

OEA/Ser.L/V/II.169  
Doc. 135  
October 5, 2018  
Original: Spanish

**REPORT No. 118/18**  
**CASE 12.890**  
MERITS REPORT

JOSÉ GREGORIO MOTA ABARULLO AND OTHERS  
(DEATHS AT THE SAN FÉLIX PRISON)  
VENEZUELA

Approved by the Commission at its session No. 2137 held on October 5, 2018  
169<sup>th</sup> Extraordinary Period of Sessions

**Cite as:** IACHR, Report No. 118/18. Case 12.890, Merits. José Gregorio Mota Abarullo et al.  
(Deaths at the San Félix Prison). Venezuela. October 5, 2018.

**REPORT No. 118/18**

**CASE 12.890**

**MERITS**

**JOSÉ GREGORIO MOTA ABARULLO AND OTHERS**

**(DEATHS AT THE SAN FÉLIX PRISON)**

**VENEZUELA**

**OCTOBER 5, 2018**

**I. SUMMARY**

1. On October 12, 2007, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission", "the Commission" or "the IACHR") received a petition filed by the *Observatorio Venezolano de Prisiones* (hereinafter "the petitioners")<sup>1</sup> alleging the international responsibility of the Bolivarian Republic of Venezuela (hereinafter "the Venezuelan State", "the State" or "Venezuela") to the detriment of José Gregorio Mota Abarullo, Johan José Correa, Gabriel de Jesús Yáñez Sánchez, Rafael Antonio Parra Herrera and Cristián Arnaldo Molina Córdova.

2. The Commission adopted Admissibility Report No. 91/12 on November 8, 2012.<sup>2</sup> On November 20, 2012, the Commission notified this report to the parties and placed itself at their disposal in order to reach a friendly settlement. The parties enjoyed the time periods provided for in the IACHR's Rules of Procedure to present additional observations on the merits. The State did not present observations at the merits stage. All information received was duly transmitted between the parties.

3. The petitioners argued that the alleged victims, inmates in a juvenile detention center, died on June 30, 2005, in a fire inside their cell, attributable to the actions and omission of state authorities. They also alleged a lack of due diligence in the investigation and delay in trying the case, as well as violations of the personal integrity of their family members.

4. The State did not present arguments at the merits stage. However, it is clear from its position at the admissibility stage that it denies international responsibility for the deaths, arguing that it did not fail in its duty of prevention. Regarding judicial guarantees and judicial protection, it argued that criminal proceedings are still ongoing.

5. Based on the findings of fact and law, the Inter-American Commission concluded that the State is responsible for the violation of Articles 4.1 (life), 5.1, 5.4, 5.5 and 5.6 (personal integrity), 8.1 (judicial guarantees) and 25.1 (judicial protection) of the American Convention on Human Rights, in relation to the obligations established in Articles 1.1 and 19 of the same instrument. The Commission issued the respective recommendations.

**II. POSITIONS OF THE PARTIES**

**A. PETITIONERS**

6. The petitioners alleged that José Gregorio Mota Abarullo, Gabriel de Jesús Yáñez Sánchez, Rafael Antonio Parra Herrera, Cristián Arnaldo Molina Córdova and Johan José Correa were inmates of the "Monsignor Juan José Bernal" Diagnostic and Treatment Center, attached to the National Institute for Attention to Minors (INAM), ("the center" or "INAM-San Félix"), in the state of Bolívar. They reported that on June 30, 2005, at approximately 4:30 p.m., there was a fire in cell No. 4, as a result of which the five above-mentioned individuals died of burns and suffocation.

---

<sup>1</sup> The Cyrus R. Vance Center for International Justice subsequently joined as a petitioner.

<sup>2</sup> IACHR. Report No. 91/12. Case 12.890. Admissibility. José Gregorio Mota Abarullo et al. (Deaths at the San Félix Prison) (Venezuela). November 8, 2012. Admissible articles: 4, 5, 8, 19, and 25.

7. They alleged the responsibility of officials who worked in the prison on the day of the events and who did not provide the keys to the cell in time for these deaths. They also alleged the responsibility of the fire department, which arrived without the necessary equipment to enter the area and assist the alleged victims. They also alleged that José Gregorio Mota had a chest wound evidencing an act of violence against him before the fire.

8. They indicated that the events of the case occurred in a generalized context of human rights violations in Venezuela and of the State's inability to establish adequate policies to guarantee the rights of detainees in detention centers, including measures regarding "structure and emergency planning."

9. They alleged the violation of **the right to life**, because the INAM officials that day failed to adopt the necessary measures to safeguard the lives of the deceased while in state custody. They also alleged the violation of the **right to personal integrity**, in view of the suffering of the deceased before their deaths.

10. They indicated that despite the fact that on the day of the fire the alleged victims had reached 18 years of age, they must be considered "minors" under international law, because they were tried and sentenced under the Organic Law for the Protection of Children and the Adolescents (LOPNA), and because they were deprived of their liberty in a juvenile detention center in accordance with this law. Therefore, they alleged violations of the **rights of the child**, taking into account the applicable international *corpus juris*. They also alleged the violation of the **right to personal integrity** to the detriment of the deceased's next-of-kin.

11. On the other hand, they alleged a violation of the **rights to judicial guarantees and judicial protection**, because although the investigation began on the same day as the events, the "conclusive act" of the investigation needed to begin the trial stage was not presented until 2008. Similarly, they alleged several violations of the duty of due diligence having serious implications for a possible clarification and sanctioning of the events. They also highlighted the delays caused by dozens of adjournments of the preliminary hearing.

## B. THE STATE

12. The State did not present observations at the merits stage, and therefore this section is based on the arguments made during the admissibility stage that are related to the merits. In this sense, from its position at that stage it is clear that the State would deny its international responsibility arguing that it did not fail in its duty of prevention.

13. The State argued that it was not negligent in creating the circumstances that led to the death of the alleged victims. It argued that "it can not be said that the [State] had breached [the obligation to guarantee the right to life and personal integrity of persons deprived of liberty], based exclusively on a case that occurred in a given period, without examining the actions deployed by the State to prevent it," and that in fact "there is a tangible demonstration of the actions taken to prevent these events from occurring." It specified, with regard to the alleged widespread situation of violations against the prison population, that "the duty to prevent is [...] an obligation of means or behavior and not of results. It is not violated only by the production of a unsatisfactory result." The State cited a decrease in the rates of prison violence in 2008, in comparison with previous years, due, in its view, to "the effectiveness of humanization plans and strategies" in prisons.

14. The State also denied responsibility for violations of the rights to judicial guarantees and judicial protection, since an investigation into the events was still under the jurisdiction of the Public Prosecutor. It argued that it is not for the IACHR "to consider the guilt and participation of individuals in punishable offenses, still more when the participation of State officials in the terrible deaths of these citizens has not been established."

15. It reported that on September 29, 2009, the Public Prosecutor's Office filed an indictment against Nerio Romero Martínez, José Luis Chirinos and Francisco Gómez Corrales—individuals in charge of

the Center on the day of the events—for the alleged commission of culpable homicide. It alleged that this shows the State does not intend to "stop guaranteeing the remedies owed to the victims."

16. Regarding the alleged violations of the Convention on the Rights of the Child and other United Nations instruments, it alleged that the IACHR lacks competence in this regard. It indicated that although the victims had not been transferred to an adult prison, this did not imply that they were not aged 18 years old at the time of the events, so they cannot be considered children for the purposes of this case.

### **III. DETERMINATIONS OF FACT**

#### **A. The Alleged Victims and their Next-of-Kin**

17. On June 30, 2005, the five deceased alleged victims were inmates of the INAM-San Félix prison, in Bolívar state. Rafael Antonio Parra Herrera was born on December 2, 1986, and was 18 years old.<sup>3</sup> Christian Arnaldo Molina Córdova was born on April 17, 1987, and was 18 years old.<sup>4</sup> Johan José Correa was born on January 29, 1987, and was 18 years old.<sup>5</sup> Gabriel de Jesús Yáñez Sánchez was born on April 11, 1987, and was 18 years old.<sup>6</sup> José Gregorio Mota Abarullo was born on June 26, 1985, and was 20 years old.<sup>7</sup>

18. The death certificates indicate that Rafael Parra Herrera, Gabriel Yáñez Sánchez and José Gregorio Mota Abarullo died as a result of "asphyxia by suffocation" and "third degree burns"<sup>8</sup>; that Christian Molina Cordova died of " asphyxia by suffocation " and "third degree burns to over 65% of the body surface"<sup>9</sup>; and that Johan Correa died of "third degree burns to 90% of the body surface"<sup>10</sup>. There are also exhumation records of four of the five deceased,<sup>11</sup> although only the result of the exhumation and autopsy of José Gregorio Mota was provided, which states: "No traumatic injuries present, pending the results of toxicological and microanalysis studies", and "Cause of death: Undetermined, with absence of viscera and without injuries to soft or bony parts".<sup>12</sup>

19. The petitioners identified as relatives of the alleged victims: Nelys Margarita Correa and Belkys Josefina Correa Ríos (with respect to Johan José Correa); Elvia de Jesús Abarullo de Mota, Félix Enríquez Mota and Osmely Angelina Mota Abarullo (regarding José Gregorio Mota Abarullo); Luis José Yáñez and Maritza del Valle Sánchez Ávila (regarding Gabriel de Jesús Yáñez Sánchez); Miryam Josefina Herrera Sánchez and Jesús Juvenal Herrera Sánchez (regarding Rafael Antonio Parra Herrera); and María Cristina Córdova de Molina and Hugo Arnaldo Molina (regarding Christian Arnaldo Molina Córdova)<sup>13</sup>.

#### **B. Context and Background**

##### **1. Structural Problems in the Prison**

20. The case file contains information highlighting a series of structural problems in the operation of the INAM-San Félix prison at the time of the events, such as the lack of sufficient custodial staff, overcrowding and the lack of facilities and adequate security measures.

21. Thus, months before the fire, the former Warden indicated the following: "even though we have made an effort to give comprehensive care, however [overcrowding] has caused limitations due to the

<sup>3</sup> Annex 1. Death Certificate. Annex B1 to the original petition.

<sup>4</sup> Annex 2. Death Certificate. Annex B2 to the original petition.

<sup>5</sup> Annex 3. Death Certificate. Annex B3 to the original petition.

<sup>6</sup> Annex 4. Death Certificate. Annex B4 to the original petition.

<sup>7</sup> Annex 5. Death Certificate. Annex B5 to the original petition.

<sup>8</sup> Annexes 1, 4, 5. Death Certificate. Annexes B1, B4, B5 to the original petition.

<sup>9</sup> Annex 2. Death Certificate. Annex B2 to the original petition.

<sup>10</sup> Annex 3. Death Certificate. Annex B3 to the original petition.

<sup>11</sup> Annex 6. Exhumation Report of January 25, 2006. Annexes Q1-Q4 to the original petition. Rafael Parra's report not present.

<sup>12</sup> Annex 7. Exhumation Report of January 25, 2006. Annex Q5 to the original petition.

<sup>13</sup> Petitioners' additional brief dated July 20, 2015, para. 28.

low staffing levels and inadequate infrastructure to serve this population."<sup>14</sup> In the year before the events, the wardens of the center expressed their concern about "the continuous absences of the (Male) Police Agent during weekends and also on weekdays."<sup>15</sup>

22. In a post-event statement, the former Warden acknowledged that the center "does not have the infrastructure to maintain a population of fifty to seventy adolescents and despite [LOPNA] entering into force five years ago, this center lacks the conditions to function; also on that day as at other times, there was no police support, no security at the center and few personnel"<sup>16</sup>. He also stated that having only two guides per shift was usual, despite the high population of the center.<sup>17</sup>

23. Regarding overcrowding, although the center had capacity to house 30 youths,<sup>18</sup> throughout 2004 and 2005, a population averaging 75 to 90 youths was reported,<sup>19</sup> and on one occasion up to 105 inmates.<sup>20</sup> At the date of the fire, the center housed approximately 50 youths.<sup>21</sup> It should be noted that the alleged victims' cell had four concrete beds,<sup>22</sup> but on the day of the events it housed seven youths, two of whom were released minutes before the fire. The Warden acknowledged months before that the situation of overcrowding "could endanger the physical integrity of the [young inmates]."<sup>23</sup> The case file also shows that in the center only "those who reached the age of majority were separated [from other inmates], but not those in pretrial detention and those sentenced," because such separation "was not foreseen in the design [of the establishment]."<sup>24</sup>

24. The lack of effective control on the entry of unauthorized items into the center is also documented. In 2004, the then-Warden requested the assignment of a (female) police officer to the center to carry out searches of the mothers who entered the center during visiting hours.<sup>25</sup> It is clear from the case file that this request was not satisfied, as security recommendations issued by the National Guard after the fire insist on the need for such controls.<sup>26</sup> Center staff also reported that inmates' families brought them, for example, lighters and cigarettes.<sup>27</sup>

25. Regarding the infrastructure, the facilities did not have sufficient electricity and lighting services.<sup>28</sup> The expert witness' opinion carried out by the CICPC after the events concluded that "the building does not have detection systems or fire alarms in any of the areas. It was noted that cell no. 4 did not have an internal electricity supply. The lighting in this and other dormitories is provided only by lamps located in the corridors."<sup>29</sup> There was also information that "the young inmates improvised wiring to have electricity inside

<sup>14</sup> Annex 8. Letter of Nerio Romero to Rafael Martínez, Temporary Enforcement Judge (9.10.2004). Annex 01 to the additional brief of the petitioners of July 20, 2015 [hereinafter, "additional brief"].

<sup>15</sup> Annex 8. Letter of Nerio Romero to Rafael Martínez, Temporary Enforcement Judge (9.10.2004). Annex 01 to the additional brief; *see also* Annex 9. Letter Nerio Romero to Arquímedes Viamonte Carpio, Chief of Police (9.10.2004). Annex 11 to the additional brief; Annex 10. Inspection Report of the INAM-San Félix (21.4.2005). Annex 07 to the additional brief; Annex 11. Statement of Fanny Ricardo (5.8.2005). Annex 02 to the additional brief.

<sup>16</sup> Annex 12. Statement of Nerio Romero (7.29.2005). Annex 28 to the additional brief.

<sup>17</sup> Annex 12. Statement of Nerio Romero (7.29.2005). Annex 28 to the additional brief; *see also* Annex 13. Interview of Brígida Hurtado (8.7.2005). Annex 29 to the additional brief.

<sup>18</sup> Annex 11. Statement of Fanny Ricardo (5.8.2005). Annex 02 to the additional brief.

<sup>19</sup> *See* Annexes 8 and 9.

<sup>20</sup> Annex 11. Statement of Fanny Ricardo (5.8.2005). Annex 02 to the additional brief.

<sup>21</sup> Annex 10. Inspection Report of the INAM-San Félix (21.4.2005). Annex 07 to the additional brief; Annex 14. Inmate list of INAM-San Félix, April 2005. Annex 09 to the additional brief.

<sup>22</sup> Annex 15. Report of the Criminal Toxicological Laboratory (1.7.2005). Annex 51 to the additional brief.

<sup>23</sup> Annex 8. Letter of Nerio Romero to Rafael Martínez, Temporary Enforcement Judge (9.10.2004). Annex 01 to the additional brief.

<sup>24</sup> Annex 10. Inspection Report of the INAM-San Félix (21.4.2005). Annex 07 to the additional brief.

<sup>25</sup> Annex 16. Letter of José Gregorio Arteaga, Director of the INAM-San Félix, to Hernán Bogarín, General Inspector IPOL Bolívar, (12.5.2004). Annex 10 to the additional brief.

<sup>26</sup> Annex 17. Letter of Luis López, Commander of the National Guard, to Franklin Rojas, Prosecutor (19.8.2005). Annex D to the original petition.

<sup>27</sup> *See*, for example, Annex 13. Interview of Brígida Hurtado (8.7.2005). Annex 29 to the additional brief.

<sup>28</sup> Annex 10. Inspection Report of the INAM-San Félix (21.4.2005). Annex 07 to the additional brief; Annex 18. Report of the National Council for the Rights of the Child and Adolescents, July 2005. Annex P to the original petition.

<sup>29</sup> Annex 19. CICPC Expert Report (31.8.2005). Annex 18 to the additional brief.

the cell, but after the fire it was removed."<sup>30</sup> In this sense, weeks after the fire, the National Guard recommended the "revision and exhaustive repair of electrical installations."<sup>31</sup> The absence of a system of fire alarms and extinguishers<sup>32</sup> was also addressed by the National Guard, recommending the "placement of fire extinguishers in the corridors and areas of the center, to guarantee an immediate response to a fire."<sup>33</sup>

26. Finally, the IACHR notes that at the time of the events, the INAM-San Félix prison educational programs had been suspended due to lack of materials.<sup>34</sup> In the months prior to the fire, there had been warnings of the failure to deliver the institution's rules to the inmates, as well as the failure to comply with their individual plans.<sup>35</sup> The President of the INAM "warned that the facilities of the agency, its precarious conditions, in addition to the lack of resources do not allow the reeducation of young offenders."<sup>36</sup> One month after the fire, the National Council for the Rights of Children and Adolescents pointed out at the INAM "the lack of programs, individual plans and the non-guarantee of rights such as: education, health, development, personal integrity, culture, recreation, and access to information, among others."<sup>37</sup>

## 2. Presence of Young Adults in the Prison

27. In accordance with Article 641 of the LOPNA:

If the adolescent turns 18 during his internment, he will be transferred to an adult institution, and be physically separated from the adults. Exceptionally, the judge may authorize his continued confinement in the adolescent institution, up to the age of twenty-one, taking into account the recommendations of the institution's technical team, as well as the type of offense committed and the circumstances of the case and the perpetrator.<sup>38</sup>

28. It is clear from the case file that, in practice, the transfer of adolescents was only ordered when the Warden of the center so requested when he or she represented a danger to the physical integrity of other youths.<sup>39</sup> In this sense, the judge in charge of the alleged victims indicated that she took into account the criteria of the LOPNA, an absence of negative reports about their conduct, and their compliance with the individual plan, concluding that "it would be unfair to order their transfer to the prison under those conditions."<sup>40</sup> In addition, state authorities indicated that "the precariousness of the facilities [of the INAM-San Félix] does not allow separation between minors and [adults]", that this situation "has become a habit" and that "it generates a series of ongoing confrontations [among the inmates] we cannot control".<sup>41</sup> In general, according to the teachers, the problem of confrontations among inmates was well known to the Center's staff and to the judicial personnel associated with the Center.<sup>42</sup>

<sup>30</sup> Annex 20. Interview of Carlos Martes (3.8.2005). Annex 15 to the additional brief.

<sup>31</sup> Annex 17. Letter of Luis López, Commander of the National Guard, to Franklin Rojas, Prosecutor (19.8.2005). Annex D to the original petition.

<sup>32</sup> Annex 13. Interview of Brígida Hurtado (8.7.2005). Annex 29 to the additional brief.

<sup>33</sup> Annex 17. Letter of Luis López, Commander of the National Guard, to Franklin Rojas, Prosecutor (19.8.2005). Annex D to the original petition.

<sup>34</sup> Annex 10. Inspection Report of the INAM-San Félix (21.4.2005). Annex 07 to the additional brief; Annex 18. Report of the National Council for the Rights of the Child and Adolescents, July 2005. Annex P to the original petition.

<sup>35</sup> Annex 10. Inspection Report of the INAM-San Félix (21.4.2005). Annex 07 to the additional brief.

<sup>36</sup> Annex 21. National Assembly (Press Release), "President of the Institution reported: Youths of INAM burned themselves" (10.8.2005). Annex U2 to the original petition.

<sup>37</sup> Annex 18. Report of the National Council for the Rights of the Child and Adolescents, July 2005. Annex P to the original petition.

<sup>38</sup> Art. 641. Detention of Adolescents Reaching the Age of 18.

<sup>39</sup> Annex 22. Letter of Nerio Romero a Hilda María Arteaga, Prosecutor (19.10.2004). Annex 05 to the additional brief; Annex 23. Letter of José Gregorio Arteaga, Director of the INAM-San Félix, to Damelis Villalba, Enforcement Judge (27.2.2004). Annex 04 to the additional brief; *see also* Annex 24. Statement of Yolaiza Boada (31.8.2005). Annex 14 to the additional brief.

<sup>40</sup> Annex 24. Statement of Yolaiza Boada (31.8.2005). Annex 14 to the additional brief; *see also* Annex 11.

<sup>41</sup> Annex 21. National Assembly (Press Release), "President of the Institution reported: Youths of INAM burned themselves" (10.8.2005). Annex U2 to the original petition; *see also* Annex 25. Letter of José Gregorio Arteaga, Director of the INAM-San Félix, to Hilda Arteaga, Prosecutor (17.2.2004). Annex C1 to the original petition.

<sup>42</sup> Annex 26. Statement of Francisco Gómez (8.8.2005). Annex 31 to the additional brief.

29. From the case file, the Commission observes that the young inmates of the INAM-San Félix would have eventually been transferred to the Vista Hermosa penitentiary in Ciudad Bolívar, highlighted as one of the most dangerous in Venezuela. From the case file there are references to the fact that in this prison it was impossible to separate young people from the adult population, the understanding being that this prison lacked the conditions to effectively protect the rights of young people under the terms of the LOPNA.<sup>43</sup> There are also references to the fact that this situation fostered a type of intimidation against the adolescents: "they were threatened that if they misbehaved the court would be informed and order their transfer to Ciudad Bolívar, and they were always intimidated [with the judge],"<sup>44</sup> as well as complaints from family members who paid bribes of 500,000 Bolívares a month to INAM officials not to transfer their adult children to the Vista Hermosa penitentiary, "because there they could be killed."<sup>45</sup>

### 3. Other relevant background

30. With regard to José Gregorio Mota Abarullo, the IACHR observes that in April 2005 an order of "assisted release and rules of conduct" was issued in his case, and that after an appeal, he was detained in order to conduct psychiatric testing, which was carried out on June 29, 2005, the day before the fire.<sup>46</sup>

31. A public defender indicated that this case exemplified structural problems of noncompliance with the LOPNA, that is, the lack of specialized children's courts and that Bolívar state's appeals court decisions failed to comply with the law, such as the arrest warrant to return Mota to the INAM-San Félix.<sup>47</sup> The person in charge of the Center after the event maintained that the structural problems also have external causes such as "the judges in charge of minors and budgetary deficiencies."<sup>48</sup>

32. The Commission observes that there are several references in the case file that the events could have been a reprisal for complaints made previously by the young inmates. A judge stated that they called her from INAM-San Félix on June 23, 2005, because "Zabala, Correa, Herrera and Lira" insisted on speaking to her. She indicated that the youths complained to her "that there were [legal] representatives who, on Fridays [...] or Saturday evenings, partied with the duty teacher and then those parents took their children to their homes. On one occasion, one of the inmates was even taken some bottles of alcohol, [...] [and] that once the warden arrived drunk to carry out a search with people the inmates did not know." They also complained about the practice of granting early release to inmates in exchange for payments to teachers.<sup>49</sup> The judge stated that she and her team were investigating when the events took place eight days later.<sup>50</sup>

33. The relatives complained to the authorities and to the media that the death of the youths had been a reprisal on account of these complaints,<sup>51</sup> even claiming that the fire was a result of a plan previously agreed by the staff of the Center.<sup>52</sup> According to a press report, they argued that "they did everything so that the boys would die, because they complained about the widespread corruption and did nothing to save them.

<sup>43</sup> Annex 11. Statement of Fanny Ricardo (5.8.2005). Annex 02 to the additional brief.

<sup>44</sup> Annex 24. Statement of Yolaiza Boada (31.8.2005). Annex 14 to the additional brief.

<sup>45</sup> Annex 27. *El Guayanes*, "Familiares de los muchachos quemados habrían pagado por mantenerlos en el Inam" (20.7.2005). Annex to the original petition.

<sup>46</sup> Annex 28. Letter of Yolaiza Boada to Director of INAM-San Félix (20.4.2005). Annex E1 to the original petition; Annex 29. Minutes of the Hearing (21.4.2005). Annex E2 to the original petition; Annex 24. Statement of Yolaiza Boada (31.8.2005). Annex 14 to the additional brief.

<sup>47</sup> Annex 11. Statement of Fanny Ricardo (5.8.2005). Annex 02 to the additional brief.

<sup>48</sup> Annex 21. National Assembly (Press Release), "President of the Institution reported: Youths of INAM burned themselves" (10.8.2005). Annex U2 to the original petition.

<sup>49</sup> Annex 24. Statement of Yolaiza Boada (31.8.2005). Annex 14 to the additional brief. *See also* Annex 30. Statement of Carlos Zabala (7.29.2005). Annex 37 to the additional brief; Annex 31. Statement of José Alberto Lira (7.29.2005). Annex 17 to the additional brief.

<sup>50</sup> *Id.* *See also* Annex 30.

<sup>51</sup> Annex 32. *Nueva Prensa*, "Familiares de calcinados en Inam claman justicia ante la Asamblea Nacional" (20.7.2005). Annex to the original petition; Annex 33. Letter of María Carolina Pulido, Deputy Defender, to Víctor Sevilla, Prosecutor (8.7.2005). Annex 16 to the additional brief.

<sup>52</sup> Annex 34. Brief by Nelys Correa before the General Prosecutor of the Republic and others (15.9.2005). Annex T1 to the original petition; Annex 35. Brief by Elvia de Jesús Abarullo de Mota to the Palace of Miraflores (15.9.2005). Annex T2 to the original petition; *see also* Annex 36. *Diario de Guayana*, "Ministerio Público citó a implicados en incendio of the INAM" (9.5.2006). Annex to the original petition.

We know that they closed the doors to prevent anyone entering or leaving, and did absolutely nothing, because there was an opportunity to save them.”<sup>53</sup>

#### 4. The events of June 30, 2005

##### 4.1 Before Visiting Hours

34. On June 30, 2005, ten individuals were working at the INAM-San Félix: the warden, three guides, three social workers, a teacher, a tutor and a secretary.<sup>54</sup> However, at the time of the events—between approximately 4:30 and 5:10 pm—the only staff present to look after the population of about 50 adolescents were Nerio Romero, who served as Head of the Center (despite his rank of "Guide II")<sup>55</sup>; the guides Francisco Gómez and José Luis Chirinos; and the social worker Brígida Hurtado.<sup>56</sup>

35. On the day of the events during lunchtime, there was a fight between Rafael Parra and the other youths in cell No. 4 against Carlos Aguilera, nicknamed "the Boxer", from cell No. 2.<sup>57</sup> It is clear from the case file that staff knew about this fight. On the morning of June 30, 2005, there were seven youths in cell No. 4; two of them, named Zabala and Lira, were released that afternoon, at approximately 4:30 pm, after the court received their psychiatric evaluations.<sup>58</sup> The five deceased youths remained as residents of cell No. 4.<sup>59</sup>

##### 4.2 From Visiting Time

36. On that day, the five alleged victims received visits from Maria de Molina, Belkis Rios, Elvia Mota, Osmely Mota and Maritza Sánchez.<sup>60</sup> Osmely Mota said that at the end of the visit, when the teacher Chirinos was taking Zabala and Lira to lead them to their relatives outside,<sup>61</sup> "we heard from the window of that same room, that [Lira and Zabala] shouted boys take care in the corridors, because they are waiting for you, that they are planning something, everyone in the visit got nervous".<sup>62</sup> Faced with this situation, family members advised them "not to fight, because if they had a fight, they would be taken to Ciudad Bolívar."<sup>63</sup> The acting Warden stated that "when they took [Lira and Zabala] out of the dormitories the other inmates made a scandal and started a fight, saying the witches are leaving and the toads are leaving and while kicking the bars". He added that he entered the Center to verify what was happening and after seeing that the situation "had calmed down", he left again to the outside area.<sup>64</sup>

37. It is clear from the case file that the inmates of cell No. 7 attempted to assault those who remained in cell No. 4. The guide Chirinos said that "at the end of visiting hours, when we were going to take the youths from [No. 7], [...] they refused to enter [their dormitory] and ran off [...] because they wanted to fight with the boys [of No. 4], we managed to control them and return them to [No. 7]."<sup>65</sup> That is, in the hour before the fire there were two assaults against the inmates of cell No. 4, coupled with the fight between Parra and "the Boxer" hours before, all of which the staff of INAM -Saint Félix knew about.

<sup>53</sup> Annex 37. *Correo del Caroní*, "Fiscalía imputa por homicidio intencional a ex director del INAM" (9.5.2006). Annex to the original petition.

<sup>54</sup> Annex 38. Personnel List of the INAM-San Félix and who was working on the day of the events. Annex F to the original petition.

<sup>55</sup> Annex 38. Personnel List of the INAM-San Félix and who was working on the day of the events. Annex F to the original petition; *see also* Annex 39. Terms of reference for postings at the Centers for Attention and Treatment. Annexes K1-K5 to the original petition.

<sup>56</sup> Annex 38. Personnel List of the INAM-San Félix and who was working on the day of the events. Annex F to the original petition.

<sup>57</sup> Annex 40. Statement of José Luis Chirinos (7.29.2005). Annex 27 to the additional brief; *see also* Annexes 42 and 43.

<sup>58</sup> Annex 24. Statement of Yolaiza Boada (31.8.2005). Annex 14 to the additional brief.

<sup>59</sup> *See for example*, Annex 13. Interview of Brígida Hurtado (8.7.2005). Annex 29 to the additional brief.

<sup>60</sup> Annex 41. Log Book of the INAM-San Félix. Annex 44 to the additional brief.

<sup>61</sup> Annex 40. Statement of José Luis Chirinos (7.29.2005). Annex 27 to the additional brief.

<sup>62</sup> Annex 42. Interview of Osmely Mota (8.7.2005). Annex 25 to the additional brief.

<sup>63</sup> Annex 42. Interview of Osmely Mota (8.7.2005). Annex 25 to the additional brief.

<sup>64</sup> Annex 12. Statement of Nerio Romero (7.29.2005). Annex 28 to the additional brief; *see also* Annex 13.

<sup>65</sup> Annex 40. Statement of José Luis Chirinos (7.29.2005). Annex 27 to the additional brief; *see also* Annexes 26 and 43.



38. The family members informed guide Chirinos of their concerns, who told them to calm down as everything was under control. The relatives stayed outside to watch the youths, who then shouted to them that the teachers had put them in the cell without any trouble and that they were eating.<sup>66</sup> The teachers decided to "take [the inmates for dinner] dormitory by dormitory, in view of the tense situation."<sup>67</sup> The social worker Hurtado stayed after her leaving time at 4:00 pm "due to the ongoing situation" between the inmates of cells No. 7 and 4.<sup>68</sup> The other four officials left the Center at 4:00 pm.<sup>69</sup>

39. After the return of the inmates of No. 4 to their cell, at approximately 4:45 p.m., the guides Gómez and Chirinos went to take the youths from No. 2 for dinner, who confronted them with improvised knives and sharp objects.<sup>70</sup> At that time, cell No. 2 housed eleven young people.<sup>71</sup> The guide Chirinos stated that "the boys [...] asked us for the keys because they were going to kill those in No. 4, and to keep quiet, because otherwise they would attack us as well." He added that he saw "how the faces of these boys had totally changed, they were pale, and very agitated, [...] they were serious in what they said".<sup>72</sup>

40. The guide Gómez stated that while one of the inmates threatened him, he moved toward the outside of the Center to throw the keys of the cells outside so that the youths would not take them off him. He added that while two young men threatened the two teachers, the others went to cell No. 4 and "uttered intimidating words [...] causing the other dormitories to join the riot." He added that the guides began to "forcibly return the youngsters to their dormitories" and the youths returned to No. 2, where the guide Gomez and also the acting warden Romero came into the Center to talk to them and confiscate the weapons.<sup>73</sup> The latter stated that "one of the youths of [No. 4], [shouted] run man, it's a riot. I immediately went to the inner part [...] and arrived at [No. 2]" where the youths "on seeing me went to their dormitory and I went to talk to them to see what was happening."<sup>74</sup>

41. While the acting warden Romero and the guide Gómez remained in cell No. 2, the guide Chirinos went out into the corridor and approached No. 4, where he heard screams and noticed the smoke coming out of the cell.<sup>75</sup> Chirinos reported that "about three minutes passed from the time the youths started calling me [from No. 4 until the moment he arrived at the cell], that was approximately at [5:00 pm]."<sup>76</sup> Acting warden Romero reported that on leaving cell No. 2 "when he arrived [at No. 4] there were no voices, no noise, only the flames spreading in the dormitory and the smoke."<sup>77</sup>

42. The youths Zabala and Lira, as well as young Mota's family, witnessed the events from outside. Osmely Mota questioned the account of acting warden Romero. She argued that the warden was "sitting at the entrance playing chess, [when] my brother and Parra started shouting, 'Romero, it's a riot'[,] It was strange to us that Romero couldn't hear them[,] since we heard it from outside[,] It was only when we started to scream 'riot' as well that Romero ran inside, that's when we started to see the smoke. We wanted to get in but Brígida came and closed the gate."<sup>78</sup>

43. Social worker Brígida Hurtado reported that upon hearing the cries of riot, she called 171, the Bolívar emergency services, requesting reinforcement and reporting that there were no police officers in the center." According to the records of the Autonomous Emergency Service Bolívar 171, three calls were

<sup>66</sup> Annex 42. Interview of Osmely Mota (8.7.2005). Annex 25 to the additional brief; *see also* Annex 40.

<sup>67</sup> Annex 26. Statement of Francisco Gómez (8.8.2005). Annex 31 to the additional brief.

<sup>68</sup> Annex 42. Statement of Brígida Hurtado (7.29.2005). Annex 32 to the additional brief.

<sup>69</sup> Annex 38. Personnel List of the INAM-San Félix and who was working on the day of the events. Annex F to the original petition.

<sup>70</sup> Annex 40. Statement of José Luis Chirinos (7.29.2005). Annex 27 to the additional brief; Annex 26. Statement of Francisco Gómez (8.8.2005). Annex 31 to the additional brief.

<sup>71</sup> Annex 13. Interview of Brígida Hurtado (8.7.2005). Annex 29 to the additional brief.

<sup>72</sup> Annex 40. Statement of José Luis Chirinos (7.29.2005). Annex 27 to the additional brief; *see also* Annex 12.

<sup>73</sup> Annex 40. Statement of José Luis Chirinos (7.29.2005). Annex 27 to the additional brief; *see also* Annex 26.

<sup>74</sup> Annex 12. Statement of Nerio Romero (7.29.2005). Annex 28 to the additional brief.

<sup>75</sup> Annex 26. Statement of Francisco Gómez (8.8.2005). Annex 31 to the additional brief.

<sup>76</sup> Annex 40. Statement of José Luis Chirinos (7.29.2005). Annex 27 to the additional brief.

<sup>77</sup> Annex 12. Statement of Nerio Romero (7.29.2005). Annex 28 to the additional brief.

<sup>78</sup> Annex 42. Interview of Osmely Mota (8.7.2005). Annex 25 to the additional brief; *see also* Annex 51. On challenges to the official version see: Annexes 33 and 34.

received from Brígida Hurtado on June 30, 2005. The first at 16:56:07, reporting a riot at the INAM-San Félix; the second at 16:57:43, reporting the fire; and the last one at 17:04:34 indicating: "they are reporting a riot in the place where the adolescents [started] a fire in the facilities [...] several young people [...] suffering from burns". The social worker reported that when the first police officers arrived, smoke started coming out of the INAM; and that the 171 unit and the fire fighters took longer to reach the site. The first fire-fighting unit that arrived did not have the proper equipment to enter and fight the fire, there was a delay until a unit came from Unare.<sup>79</sup> A firefighter claimed to have arrived at the facilities when they had already removed two inmates from the cells, and the fire was almost out "since there was no more material to burn."<sup>80</sup>

44. The youths in cell No. 2 who were interviewed after the events agree in the essentials of these events. They stated: "We wanted to talk to the warden so [at] meal time we all ran outside and went on strike,"<sup>81</sup> where inmate Pulgarita threatened the teacher "with a [sharp improvised weapon]."<sup>82</sup> They maintained that they only reached cell No. 3, when the teachers reached them "and they calmed us down, and put us back inside the cell." They added that acting warden Romero, who had been speaking with them when the guide Chirinos came to cell No. 2 to say "the boys in room four are burning."<sup>83</sup> Some of the inmates in Cell No. 2 stated that the teachers "went down the corridor and looked for water buckets, but the boys were burned because [Chirinos], instead of opening the door, ran into the hallway screaming that cell four is burning."<sup>84</sup> Carlos Martes, an inmate who helped with cleaning, said that guide Chirinos took "about five minutes" to help them after hearing the victims shouting.<sup>85</sup> For his part, acting warden Romero estimated that it took about three minutes to get from cell No. 2 to No. 4 after being informed of the situation by Chirinos.<sup>86</sup>

45. For his part, the guide Chirinos argued that there was no time to effectively assist the victims. In his version, while the youths of No. 2 surrounded him, "I heard them calling me from [No. 4] asking for help, saying uncle Chirinos save us, we are burning."<sup>87</sup> He stated that on breaking free he came running and saw the magnitude of the flames coming out of the cell door and spreading on the inside, so he shouted and asked the warden and guide Gomez for help to bring the keys. He added that he called inmate Carlos Martes, who threw water on the mattresses and that "what he did see was that he could not control it easily, because of the pile of mattresses [and other belongings]."<sup>88</sup> Acting warden Romero stated that "we do not have extinguishers, we did what we could, that's all I can say."<sup>89</sup>

46. From the statements of the guides Chirinos and Gómez, from the acting warden Romero and from the youth Carlos Martes, it is clear that they tried to extinguish the fire with buckets of water, without success. Carlos Martes managed to open the bars of the cell and with the help of paramedics who arrived from 171, the guides removed José Gregorio Mota and Gabriel Yáñez alive. The acting warden reported that "the fire fighters arrived, the first of the fire trucks to arrive had no water"; then another unit arrived from Unare that did bring a water tank, "but it was too late". Carlos Martes reported: "first the fire fighters arrived and after them came the 171 Bolívar service, then the 171 and [Chirinos] brought out one of the boys who was

<sup>79</sup> Annex 13. Interview of Brígida Hurtado (8.7.2005). Annex 29 to the additional brief; *see also* Annex 44. Report of the Bolívar Autonomous Emergency Services 171 (3.8.2005). Annex 47 to the additional brief.

<sup>80</sup> Annex 45. Interview by Norman Richards Correa (2.8.2005). Annex 48 to the additional brief.

<sup>81</sup> Annex 46. Interview by Luis Catilo Jiménez (9.8.2005). Annex 33 to the additional brief; *see also* Annex 47. Interview by Osman Rojas (10.8.2005). Annex 34 to the additional brief (They wanted to protest "because the older ones in that cell [four] had had it with us, they wanted to impose on us [...] they wanted to rule the INAM"); Annex 48. Interview by Christian Rocca (8.8.2005). Annex 38 to the additional brief; Annex 49. Interview by Carlos Lemis (8.8.2005). Annex 40 to the additional brief; Annex 50. Interview by José Luis Pulgarita (8.8.2005). Annex 42 to the additional brief.

<sup>82</sup> Annex 46. Interview by Luis Catilo Jiménez (9.8.2005). Annex 33 to the additional brief; *see also* Annexes 47, 50.

<sup>83</sup> Annex 46. Interview by Luis Catilo Jiménez (9.8.2005). Annex 33 to the additional brief; Annexes 47, 48, 49, 50.

<sup>84</sup> Annex 49. Interview by Carlos Lemis (8.8.2005). Annex 40 to the additional brief; *see also* Annex 50 (Chirinos "arrived at our cell and told us that those lads were kicking up a fuss and that it was our fault").

<sup>85</sup> Annex 20. Interview of Carlos Martes (3.8.2005). Annex 15 to the additional brief.

<sup>86</sup> Annex 12. Statement of Nerio Romero (7.29.2005). Annex 28 to the additional brief.

<sup>87</sup> Annex 40. Statement of José Luis Chirinos (7.29.2005). Annex 27 to the additional brief.

<sup>88</sup> Annex 40. Statement of José Luis Chirinos (7.29.2005). Annex 27 to the additional brief.

<sup>89</sup> Annex 51. Reconstruction of Events (31.10.2006). Annex 0 to the original petition.

still alive, then the 171 with the help of the firefighters took out another who was alive, (...) then after about half an hour they took out those who were dead.<sup>90</sup>

47. On this point, the inmates of Cell No. 2 declared that "the boys were rescued by [Chirinos] and the fire was put out by [Martes], the fire fighters, despite arriving on time, did not participate". They state that "the rescue group 171 did not have equipment such as fire extinguishers, masks and said that there was a lot of smoke and that they could not enter because they were putting their lives at risk".<sup>91</sup>

48. Subsequently, the youths Mota and Yáñez were transferred to the Manuel Piar clinic—which initially refused to admit them for alleged lack of an agreement with the INAM<sup>92</sup>—where they died shortly afterwards due to the severity of their injuries.<sup>93</sup> The five victims were then transferred to the Raúl León Hospital mortuary, where they underwent medical examinations and autopsies.<sup>94</sup>

49. After the fire, Nerio Romero, Francisco Gómez and José Luis Chirinos were suspended from their posts at the INAM.<sup>95</sup>

## 5. Internal Proceedings

### 5.1 Investigation of the facts

50. The investigation began on the same day as the events<sup>96</sup> and the following month the National Council on the Rights of Children and Adolescents<sup>97</sup> and the Permanent Commission of Family, Women and Youth of the National Assembly became involved.<sup>98</sup>

51. Regarding the cause of the fire, the expert opinion issued by the CICPC "established that the [fire] originated because of the application of an [naked flame] on the combustible materials [in cell No. 4], the fire spreading to the other areas, which caused a large release of smoke and soot particles, leading to the death of [the victims]." Also, it was established that a segment of electrical cable found in cell no. 4 was being used to hang laundry; that the fire originated inside the cell; and that there was no evidence of the use of "accelerants."<sup>99</sup>

52. For their part, the guide Chirinos and acting warden Romero believed that the fire was a defense mechanism used by the victims to prevent the youths of No. 2 from killing or injuring them, since "if the keys were taken [from the guides] they were going to get in."<sup>100</sup> Inmate Carlos Martes agreed with this.<sup>101</sup> The guide Chirinos indicated that the fire was made possible "because they had cigarettes, and matches, provided by their relatives."<sup>102</sup> An inmate reported that it was forbidden to have matches, lighters or cigarettes "but they were clandestinely passed over by visiting relatives."<sup>103</sup> In this sense, social worker Brígida Hurtado said that these items were prohibited, "what happens [is] that when the police are not there,

<sup>90</sup> Annex 40. Statement of José Luis Chirinos (7.29.2005). Annex 27 to the additional brief; *see also* Annexes 12, 20, 42, 48.

<sup>91</sup> Annex 43. Statement of Brígida Hurtado (7.29.2005). Annex 32 to the additional brief; *see also* Annexes 48, 50, 55.

<sup>92</sup> Annex 43. Statement of Brígida Hurtado (7.29.2005). Annex 32 to the additional brief; *see also* Annex 40.

<sup>93</sup> *See, for example*, Annex 52. Procedural Steps Order of CICPC (30.6.2005). Annex 46 to the additional brief; Annexes 12, 13.

<sup>94</sup> Annex 53. Autopsies and Medical Examinations. Annex 57 to the additional brief; Annex 54. "CICPC: Transcription of Event" (30.6.2005). Annex A to the original petition. The IACHR does not have the results of these autopsies. *See supra* para. 18.

<sup>95</sup> Annex 38. Personnel List of the INAM-San Félix and who was working on the day of the events. Annex F to the original petition; *see also* Annex 21.

<sup>96</sup> Annex 54. "CICPC: Transcription of News" (30.6.2005). Annex A to the original petition.

<sup>97</sup> Annex 18. Report of the Report of the National Council for the Rights of the Child and Adolescents, July 2005. Annex P to the original petition.

<sup>98</sup> Annex 72. National Assembly (Press Release), "Investigation into deaths of 5 youths burned in the INAM detention center." (27.7.2005). Annex U1 to the original petition.

<sup>99</sup> Annex 19. CICPC Expert Report (31.8.2005). Annex 18 to the additional brief.

<sup>100</sup> Annex 12. Statement of Nerio Romero (7.29.2005). Annex 28 to the additional brief; *see also* Annex 40.

<sup>101</sup> Annex 20. Interview of Carlos Martes (3.8.2005). Annex 15 to the additional brief. *See also* Annex 13.

<sup>102</sup> Annex 40. Statement of José Luis Chirinos (7.29.2005). Annex 27 to the additional brief.

<sup>103</sup> Annex 48. Interview by Christian Rocca (8.8.2005). Annex 38 to the additional brief.

the visitors are not searched."<sup>104</sup> Other inmates maintained that before the fire, it was allowed to have those objects.<sup>105</sup> Carlos Zabala, who was released from cell No. 4 minutes before the fire, indicated that in this cell there were aerosol deodorant and lighters,<sup>106</sup> and that "from time to time they lit a small fire to heat water or to fry some food".<sup>107</sup> Also, the social worker Hurtado reported that the "Manuel Piar" clinic physician "called me and informed me that Yáñez was carrying a box with seven matches in his pocket."<sup>108</sup>

53. The expert opinion issued by the CICPC indicated that "there was a history indicating it was the inmates' habit to burn mattresses [...] and other elements when they were in situations of tension."<sup>109</sup> Other references suggest that this was a common practice in Venezuela's prisons in general.<sup>110</sup> This view was contradicted by the young inmates interviewed, who maintained that, although the possession of cigarettes and matches in the cells was common, there were not and had never been fires during their time in the INAM.<sup>111</sup>

54. The Public Ministry requested the exhumation of the alleged victims in December 2005.<sup>112</sup> It made this request based on statements indicating that a man working at the mortuary where they were taken "said that the boys smelt of paint thinner [...] that's what burned them," and Rafael Parra's mother "said that what happened was an execution arranged between the teachers, and the warden."<sup>113</sup> The new autopsies did not reveal additional findings on the alleged victims' cause of death.<sup>114</sup> The Commission observes that the exhumation certificate of José Gregorio Mota indicated that the corpse was already in an advanced state of decomposition.<sup>115</sup> Regarding the allegations that the victims smelled of paint thinner and that Mota had suffered a chest wound before his death,<sup>116</sup> the authorities interviewed the individuals present at the autopsies, who maintained that the bodies smelled only of "charred meat",<sup>117</sup> and that Mota's body "showed no other injuries of violence."<sup>118</sup>

55. Complaints were made about alleged irregularities in the investigation of these events, including unjustifiable delays in collecting evidence. In this sense, for example, the report of the Fire Department on the events was released in May 2007, with "apologies for the delay in the delivery of the request, hoping not to have delayed proceedings."<sup>119</sup> Likewise, the delay in carrying out a reconstruction of the events made it impossible to carry it out effectively, since the facilities of INAM-San Félix were completely altered in the year after the events.<sup>120</sup>

## 5.2 Judicial Proceedings

<sup>104</sup> Annex 13. Interview of Brígida Hurtado (8.7.2005). Annex 29 to the additional brief.

<sup>105</sup> Annex 55. Interview by Jhorwis Machado (12.8.2005). Annex 39 to the additional brief; *see also* Annexes 49, 50.

<sup>106</sup> Annex 56. Interview by Carlos Zabala (8.7.2005). Annex 35 to the additional brief.

<sup>107</sup> Annex 56. Interview by Carlos Zabala (8.7.2005). Annex 35 to the additional brief.

<sup>108</sup> Annex 43. Statement of Brígida Hurtado (7.29.2005). Annex 32 to the additional brief.

<sup>109</sup> Annex 57. Preliminary Report of the CICPC (1.8.2005). Annex 19 to the additional brief.

<sup>110</sup> *See, for example*, Annex 37. *Correo del Caroní*, "Prosecutor indicts former Warden of INAM for intentional homicide" (9.5.2006). Annex to the original petition (indicating that Humberto Prado [petitioner in the present case], "added that this same situation has occurred in many detention centers in Venezuela where the inmates die from being burnt". The petitioner has not referred to the alleged existence of this practice in its briefs in the present case); Annex 72. National Assembly (Press Communiqué), "Investigation in the deaths of 5 youths burnt in the INAM detention center." (27.7.2005). Annex U1 to the original petition ("the fact of burning another human being has become a recurring practice").

<sup>111</sup> Annex 55. Interview by Jhorwis Machado (12.8.2005). Annex 39 to the additional brief; *see also* Annexes 20, 49, 50.

<sup>112</sup> Annex 58. Exhumation Request (5.12.2005). Annex 55 to the additional brief.

<sup>113</sup> Annex 58. Exhumation Request (5.12.2005). Annex 55 to the additional brief.

<sup>114</sup> Annex 59. Post Exhumation Examination Report (25.1.2006). Annex 56 to the additional brief. Results of the exhumation and autopsy of Rafael Parra unavailable.

<sup>115</sup> *See* Annex 7. Order for Exhumation (25.1.2006). Annex Q5 to the original petition.

<sup>116</sup> *See supra* para. 7; *accord*, Annex 42. Interview of Osmely Mota (8.7.2005). Annex 25 to the additional brief.

<sup>117</sup> Annex 60. Statement of Orlando Rondón (31.8.2005). Annex 53 to the additional brief; Annex 61. Statement of Alexander López (31.8.2005). Annex 54 to the additional brief.

<sup>118</sup> Annex 62. Statement of Marlene López (18.10.2005). Annex 52 to the additional brief; *see also* Annex 20.

<sup>119</sup> Annex 63. Letter of Héctor Morillo, Chief Fire Fighter, to Francisco Ávila, Prosecutor (31.5.2007). Annex I2 to the original petition.

<sup>120</sup> Annex 64. Report on Reconstruction of Events. Annex 63 to the additional brief.

56. José Luis Chirinos, Francisco Gómez and Nerio Romero were informed that they had been indicted in the case in April 2006<sup>121</sup> and a public defender appointed for them.<sup>122</sup> Media reports stated that they had been indicted for culpable homicide under Article 455 of the Organic Code of Criminal Procedure.<sup>123</sup> The indictment of the alleged perpetrators, issued in September 2008, indicated that that afternoon:

there was an attempted riot between the adolescent inmates of cell number two (02) and the young adults of cell number four (04), which was brought under control, by [the accused], as a result of this attempt, and as a defense mechanism [the victims] set light to several mattresses near the access door to cell [number 04], trying thereby to prevent the teenagers from cell number 02 from entering cell number four; on observing that the flames were out of control, the young adults shouted for help and assistance, this call being heard from the outside of the premises, by the relatives of the detainees who just before had been at the corresponding visit, as well as by the staff working in the diagnostic center. It should be noted that [the accused] acted negligently by not responding to the request for help from [the victims] and did not immediately open the door giving access to the cell where [the victims] were being held.<sup>124</sup>

57. The Commission does not have the date on which the closure of the investigation was ordered. However, there is evidence that the accused's trial hearing was deferred at least six times between June 2010 and January 2015;<sup>125</sup> the petitioners alleged that there have been adjournments on no less than 32 occasions since 2008.<sup>126</sup> Of the adjournments ordered in 2014 and 2015, there is evidence that three of them were due to the defense's non-appearance; one by default of the Public Ministry; and one because "the necessary steps were not taken."<sup>127</sup>

#### **IV. LEGAL ANALYSIS**

##### **A. The rights to life<sup>128</sup> and personal integrity<sup>129</sup> in relation to articles 1.1<sup>130</sup> and 19<sup>131</sup> of the American Convention**

##### **1. The special position of guarantor of the State vis-a-vis persons deprived of liberty and burden of proof**

58. The case-law of the Inter-American system has established that in regard to persons deprived of liberty, the State assumes a special position as guarantor of their rights, since the deprivation of liberty "produces a special relationship and interaction of subordination between the person deprived of his liberty and the State, characterized by the particular intensity with which the State can regulate their rights

<sup>121</sup> Annex 65. Proof of Service on José Luis Chirinos, Francisco Gómez and Nerio Romero (6.4.2006). Annexes M1-M3 to the original petition.

<sup>122</sup> Annex 66. Appointment of Public Defender for the three accused, (28.4.2006). Annex M4 to the original petition.

<sup>123</sup> Annex 37. *Correo del Caroní*, "Fiscalía imputa por homicidio intencional a ex director of the INAM" (9.5.2006). See also Annex 67. *Nueva Prensa*, "Imputan a ex director and maestros por muerte de 5 jóvenes en el INAM", (9.5.2006). Annexes to the original petition.

<sup>124</sup> Annex 68. Formal Charges and Request for Indictment (29.9.2008). Annex 62 to the additional brief.

<sup>125</sup> See Annex 69. Order for Adjournment (9.6.2010) and Annex 70. Court Decision (9.6.2010). Annexes to the petitioners' admissibility brief; Annex 71. Five Adjournment Decisions of Public and Oral Trial of 2014-2015. Annex 64 to the additional brief.

<sup>126</sup> Brief on Merits of the petitioners.

<sup>127</sup> Annex 71. Five Adjournment Decisions of Public and Oral Trial of 2014-2015. Annex 64 to the additional brief.

<sup>128</sup> Article 4 establishes: 1. "Every person has the right to have his life respected. [...] No one shall be arbitrarily deprived of his life".

<sup>129</sup> Article 5 establishes, in relevant part: "1. Every person has the right to have his physical, mental, and moral integrity respected. [...] 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons. 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. 6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners".

<sup>130</sup> Article 1.1 establishes, in relevant part: 1. "The States Parties [...] undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination [...]".

<sup>131</sup> Article 19 establishes: "Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."

and obligations and by the circumstances of confinement, where the inmate is prevented from satisfying, on his own, certain basic needs that are essential if one is to live a dignified life."<sup>132</sup> In such circumstances, "[t]he way a detainee is treated must be subject to the closest scrutiny, taking into account the detainee's vulnerability."<sup>133</sup>

59. Therefore, "whenever a individual is deprived of liberty in normal health and subsequently displays health problems, the State must provide a satisfactory and credible explanation for this situation and disprove the allegations of its responsibility with adequate probative elements."<sup>134</sup> Accordingly, the absence of a satisfactory explanation leads to a presumption of state responsibility for the injuries of a person who has been in the custody of state agents.<sup>135</sup> In addition, the State's guarantor status with respect to the right to life and personal integrity obliges it to prevent situations that could lead, by action or omission, to an impact on the person under its custody.<sup>136</sup>

60. In addition to the above, "[i]n matters of the right to life, when the State is dealing with children deprived of their liberty", as in the present case, given that it took place in a center for adolescents and that the alleged victims were admitted to the center when they were under 18 years of age, the State must "assume its special position of guarantor with greater care and responsibility, and must take special measures based on the principle of the best interests of the child."<sup>137</sup>

## 2. General considerations relating to prison conditions

61. As a guarantor of the rights of persons deprived of liberty, the State must assume a specific series of responsibilities and take special initiatives to guarantee that inmates have the necessary conditions to lead a decent life and contribute to the effective enjoyment of those rights that under no circumstances can be restricted or whose restriction does not necessarily derive from the deprivation of liberty,<sup>138</sup> such as the right to life and personal integrity. Protecting the lives of children deprived of their liberty entails broader obligations: "it requires the State to be particularly attentive to that child's living conditions while deprived of his or her liberty."<sup>139</sup> In this sense, the State has the obligation to provide them with health care and education, to ensure that detention will not destroy their life plans.<sup>140</sup> Likewise, the Court has considered, in line with the United Nations, that children deprived of their liberty "will receive care, protection and all necessary assistance - social, educational, vocational, psychological, medical and physical - that they may

<sup>132</sup> I/A Court H.R., *Case of the "Juvenile Reeducation Institute" v. Paraguay*. Judgment of September 2, 2004, para. 152; *Case of Mendoza et al. v. Argentina*. Judgment of May 14, 2013, para. 188 (see also *Case of Caesar v. Trinidad and Tobago*. Judgment of March 11, 2005, para. 97; *Case of Fermín Ramírez v. Guatemala*. Judgment of 20 June, 2005, para. 118). In this sense, the Commission established two decades ago that: "When it detains an individual, the State introduces that individual into a "total institution"--such as a prison--where the various aspects of his life are subject to an established regimen; where the prisoner is removed from his natural and social milieu; where the established regimen is one of absolute control, a loss of privacy, limitation of living space and, above all, a radical decline in the individual's means of defending himself. All this means that the act of imprisonment carries with it a specific and material commitment to protect the prisoner's human dignity so long as that individual is in the custody of the State, which includes protecting him from possible circumstances that could imperil his life, health and personal integrity, among other rights." IACHR, Report No. 41/99, Merits, *Minors in Detention* (Honduras), March 10, 1999. Para. 135.

<sup>133</sup> I/A Court H.R., *Case of Bulacio v. Argentina*. Judgment of September 18, 2003, para. 126.

<sup>134</sup> I/A Court H.R., *Case of Mendoza v. Argentina*. Judgment of May 14, 2013, para. 203 (citing cf. *Case of Juan Humberto Sánchez v. Honduras*, paras. 100, 111, and *Case of Fleury et al. v. Haiti*, para. 77).

<sup>135</sup> I/A Court H.R., *Case of Mendoza v. Argentina*. Judgment of May 14, 2013, para. 203 (citing cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala*. Merits, paras. 95, 170, and *Case of Fleury et al. v. Haiti*, para. 77).

<sup>136</sup> *Id.* at para. 191.

<sup>137</sup> I/A Court H.R. *Case of Servellón García and others v. Honduras*. Judgment of September 21, 2006, para. 116.

<sup>138</sup> I/A Court H.R., *Case of Pacheco Teruel et al. v. Honduras*. Judgment of April 27, 2012, para. 64 (citing c.f. *Case of the "Juvenile Reeducation Institute" v. Paraguay*, para. 153).

<sup>139</sup> I/A Court H.R., *Case of the "Juvenile Reeducation Institute."* Judgment of September 2, 2004, para. 160.

This, given that "Articles 6 and 27 of the Convention on the Rights of the Child include in the right to life the obligation of State to ensure 'the maximum degree possible of survival and development of the child.'" *Id.*, para. 161.

<sup>140</sup> I/A Court H.R., *Case of the "Juvenile Reeducation Institute."* Judgment of September 2, 2004, para. 161. See also UN Rules for the Protection of Juveniles Deprived of their Liberty, Rule 13 ("Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty").

require because of their age, sex and personality and in the interests of their healthy development".<sup>141</sup> All these would be, therefore, conditions that should be guaranteed within adolescent centers such as the INAM-San Félix.

62. In order to fulfill its duty of prevention with respect to possible violations of the rights to life and to personal integrity, the State "must design and enforce prison policies intended to prevent crisis situations." <sup>142</sup> Among others, the Inter-American Court has considered that "the State [has] the duty to create the conditions to avoid, to the maximum extent possible, fighting among inmates".<sup>143</sup>

63. In addition, the Commission has considered that the State must "[adopt] concrete measures to prevent and react to emergencies like fires [...] ensuring that prisons have early warning systems to detect threats and proper equipment to react to emergencies [and] train prison personnel in evacuation procedures, first aid and how to respond to events of this type."<sup>144</sup> In this sense, the State must incorporate in the design, structure, construction, improvements, maintenance, and operation of the detention centers, all the material mechanisms that minimize the risk of emergencies or fires occurring and, in the event that they do occur, can be dealt with with due diligence, guaranteeing the protection of the inmates or a safe evacuation of the premises. Among these mechanisms are effective systems for the detection and extinguishing of fires, fire alarms, as well as action protocols in cases of emergencies that guarantee the safety of inmates.<sup>145</sup>

64. On the other hand, the Inter-American Court has incorporated into its jurisprudence a series of standards for prison conditions and the duty of prevention, to be taken into account when analyzing international obligations under the American Convention regarding persons deprived of their liberty. The following are particularly relevant to this case:

- a. overcrowding is, in itself, a violation of personal integrity; in addition, it hinders the normal execution of essential functions in prisons;
- b. those who are being processed must be separated from those who have been convicted; and children must be held separately from adults, so that those deprived of liberty receive treatment appropriate to their situation; [...]
- f. education, work and recreation are essential functions of a prison, and must be provided to all those deprived of liberty in order to promote the rehabilitation and social adjustment of inmates; [...]
- h. all cells must have sufficient natural or artificial light, ventilation and adequate conditions of hygiene; [...]
- k. Disciplinary measures that constitute cruel, inhuman or degrading treatment, including corporal punishment, prolonged solitary confinement, and any other measure that may seriously jeopardize the physical or mental health of the inmate is strictly prohibited.<sup>146</sup>

65. Regarding the design for penitentiary prevention policies, the Commission has considered that the State's exercise of its role as guarantor "is a complex one in which the areas of competence of various

<sup>141</sup> I/A Court H.R., *Case of the "Juvenile Reeducation Institute."* Judgment of September 2, 2004, para. 163. (citing UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules)).

<sup>142</sup> IACHR. Report No. 118/10. Case 12.680. Merits. Pacheco Teruel et al. (Deaths in Fire at San Pedro Sula Prison) (Honduras). October 22, 2010, para. 64; I/A Court H.R., Matter of Urso Branco Prison regarding Brazil. Provisional Measures. Order of the Inter-American Court of Human Rights of April 22, 2004, considering no. 11; I/A Court H.R., *Case of the "Juvenile Reeducation Institute."* Judgment of September 2, 2004, para. 178; Matter of Monagas Judicial Confinement Center ("La Pica") regarding Venezuela. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of January 13, 2006, consideration 15; Matter of Yare I and Yare II Capital Region Penitentiary Center regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of March 30, 2006, consideration 18; Matter of the persons imprisoned in the "Dr. Sebastião Martins Silveira" Penitentiary in Araraquara, São Paulo regarding Brazil. Provisional Measures. Order of the President of the Inter-American Court of Human Rights of July 28, 2006, consideration 18.

<sup>143</sup> I/A Court H.R., *Case of the "Juvenile Reeducation Institute."* Judgment of September 2, 2004, para. 184; see also Matter of Judicial Penitentiary of Ciudad Bolívar "Vista Hermosa Prison" regarding Venezuela. Provisional Measures. Order of the Inter-American Court of Human Rights of May 15, 2011.

<sup>144</sup> IACHR. Report No. 118/10. Case 12.680. Merits. Pacheco Teruel et al. (Honduras). October 22, 2010, para. 63.

<sup>145</sup> I/A Court H.R., *Pacheco Teruel et al.* Judgment of April 22, 2012, para. 64.

<sup>146</sup> I/A Court H.R., *Pacheco Teruel et al.* Judgment of April 22, 2012, para. 77 (footnotes omitted).

state institutions converge. From the executive and legislative bodies [...], to mid-level institutions charged with running prisons, and the appointed authorities at the prisons [...]. Likewise, the work carried out by the judicial branch is relevant, [...] which monitors the lawfulness of detention and the conditions under which detainees are held.<sup>147</sup>

### 3. Analysis of the case

66. As a preliminary matter, the Commission observes that there is a presumption of State responsibility for the deaths of the five youths in their custody, uncontroverted in this case, since the State has not provided a "satisfactory explanation" about the deaths, as will be analyzed later in the corresponding section to the rights to judicial guarantees and judicial protection. Notwithstanding the foregoing, the Commission identifies a series of additional factors relevant to the analysis of the State's responsibility in this case, specifically with respect to the duty of prevention.

67. First, a series of elements reveal the lack of a prison policy for the prevention of emergencies in INAM-San Félix, reflected in the living conditions within the Center at the time of the events. In the previous chapter, the Commission determined that for years, INAM-San Félix suffered from overcrowding, with a lack of sufficient personnel to provide minimum security conditions, both as regards effective control to prevent the entry of contraband into the Center, as well as the lack of adequate personnel to control a population that varied between 50 and 105 inmates. Likewise, serious deficiencies were found in the infrastructure of the Center, mainly the lack of sufficient electric light that resulted in adolescents improvising wiring in their cells. In addition, the lack of fire alarm and extinguisher systems also demonstrates the absence of an adequate response plan for emergencies such as the fire on June 30, 2005, which ended the lives of the five youths.

68. On the other hand, the inoperativity of the Center's education program was verified at the date of the events, as well as the failure to comply with the individual readaptation plans. The Commission recalls that the failure of the State to provide education to children and adolescents deprived of their liberty "has even more serious consequences when the children (...) are from marginal sectors of society, as is true in the instant case, because the failure to provide an adequate education limits their chances of actually rejoining society and carrying forward their life plans."<sup>148</sup> The Commission considers that this situation constituted a violation of Article 5.6 of the American Convention.

69. It was also indicated that the State did not adequately respond to the fact that the Center lacked adequate facilities to separate the inmates from convicted prisoners, in violation of Article 5.4 of the American Convention and a potential source of violence and tension at the Center.

70. Indeed, there was a situation of arguments and aggression among the young inmates of the Center. This was verified both in relation to the specific situation of the victims of cell No. 4, and in the frequent references throughout the case to situations of violence, fights between inmates, and historical conflict among the various groups of youths in center. The case file does not include the adoption of specific and comprehensive plans aimed at eradicating this situation, despite that fact that it was a source of serious and permanent risk to the life and personal integrity of the adolescents. On the contrary, the aforementioned ongoing situations highlight the indifference on the part of the State towards such risks.

71. The Commission also notes that the INAM-San Félix authorities indicated that the Center was not built in a way that allowed the separation of minors and adults. Although the practice at the Center was to locate inmates over 18 and under 18 years of age in separate cells, the national director of INAM indicated that the lack of adequate facilities "generated a series of ongoing confrontations [among the inmates] that escaped our control." In that sense, in addition to being a violation of Article 5.5 of the American Convention, this situation was an additional factor contributing to conflict at the Center.

<sup>147</sup> IACHR. Report No. 118/10. Case 12.680. Merits. Pacheco Teruel et al. (Honduras). October 22, 2010, para. 65.

<sup>148</sup> I/A Court H.R., *Case of the "Juvenile Reeducation Institute."* Judgment of September 2, 2004, para. 174.



72. Finally, the Commission notes the allegations contained in the case file regarding the lack of specialized children's courts, as well as allegations that the ordinary courts of Bolívar State conducting the criminal trials against minors took decisions in contravention of domestic law for the protection of children. These references from state agents were not contested by the Venezuelan State, and therefore constituted an additional violation of Article 5.5 of the Convention.

73. The Commission considers that the continuity and overlapping of all these elements—well-known to the competent authorities, both of the center and in the judiciary—contributed to the creation of a situation involving violence, such as the argument between cells No. 2 and No. 4 and the resulting fire in the present case.

74. On the other hand, and in addition to the precarious conditions of the INAM-San Félix in general, the Commission considers that there were also a series of clear signals on the day of the events, alerting the Center's personnel to the imminent violent episode. In this sense, the Center's personnel knew of the fight between Rafael Parra and "the Boxer" at midday; the aggression of the inmates of the cell no. 7 against the youths in cell No. 4 at visiting time; the aggression of the Center's inmates against Carlos Zabala and José Alberto Lira at the time of their release from the Center; as well as the concern expressed by the relatives of the victims for their safety once visiting hours were over. Given all these elements, the only containment measures taken were assistant Brígida Hurtado's extended work schedule and the confinement of the inmates of cell No. 4 after visiting hours. The Commission finds that these measures were inadequate to fulfill a protocol or prison policy of violence prevention, and were insufficient to prevent the situation of violence that arose within the prison, leading to the fire.

75. In addition, and with respect to the specific moment of the fire, the eyewitness accounts indicated at various points that the three individuals in charge of the Center—Nerio Romero, José Luis Chirinos and Francisco Gómez—delayed or failed to act with due diligence to release the youths in cell No. 4 and extinguish the fire therein. In this sense, the account shows that when the fire started, guides Gomez and Chirinos did not have the keys to cell No. 4, because one of them had thrown them towards the entrance of the Center. In addition, and by his own account, Chirinos delayed arriving at the cell for at least three minutes, and possibly for up to five minutes, from the moment in which heard the screams of the victims and became aware of the fire; from the information available, it is obvious that the distance between the cells did not justify such a delay. Such impossibility was not alleged by the State nor could be verified through judicial reconstruction of the events due to the delay, to be analyzed later. According to his own account, acting warden Romero took another three minutes to reach cell No. 4 after being notified of the situation by guide Chirinos. He delayed in opening the bars of the cell due to the heat of the fire and, according to Carlos Martes, because he was nervous. The Commission considers that this delay of six minutes or more in responding to the outbreak of the fire no doubt had an impact on the lethality of the incident.

76. On the other hand, the Commission considers that the first firefighters' lack of adequate equipment and material to extinguish the fire and their failure to enter the cell to effectively assist the victims, also constituted an omission attributable to the State.

77. Due to all the above elements taken together, the Commission considers that the Venezuelan State failed to comply with its duty of prevention in this case, and therefore is responsible for the violation of the right to life and personal integrity—in view of the suffering that a death due to asphyxia, suffocation and burns implies<sup>149</sup>—to the detriment of the five deceased victims.

78. Furthermore, considering the fact that the majority of the structural problems allowing the death of the victims while under 18 years of age constituted continuous and repeated omissions, the Commission also considers that the State "did not effectively fulfill its role as guarantor of the rights of the child, in this special relationship of subordination between the State and the adult/child deprived of liberty. The State failed to take the necessary positive measures to ensure to all inmates decent living conditions. It

<sup>149</sup> See IACHR. Report No. 118/10. Case 12.680. Merits. Pacheco Teruel et al. (Honduras). October 22, 2010, para. 81.

also failed to take the special measures of protection that are required of it where children are concerned.”<sup>150</sup> In addition, although the victims of these events had already reached the age of 18 on the day of the fire, the Commission considers it sufficiently established that the circumstances leading to their deaths were the result of a lack of special and sufficient protection measures to guarantee the life, personal integrity and conditions of dignity in favor of all adolescent internees of the INAM-San Félix center for children under 18 years of age. In all, the responsibility of the State is based on the lack of preventive measures against the possibility of acts of violence within the Center as a consequence of the ongoing situations also attributable to the State; as well as the negligence of the personnel of the Center and of the Fire Department in their actions to extinguish the fire and save the lives of the victims.<sup>151</sup>

79. The Commission concludes that the Venezuelan State is responsible for the violation of the rights to life and personal integrity established in Articles 4.1, 5.1, 5.4, 5.5 and 5.6 of the American Convention, in relation to the obligations established in Articles 1.1 and 19 of the same instrument, to the detriment of José Gregorio Mota Abarullo, Gabriel de Jesús Yáñez Sánchez, Rafael Antonio Parra Herrera, Cristián Arnaldo Molina Córdova and Johan José Correa.

**B. Rights to judicial guarantees<sup>152</sup> and judicial protection<sup>153</sup> in relation to article 1.1 of the American Convention**

**1. Standards of due diligence, officiousness and reasonable time period**

80. The Inter-American Court has established that "as a result of the protection granted by Articles 8 and 25 of the Convention, States are obliged to provide effective judicial remedies to the victims of human rights violations that must be substantiated according to the rules of due process of law."<sup>154</sup>

81. The case law of the Inter-American system provides that the State is obliged, once it has knowledge of a violation of human rights, in particular of the rights to life, personal integrity and personal liberty,<sup>155</sup> to initiate *ex officio* and immediately, a genuine, impartial and effective investigation,<sup>156</sup> which must be carried out within a reasonable time.<sup>157</sup> This implies the right of victims and their families to have state authorities initiate proceedings against the alleged perpetrators of these crimes; and if applicable, to impose the pertinent penalties, and to compensate the damages and losses suffered.<sup>158</sup>

82. Although the obligation to investigate is an obligation of means, rather than results, the State must undertake it as its own legal duty and not as a mere formality predestined to be ineffective,<sup>159</sup> or as a

<sup>150</sup> I/A Court H.R., *Case of the "Juvenile Reeducation Institute."* Judgment of September 2, 2004, para. 176

<sup>151</sup> See also, in this sense, I/A Court H.R., *Case of the "Juvenile Reeducation Institute."* Judgment of September 2, 2004, para. 187; I/A Court H.R., *Case of Pacheco Teruel et al.* Judgment of April 27, 2012, para. 69.

<sup>152</sup> Article 8.1 establishes: 1. "Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature."

<sup>153</sup> Article 25 establishes, in relevant part: 1. "Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties."

<sup>154</sup> I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz v. Peru.* Judgment of July 10, 2007, para. 124; *Case of the Rochela Massacre v. Colombia.* Judgment of May 11, 2007, para. 145; *Case of the Miguel Castro Castro Prison v. Peru.* Judgment of November 25, 2006, para. 381; and *Case of the Dismissed Congressional Employees (Aguado - Alfaro et al.) v. Peru.* Judgment of November 24, 2006, para. 106.

<sup>155</sup> I/A Court H.R., *Case of Cantoral Huamaní and García Santa Cruz.* Judgment of July 10, 2007, para. 100.

<sup>156</sup> I/A Court H.R., *Case of García Prieto et al. v. El Salvador.* Judgment of November 20, 2007, para. 101; *Case of the Gómez Paquiyauri Brothers v. Peru.* Judgment of July 8, 2004, para. 146; *Case of Cantoral Huamaní and García Santa Cruz.* Judgment of July 10, 2007, para. 130.

<sup>157</sup> I/A Court H.R., *Case of Bulacio v. Argentina.* Judgment of September 18, 2003, para. 114; *Case of the Rochela Massacre.* Judgment of May 11, 2007, para. 146; *Case of the Miguel Castro Castro Prison.* Judgment of November 25, 2006, para. 382.

<sup>158</sup> I/A Court H.R., *Case of García Prieto et al.* Judgment of November 20, 2007, para. 103; *Case of Bulacio v. Argentina.* Judgment of September 18, 2003, para. 114; and *Case of the Miguel Castro Castro Prison.* Judgment of November 25, 2006, para. 382.

<sup>159</sup> I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras.* Judgment of July 29, 1988, para. 177; *Case of Cantoral Huamaní and García Santa Cruz.* Judgment of July 10, 2007, para. 131; *Case of Zambrano Vélez et al.* Judgment of July 4, 2007, para. 120.

mere reaction to private interests, which would depend on the procedural initiative of the victims or their family members or on the submission of evidentiary elements by private individuals.<sup>160</sup>

83. The Inter-American Court has indicated that the duty to investigate with due diligence implies that the investigations must be carried out utilizing all available legal means and be oriented toward determining the truth.<sup>161</sup> In addition, the Commission and the Court have specified that in cases of human rights violations, the State can be found responsible for not ordering and carrying out pertinent tests in accordance with the duty of due diligence, and that the investigation should be oriented to explore all possible avenues of investigation to permit the identification of the perpetrators of this violation.<sup>162</sup>

84. Finally, with respect to the principle of a reasonable period of time contemplated in Article 8.1 of the American Convention, the Inter-American Court has established that it is necessary to take into account three elements to determine the reasonableness of the period in conducting proceedings: a) the complexity of the matter, b) the procedural activity of the interested party, and c) the conduct of judicial authorities.<sup>163</sup> In addition, the Court considered that it is also necessary to take into account the interest affected by the delay.<sup>164</sup>

## 2. Analysis of the case

85. In the present case, the petitioners alleged irregularities in the investigation of the events of June 30, 2005, a violation of the reasonable time to carry out the investigation and the trial of the case, and a violation of the right to a effective remedy due to the procedural impossibility of the next-of-kin to promote the closure of the investigation and initiate the trial phase.

86. With respect to the alleged irregularities in the investigation, the Commission only has evidence regarding the impossibility of carrying out the reconstruction of the events. In this regard, it was verified that due to the delay in performing the reconstruction of events until October 2006, during those 16 months the facilities of INAM-San Félix were entirely modified, and so the reconstruction "could not be duly carried out."

87. However, from an overall view of the investigation based on the information available, the Commission finds in this case that the investigation carried out by the authorities seems to have uncovered what happened that and identified those responsible within of the INAM-San Félix. In this regard, the IACHR emphasizes that the narrative contained in the formal indictment of the Center's officials coincides substantially with the facts that the Commission was able to verify from the evidence provided largely by the petitioner. However, the Commission finds that in this case there has been a clear violation of the reasonable time limit, given that more than 13 years have passed since the death of the victims and 12 years since the alleged perpetrators were charged in 2006. From the available information it is apparent that the domestic proceedings are ongoing, so that the events remain in a situation of impunity, without the completion of a trial and any determination of the appropriate punishment for the varying degrees of responsibility that may be determined in this case. This includes the authorities that were present at the Center on the day of the events, and those whose omissions may have contributed to the ongoing structural problems identified in this report.

88. Regarding the alleged violation of the right to an effective remedy, the Commission considers that, for the reasons described in this section, it is possible to arrive at the conclusion that domestic

<sup>160</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988, para. 177; *Case of Zambrano Vélez et al.* Judgment of July 4, 2007, para. 120.

<sup>161</sup> I/A Court H.R., *Case of García Prieto et al.* Judgment of November 20, 2007, para. 101.

<sup>162</sup> IACHR. Report No. 25/09 Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, para. 109; I/A Court H.R., *Case of the "Street Children" (Villagrán-Morales et al.)*. Judgment of November 19, 1999, para. 230; *Case of J. v. Peru*. Judgment of November 27, 2013, para. 344 (citing *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003, para. 128).

<sup>163</sup> *Case of Vargas Areco v. Paraguay*. Judgment of September 26, 2006, para. 102; *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006, para. 289; *Case of Baldeón García v. Peru*. Judgment of April 6, 2006, para. 151.

<sup>164</sup> I/A Court H.R., *Case of Valle Jaramillo et al. v. Colombia*. Judgment of November 27, 2008, para. 155.

proceedings have not constituted an effective remedy for the next-of-kin of the deceased youths, in terms of truth, justice and reparation. In this regard, the Commission considers that it is not necessary to make a finding on the alleged specific violation in connection with criminal procedural rules on the presentation of the conclusive act.

89. Based on the foregoing considerations, the Commission concludes that the State failed to provide the relatives of the victims, duly identified in the section on proven facts, with an effective remedy to clarify what happened and establish the corresponding responsibilities, in violation of the rights enshrined in Articles 8.1 and 25.1 of the American Convention in relation to Article 1.1 of the same instrument.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

90. Based on the findings of fact and law, the Inter-American Commission concludes that the State is responsible for the violation of Articles 4.1 (life), 5.1, 5.4, 5.5 and 5.6 (personal integrity), 8.1 (judicial guarantees) and 25.1 (judicial protection) of the American Convention on Human Rights, in relation to the obligations established in Articles 1.1 and 19 of the same instrument, to the detriment of José Gregorio Mota Abarullo, Gabriel de Jesús Yáñez Sánchez, Rafael Antonio Parra Herrera, Cristián Arnaldo Molina Cordova, Johan José Correa and their families, in the terms explained throughout this report.

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

1. Provide comprehensive reparations for the human rights violations declared in this report both for material and immaterial damage. The State must adopt the measures to provide economic compensation and satisfaction.

2. Provide the necessary measures of physical and mental health care for the rehabilitation of the relatives of the deceased youths, with their agreement and in a concerted manner.

3. Continue the criminal investigation diligently, effectively and within a reasonable time in order to clarify the facts in a complete manner, identify all possible responsibility and impose the appropriate sanctions with respect to the human rights violations declared in the present report.

4. Provide mechanisms of non-repetition including all necessary measures to eradicate the multiple risk factors identified in this report, in terms of infrastructure, effective control, attention to emergency situations, elimination of overcrowding, segregation and strict compliance with resocialization programs for adolescents deprived of their liberty at the INAM-San Félix.