring to an episode in which he was accused of carrying a firearm, which he affirmed that it did not belong to him.<sup>26</sup> The third criminal complaint was filed on November 4, 2002, and was also lodged by Jimmy Guerrero before the Second Prosecutor’s Office of the Jurisdiction of Falcón state, highlighting that he had been arrested without having knowledge of the motive and he reiterated that “he was frequently [arrested] without any motives.”<sup>27</sup> No more diligences are registered.

30. Additionally, the Commission observes the filing of complaints before the Ombudsman for arrests and harassment of the part of the police. In this way, there appears the first complaint filed on October 28, 2002, according to which Jimmy Guerrero had been arrested in an occasion by the Technical Investigations Force of Falcón state, and in another opportunity by a “group of motorized persons of the police of Coro” in relation to the theft to a taxi driver, indicating that he could recognize the officers who detained him and affirmed “every time they see me on the street they arrest me.”<sup>28</sup> The Ombudsman remitted the complaint to the Senior Prosecutor on the same day.<sup>29</sup>

31. The second complaint refers to the detention suffered by Jimmy Guerrero on February 17, 2003, by a group of persons driving vehicles, whom he identified as officers of the Armed Police Forces of Falcón state. His captors allegedly did not have an arrest warrant. They put a hood over his head, stole his personal belongings, beat him and “kicked him in the right eye” and they “threw tear gas at him and hit him with his gun in the head.”<sup>30</sup> The complaint was also filed by Ms. Erimay Loyo, who reported the events in a consistent way with the aforesaid.<sup>31</sup> That same day, an Ombudsman’s representative went to a police checkpoint of the Armed Forces, where she corroborated that Jimmy Guerrero was detained in a public order unit.<sup>32</sup> The forensic examination from February 19, 2003, determined the existence of “traumatic edema in the frontal area; right suborbicular ecchymoses; closed chest trauma, worsened by an intercostal neuritis of traumatic origin; wounds produced by a blunt instrument.”<sup>33</sup> The Ombudsman informed the events to the Second Prosecutor’s Office and requested to initiate an investigation due to alleged acts of torture and degrading and inhuman treatments, and to monitor criminal case No. 2202-02. Likewise, the Ombudsman requested protection measures in favor of Jimmy Guerrero.<sup>34</sup>

32. On March 6, 2003, Jimmy Guerrero lodged a third complaint before the Ombudsman, given that police officials were tossing around his house and that he had again been accused of being responsible for a theft.<sup>35</sup> On March 10, the complaint was remitted to the Second Prosecutor’s Office and information was also requested regarding the requirement of protection measures.<sup>36</sup>

<sup>23</sup> Annex 3. Second Prosecutor’s Office. Handwritten complaint. August 16, 2002. Annex to the initial petition.

<sup>24</sup> Annex 4. Second Prosecutor’s Office. Complaint/case No. 2202-02. August 10, 2002. Annex to the initial petition.

<sup>25</sup> Annex 5. First Prosecutor’s Office. Communication of September 13, 2002. Annex to the initial petition.

<sup>26</sup> Annex 6. Senior Prosecutor. Record of the hearing from September 27, 2002. Annex to the initial petition.

<sup>27</sup> Annex 7. Second Prosecutor. Complaint filed by Jimmy Rafael Guerrero on November 4, 2002. Annex to the initial petition.

<sup>28</sup> Annex 8. Ombudsman. Statement by Jimmy Guerrero. October 28, 2002. Annex to the initial petition.

<sup>29</sup> Annex 8. Ombudsman. Statement by Jimmy Guerrero. October 28, 2002. Annex to the initial petition.

<sup>30</sup> Annex 9. Ombudsman. Statement by Jimmy Guerrero. February 18, 2003. Annex to the initial petition.

<sup>31</sup> Annex 10. Ombudsman. Statement by Erimay Loyo. February 17, 2003. Annex to the initial petition.

<sup>32</sup> Annex 11. Ombudsman. Record from the visit to the police checkpoint. February 17, 2003. Annex to the initial petition.

<sup>33</sup> Annex 12. Ombudsman. Medico-legal report of Jimmy Guerrero. February 19, 2003. Annex to the initial petition.

<sup>34</sup> Annex 13. Ombudsman. Communication requesting protection measures in favor of Jimmy Guerrero. February 25, 2003. Annex to the initial petition.; and Annex 14. Ombudsman. Communication by means of which a medico-legal report of Jimmy Guerrero is remitted. February 26, 2003. Annex to the initial petition.

<sup>35</sup> Annex 15. Ombudsman. Statement by Jimmy Guerrero. March 6, 2003. Annex to the initial petition.

<sup>36</sup> Annex 16. Ombudsman. Remits statement by Jimmy Guerrero. March 10, 2003. Annex to the initial petition.



33. Finally, in the record there appear several press releases of that time, in which Jimmy Guerrero publicly reported “harassment on the part of security forces.”<sup>37</sup>

**D. The deaths of Jimmy Guerrero and Ramón Antonio Molina in the events that took place between March 29 and 30, 2003.**

34. The night of March 29, 2003, Jimmy Guerrero and members of his family traveled from Coro to Punto Fijo to attend the funeral of a relative. Along the way, their vehicle was stopped by a “police commission” that asked them about their destination, and subsequently let them continue.<sup>38</sup> In the middle of the night, Jimmy Guerrero, Ramón Molina and José Hernández went to do some shopping and were victims of the abovementioned attack. According to the CICPC, Jimmy Guerrero’s body was found in Girardot Extension, specifically in the service station Santa Irene, in Punto Fijo, Falcón State.<sup>39</sup> According to the autopsy protocol, the cause of death was “hypovolemic shock, massive hemoperitoneum, arterial injury due to a bullet shot by a firearm.” The detailed ballistic trajectory expertise recognizes three shots in the body, indicating that the trajectory of the head shots was descendant, from left to right.<sup>40</sup> In addition, his body presented:

(...) Head: there appear two holes due to the entrance of bullets of firearms, (...) provoking a minor left epicraneal hematoma, fracturing the left parietal bone and the right upper part of the orbit, injuring the parietal and frontal lobes. (...), fracturing the squamous left temporal lobe, injuring left temporal and parietal lobes, (...). Mouth: Abrasions in left labial corner (...) Thorax: Symmetric. There appear large abrasions produced by dragging in all the surface of the chest with a large amount of skin loss. Abdomen: (...) there appear large abrasions in the abdomen with a large amount of skin loss.<sup>41</sup>

35. The body of Ramón Molina was found in front of a liquor store in the Buenos Aires passage of Santa Irene Urbanization, in Punto Fijo, Falcón state. According to the autopsy protocol, the cause of death was “hypovolemic shock, hemomediastinum, serious heart damage due to a bullet shot by a firearm.” According to such report, he presented several “holes due to the entrance of bullets of firearms” in the thorax.<sup>42</sup> The ballistic trajectory expertise presents a shot with a descendent trajectory, from the front to the back, and from right to left.<sup>43</sup>

36. The Commission observes that there were different versions and public information regarding the circumstances in which the events took place. First, in the record before the IACHR there appear several press releases which referred to the deaths of Jimmy Guerrero and Ramón Antonio Molina. Some of these notes related statements by police officials and their version that it had been a confrontation between gangs. In this way, it appears that the chief superintendent of the Delegation of the CICPC of Falcón state publicly declared that “one of the individuals who was shot dead on Saturday night in front of the “Rodriguez” Distributor of Punto Fijo [Jimmy Guerrero] had criminal records for several offenses and was also a member of a criminal gang dedicated to the theft and robbery of houses. [...] This was a highly dangerous subject.”<sup>44</sup>

37. Second, there is a version mentioned in police records which states that there was a robbery in the liquor store in which the alleged victims were. Specifically, a person declared that, when trying to leave the

<sup>37</sup> Annex 17. Ombudsman. Remits copy of the press release entitled: *Reports harassment on the part of Security Forces*. November 07, 2002. Annex to the initial petition.

<sup>38</sup> Initial petition and IACHR. [Testimony of Jean Carlos Guerrero Meléndez in the Hearing of April 4, 2016](#).

<sup>39</sup> Annex 18. CICPC Body Removal Report. March 30, 2003. Annex to the communication of the State from October 6, 2011.

<sup>40</sup> Annex 19. Ballistic Trajectory Report (N°9700-029-) from May 1, 2006. Annex to the communication of the State from October 6, 2011.

<sup>41</sup> Annex 20. Autopsy protocol of Jimmy Guerrero. April 3, 2003. Annex to the communication of the State from October 6, 2011.

<sup>42</sup> Annex 21. Autopsy Protocol of Ramón Molina from April 3, 2003. Annex to the communication of the State from October 6, 2011.

<sup>43</sup> Annex 19. Ballistic Trajectory Report (N°9700-029-) from May 1, 2006. Annex to the communication of the State from October 6, 2011.

<sup>44</sup> Annex 22. Press release. *El Falconario* newspaper, J.J. López, *Jimmy Guerrero had criminal records* of April 3, 2003. Annex to the initial petition; Annex 23. Press release. *El Falconario* newspaper, J.J. López, *Two persons were riddled before a liquor store*. Annex to the initial petition. (“when the physicians were preparing to provide assistance to the patients, approximately 20 persons arrived and started throwing rocks at the important medical center, provoking serious material damages [...] and yelling at the medical staff not to assist those two patients because they were bad people”).

place, he accidentally dragged the body that was identified as belonging to Jimmy Guerrero, with his vehicle.<sup>45</sup> This version was confirmed by the wife of said driver.<sup>46</sup>

38. Third, the press highlighted that the deaths were not “a settling between gangs” but that they were perpetrated by police officials, as reported by the father and the brother of Jimmy Guerrero, Jean Carlos Guerrero. Jean Carlos Guerrero’s version is consistent with his complaint filed before the Senior Prosecutor, according to which his brother “was tortured before being murdered” and that the perpetrator was the then commissioner of the Police Armed Forces of Falcón state, Oswaldo Rodríguez León.<sup>47</sup> The same is understood from his testimony in the public hearing before the IACHR.<sup>48</sup>

39. Jimmy Guerrero’s father and brother also declared that the eyewitness Mr. José Hernández had survived, but that he was seriously injured and that they feared for his life.<sup>49</sup> Mr. Hernández provided his preliminary statement and indicated that when he arrived to the liquor store, Jimmy Guerrero got off to do the shopping when “four persons dressed in black arrived,” who were “dressed in police clothes,” and started shooting. Mr. Hernández declared that he was wounded when he tried to get off the car, as well as Mr. Molina, whose body he approached and “[acted] as if he were dead.” He also affirmed that he was able to see “by the edge of the door that they were kicking [Jimmy] Meléndez, [SIC] they shot at him two times, and they dragged him by his feet [...]” Additionally, he highlighted that after being taken to a hospital, 3 police officials had interrogated him about “why was he telling that the police officers had shot at him when the only officials on duty that night were the ones who interrogated him.”<sup>50</sup>

40. Regarding this version, in the file there appears a record of an interview to an eyewitness of the events who declared that he was working at the liquor store “around 1:30 a.m.” when a man came to buy some drinks, and indicated the arrival of a vehicle out of which two men got off, one of them “gabbed the man who bought me the bottles by the neck and told us not to get involved (...) subsequently he shot him in the head and threw him to the floor. Therefore, Mr. Ramón Molina, who works for us, got off the MONZA vehicle and asked what was going on, (...) and immediately he was shot in several bursts (...). Then, a light brick-colored SEP ran over the corpse, turned around, and one of the passengers tied the body by the leg with a fine rope. Subsequently, they tied it to the rear bumper and dragged him.”<sup>51</sup> The witness described the physical characteristics of the persons whom he identified as the attackers.<sup>52</sup>

41. Moreover, the Commission finds in the record another statements from witnesses that are consistent with what was indicated by the petitioners in relation to the place where Jimmy Guerrero’s body was found<sup>53</sup>,

<sup>45</sup> Annex 24. CICPC. Police Record interview to Humberto Casas. April 3, 2003. Annex to the communication of the State from October 6, 2001. This person declared: “we were arriving to Rodríguez Distributor to buy a box of beer and I saw a robbery, as I saw a subject in front of the liquor store with a gun in his hand pointing at the inside of the store. When I saw that, I got into the car immediately, as I had already gotten off, and I started in reverse heading to Punto Fijo. When I was arriving to the service station, I felt as if the car’s tire had been poked, so I went to put air to the pump and then my son [...] got off to blow air and I also got off, and that is when I saw that there was a body under the car.”

<sup>46</sup> Annex 25. CICPC. Police Record of the interview to Engle Blanco. April 3, 2003. Annex to the communication of the State from October 6, 2011. According to her narration, “On a Saturday, close to Sunday, in the early hours, I was with my husband, a nephew and my two children in a Rey vehicle, and when arriving to Rodríguez liquor store, there were two vehicles, one red and a closed pick-up truck, whose color I could not identify well. My husband got off to buy a box of beer and he mentioned that a robbery was taking place. He reversed the vehicle and we started. When we were close to Santa Irene, my husband mentioned that the tire had deflated. He stood up and we got off to inflate the tire, but we realized that the tires were normal. That was when my husband said that we had a man stuck in there.” Moreover, she declared that they did not file any complaints before the authorities because of fear.

<sup>47</sup> Annex 26. Communication of Jean Carlos Guerrero Meléndez addressed to the General Prosecutor and the Ombudsman. Annex to the Petitioners’ communication of January 4, 2012.

<sup>48</sup> IACHR. [Testimony of Jean Carlos Guerrero Meléndez in the Hearing of April 4, 2016.](#)

<sup>49</sup> See, among others: Annex 27. Press release. *Diario La Mañana*, Maiveline Verde, *Two deaths in a shooting*. March 31, 2003. Annex to the initial petition; Annex 28. Press release. *Diario La Mañana*, Marianela Millán, *They died by an execution and not in a shooting*. April 4, 2003. Annex to the initial petition; Annex 29. Press release. *Diario El Falconario*, Ainet Chirinos, *Relatives of Jimmy Guerrero and Ramón Molina blame the police for their death*. April 4, 2003. Annex to the initial petition.

<sup>50</sup> Annex 30. Sixth Prosecutor. Communication addressed to the First Instance Duty Magistrate in Control Functions of the Criminal Judicial Circuit of Falcón state/ Punto Fijo Extension and Order Granting Permission to Proceed. Annex to the initial petition; and Annex 31. Criminal Court. Record April 5, 2003. Annex to the initial petition.

<sup>51</sup> Annex 32. CICPC. Record of the interview to Manuel Antonio Diogo. April 2, 2003. Annex to the initial petition.

<sup>52</sup> Annex 32. CICPC. Record of the interview to Manuel Antonio Diogo. April 2, 2003. Annex to the initial petition.

<sup>53</sup> Annex 33. CICPC. Record of the interview to Leonardo Morillo. March 30, 2003. Annex to the communication of the State from October 6, 2011.

the identification of the car used to commit the murder<sup>54</sup> and the dragging of his body<sup>55</sup> and that, in general, they noted the dynamic of the events in the abovementioned terms.<sup>56</sup>

### **E. Investigations and judicial proceedings initiated prior to the deaths of Jimmy Guerrero and Ramón Antonio Molina**

42. Subsequently, the IACHR will give an account of the main diligences carried out in the context of the investigation of the deaths of the alleged victims. The content of some of the diligences has already been described in the previous section.

43. On March 30, 2003, the Sixth Prosecutor of the Judicial District of Falcón state (hereinafter “the Sixth Prosecutor”) executed an order to start an investigation over the events.<sup>57</sup> From the record it results that on that same day, inspections were carried out on the road<sup>58</sup> and in the service station in which “the body of a young person was found, (...) moreover, it presents abrasions with loss of the epidermis at the levels of the left shoulder, chest-abdominal region, right and left forearms and left-hand side of the face, with detachment of the left year (...). After a detailed search, it was possible to see marks of tires of vehicles on the ground, specifically from the entrance (Girardot Extension) to the place the body was found (...).”<sup>59</sup>

44. On the same day, the inspection to the corpses was carried out. Corpse No. 01 presented “a minor wound in the form of a circular hole, of regular edges reversed at the level of the middle pectoral area. Minor wound in the form of a circular hole, of reversed regular edges and with halos or burns at the level of the left costal region. Two minor wounds in the form of a hole at the level of the left costal region (...)”<sup>60</sup> Corpse No. 02 presented “a minor wound in the form of a circular hole, of regular edges reversed at the level of the left parietal region. A minor wound in the form of a hole in the superior part of the ring finger, a minor wound in the form of a hole, of reversed irregular edged at the level of the region of the palm of the left side of the left hand, and severe abrasions with loss of the first layer of skin (epidermis)” in several parts of the body, face and limbs.<sup>61</sup>

45. On the same March 30, 2003, by means of a citizen complaint, it was possible to find in the surroundings of the crime scene, a GABILONDO Y CIA VICTORIA gun, SERIAL 958084, 32 caliber, with a black handle piece of synthetic material, with its respective bag with 8 caliber bullets, which was incorporated to the evidence.<sup>62</sup> Likewise, on April 2, 2003, the Criminal Control Court of Punto Fijo executed a search warrant to a property with the aim of locating firearms and the Ford vehicle, Rey model, color blue, with license plates AUY-463 identified by the witnesses.<sup>63</sup> It was executed on the following day. No guns were found, however, the vehicle was located and seized.<sup>64</sup>

46. On April 1, 2003, the CICPC ordered the practice of Planimetric Lifting, Ballistic and Anatomic Trajectory. Moreover, it requested authentic copies of the death certificates of the deceased, the autopsy protocols and the medical report or clinical record of José Hernández.<sup>65</sup> On May 21, 2004, the CICPC issued a

<sup>54</sup>Annex 34. CICPC. Record of the interview to Horacio Blanco. April 1, 2003. Annex to the communication of the State from October 6, 2011.

<sup>55</sup> Annex 35. CICPC. Record of the interview to Wilmer Enrique Arias. March 31, 2003. Annex to the communication of the State from October 6, 2011.

<sup>56</sup> Annex 34. CICPC. Record of the interview to Horacio Blanco. April 1, 2003. Annex to the communication of the State from October 6, 2011; Annex 36. National Guard, Regional Command No. 4. Detachment No. 44. Judibama Command. Record of the interview to Yarelis Guerrero. April 2, 2003. Annex to the communication of the State from October 6, 2011.

<sup>57</sup> Annex 37. Sixth Prosecutor. Order to Start the Investigation. March 30, 2003. Annex to the initial petition.

<sup>58</sup> Annex 38. Official communication DP/DDEF N. 01073-03 (Record 11-F6-06.612-03, Section N° I, folio 95). Ombudsman. May 14, 2003. Annex to the initial petition.

<sup>59</sup> Annex 39. CICPC. Record of inspection at service station (Record No. G-371.453). March 30, 2003. Annex to the initial petition.

<sup>60</sup> Annex 40. CICPC. Inspection of Corpses No. 645. March 30, 2003. Annex to the communication of the State from October 6, 2011.

<sup>61</sup> Annex 40. CICPC. Inspection of Corpses No. 645. March 30, 2003. Annex to the communication of the State from October 6, 2011.

<sup>62</sup> Annex 41. CICPC. Road and Vehicle Inspection. March 30, 2003. Annex to the communication of the State from October 6, 2011.

<sup>63</sup> Annex 42. Search warrant of April 2, 2003. Annex to the communication of the State from October 6, 2011.

<sup>64</sup> Annex 43. CICPC. Police Record of April 3, 2003. Annex to the communication of the State from October 6, 2011.

<sup>65</sup> Annex 44. CICPC. Official Communication No. 9700-175-3477, Official Communication No. 9700-175-3481. April 1, 2003. Annex to the initial petition.

memorandum requesting the practice of a hematologic expertise, blood type and determination of nitrites<sup>66</sup> and an expertise of ballistic comparison.<sup>67</sup>

47. The Commission observes that throughout the investigation, for several years (2003, 2004, 2005) the CICPC requested several documents to establish the connection of the crime committed with police agents. With this aim, it requested the Commander of the Armed Forces of Falcón the delivery of news books, the list of the the weapons depot, the list of the officials on duty, the list of names, hierarchies and location of the officials on duty, corresponding to the moment in which the events took place.<sup>68</sup> The information was requested in the year 2004, by the Sixth Prosecutor's Office<sup>69</sup>; and, in the year 2014, by the Seventeenth Prosecutor's Office.<sup>70</sup> Finally, in 2015, the police informed that the news books of the year 2003 were damaged by precipitations in the year 2010 at the Police Coordination Centre No. 0271.

48. On November 3, 2003, a legal expertise of a partially deformed copper bullet and a diskette was carried out. They were guarded in the delegation of Punto Fijo.<sup>72</sup> According to the expert's report, "the metallic piece (...) belongs to a projectile, which was shot by a firearm, as it presents signs of the striations left by the passing by the bore of the pipe of a firearm. It can be submitted to a ballistic test. The diskette (...) is observed as used and in good structural condition."<sup>73</sup> On December 3, 2003, the sub delegation of Punto Fijo sent an urgent memorandum to the chief of the State sub delegation Zulia reiterating the request for an expertise of ballistic comparison.

49. On November 20, 2003, the Sixth Prosecutor issued a communication to the CICPC requesting information regarding the state of the criminal case<sup>74</sup> and by mid-2004, he requested the commander of the CICPC the results of the Expertise of Ballistic Comparison<sup>75</sup> and the results of the practice of Planimetric Lifting, Ballistic and Anatomic Trajectory.<sup>76</sup> With the aforesaid, the Sub delegation of Punto Fijo issued several memorandums<sup>77</sup> to collect the requested expertise, but it indicated that it never received an answer.<sup>78</sup> Due to the lack of results, on January 10, 2005, the Sixth Prosecutor's Office reiterated its communications and ordered to carry out the requested expertise once again.<sup>79</sup>

50. On December 9, 2005, the Sub delegation of Punto Fijo sent an urgent communication to the chief of the Sub delegation of the State of Zulia, requesting the delivery of the expertise of ballistic comparison.<sup>80</sup> On May 1, 2006, the Division of Analysis and Reconstruction of Events, Ballistic Trajectory Area carried out an expertise, concluding similarly in both cases that "the shooter is in front of the victim, firing with the barrel muzzle of the firearm in a descending way, aiming at the implicated anatomic region."<sup>81</sup>

<sup>66</sup> Annex 45. CICPC. Official Communication No. 9700-175-3883 of May 21, 2004. Annex to the initial petition.

<sup>67</sup> Annex 46. CICPC. Official Communication No. 9700-175-3883 of May 21, 2004. Annex to the initial petition.

<sup>68</sup> Annex 47. CICPC. Official Communication No. 9700-1759836 (Record 11-F6-06.612-03, Section N° I, folio 96) from May 26, 2003. Annex to the initial petition; Annex 48. CICPC. Official Communication No. 9700-175-3881 of May 21, 2004. Annex to the initial petition; Annex 49. CICPC. Official Communication No. 9700-175-05906 of August 17, 2004, Official communication No. 9700-175-05907 of August 17, 2004. Annex to the initial petition; Annex 50. CICPC. No. 9700-175-1085 of February 9, 2005; CICPC. Official Communication No. 9700-175-1088 of February 9, 2005. Annex to the initial petition.

<sup>69</sup> Annex 51. Sixth Prosecutor. Official Communication No. FAL-06-04-01.131 of July 22, 2004. Annex to the initial petition.

<sup>70</sup> Annex 52. General Prosecutor's Office No.17. Official communication FAL17-399-2014 of March 27, 2014. Annex to the Petitioners' communication, April 24, 2017.

<sup>71</sup> Annex 53. Police record regarding the destruction of the books. March 27, 2014. Annex to the Petitioners' communication, April 24, 2017.

<sup>72</sup> Annex 54. CICPC. Remission of evidence. Police Record of October 30, 2003. Annex to the initial petition.

<sup>73</sup> Annex 55. CICPC. Official Communication No. 9700-175-ST-532 of November 3, 2003. Annex to the initial petition.

<sup>74</sup> Annex 56. Sixth Prosecutor. Official Communication No. FAL-06-03-02.051. November 20, 2003. Annex to the initial petition.

<sup>75</sup> Annex 57. Sixth Prosecutor. Official Communication No. FAL-06-04-01.153. July 26, 2004. Annex to the initial petition.

<sup>76</sup> Annex 58. Sixth Prosecutor. Official Communication No. FAL-06-04-01.194. August 4, 2004. Annex to the initial petition.

<sup>77</sup> Annex 49. CICPC. Official Communication No. 9700-175-05906 of August 17, 2004; CICPC. Official Communication No. 9700-175-05907 of August 17, 2004. Annex to the initial petition; Annex 59. CICPC. Official Communication No. 9700-175-05902 of August 17, 2004. Annex to the initial petition; Annex 60. CICPC. Official Communication No. 9700-175-31 of August 18, 2004. Annex to the initial petition.

<sup>78</sup> Annex 61. CICPC. Official Communication No. 9700-175-6010 of August 19, 2004. Annex to the initial petition.

<sup>79</sup> Annex 62. Sixth Prosecutor. Official Communication No. FAL-06-05-01.00036 of January 10, 2005. Annex to the initial petition.

<sup>80</sup> Annex 63. CICPC. Official Communication No. 9700-175-1140 of February 9, 2005. Annex to the initial petition.

<sup>81</sup> Annex 19. Ballistic Trajectory Report (N°9700-029-) from May 1, 2006. Annex to the communication of the State from October 6, 2011.

51. On May 31, 2006, the Ballistic Division of Identifiable-Comparative Criminalistics (*División de Balística de la Dirección de Criminalística Identificativa - Comparativa*), sent a Report of Ballistic Comparison to the Chief of the Sub delegation of Punto Fijo. It concludes that two of the analyzed elements of 40 caliber (complete projectile and fragment) were shot by the same firearm, and that the projectile of 9 millimeters of caliber was fired by another gun.<sup>82</sup>

52. On July 18, 2007, the General Prosecutor reassigned the criminal case to the Seventeenth Prosecutor's Office of the Public Ministry of Falcón State (hereinafter "Seventeenth Prosecutor's Office"). Likewise, it sent a copy of the file opened for the criminal case to the First District Judge of the Criminal Judicial Circuit of Falcón State, in order to be remitted to the Seventeenth Prosecutor of the Public Ministry, "who will analyze it in an individual or joint way in this Office to carry out the respective conclusive action."<sup>83</sup> In view of the foregoing, on December 16, 2008, the Seventeenth Prosecutor's Office requested the remittance of all the proceedings carried out in the case to the CICPC and the Delegation of Punto Fijo.<sup>84</sup>

53. On March 23, 2009, the Seventeenth Prosecutor's Office informed the Direction of the Protection of Fundamental Rights that alleged officials related to the police were involved in the criminal case.<sup>85</sup> On September 14, 2011, the Seventeenth Prosecutor's Office issued an urgent communication to the Direction of Protection of Fundamental rights, in which it was informed that no disciplinary investigation had been opened, as it had not been possible to individualize or demonstrate the participation of an official in the events.<sup>86</sup>

54. On April 21, 2015, the Forty-Ninth Prosecutor's Office with full jurisdiction at national level requested the Seventeenth Prosecutor's Office the delivery of informative notes with the las proceedings carried out in the context of the investigation.<sup>87</sup> On February 2016, the Seventeenth Prosecutor's Office issued a communication<sup>88</sup> and requested a meeting to the Coordinator of the Criminalistics Unit against the Violation of Fundamental Rights of the Public Ministry of the State of Lara (hereinafter, "the Criminalistics Unit"), requesting its support to carry out several tests in the case under consideration.

55. The Commission observes that during the first months of 2016, the Seventeenth Prosecutor's Office sent several communications to entities. In this way, it requested the Criminalistics Unit the confirmation of a commission to carry out several proceedings<sup>89</sup>; it asked the Director of the Police of Falcón State to provide the registry of the guns assigned to Miguel Caldera, Felipe Rojas and the Sergeant Segundo Curia in 2003, the delivery of certified copies of the designation of the gun or gun warehouses of the day of the events<sup>90</sup>; and the list of the guns of 9 mm and 40 mm which were in possession of such police body and which were assigned to them<sup>91</sup>. It also communicated with the Chief of the Homicide Brigade of the CICPC of Falcón State, requesting the remittance of all the original proceedings carried out and the certified copies of the record of their disincorporation, destruction or remittance.<sup>92</sup>

<sup>82</sup> Annex 64. CICPC. Official Communication No. 9700-018-B-2819 of May 31, 2006. Annex to the initial petition.

<sup>83</sup> Annex 65. Public Prosecutor of the Republic, Official communication No. FAL-6-07-01.427 of July 18, 2007. Annex to the initial petition.

<sup>84</sup> Annex 66. Prosecutor's Office No.17. Memo 11F17-250-08. December 16, 2008. Annex to the Petitioners' communication of April 24, 2017.

<sup>85</sup> Annex 67. Prosecutor's Office No.17. Memo. 11F17-0055-09. March 23, 2009. Annex to the Petitioners' communication of April 24, 2017.

<sup>86</sup> Annex 68. Prosecutor's Office No.17. Official communication FAL17-1.141-2011. September 14, 2011. Annex to the Petitioners' communication, April 24, 2017.

<sup>87</sup> Annex 69. Prosecutor's Office No.49. 00-F49-0102-2015. April 21, 2015. Annex to the Petitioners' communication, April 24, 2017.

<sup>88</sup> Annex 70. Prosecutor's Office No.17. Official communication FAL17-169-2016. February 02, 2016. Annex to the Petitioners' communication, April 24, 2017.

<sup>89</sup> Annex 71. Prosecutor's Office No.17. Official communication FAL17-169-2016. March 11, 2016. Annex to the Petitioners' communication, April 24, 2017.

<sup>90</sup> Annex 72. Prosecutor's Office No.17. Official communication FAL17-191-2016. March 12, 2016. Annex to the Petitioners' communication, April 24, 2017.

<sup>91</sup> Annex 73. Prosecutor's Office No.17. Official communication FAL17-192-2016. March 12, 2016. Annex to the Petitioners' communication, April 24, 2017.

<sup>92</sup> Annex 74. Prosecutor's Office No.17. Official communication FAL17-193-2016. March 12, 2016. Annex to the Petitioners' communication, April 24, 2017.

56. On March 14, 2016, the Criminalistics Unit discarded the practice of some proceedings given that several eyewitnesses died or were not located, and due to the impossibility to carry out the planimetric lifting due to the urbanization of the place. Moreover, it found out that the ballistic evidence was not precise because it did not reflect whether it had been examined<sup>93</sup> and, it later acknowledged, that in fact the bullets and bullets fragments were lost and their place of custody was unknown.<sup>94</sup> That same day, the Prosecutor attending the case and the Criminalistic Unit agreed on the practice of the following proceedings: to request information related to the record of a Gabilondo firearm of 32 caliber; designation of the guns of the officials Felipe Rojas, Curia and Caldera, in order to make a comparison with the collected projectiles.<sup>95</sup>

57. On March 28, 2016, the Seventeenth Prosecutor's Office issued a communication to the General Director of Weapons and Explosives asking if there was a record in said organism of the firearm of the brand Gabilondo y Cia Vitoria, 32 mm caliber, Serial 958084.<sup>96</sup> On March 30, 2016, the Police of the Falcón State sent an official communication to the Seventeenth Prosecutor's Office informing that by the time of the events, the citizen Felipe Rojas Quero occupied the position of deputy superintendent and was assigned to Police Zone No.2, located in Punto Fijo.<sup>97</sup>

58. On April 1, 2016, the Seventeenth Prosecutor's Office issued an arrest warrant against police officer Felipe Rojas, and the Criminal Court of First Instance in Control Functions issued a circular addressed to all the civil, police, judicial and military authorities to execute the arrest warrant<sup>98</sup> for the offenses of homicide committed to the detriment of Jimmy Guerrero and Ramón Molina, and frustrated homicide to the detriment of José Hernández.<sup>99</sup> On April 5, 2016, supervisor José Carrera of the State Police headed to the domicile of Felipe Rojas to execute the arrest warrant against him. However, when he arrived at the property, he was informed that the citizen was away on a trip.<sup>100</sup> In the record there is no information regarding his subsequent arrest.

59. On June 9, 2016, the State issued a communication to the IACHR regarding the deaths of Jimmy Guerrero and Ramón Molina, in which it mentioned that "it was possible to gather information regarding the full identification and current position of one of the officials involved, against whom the Public Ministry requested the duly justified arrest warrant on April 1, 2016."<sup>101</sup>

<sup>93</sup> Annex 75. Criminalistics Unit. Record of investigation and meeting of March 14, 2016. Annex to the Petitioners' communication of April 24, 2017.

<sup>94</sup> Annex 76. Criminalistics Unit. Record of investigation. April 7, 2016. Annex to the Petitioners' communication, April 24, 2017.

<sup>95</sup> Annex 77. Criminalistics Unit. Minute of March 14, 2016. Annex to the Petitioners' communication, April 24, 2017.

<sup>96</sup> Annex 78. Prosecutor's Office No.17. Official communication FAL17-204-2016. March 28, 2016. Annex to the Petitioners' communication, April 24, 2017.

<sup>97</sup> Annex 79. Body of State Police. Official communication 0252. March 30, 2016. Annex to the Petitioners' communication, April 24, 2017.

<sup>98</sup> Annex 80. State and Local Criminal Court of First Instance in Control Functions. Official Communication No 2C-920-2016. Arrest warrant against Felipe Antonio Rojas Quero of April 1, 2016. Annex to the Petitioners' communication of April 24, 2017.

<sup>99</sup> Annex 81. Prosecutor's Office No.76. Official communication FAL17-229-2016. April 1, 2016. Annex to the Petitioners' communication, April 24, 2017.

<sup>100</sup> Annex 82. Police report of April 5, 2016. Annex to the Petitioners' communication of April 24, 2017.

<sup>101</sup> Permanent Mission of the Bolivarian Republic of Venezuela before the OAS, Communication II.2.E8.D-OEA.16-399, of June 09, 2016.

#### IV. LEGAL ANALYSIS

##### A. The right to life<sup>102</sup> (Article 4.1) and humane treatment<sup>103</sup> (article 5.1) in relation to Article 1.1<sup>104</sup> of the American Convention and articles 1<sup>105</sup>, 6<sup>106</sup> and 8<sup>107</sup> of the IACPPT.

##### 1. General standards on the right to life, integrity and the prohibition of torture in cases related to alleged extrajudicial executions

60. The Commission has established that “extrajudicial or summary executions are characterized by being deliberate and illegitimate deprivations of life on the part of State agents, generally acting under order or at least the consent or acquiescence of the authorities. Therefore, extrajudicial executions are illegal actions committed by those who have been given power originally intended to protect and guarantee the safety and life of the people.”<sup>108</sup>

61. In cases in which there is controversy regarding the state participation in serious human rights violations, the Commission has indicated that, given the existence of signs that imply a direct attribution of international responsibility from the State, the authorities in charge of the investigation shall make all the necessary efforts to clarify the possible responsibilities or connections of state authorities in a violation to the right to life.<sup>109</sup> In this way, the State has the obligation to carry out a detailed, serious and diligent investigation to determine the veracity or distort the signs of the participation of state agents. Otherwise, the Commission has granted probative value to evidence that has not been duly investigated.<sup>110</sup>

62. In the same line, the Court has reiterated that the lack of investigation of alleged violations committed to a person when there are signs of the participation of state agents, “prevents the State from presenting a satisfactory and convincing explanation of the alleged [events] and distort the allegations over its responsibility by means of adequate probative elements.”<sup>111</sup> In this way, the Court has perceived that the signs of the participation of state agents, before the lack of clarification and investigation<sup>112</sup>, gather probative value given that “concluding otherwise would allow the State to rely on the negligence and ineffectiveness of the criminal investigation to escape from its responsibility for the violation of Article 4.1 of the Convention.”<sup>113</sup>

<sup>102</sup> Article 4 of the Convention establishes: 1. Every person has the right to have his life respected. (...) No one shall be arbitrarily deprived of his or her life. (...)

<sup>103</sup> Article 5 of the American Convention establishes: 1. Every person has the right to have his physical, mental, and moral integrity respected.

<sup>104</sup> Article 1.1 of the American Convention establishes: The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms.

<sup>105</sup> Article 1 of the IACPPT establishes: The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention.

<sup>106</sup> Article 6 of the IACPPT establishes: In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction. The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. Likewise, the States Parties shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction.

<sup>107</sup> Article 8 of the IACPPT establishes: The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.

<sup>108</sup> IACHR, Report No. 25/02, Case 11.763, Case of the Plan de Sánchez Massacre, Guatemala, Case 11.763, from February 28, 2002, para. 114.

<sup>109</sup> IACHR, Report No. 120/10, Case 12.605, Merits, Joe Luis Castillo González, Venezuela, October 22, 2010, para. 109.

<sup>110</sup> IACHR, Report No. 100/17, Merits, Juan Francisco Arrom Shuhurt and others. Paraguay. September 5, 2017. Para. 189 and ss.

<sup>111</sup> I/A Court of H.R., Caso J. Vs. Peru. Preliminary objections, Merits, Reparations and Costs. Judgment of September 27, 2013. Series C No. 275, para. 353.

<sup>112</sup> I/A Court of H.R., Caso J. Vs. Peru. Preliminary objections, Merits, Reparations and Costs. Judgment of September 27, 2013. Series C No. 275, para. 354.

<sup>113</sup> I/A Court of H.R., Case Kawas Fernández Vs. Honduras. Merits, Reparations and Costs. Judgment of April 3, 2009, Series C No. 196, para. 97.

63. Moreover, and regarding the duty of guarantee, the Commission has indicated that the lack of protection of a person when such protection has been requested, implies to leave him or her in a helplessness situation and to facilitate human rights violations to his or her detriment, in an open ignorance of the duty of prevention.<sup>114</sup> Specifically, regarding this duty, the Court has indicated that “a State cannot be responsible for any human rights violation committed between individuals within its jurisdiction.” In effect, the *erga omnes* nature of the conventional obligations of guarantee in charge of the States does not imply a limited responsibility from the States before any act or event from individuals, because their duties to adopt prevention and protection measures in their relations with each other are conditioned to<sup>115</sup> a: i) whether the State had or ought to have knowledge of a situation of risk; ii) whether said risk was real and immediate; and iii) whether the State adopted the measures that were reasonably expected to prevent such risk from being verified.<sup>116</sup>

64. The Commission recalls that in cases of extrajudicial executions, depending on their characteristics, it is possible to deduce other human rights violations, as the right to personal integrity. In this terms, the Inter-American Court has established that “it is reasonable to presume that, in the moments prior to the deprivation of liberty [the executed] suffered deep fear before the real and imminent danger that the event would end with their own death, as it effectively happened”<sup>117</sup> which results in the violation to the right of personal integrity set forth in Article 5 of the American Convention. The Commission reiterates that, in certain circumstances, the real threat of the arbitrary deprivation of liberty constitutes, by itself, an inhuman treatment.<sup>118</sup>

## **2. Determination of the attribution of international responsibility to the State for the deaths of Jimmy Guerrero and Ramón Molina**

65. Hereafter, the Commission will determine whether the Venezuelan State is internationally responsible for the deaths of Jimmy Guerrero and Ramón Molina. In the present case there appear several descriptions regarding the circumstances of the deaths and the participation of state agents. In this sense, the Commission shall analyze the signs related to the murders under consideration that result from the evidence incorporated in the record. The Commission recalls that it is not its responsibility to determine criminal liabilities, but whether there are enough elements that allow to confirm the State’s participation in the events.

66. First, the Commission understands that there are formally reported records of non-investigated police persecution executed against Jimmy Guerrero. The Commission observes that the first reported interventions, which included death threats, were followed by arrests without warrants, accredited by the Ombudsman and cruel treatments regarding which there is a medico-legal report. Therefore, the IACHR observes an incremental pattern in the contacts held between state agents and Jimmy Guerrero in relation to his alleged criminal record. These are charged with a high level of hostility that incremented with the frequency of the interventions, and regarding which the State did not adopt any measure to eradicate it despite the complaints filed by Jimmy Guerrero. The Commission highlights that the complaints filed for these events were presented to the General Prosecutor’s Office as well as to the Ombudsman from 2002 to 2003, a few days prior to the deaths. In this sense, the IACHR stresses that the reported persecution sequence coincides temporally and was in force by March 29, 2003.

<sup>114</sup> IACHR. Report No. 11/10. Case 12.488. Merits. Barrios Family. Venezuela. March 16, 2010, para. 167; IACHR. Report 24/98. Joao Canuto de Oliveira. Brazil. April 7, 1998. Para. 53.

<sup>115</sup> I/A Court. H.R. Case Valle Jaramillo and others Vs. Colombia. Merits, Reparations and Costs. Judgment of September 27, 2008. Series C No. 192, para. 78; I/A Court. H.R. Case of Pueblo Bello’s Massacre. Para. 117.

<sup>116</sup> The case-law of the European Court regarding the elements highlighting the duty of prevention has been considered by the Inter-American Court in several of its judgments. In this respect, see: I/A Court of H.R. Case of Pueblo Bello’s Massacre. Colombia. Judgment of January 31, 2006. Series C No. 140, para. 124; I/A Court. H.R. Case González and others (“Cotton Filed”) Vs. Mexico. Preliminary objections, Merits, Reparations and Costs. Judgment of September 16, 2009. Series C No.205, para. 284; I/A Court. H.R. Case Luna López Vs. Honduras. Merits, Reparations and Costs. Judgment of October 10, 2013. Series C No. 269, para. 124.

<sup>117</sup> I/A Court. H.R. Case *Cantoral Huamani and García Santa Cruz Vs.* Preliminary objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. Para. 99.

<sup>118</sup> IACHR. Report No. 63/01. Case 11.710. Carlos Manuel Prada González and Evelio Bolaño Castro. Colombia. April 6, 2001, para. 34.



67. Second, and related to the foregoing, it is important to highlight the relevance of the events that took place on February 17, 2003, in the context in which it was reported that Jimmy Guerrero was intervened by men driving vehicles, and that he subsequently appeared in a police agency, which, again, was confirmed by the Ombudsman. The Commission considers that this event, in addition to demonstrating that there was a previous persecution to Jimmy Guerrero on the part of the police, constitutes a strong sign on the way the police acts, by means of the intervention of persons driving vehicles, to later remain under the State's custody, as it was effectively the case a bit more than a month before the deaths.

68. Third, the Commission finds that there are two relevant contexts to be considered in the analysis of Jimmy Guerrero's death. Therefore, on the one side, as already mentioned, at a national level there was a context of state police violence and complaints filed for extrajudicial executions against persons with Jimmy Guerrero's profile in the Venezuelan State, characterized by their lack of investigation and their relation to the participation of police agents in their commission, or that are explained as a "settling of scores" appealing to criminal records that has already been verified by the Commission and the Court. On the other hand, the Commission also advises that the most specific context of the effect of this problem exists in the Falcón State, in which the events of the case coincide temporally and geographically with the actions carried out by the State Police of such state and that, again, coincides with the profile of the victim of this case, with some of the elements that surrounded his death, and with the city in which it occurred.

69. Fourth, the Commission observes that there exists a suspicious level of cooperation of the State Police with the bodies in charge of the investigation. In this terms, from the record it is understood that the books of the events and the inventory of the weapons depot, important evidence that could shed a light on the participation of state agents in the deaths of Jimmy Guerrero and Ramón Molina, were never remitted by the police forces nor by the CICPC or the General Prosecutor's Office, in spite that they were requested many times since the year 2003, informing in 2015 that said books no did no longer exist since the year 2010. These lack of cooperation from the police in the investigation, understood in connection with the abovementioned context, cannot be appreciated by the Commission as a fortuitous event, as in concrete terms, the refusal to send these documents generated the concealment of the possible state participation in the deaths.

70. Fifth, the Commission considers the public statements from authorities as another indicative element, among them, the one from the Superintendent of Falcón state who discredited Jimmy Guerrero in the media for dedicating to theft, robbery and who indicated that his death was a settling of scores between criminal gangs. It is worth highlighting that the only arrest warrant issued in the context of the investigation was against the person who uttered these comments. The IACHR recalls that the characterization of the victims as criminals is one of the elements of the *modus operandi* identified in the section of context.

71. Sixth, the IACHR also notes that Yarelis Mercedes Guerrero, in her statements before the Regional Command No. 44, Judibama Command, from April 2, 2003, indicated that, in conversation with Mr. Hernández, she learnt that police officer Rojas had been in the place of the events, against whom an arrest warrant was issued. In the same way, Mr. Hernández, in his statement, described the attackers as uniformed persons and associated their clothes to the police uniform. Moreover, the Commission also considers the statements that indicate that in the route between Coro and Punto Fijo, the vehicle that was carrying Jimmy Guerrero and members of his family to the funeral was intercepted by a police commission, who asked them what their destination was, allowing them to leave after a while.

72. Seventh, without evaluating the detailed analysis of the due diligence that will be carried out later, the Commission finds that the judicial investigation has still not achieved the determination of the perpetrators, and that there are pieces in the record that indicate that a great part of the evidence was lost. Therefore, the Commission can also observe, prior to the analysis of due diligence, that the investigation has not provided any results, and that there are no duly clarified alternative hypothesis, apart from the one provided by the person with an arrest warrant, according to whom Jimmy Guerrero's death was a settling of scores.

73. In conclusion, the Commission finds that the records of harassment and violence, their coincidence and temporal closeness with the deaths, the State's indifference towards the complaints filed for these

records, as well as the above-mentioned contexts, the lack of police cooperation in the investigation as well as the signs of concealment, the public discrediting comments against Jimmy Guerrero, the events that relate State agents to the deaths under consideration, and the lack of judicial determination of the perpetrators, as a whole, are sufficient and consistent signs to establish the State participation in the death of Jimmy Guerrero, and in the related death of his uncle Ramón Molina. Consequently, they are directly attributable to the Venezuelan State.

74. Due to the circumstances of the present case, the Commission also considers pertinent to determine whether the State also violated its duty of prevention of violations to the right to life to the detriment of Jimmy Guerrero. Therefore, the Commission also confirms that Jimmy Guerrero was subjected to threats and harassment of the part of police officials. These events were duly reported in several opportunities before the General Prosecutor's Office and the Ombudsman, as established in the record, and therefore, the State was aware of the situation of risk. In relation to this kind of risk, the Commission has already confirmed that the threats and arrests increased their frequency and level of hostility. Therefore, the Commission concludes that the risk against Jimmy Guerrero was real and immediate. Moreover, the risk was especially serious considering the context in which the reported events took place. Finally, as regards the measures adopted, the Commission finds that the Ombudsman requested protection measures in favor of Jimmy Guerrero that were never granted, and, in the same way, the complaints filed before the Public Ministry, according to the record, did not start any investigation nor answer as regards protection. In view of the foregoing, the Commission concludes that the State did not comply with its duty of prevention of the violation to the right to life to the detriment of Jimmy Guerrero on the part of its own agents, concluding in this case with the violation of the obligation of respect and guarantees.

75. Moreover, the IACHR also highlighted that the extrajudicial execution can also be related to the concomitant violation of other rights established in the Convention. In this sense, the sole determination of the extrajudicial order, due to the dynamic of the events, can allow concluding that Jimmy Guerrero and Ramón Molina suffered deep fear due to the situation of violence during the attack that ended their lives, which constitutes suffering contrary to their integrity.

76. In addition to the above, the petitioners alleged that the violations to the right to the victims' integrity constituted torture and cruel, inhumane or degrading treatments. On this regard, according to mechanics of the events, the first shots were aimed at Jimmy Guerrero, and according to the statement of Mr. Diogo, one of those shots was in the head. The shots made his uncle Ramón Molina react, who confronted the attackers. This is the reason why he was shot and fell to the ground. Even though Mr. Diogo mentioned that Jimmy Guerrero's corpse was subsequently tied to the car, which dragged him several meters, Mr. Hernández stated that after the first shots, he saw that Jimmy Guerrero was being kicked and that he resisted and yelled. The evidence in the record is not enough to determine whether Jimmy Guerrero was alive or not after the first shot on the head as witnessed by Mr. Diogo, and whether the blows and the dragging through the route are subject of being analyzed as acts of torture, or cruel, inhuman and degrading treatments.

77. Notwithstanding the foregoing, the Commission finds that even though it is not possible to establish whether Jimmy Guerrero was alive when he was beaten and subsequently dragged by the car under consideration, this is not an impediment to analyze the obligation to investigate possible acts of torture, as established in Article 8 of the IACPPT. In the present case, the state in which Jimmy Guerrero's body was found, according to the autopsy report, reveals a possible act of extreme cruelty that should have triggered an investigation on its own initiative that has not been reported in the record.

78. In conclusion, the Commission finds that the Venezuelan State violated the rights established in Articles 4.1 and 5.1 of the American Convention, in relation to its obligation of respect in Article 1.1 of the same instrument, to the detriment of Jimmy Guerrero and Ramón Molina. Moreover, in the case of Jimmy Guerrero, the Commission finds that the State also violated its right of guarantee in its prevention component regarding the right to life and its obligation of investigating, by its own initiative, possible acts of torture enshrined in Articles 1, 6 and 8 of the IACPPT.

## **B. Right to fair trial and judicial protection (Articles 8.1<sup>119</sup>, 25.1<sup>120</sup>) in relation to Article 1.1 of the American Convention**

### **1. Due diligence standards in investigations of deaths that involve the participation of State agents and reasonable time**

79. The IACHR as well as the Court have established that in cases related to extrajudicial executions, the State has the duty to initiate *ex officio* and without delay, a serious, impartial and effective investigation.<sup>121</sup> Following this line of case law, when related to suspicious deaths that involve State agents, “[the] investigation shall be carried out by means of all the judicial resources available for the determination of the truth and the investigation, trial and penalty of all the perpetrators of the events, especially when it may imply the participation of state agents.”<sup>122</sup> Therefore, the duty to investigate shall be accomplished with seriousness and not just as a formality condemned beforehand to being infructuous and shall have a sense and be assumed by the States as their own legal duty and not as a simple management of interests.<sup>123</sup> Moreover, the Commission reiterates that the obligation to investigate and punish every act that entails a violation of the rights protected by the Convention requires that not only the direct perpetrators of human rights violations be punished, but also the masterminds.<sup>124</sup>

80. Case-law has also established that in cases where there are contradictory versions that involve the privation of the right to life, besides carrying out certain evidentiary proceedings, “the due diligence in the investigation shall be assessed in relation to the need to determine the truthfulness of the versions considered in the context of the procedure regarding the events, that is to say, if it was possible to obtain a legal clarification of the events and a possible legal assessment thereof according to what happened.”<sup>125</sup>

81. In the same way, with the objective of guaranteeing the due diligence in the performance of an exhaustive and impartial investigation of a death in suspicious circumstances that involves state agents, the Commission highlights some standards from the Minnesota Protocol, an instrument that establishes some minimum diligences such as: the identification of the victim, the recollection and preservation of evidence related to the death with the aim of helping in the potential prosecution of the perpetrators, the identification of possible witnesses and the obtention of their statements in relation to the death, the determination of the cause, manner, place and time of the death, as well as any other pattern or practice that may have provoked the death, the distinction between natural death, suicide and homicide, the identification and arrest of the person or persons involved in the death and the appearance of the alleged perpetrators before a competent court established by law.<sup>126</sup> Pursuant to such standards “When necessary, and subject to the consent of the

<sup>119</sup> Article 8 from the American Convention establishes: 1. Every person has the right to be heard, with the respective guarantees and within reasonable time, by an independent and unbiased competent judge or court, previously designated by law, in connection to any formal criminal accusation filed against him or her, or in order to determine his civil, labor and prosecution rights and obligations or any other rights and obligations.

<sup>120</sup> Article 25 from the American Convention establishes that: 1. Every person has the right to a simple and rapid action or any other effective action before the competent judges or courts, which protects him or her from acts that violate the fundamental rights set forth by the Constitution, the law or this Convention, even if such violation was committed by persons performing their official functions.

<sup>121</sup> IACHR, Report No. 41/15, Cases 12,335, 12. 336, 12. 757, 12.711. Merits. Gustavo Giraldo Villamizar Durán and others. Colombia. July 28, 2015, para. 195; and I/A Court of H.R. Case of Pueblo Bello’s Massacre Vs. Colombia. Judgment of September 15, 2005. Series C No. 122, para. 219.

<sup>122</sup> I/A Court. H.R. Case Mendoza and others vs. Argentina. Merits, Reparations and Costs. Judgment of May 14, 2013. Series C No. 260. Para. 218. See also: Cfr. Case Velásquez Rodríguez Vs. Honduras. Merits, paras. 177, and Case Santo Domingo Massacre Vs. Colombia, para. 157.

<sup>123</sup> I/A Court. H.R. Case Velásquez Rodríguez Vs. Honduras. Merits. Judgment of July 29, 1988. Series C No. 6, para. 177.

<sup>124</sup> IACHR. Report on the Situation of Human Rights Defenders in the Americas OEA/Ser.L/V/II.124. Doc. 5 rev.1, March 7, 2006, para. 109., Also: I/A Court of H.R, Case of the Constitutional Court Vs. Peru, judgment of September 29, 1999. Series C No. 71, para. 123; I/A Court. H.R, Casa Blake Vs. Guatemala, Reparations, Judgment of January 22, 1999, Series C No. 48, para. 65.

<sup>125</sup> I/A Court. H.R. Case García Ibarra and others vs. Ecuador. Preliminary objections, Merits, Reparations and Costs. Judgment of September 17, 2015. Series S No. 306, para. 143.

<sup>126</sup> I/A Court. H.R. Case Ortiz Hernández and others vs. Venezuela. Merits, Reparations and Costs. Judgment of August 22, 2017. Series C No. 338. Para. 161.

individual(s) concerned, investigators should take steps to protect an interviewee and others from ill-treatment or intimidation as a consequence of providing information.”<sup>127</sup>

82. Likewise, according to the standards of the above-mentioned Protocol, it is established as general principle of the autopsies, in cases of suspicious deaths, that the labor of the forensic practitioners, among others, is to help to guarantee that the causes and circumstances of the death be disclosed in such a way that it results possible to present conclusions over the cause of death and the circumstances that contributed to it. In this way, the Protocol recognizes that in only a few cases the cause of death can be solely determined from the autopsy without any other additional information, therefore, the autopsy report should contain the list of findings of the injuries and provide an interpretation in relation to them.<sup>128</sup>

83. Ultimately, regarding the principle of the reasonable time referred to in Article 8.1 of the American Convention, the Inter-American Court has established that it is precise to consider three elements in order to determine the reasonableness of the period of time during which a procedure is carried out: a) the complexity of the issue, b) the procedural activity of the interested party, and c) the judicial authorities’ behavior.<sup>129</sup> In addition, the Commission and the Court have also considered the interest of the affected party.<sup>130</sup>

## **2. Due diligence and reasonable time in the investigation of the deaths of Jimmy Guerrero and Ramón Molina**

84. Hereunder, the IACHR will analyze the due diligence in the investigation of the deaths of Jimmy Guerrero and Ramón Molina, in relation to the clarification of the events, *ex officio* procedures, the custody and preservation of the evidence, the diligences carried out and the reasonable time.

85. First, the Commission observes that the entities in charge of the investigation faced two contradictory narratives. On the one hand, the family held that the deaths of Jimmy Guerrero and Ramon Molina were acts of police violence; and, on the other hand, from the record it appears that the State held that the deaths had been the result of a settling between criminal gangs. After the revision of the different probative elements carried out, the Commission does not observe that there exists any logic line of investigation oriented at the clarification of the events and the search of the truth, in view of the different versions. The Commission notices that the ballistic expertise carried out on the projectiles found, on the trajectory of the shot and the autopsy reports contain isolated information without any coordinated and integrated analysis thereof towards the clarification of possible hypothesis. It is not clear whether the expertise is aimed at giving an explanation regarding the death of the victims, considering the evident contextual elements already known by the time of the events, the records of harassment reported by Jimmy Guerrero, as well as the testimonies from eyewitnesses, specially by the person who survived the attack.

86. Second, the Commission observes that between 2003 and 2005, the CICPC and the Prosecutors in charge of the investigation requested the Command of the Armed Forces to issue a list of the names, hierarchies and location of state agents on the day of the murder as well as of the previous days. Moreover, the governing bodies of the investigation also requested the news book and the book of the weapons depot of the same time lapse. It appears in the record that after these reiterated requests, the Police Command provided an answer only twelve years after the first request, in the year 2015, and indicated that such evidence had been lost in the year 2010 due to precipitations. The record does not show any explanation regarding the unusual delay to answer to a simple request for information. As indicated in the previous section, this omission, due to its nature and lack of explanation, can be understood as concealment and hampering of the investigations. The Commission also observes that in 2016, the Criminalistics Unit

<sup>127</sup> UN. The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016), Office of the United Nations High Commissioner for Human Rights, New York/Geneva, 2017. Para. 86.

<sup>128</sup> *Ibidem*. Paras. 148-182 and 255, 264 266.

<sup>129</sup> I/A Court. H.R. *Case Vargas Areco Vs. Paraguay*. Judgment of September 26, 2006. Series C No. 155, para. 196; *Case of the Ituango Massacres Vs. Colombia*. Judgment of July 1, 2006, Series C No. 148, para. 289; and I/A Court of H.R. *Case Baldeón García Vs. Peru*. Merits, Reparations and Costs. Judgment of April 6, 2006. Series C No. 147, para. 151.

<sup>130</sup> I/A Court. H.R. *Case Valle Jaramillo and others Vs. Colombia*. Merits, Reparations and Costs. Judgment of September 27, 2008. Series C No. 192, para. 155.

corroborated that the bullets and bullets fragments under custody were lost. That is to say, the main pieces of evidence that could have provided elements leading to establish the identity of the perpetrators and their relation to the armed police forces were not properly safeguarded, analyzed or delivered.

87. Third, and according to the above, the Commission also finds that the testimonial evidence opened a logic line that was not explored by the bodies in charge of the investigation. In this way, several witnesses indicated the presence of individuals dressed in police clothes. Mr. Hernández in several opportunities referred to “the police” and even at some point related police officer Rojas to the crime scene. However, the record does not reveal the way in which the evidence activated a kind of immediate exploration of said hypothesis of criminal authorship, but that the arrest warrant was issued in 2016, thirteen years after the events took place, when an important part of the evidence had already been lost or it was impossible to be recollected. Regarding the aforesaid, the Commission notices that the bodies in charge of the investigation did not take the statements of the members of the police forces who were involved in the attack.

88. Fourth, the Commission observes that after the deaths, the investigation bodies carried out the taking of testimonies, performed the autopsies, requested the expertise of ballistic and anatomic trajectory, among others, in a consistent way during 2003. From 2004 onwards, the most important part of the procedural documents that were attached to the report refer to communications from investigative bodies addressed to other entities to remit the expertise carried out, or to request the delivery of documentary evidence, which hardly ever achieved any results. Around 2007, these repetitive acts even ceased to be carried out. The IACHR observes that it was only in 2016 that the investigation gathered significant procedural momentum when the arrest warrant was issued against police officer Rojas, even though the Prosecutor’s Office that resumed it realized that a great part of the documentary evidence was lost or impossible to be collected. Therefore, the Commission observes that there was a decline in the *ex officio* procedural momentum, which generated the loss of evidence and hampered the clarification of the events, which does not comply with the standards of due diligence of suspicious deaths that involve State agents.

89. Fifth, the Commission cannot stop relating the double context of lack of investigation of the judicial executions attributable to state police officers in the Venezuelan State and particularly in Falcón state. The alarming signs of impunity of this type of cases have been accredited by multiple national and international instances, including the General Prosecutor’s Office.

90. In addition to the above, the Commission proceeds to carry out the analysis of the reasonableness of the time. The investigation initiated in 2003 and it has not concluded to date, which results in a total of 15 years of investigation without obtaining a clarification of what happened nor the identification of the perpetrators. The Commission observes that there are two related deaths, that there are logic lines that allow to narrow the search of the perpetrators and the exhaustion of criminal hypothesis, besides multiple eyewitnesses who even managed to register the license of the car that transported the perpetrators. In this sense, the Commission does not observe that it is a criminal situation without signs or evidence and, if that were the case, the State did not argue the reasons of a possible complexity, nor it particularly connected such delays to it.

91. Regarding the actions of the interested party, the Commission does not observe hampering of the justice of the part of the families of the victims. Regarding state authorities’ behavior, the Commission abides by the analysis regarding the violation of the duty of due diligence already performed. Moreover, the Commission observes that there were periods of procedural inactivity that were not justified by the State, as the procedural silence from 2004 to 2016, when it was verified that it resumed the procedural impetus of the case that was inactive for years or its sole activity was connected to requests and official communications between authorities.

92. Consequently, the Commission concludes that the Venezuelan State is responsible for the violation of the rights to judicial guarantees and protection established in Articles 8.1 and 25.1 of the American Convention, in connection to the obligations established in Article 1.1 of the same instrument, to the detriment of the families of Jimmy Guerrero and Ramón Molina, identified in this report.

### C. Right to personal integrity concerning the families of Jimmy Guerrero and Ramón Molina

93. Regarding the families of the victims that suffered certain human rights violations, the Commission and the Inter-American Court have indicated that they can also be considered as victims.<sup>131</sup> In this regard, the Court has established that their psychological and moral integrity can be affected as a result of the particular situations that the victims endured, as well as the subsequent proceedings or omissions of the internal authorities before these events<sup>132</sup>. In the present case, the Commission established that Jimmy Guerrero and Ramón Molina lost their lives in extrajudicial executions in the hands of State security agents after a persecution connected to the alleged criminality of Mr. Guerrero. Moreover, it was established that the events are part of a context of serious state police violence and its lack of investigation.

94. In addition to these circumstances that constitute a source of suffering and impotence, the Commission observes that in the present case the investigations were not carried out with due diligence. In this type of circumstances, the Court has indicated that the absence of a complete and effective investigation over the facts “constitutes an additional source of suffering and distress for the victims and their families, who have the right to discover the truth about the events. This right to the truth requires the procedural determination of the most complex historical truth possible, which includes the judicial determination of the patterns of joint performance of action and of all the persons involved in such violations and their respective responsibilities.”<sup>133</sup>. Therefore, the Commission considers that the pain and suffering of the families of the victims that were extrajudicially executed has magnified due to the lack of response before the unjust actions.

95. In view of the foregoing, the Commission considers that the disappearance of a loved one as in the circumstances described herein, as well as the absence of truth and justice, caused suffering and distress to the families of Jimmy Guerrero and Ramón Molina and violated their right to psychological and moral integrity, established in Article 5.1 of the American Convention in connection to the obligations established in Article 1.1 of the same instrument.

### V. CONCLUSIONS AND RECOMMENDATIONS

96. Based on factual and legal determinations, the Inter-American Commission concludes that the State is responsible for the violation of Articles 4.1 (right to life), 5.1 (right to humane treatment), 8.1 and 25.1 (right to fair trial and judicial protection) of the American Convention on Human Rights in relation to Article 1.1 of the same treaty, and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture.

97. By virtue of the above conclusions,

#### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF VENEZUELA**

1. Comprehensively repair human rights violations stated in this report both in the material and immaterial aspect, including an economic compensation and satisfaction measures.

2. Provide the necessary physical and mental health assistance for the rehabilitation of the families of Jimmy Guerrero and Ramón Molina in a concerted manner if this is their will.

<sup>131</sup> I/A Court. H.R. *Case Cantoral Huamaní and García Santa Cruz Vs. Peru*. Preliminary objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; and *Case Bueno Alves Vs. Argentina*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164. para. 102. See also: IACHR. Report No. 58/12. Case 12.606. Merits. Landaeta Mejías Brothers. Venezuela. March 21, 2012, para. 256.

<sup>132</sup> I/A Court. H.R. *Case Cantoral Huamaní and García Santa Cruz Vs. Peru*. Preliminary objections, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C No. 167. para. 112; and *Case Vargas Areco Vs. Paraguay*. Judgment of September 26, 2006. Series C No. 155. para. 96.

<sup>133</sup> I/A Court. H.R. *Case Valle Jaramillo and others Vs. Colombia*. Merits, Reparations and Costs. Judgment of September 27, 2008. Series C No. 192, para. 102; *Case of La Rochela's Massacre Vs. Colombia*. Merits, Reparations and Costs. Judgment of May 11, 2007, Series C No. 163, para. 195; and *Case Heliodoro Portugal Vs. Panama*. Preliminary objections, Merits, Reparations and Costs. Judgment of August 12, 2008. Series C No. 186, para. 146..

3. Conclude the criminal investigation with due diligence, in an effective way and within the reasonable time with the purpose of clarifying the facts completely, identifying all possible responsibilities and establishing the corresponding punishments in connection to the human rights violations mentioned in this report. In pursuance of this recommendation, the Venezuelan State shall incorporate to the investigation the relevant elements of context in the terms described in the present report and adopt all the possible corrective actions before the flaws that have been registered throughout the investigation.

4. Strengthen the non-repetition mechanisms that include: i) training programs on international human rights standards in general, particularly, aimed at the Police of Falcón State and to justice operators; ii) measures to guarantee the effective accountability in the criminal, disciplinary or administrative jurisdiction, in cases of alleged abuse of authority by state agents in charge of the public safety; and iii) legislative, administrative and other measures to guarantee that the investigation be carried out with due diligence and pursuant to the relevant international standards of cases of alleged extrajudicial executions.