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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 3283/2019*, **, ***

Communication submitted by:	José Gregorio Pernalete López and Elvira del Carmen Llovera Hurtado (represented by Andrea Santacruz, Tamara Bechar and Laura Dib)
Alleged victims:	The authors and their deceased son, Juan Pablo Pernalete Llovera
State Party:	Bolivarian Republic of Venezuela
Date of communication:	26 April 2018 (initial submission)
Document references:	Decision taken pursuant to rule 92 of the Committee's rules of procedure, transmitted to the State Party on 7 January 2019 (not issued in document form)
Date of adoption of Views:	18 March 2025
Subject matter:	Alleged extrajudicial execution during a demonstration
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Right to an effective remedy; right to life; right to honour; right to freedom of expression; right to freedom of peaceful assembly; integrity of the person
Articles of the Covenant:	2 (3), 6 (1) 7, 17, 19 and 21
Articles of the Optional Protocol:	2, 3 and 5 (2) (b)

1. The authors of the communication are José Gregorio Pernalete López and Elvira del Carmen Llovera Hurtado, nationals of the Bolivarian Republic of Venezuela, of legal age, and the parents of Juan Pablo Pernalete Llovera, of legal age, who died during an allegedly peaceful demonstration. They claim that the State Party has violated their rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3), as well as the rights

* Adopted by the Committee at its 143rd session (3–28 March 2025).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Wafaa Ashraf Moharram Bassim, Rodrigo A. Carazo, Yvonne Donders, Mahjoub El Haiba, Carlos Ramón Fernández Liesa, Laurence R. Helfer, Konstantin Korkelia, Dalia Leinarte, Bacre Waly Ndiaye, Hernán Quezada Cabrera, Akmal Saidov, Ivan Šimonović, Soh Changrok, Teraya Koji, Hélène Tigroudja and Imeru Tamerat Yigezu.

*** An individual opinion by Committee member Rodrigo A. Carazo (dissenting) is annexed to the present Views.

of their deceased son under article 6 (1), read alone and in conjunction with articles 2 (3), 17, 19 and 21. The authors are represented by counsel. The Optional Protocol entered into force for the State Party on 10 August 1978.

Facts as submitted by the authors[1]

Extrajudicial execution of Mr. Pernalete Llovera during a peaceful demonstration

2.1 The events that form the backdrop to the communication are the protests that took place in the Bolivarian Republic of Venezuela between April and August 2017, in which it is estimated that between 124 and 157 people were killed and 5,341 were arbitrarily detained. The authors claim that, on 26 April 2017, Mr. Pernalete Llovera[2] was killed by an agent of the State Party while peacefully demonstrating in Altamira (in the municipality of Chacao, in the capital), demanding the restoration of the democratic and constitutional order. The authors claim that, although their son was unarmed and posed no threat, the Bolivarian National Guard fired a tear gas canister directly at his chest along a horizontal trajectory and from close range (approximately 30 m), causing him to die minutes later.

2.2 The Public Prosecution Service immediately launched an investigation. After a number of tests had been conducted, the autopsy performed by the public prosecutor's office concluded that the cause of death was cardiogenic shock resulting from cardiac contusion with haemorrhage caused by thoracic blunt trauma at the precordial level.[3] Forensic analysis of the clothes that he was wearing found traces of tear gas in the chest area, where he was hit.

Denial of the truth and stigmatization of Mr. Pernalete Llovera and other demonstrators as terrorists

2.3 The authors allege that agents of the State Party denied the truth and stigmatized their son in the media and that, on several national television programmes, the Bolivarian National Guard were exonerated and the blame was placed on the demonstrators, who were called terrorists.

2.4 Therefore, on 30 June 2017, the authors filed a criminal complaint with the Attorney General for the offences of public incitement, cruel and degrading treatment, collaboration, concealment and obstruction, abuse of public credulity, and corruption, against two high-ranking officials (the Minister of People's Power for Communication and Information and the Minister of People's Power for Defence, who, at the time, had been members of the National Assembly and, at the time of issuance of the statement by the unlawfully constituted National Constituent Assembly, had been television presenters and newspaper editors).

2.5 On 25 July 2017, the authors requested the Supreme Court to initiate a preliminary hearing on the merits against these high-ranking officials. On 18 August 2017, they submitted an urgent request to public prosecutor No. 49 for the protection of fundamental rights, who was attached to the Public Prosecution Service, to carry out all necessary inquiries. On 26 October 2018, the prosecutor was due to take their statements but she was removed from office on the same day. The new interim prosecutor requested time to review the case file and rescheduled the interview for 12 November 2018. In their statement, the authors summarized the events and the actions undertaken by high-ranking government officials and media professionals who had pre-empted the investigations carried out by the Public Prosecution Service. The authors state that the designated prosecutor treated them in a hostile manner, expressing contempt for their complaint and stating that, in her opinion, the officials who were the subject of the complaint were not committing an offence but exercising their

[1] In the initial complaint, dated 26 April 2018, and in the additional submissions dated 16 January 2019 and 26 April 2020, both of which were submitted prior to the submission of the State Party's observations.

[2] Mr. Pernalete Llovera was 20 years old and was studying Accounting at the Metropolitan University of Caracas.

[3] Expert report of the Unit for Criminal Investigation of Violations of Fundamental Rights of the Caracas Metropolitan Area (UCCVDF-AMC-DCF-AX-127-2017), dated 9 May 2017, p. 22.

right to freedom of expression. For this reason, another prosecutor was subsequently appointed.

Exhaustion of domestic remedies

2.6 The authors claim that domestic remedies have been exhausted, both in connection with the denial of the truth and the stigmatization of their son and with the criminal investigation into the actions of the Bolivarian National Guard.

2.7 With regard to the criminal proceedings, the authors state that, for the first three months following the launch of the investigation, no prosecutor was investigating the case. It was not until 16 July 2017 that a provisional prosecutor was appointed. From that moment on, the authors regularly requested the public prosecutor's office to take every ordinary and special measure necessary to identify the officials responsible. The authors claim that high-ranking officials of the Bolivarian National Armed Forces are obstructing the course of justice by refusing to provide the prosecutor's office with the information necessary to establish the individual responsibility of the guilty party. Thus, faced with the refusal of the military, on 18 August 2017, the authors requested the prosecutor to take steps to determine the respective responsibilities of those obstructing the course of justice in the criminal investigation.

2.8 The authors state that the investigation has not progressed, despite the fact that a number of measures have been taken. On 5 October 2017, for example, the new prosecutor appointed to the case requested information from the command of the Bolivarian National Guard and interviewed the doctor attached to the military clinic. On 1 August 2018, after a number of other measures had been taken, the Chief of Staff of the Bolivarian National Guard was requested to provide information on the agents present in the Altamira area at the time of the events on 26 April 2017. On 26 October 2018, the authors learned that a newly assigned provisional prosecutor had requested the Bolivarian National Guard to locate Sergeant Eliux Alberto Custodio Marcano (no further information is provided about this person's identity or his connection with the events; the State Party mentions him in its observations on admissibility (see para. 4.2 below). A number of telecommunications companies were also asked to provide information on the sergeant's telephone numbers so that he could be located and summoned. On 27 May 2019, the Director of Personnel of the Bolivarian National Guard provided information on his location; he was still on active service. In an interview conducted on 31 July 2019, he stated that he reported to Colonel Ediam Gabriel Lagonell Hernández. On 3 September 2019, the Public Prosecution Service wrote to the Bolivarian National Guard, requesting it to locate this colonel. On 18 November 2019, the Director of Personnel of the Bolivarian National Guard stated that the colonel was a serving officer and provided his location. A list of the weapons assigned to the officers on the day of the events was also obtained. The colonel was summoned to appear at the public prosecutor's office on 31 January 2020 but he did not do so. He was subsequently summoned to appear on 5 March 2020 but, once again, he failed to turn up. During the coronavirus disease (COVID-19) pandemic, the proceedings were suspended.

2.9 The authors state that, three years after the events, the case remains at the initial stage of the proceedings (that is, the prosecutorial investigation, with the next stages being the preliminary investigation and the trial), without the officer who fired the tear gas canister having been identified and without any charges having been brought against the chain of command. The authors point out that the Public Prosecution Service (the prosecutor's office) oversees the criminal proceedings and is therefore responsible for taking action during the investigation stage. The law does not provide the authors with any remedy at the investigation stage aside from the possibility of challenging the performance of the prosecutor's office (through an administrative or even criminal investigation against the prosecutor), which is not an appropriate remedy as it does not resolve the legal situation; it is a special remedy that is unlikely to succeed. The authors also state that 13 prosecutors have been in charge of the investigation since the opening of the case and that, with each new prosecutor, a significant degree of re-victimization took place.

2.10 The authors add that the lack of independence and impartiality in the justice system, and a pattern of impunity, make it highly unlikely that justice will be achieved. They point out that the initial Attorney General tried to move the investigation forward but was removed

from her position[4] and replaced with another prosecutor (the then Ombudsman), who has denied the truth of Mr. Pernalete Llovera's murder.

2.11 The authors recall that a number of international bodies have made statements about the lack of independence of the judiciary and violations of the rights to truth and justice of the family members of people killed during protests,[5] claiming that this demonstrates that they have no plausible hope of achieving justice.

Complaint

3.1 The authors allege, firstly, a violation of article 6 (1) of the Covenant, read alone and in conjunction with article 2 (3), in respect of their deceased son. They allege that, although tear gas is not lethal, it was used in a lethal manner as it was fired with a projectile directly at their son from close range. They allege that, since their son was unarmed and did not pose any threat, the action taken by the Bolivarian National Guard was neither proportional nor necessary in a peaceful demonstration and was not in pursuit of a legitimate aim. The authors also recall that the second component of the right to life is the requirement to conduct a proper investigation and ensure accountability where there is reason to believe that an arbitrary deprivation of life may have taken place.

3.2 Secondly, the authors allege violations of their son's rights under articles 19 and 21 of the Covenant, given that demonstrators like their son were unarmed civilians who were peacefully exercising their right to protest and their freedom of expression.

3.3 Thirdly, the authors allege a violation of their son's rights under article 17 (particularly with regard to honour and reputation) resulting from the false statements made by high-ranking government authorities, the military and the government-controlled media, which questioned the veracity of the claims, exonerated the military and blamed their son by calling him a terrorist.

3.4 Fourthly, the authors allege a violation of their rights under article 7 of the Covenant, read alone and in conjunction with article 2 (3), on account of (a) the extrajudicial execution of their son; (b) the violation of their son's honour and reputation by the authorities' false claim that he was a terrorist; and (c) the lack of an impartial investigation leading to a reasonable expectation of justice. They point out that the suffering, anguish, frustration and helplessness that they have experienced are reflected in a number of psychiatric reports submitted to the Directorate General for Legal Action of the Public Prosecution Service.[6] These reports state that Ms. Llovera Hurtado suffers from a tendency to cry easily and from thoughts of disability, hopelessness and death, sleep-onset insomnia, anhedonia and clinically significant loss of appetite triggered by the death of her son, while Mr. Pernalete López suffers from anxiety, a tendency to cry easily, sleep-onset insomnia and motor hyperactivity with a tendency toward agitation. They have both been diagnosed with a severe major depressive disorder and persistent complex bereavement disorder and they are being treated

[4] On 20 June 2017, the Supreme Court admitted a petition for a preliminary hearing on the merits against the prosecutor. On 4 August 2017, it was determined that there was sufficient evidence to prosecute her for allegedly committing serious misconduct in the exercise of her office, and she was finally dismissed.

[5] The authors refer to the report of the Office of the United Nations High Commissioner for Human Rights (OHCHR) entitled *Violaciones y abusos de los derechos humanos en el contexto de las protestas en la República Bolivariana de Venezuela del 1 de abril al 31 de julio de 2017* (Geneva, 2017), in which specific reference is made to the case of Mr. Pernalete Llovera (pp. 13 and 17); the OHCHR report *Human rights violations in the Bolivarian Republic of Venezuela: a downward spiral with no end in sight* (Geneva, 2018); a number of statements made by the United Nations High Commissioner for Human Rights, Michelle Bachelet, before the Human Rights Council; and the *Report of the General Secretariat of the Organization of American States and the Panel of Independent International Experts on the Possible Commission of Crimes against Humanity in Venezuela* (Washington, D. C., 2018).

[6] In particular, the psychiatric medical reports of 13 July 2018, drawn up by the head of the psychiatry unit at the Dr. Domingo Luciani Hospital, and the psychological examinations conducted on 26 and 27 November 2018 by the Forensic Psychology Department of the Public Prosecution Service.

with medication and supportive psychotherapy. At the time of writing, their depressive symptoms persist, mainly due to the lack of justice.

3.5 The authors request the Committee to instruct the State Party to conduct an independent and impartial investigation into their son's extrajudicial execution and to convict those responsible. The authors also request: (a) financial compensation measures for moral damage, consequential damage (for the expenses incurred in the search for justice) and loss of income (as the authors have stopped working to devote themselves to the search for justice for their son's death); (b) psychological rehabilitation for both authors, with specialists of their choosing; (c) a public apology; (d) the establishment of a scholarship in their son's name for young athletes who wish to advance in their primary, secondary or university education; (e) the construction of a monument to commemorate young people killed during demonstrations; and (f) the construction of an animal shelter, named after their son, that will rescue and provide refuge and veterinary treatment to animals, in honour of his work as a rescuer.

State Party's observations on admissibility

4.1 On 28 September 2020, the State Party claimed that the communication is inadmissible on the grounds that domestic remedies have not been exhausted. It points out that the Public Prosecution Service has not ceased to carry out all the relevant investigative procedures to identify those responsible. It states that, following Mr. Pernalete Llovera's death, both national public prosecutor's office No. 62 and public prosecutor's office No. 81 of the Caracas Metropolitan Area launched an investigation. To date, the Public Prosecution Service has acted promptly and with due diligence and thoroughness in carrying out 22 measures to investigate the incident. The investigation is currently still active.

4.2 The State Party specifies that the measures taken include the following: a technical inspection of the site; the gathering of footage from security cameras installed in public and private institutions and the analysis of this footage; the gathering of used tear gas devices; the collection of the daily incident log of the Bolivarian National Guard, which states that Sergeant Custodio Marcano was wounded near the place of the reported events; an autopsy and the post-mortem fingerprint identification of the corpse; comparative physical and physico-chemical expert analyses of the victim's clothing; a physical fit examination of the victim's wound, his shirt and the characteristics of different types of tear gas devices; interviews with 15 witnesses; the expert comparison of genetic profiles; the expert analysis of mobile phone numbers; the request for the administrative and physical location of certain officers of the Bolivarian National Guard; and the request for information on the movements of migrants.

4.3 The State Party argues that the exception to the rule concerning the prior exhaustion of domestic remedies is not applicable because, owing to the complexity of the case (which results from the considerable number of law enforcement officers present on the day to protect public order in the face of hundreds of demonstrators), it has not yet been possible to conclude the investigation.

4.4 Despite this complexity, progress is being made in the investigation, as Sergeant Custodio Marcano has been identified as the possible perpetrator of the shooting. Efforts are also being made to locate Colonel Lagonell Hernández, the officer under whose command Sergeant Custodio Marcano reportedly acted. The State Party also recalls that the investigation is not an obligation of result, but of means, and argues that it is taking reasonable measures within its power to obtain the relevant evidence. It concludes that the criminal investigation is oriented towards establishing the facts and identifying those responsible.

4.5 The State Party also points out that, although the Code of Criminal Procedure does not establish a time period for the conclusion of the investigation phase (such time periods begin to run only when the Public Prosecution Service has identified a defendant), victims have a series of judicial remedies with which to monitor the investigative work carried out by the Public Prosecution Service and its diligence and speed. All actions taken or not taken during the investigation phase are subject to judicial oversight (the State Party points out that the approach taken to safeguard victims' rights has been recognized by the Supreme Court in

a decision handed down by the Constitutional Chamber).[7] In particular, victims may file complaints about delays or a lack of impartiality or objectivity. The State Party maintains that the authors have not exhausted any of these remedies. They have never appeared before the Procedural Court; they have not exercised, for example, the remedy provided for in article 295 of the Code of Criminal Procedure, which allows the procedural judge to set a deadline for the conclusion of the investigation. In addition, the Public Prosecution Service Act provides for the removal of prosecutors if doubts arise as to their impartiality; the authors have not exercised this remedy either.

4.6 The State Party adds that the submission of allegations about the ineffectiveness of domestic remedies does not exempt the authors from the obligation to exhaust such remedies before appealing to the Committee and that, in accordance with the Committee's jurisprudence, the obligation to exhaust administrative and judicial remedies persists even in the case of highly technical remedies.

4.7 Lastly, the State Party points out that the authors have always been granted access to the case file, and that they have regular meetings both with the prosecutors in charge of the case and with the authorities of the Human Rights Directorate of the Public Prosecution Service.

Authors' comments on the State Party's observations on admissibility

5.1 On 1 November 2020, the authors claimed that the Committee was permitting undue delays in the consideration of the case in that it had repeatedly requested observations from the State Party, issuing three reminders and thereby extending the six-month deadline that it had to participate in the process. In the authors' view, requesting, accepting and transmitting State Party observations obtained in an excessively untimely manner represents a display of tolerance towards unacceptable conduct by the Government of the Bolivarian Republic of Venezuela; it gives the Government an advantage, represents a disproportionate benefit for it, and is revictimizing for the authors.

5.2 The authors reiterate that the communication is admissible, that the investigation process is entirely the responsibility of the State Party and that the Procedural Court has no competence to address omissions made by the Public Prosecution Service. They also claim that, if they had started to submit applications for the removal of prosecutors, they would have been accused of delaying the investigation.

5.3 The authors recall that, as stated in the conference room paper setting out the detailed findings of the independent international fact-finding mission on the Bolivarian Republic of Venezuela, tear gas canisters should be fired at a high angle, rather than along a direct, flat trajectory, as they could potentially cause serious or fatal injuries.[8] The conference room paper concluded that there were reasonable grounds to believe that Mr. Pernalete Llovera had been the victim of an arbitrary killing and that the Bolivarian National Guard was involved.[9]

5.4 The authors conclude that the Public Prosecution Service is a guarantor of impunity, as the United Nations allegedly acknowledged in the aforementioned conference room paper.[10]

State Party's observations on admissibility and the merits

6.1 On 14 April 2022, the State Party reiterated its claim that the communication was inadmissible on the grounds of non-exhaustion of domestic remedies and provided an update on the progress of the investigation. In particular, a statement was received from

[7] Case of Carmen Onilda Gómez Paz, decision of 20 November 2003.

[8] Conference room paper setting out the detailed findings of the independent international fact-finding mission on the Bolivarian Republic of Venezuela, para. 1599; available at https://www.ohchr.org/en/hr-bodies/hrc/regular-sessions/session45/list-reports.

[9] Ibid., para. 1781.

[10] Ibid. However, the authors also note from the conference room paper that, of the 36 cases investigated and/or reviewed by the mission, 4 resulted in a final judgment, with 7 perpetrators being convicted and punished. Of the remaining 32 cases, 6 have proceeded to trial, 8 have or are about to reach the preliminary hearing and 18 are still under investigation (ibid. para. 1605).

Colonel Lagonell Hernandez, who was responsible for blocking access to the motorway. The agent stated that, on the westbound side of the motorway, there were two groups of officers: one under the command of Captain Rosmel Madriz Briceño, and the other under the command of Captain Luis Chourio Sánchez. Both captains were summoned to testify. Their statements indicated that the group stationed on the avenue where the agent who fired the tear gas canister at Mr. Pernalete Llovera was positioned was the one led by Captain Chourio Sanchez. He reported that his group was made up of 30 agents: 15 agents in vehicles and 15 accompanying agents (who were carrying shields and the shotguns used to fire the tear gas canisters).

6.2 On 27 January 2021, the Public Prosecution Service held an arraignment hearing against eight agents[11] for the offence of collective conspiracy in unintended homicide resulting from intentional injury. The State Party points out that the prosecutor presumed that the outcome of the act exceeded the intent behind it on the basis of the agents' reaction to the aggressive conduct of Mr. Pernalete Llovera, who threw a Molotov cocktail. Subsequently, once additional evidence had been admitted, three more arraignment hearings were held for the same offence: the first on 29 January 2021, in relation to another agent;[12] the second on 29 April 2021, in relation to three other agents;[13] and the third, in which a final agent was charged,[14] on 16 September 2021. Thus, the investigation is progressing, with charges brought against 13 persons and the possibility that further charges may be brought.

6.3 The State Party stresses that the progress made by the Public Prosecution Service in the investigation has been recognized by the United Nations High Commissioner for Human Rights.[15]

6.4 The State Party also states that the authors are fully aware of the progress made in the criminal investigation and have submitted a brief to the prosecutor[16] setting out their views on the prosecutor's actions, including a request for investigative measures to be taken. Therefore, in the State Party's view, it is contradictory for the authors to claim before the Committee to have exhausted domestic remedies while requesting further investigative measures and even asking the prosecutor why he is rushing to press charges in the way he is doing without waiting for the results of the investigation.

Article 6

6.5 With regard to the merits of the allegations, the State Party firstly maintains that there is no violation of article 6 of the Covenant since all the necessary investigative steps are being taken to identify those responsible. The State Party points out that, between January 2020 and March 2022, 65 new investigative steps were taken, including the issuance of a technical report on the performance of the projectile (a 38 mm, single-phase, model NF01 tear-gas device, manufactured by Norinco), which led to charges being brought against 13 agents of the Bolivarian National Guard. The State Party claims that there is no lack of impartiality in the investigation conducted by the Public Prosecution Service in that the duration of the investigation relates to the highly complex nature of the case, which results from the circumstances of manner, time and location of the incident.

6.6 The State Party also argues that the officers' actions served a legitimate purpose and were necessary and proportionate to ensure public order, to protect rights (in particular the rights to freedom of movement, life and integrity) against an unlawful threat, and to safeguard public and private property. The State Party notes that Mr. Pernalete Llovera moved away

[11] Humberto Nivaldo González Rodríguez, José Mariano Medina Vivas, Neiquer Socneyer Blanco, Andrés Enrique de la Rosa de la Rosa, Rodolfo Gustavo Rodríguez Mambel, Johan Ramón García Bracamonte, Felipe Antonio González Esquivel and Luis Alberto Churio Sánchez.

[12] Ismael Ramón Fernández Montilla.

[13] Williams Alexander Gómez Carrasquero, Alejandro José Lorenzo Montero and José Alejandro Díaz Díaz.

[14] Jesús Ricardo Ballesteros.

[15] A/HRC/47/55, para. 42: the Office of the United Nations High Commissioner for Human Rights acknowledges the steps taken by the Office of the Attorney General to investigate human rights violations committed by members of the security forces.

[16] Annex 4 to the observations on the merits: letter of 24 March 2021.

from the group of demonstrators and approached the officers to throw Molotov cocktails at them (see paras. 6.11–6.13 below).

Articles 19 and 21

6.7 The State Party also claims that there is no violation of articles 19 and 21 of the Covenant, since demonstrations of a violent nature are not protected by the Covenant. In this regard, the State Party recalls that, according to the Committee's general comment No. 37 (2020), the right of peaceful assembly may, by definition, not be exercised using violence.

6.8 The State Party notes that the Venezuelan Public Safety Observatory recorded 7,493 demonstrations between March and July 2017, 5,878 (78.45 per cent) of which were violent. The demonstrators attacked hospitals, schools, food collection and distribution centres, residential areas, private businesses, facilities providing basic services, and military and police bases, among other places. Furthermore, children and adolescents were used to prepare firebombs, guard roadblocks and assault members of the security forces.

6.9 In particular, the State Party maintains that the demonstration in which Mr. Pernalete Llovera's death occurred was not peaceful. There is testimonial, documentary and audiovisual evidence that the demonstrators used firearms, set up roadblocks as death traps for agents trying to pass through, deployed home-made weapons, and made and used explosive weapons such as mortars and rocket launchers and other highly lethal devices and materials.

6.10 This demonstration, which involved hundreds of participants, and about which the authorities did not receive prior notification that would have enabled them to make the necessary preparations, began on a road close to where the Bolivarian National Guard was safeguarding the free movement of traffic on a motorway that is the capital's main thoroughfare. The demonstration turned violent when the demonstrators, including Mr. Pernalete Llovera, started fires and physically attacked public and private property, as well as officials, in an attempt to gain access to the motorway.

6.11 The case file contains a still image showing how Mr. Pernalete Llovera (wearing a yellow sleeveless T-shirt, black trousers and a navy-blue backpack, with a piece of yellow cloth covering his neck and shoulders) moved away from the group of demonstrators, headed directly towards the squad of the Bolivarian National Guard and threw a Molotov cocktail. The Commission for Truth, Justice, Peace and Public Tranquility, established in June 2018, noted the following:

> "The demonstrators began to throw Molotov cocktails, stones, bottles and other blunt objects at the troops of the Bolivarian National Guard, who responded by using tear gas canisters to contain the violence. Footage recovered from security cameras near the scene of the events shows that Juan Pablo Pernalete Llovera moved away from the group with which he had arrived at the scene and began to throw Molotov cocktails at the officers. It was for this reason that he regularly moved away from the crowd and approached the officers of the Bolivarian National Guard. At around 3 p.m., tear gas canisters were fired at the scene and the victim was seen walking towards the demonstrators, touching his chest and walking and breathing with difficulty. Two demonstrators quickly approached him, presumably to help him, but seconds later one of them walked away and the other carried him in his arms to the entrance of a building in the area, where he abandoned him. Later, other demonstrators on a motorcycle took the victim to an outpatient's clinic in the municipality of Chacao, where he was admitted with no signs of life. On the basis of the examinations carried out, it was established that the 4 cm diameter contusion with ecchymosis on the victim's chest and the circular imprint of the same diameter on the T-shirt that he was wearing during the incident coincide with the dimensions of parts of tear gas devices similar to those collected at the scene of the incident."

6.12 The State Party concludes that, contrary to the authors' claims, Mr. Pernalete Llovera was not exercising his right to peaceful demonstration but was engaging in violence that could have caused injury or death.

6.13 The State Party therefore argues that the actions of the agents served a legitimate purpose and were necessary and proportionate to ensure public order, to protect rights (to freedom of movement, life and integrity) against an unlawful threat, and to safeguard public and private property, and were guided by national regulations on public order and the control of assemblies and demonstrations. The State Party adds that procedural handbooks on public order, which comply with the standards governing this area, are used as part of the professional training provided at the National Experimental University for Security Services and the Bolivarian Military University of Venezuela. The officers of the Bolivarian National Guard acted in support of the police authorities, in line with the Committee's general comment No. 37 (2020), which states that military officers may be deployed to support the control of a demonstration, provided they have received appropriate training and act in accordance with the established rules.

Article 17

6.14 The State Party also maintains that there is no violation of article 17 of the Covenant and refutes and rejects the claim that Mr. Pernalete Llovera's right to honour and reputation has been violated. The State Party maintains that the authors make some general allegations but do not provide specific information that would make it possible to identify the date, the contents of the statement concerned or the person responsible, and that the complaint should therefore be considered inadmissible. The State Party adds that the public authorities and journalists may publicly disagree with the authors' version of the events, given that their statements concern a disputed matter of public interest and do not amount to a violation of the right to honour and reputation.

6.15 With regard to case file MP-316347-2017, which concerns the complaint filed by the authors for the alleged violation of their deceased son's rights to honour and reputation, the State Party argues that, as the case is at the investigation stage, the complaint should be considered inadmissible.

Article 7

6.16 The State Party also maintains that the complaint concerning the violation of the authors' rights under article 7 of the Covenant should be declared inadmissible for want of sufficient substantiation as this complaint mainly relates to the alleged violation of their son's honour and reputation (allegedly resulting from statements made by public authorities and the media which they consider to be injurious but which do not constitute an admissible complaint or a violation of the Covenant).

Authors' comments on the State Party's observations on admissibility and the merits

7.1 On 14 July 2022, the authors reiterated their claim that domestic remedies had been exhausted since, five years after the events, no perpetrators had been punished. According to the authors, the prosecutor decided to charge the entire group of agents under the command of Captain Chourio Sánchez, without determining their individual actions or providing a clear, accurate and detailed account of each agent's actions, instead of charging only the captain, who, like the other agents, not only carried a carbine like the one used but is also the only one alleged to have carried the type of tear gas canister fired at Mr. Pernalete Llovera. The authors claim that the charges brought guarantee impunity and injustice.

7.2 The first charges were brought in January 2021, which required the Public Prosecution Service to conclude the investigation in eight months. The public prosecutor's office did not issue its final decision in a timely manner, so the authors had to request the Procedural Court to set a deadline, which the Court set at the maximum possible period of six months (the deadline for issuing the final decision was set at 10 July 2022).

7.3 On 21 June 2022, the authors appealed to the public prosecutor's office and the prosecutor informed them that he had hoped to have more time to continue the investigation and to issue his final decision, but that he was restricted by the deadline set by the court at the authors' request (10 July 2022). Thus, on 8 July 2022, the public prosecutor's office brought charges against two officials (Alejandro José Lorenzo Montero and José Alejandro Díaz Díaz) and requested the prosecution to drop the charges brought against the other

officials. For the authors, it was particularly serious that Captain Churio Sánchez's case was closed, when there are reasonable grounds for considering him to be the alleged perpetrator of the murder.

7.4 With regard to the merits of the communication, the authors reiterate that the right to life of their son, who was extrajudicially executed by State agents while exercising his right to peaceful demonstration and freedom of expression, was violated without this violation being investigated with due diligence. They state that if the Bolivarian National Guard had fired the tear gas canister to disperse the crowd rather than to kill, it would not have hit their son.

7.5 The authors claim, in particular, that the State Party disregards the right to peaceful demonstration and the right to freedom of expression that their son was exercising when he was arbitrarily deprived of his life and that these rights have been criminalized by the State Party. The authors claim that if the demonstrators used Molotov cocktails, it was to protect themselves from attacks by State agents. The authors claim that their son threw a Molotov cocktail without hitting any person or object, so his actions were harmless. The authors also claim that, when the National Guard fired at him, he was not carrying any weapon. The authors allege that there is an ongoing and routine practice of attacking the civilian population.

7.6 The authors also reiterate that their son's right to honour was violated, since freedom of expression is not an absolute right, given that the rights and reputations of others must be safeguarded. They claim that the State Party, in its observations to the Committee, is continuing to violate their son's rights to honour and reputation, inflicting deep pain on them by maintaining that their son was acting in a violent and criminal manner.

Additional submissions by the parties

State Party – additional submission on admissibility

8.1 On 7 November 2022, the State Party claimed that the authors' comments demonstrate that domestic remedies have not been exhausted: new actions have been undertaken by the authors themselves in the criminal proceedings. The authors actively participate in the proceedings, making inquiries and requests that are analysed and dealt with by the competent authorities. For example, the forty-second procedural court of first instance of the criminal court circuit of the Caracas Metropolitan Area admitted the authors' request for constitutional judicial review, instructing the prosecutor attached to the Public Prosecution Service to carry out the procedures requested by them.

8.2 The State Party states that the criminal proceedings, which are being conducted in compliance with all due process safeguards, are currently at the intermediate stage, the investigation having concluded on 8 July 2022 with the issuance of the final decision by the Public Prosecution Service, which, in this case, involves charges being brought against two agents of the Bolivarian National Guard.[17] The State Party states that the Public Prosecution Service requested the closure of the case against the other accused persons because the results of the investigation were insufficient for charges to be brought against them (without prejudice to the reopening of the case when new evidence appears). In addition, the Code of Criminal Procedure provides for remedies that may be filed by the victim to challenge the closure of a case (requests for reopening must be submitted to the prosecutor while requests for review must be submitted to the procedural court). None of these remedies has been filed by the authors.

8.3 In addition to the charges brought by the Public Prosecution Service, on 25 July 2022, the authors brought private suits against the same two agents for the offences of aggravated homicide with malicious intent as necessary accessories and violation of international principles. The authors also brought private suits against the 11 agents whose cases were closed by the Public Prosecution Service. In that regard, private suits were brought against: (a) 10 agents[18] for the offences of aggravated homicide with malicious intent as necessary

[17] Alejandro José Lorenzo Montero and José Alejandro Díaz Díaz.

[18] Humberto Nivaldo González Rodríguez, José Mariano Medina Vivas, Neiquer Socneiyer Blanco, Andrés Enrique de la Rosa de la Rosa, Rodolfo Gustavo Rodríguez Mambel, Johan Ramón García

accomplices and violation of international principles; and (b) one agent, Luis Alberto Churio Sánchez, as the perpetrator of the offences of aggravated homicide with malicious intent, misuse of a service weapon and violation of international principles.

8.4 It is now up to the court hearing the case to assess whether the final decision issued is appropriate. The court[19] scheduled a preliminary hearing for 13 October 2022 but it was postponed several times owing to the defendants' failure to appear for alleged reasons of force majeure (the collapse of several stretches of road caused by heavy rains). The hearing was rescheduled for 10 November 2022. Owing to the repeated failure of the accused to appear, the Court, acting in response to a request made by the authors' representatives, revoked the non-custodial preventive measures, ordering the arrest of the agents.

8.5 If the charges are admitted, the court will agree to the case going to trial and the start of the oral and public hearing, at which a trial court will decide on the merits of the case.

State Party – additional submission on the merits

8.6 The State Party also points out the authors' latest comments acknowledge for the first time that Mr. Pernalete Llovera took violent action against agents of the Bolivarian National Guard during the demonstration. The State Party maintains that the authors, acting in bad faith, put forward an erroneous version of the events in their original communication and that they subsequently questioned the State Party's right to make observations, in the face of which they were forced to acknowledge the truth. It also states that the authors' claim that their son was defending himself against an attack by the authorities lacks credibility, since a Molotov cocktail is not a device that can be made on the spur of the moment, without the necessary preparation; it requires a glass container, a flammable liquid and a cloth to serve as a fuse.

8.7 The State Party concludes that the bad faith shown by the authors in their initial communication, their acknowledgement that Mr. Pernalete Llovera used violence, and the implausible arguments put forward in an attempt to justify it are factors that should be taken into account by the Committee when considering the communication.

Authors

9.1 On 29 May 2024, the authors stated that they were not requesting the application of the exception to the rule governing the prior exhaustion of domestic remedies but were claiming that these remedies had been exhausted.

9.2 They point out that they brought two of their three private suits (see para. 8.3 above) against the 11 agents who were not charged by the Public Prosecution Service. In so doing, they acted in accordance with ruling No. 902 of the Constitutional Chamber of the Supreme Court of 14 December 2018, which established a new principle of jurisprudence, according to which, when the Public Prosecution Service issues a final decision to close a case, the victim may bring a private suit.

9.3 The authors report that, on 10 November 2022, the preliminary hearing was held in connection with these two private suits against the 11 agents, in respect of whom the Public Prosecution Service had concluded its investigation by closing the case. On 28 November 2022, the court dismissed both private suits on the grounds that individual responsibility for the acts carried out had not been established. On 12 December 2022, the authors filed an appeal, requesting that the preliminary hearing be declared null and void and that a new court be designated. On 4 July 2023, the Fourth Chamber of the Court of Appeals of the Caracas Metropolitan Area dismissed the appeal and upheld the decision of the procedural court. On 6 December 2023, the authors filed a special application for *amparo* with the Supreme Court.

Bracamonte, Felipe Antonio González Esquivel, Ismael Ramón Fernández Montilla, Williams Alexander Gómez Carrasquero and Jesús Ricardo Ballesteros.

[19] Forty-second procedural court of first instance of the criminal court circuit of the Caracas Metropolitan Area.

9.4 The authors point out that the preliminary hearing to assess the charges brought by the Public Prosecution Service (and the authors' own private suit) against the first two accused agents has not yet taken place. The court has also failed to issue arrest warrants.

Issues and proceedings before the Committee

Consideration of admissibility

10.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 97 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

10.2 As required under article 5 (2) (b) of the Optional Protocol, the Committee must ascertain that the authors have exhausted domestic remedies. The Committee notes the State Party's argument that the communication should be declared inadmissible for failure to exhaust domestic remedies because, following Mr. Pernalete Llovera's death, an investigation to identify the perpetrators was launched immediately and has not been halted at any time. The Committee also notes the State Party's argument that the duration of the investigation was related to the highly complex nature of the case, which results from the circumstances of manner, time and location of the incident (owing to the considerable number of law enforcement officers present that day to protect public order in the face of hundreds of demonstrators), and that more than 87 investigative steps have been taken (see paras. 4.1 and 6.5 above), leading to four arraignment hearings being held in 2021 against 13 agents of the Bolivarian National Guard, and to charges being brought against 2 of them in 2022 (and to the request for the prosecution to close the case against the other 11 agents because the results of the investigation were insufficient for charges to be brought). It is now up to the court hearing the case to evaluate, in a preliminary hearing, the merits of the final decision issued by the Public Prosecution Service in order to determine whether the case should proceed to trial.

10.3 The Committee also notes the authors' claim that they have exhausted domestic remedies. The Committee notes, in particular that, although the authors claim not to be requesting the application of the exception to the rule governing the prior exhaustion of domestic remedies on the grounds of unreasonable prolongation (see para. 2.6 above), they seem to be implicitly calling for the application of the rule by stating that, several years after the events, no one responsible has been punished and that the Public Prosecution Service is the guarantor of impunity (see para. 2.10 above).

10.4 The Committee recalls that the purpose of requiring that domestic remedies be exhausted is to give States Parties the opportunity to perform their duty to protect and guarantee Covenant rights.[20] With regard to remedies relating to the investigation into Mr. Pernalete Llovera's death, the Committee notes that the State Party does not contradict the authors' claim that, between the start of the investigation and April 2020, at least 13 prosecutors were in charge of the investigation (see para. 2.9 above), which delayed the proceedings. Nor does it provide any justification for these changes. Furthermore, the Committee notes that almost eight years have elapsed since the Public Prosecution Service launched the investigation without a preliminary hearing being held to examine the charges brought by the Public Prosecution Service against two agents of the Bolivarian National Guard. In the light of the foregoing, the Committee considers that it is not precluded by article 5 (2) (b) of the Optional Protocol from examining the present communication.

10.5 The Committee wishes to recall that authors who take action under the Optional Protocol must provide truthful information and come before it in good faith. In particular, the Committee notes the authors' allegations concerning the violation of substantive obligations relating to the right to life, arising from article 6 (1) of the Covenant, in connection with the alleged killing of their son by State agents when he was unarmed (see para. 2.1 above) and exercising his right to peaceful demonstration and freedom of expression. While the Committee recalls that the deprivation of life through acts or omissions that violate provisions

[20] Settled jurisprudence since the Committee's Views in *T.K. v. France* (CCPR/C/37/D/220/1987), para. 8.3.

of the Covenant other than article 6 – such as the use of force resulting in the death of demonstrators exercising their right to freedom of assembly – is, as a rule, arbitrary in nature,[21] it also notes a contradiction in the authors' communication in that they initially stated that their son was unarmed and did not pose a threat (see paras. 2.1 and 3.1 above) but subsequently acknowledged that he had indeed thrown at least one Molotov cocktail (see para. 7.5 above). In view of this contradictory information, the Committee considers that it does not have sufficient evidence to determine whether the use of force by the agents was disproportionate. Accordingly, the Committee considers that these claims have not been sufficiently substantiated and therefore finds them inadmissible under article 2 of the Optional Protocol.

10.6 The Committee also notes the allegation of a violation of their son's rights under articles 19 and 21 of the Covenant on the grounds that the demonstrators were allegedly unarmed civilians peacefully exercising their right to demonstrate and their freedom of expression (see para. 3.2 above). However, the Committee also notes the evidence put forward by the State Party concerning the violence perpetrated by the demonstrators, particularly the use of a Molotov cocktail by Mr. Pernalete Llovera. This evidence contradicts the authors' initial claim (see paras. 2.1, 6.9 and 6.11 above) and was subsequently acknowledged by them (see para. 7.5 above). Accordingly, the Committee considers that the claims of a violation of articles 19 and 21 have not been sufficiently substantiated and therefore finds them inadmissible under article 2 of the Optional Protocol.

10.7 The Committee also notes the authors' claim of a violation of their son's rights under article 17 of the Covenant and considers that they did not provide sufficient information to explain how the statements made by high-ranking officials and the media, constituting "lies" and casting doubt on the authors' version of the events, could have undermined their son's enjoyment of his rights under the article, given that their version turned out not to be entirely truthful. Accordingly, the Committee considers that these claims have not been sufficiently substantiated and therefore finds them inadmissible under article 2 of the Optional Protocol.

10.8 The Committee also notes the authors' claim of a violation of their rights under article 7 of the Covenant – relating to the alleged extrajudicial execution, the violation of honour and reputation and the lack of an impartial investigation – and considers that these allegations, being based on other claims which the Committee does not accept, have not been sufficiently substantiated and declares them inadmissible under article 2 of the Optional Protocol.

10.9 The Committee considers that the authors have sufficiently substantiated, for the purposes of admissibility, their claim under article 6 (1) of the Covenant (procedural obligations), read in conjunction with article 2 (3), and proceeds to consider it on the merits.

Consideration of the merits

11.1 The Committee has considered the present communication in the light of all the information submitted to it, in accordance with article 5 (1) of the Optional Protocol.

11.2 The Committee notes the authors' claim that the facts of the present case constitute a violation of article 6 (1) of the Covenant, read in conjunction with article 2 (3), because the State Party is not complying with the second component of the right to life, which is to conduct an appropriate investigation for the purpose of establishing accountability, as there is reason to believe that their son has been arbitrarily deprived of his life (see paras. 2.8 and 2.9 above). The Committee also notes the State Party's argument that there is no violation as all the necessary investigative steps have been taken, enabling four arraignment hearings to be held against 13 agents of the Bolivarian National Guard and charges to be brought against two of them, in connection with which the preliminary hearing is now pending.

11.3 The Committee recalls that the content and scope of the right to life include not only negative and positive substantive obligations but also positive procedural obligations. Indeed, the duty of States Parties to protect the right to life requires them to investigate and, where appropriate, prosecute possible cases of unlawful deprivation of life, to punish those

[21] General comment No. 36 (2018) on the right to life, para. 17.

responsible and to provide full reparation. This obligation is reinforced by the duty to provide an effective remedy to victims of human rights violations and their families, as established in article 2 (3) of the Covenant, read in conjunction with article 6 (1).[22]

11.4 In particular, investigations of reasonable suspicion of unlawful use of force by law enforcement officials in the context of demonstrations should explore the legal responsibility of superior officials with regard to violations of the right to life committed by their subordinates.[23]

11.5 The Committee notes that, in the present case, despite the fact that the investigation is progressing (as recognized by the Office of the United Nations High Commissioner for Human Rights),[24] and that the State Party has carried out a significant number of investigative measures, and that the duty to investigate is an obligation of conduct – or of diligence – and not of result, it is also true that almost eight years have elapsed since the investigation began, in which time there have been more than 13 changes of prosecutor (see para. 2.9 above). Furthermore, over the course of this period, only the preliminary investigation phase has been concluded; the preliminary hearing of the two agents accused by the Public Prosecution Service, initially scheduled for 13 October 2022, has not been held but has since been postponed on several occasions. The Committee considers that the State Party must provide the authors of the communication with a judicial response in accordance with due process, either by convicting those responsible or by concluding that the actions of the officials served a legitimate purpose and were necessary and proportionate.

11.6 In the light of the foregoing, the Committee considers that the investigations conducted in connection with Mr. Pernalete Llovera's death have not yet provided the authors with a response in accordance with due process, and concludes that the facts before it disclose a violation of article 6 (1) of the Covenant, read in conjunction with article 2 (3).

12. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State Party of article 6 (1) of the Covenant, read in conjunction with article 2 (3).

13. Pursuant to article 2 (3) (a) of the Covenant, the State Party is under an obligation to provide an effective remedy. In this regard, the State Party should, without delay, proceed with the criminal proceedings relating to the death of Mr. Pernalete Llovera, carrying out an effective, exhaustive, independent and impartial investigation and, if responsibility is established, punishing the persons responsible. The State Party is also under an obligation to take steps to prevent similar violations from occurring in the future.

14. Bearing in mind that, on becoming a party to the Optional Protocol, the State Party recognized the competence of the Committee to determine whether there had been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State Party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State Party, within 180 days, information about the measures taken to give effect to the present Views. The State Party is also requested to publish the present Views and to have them widely disseminated in the official languages of the State Party.

[22] General comment No. 36 (2018), paras. 7, 19, 21 and 27; *Mora Carrero and Mora Carrero v. Bolivarian Republic of Venezuela* (CCPR/C/128/D/3018/2017), para. 9.5. See also The Minnesota Protocol on the Investigation of Potentially Unlawful Death and A/HRC/26/36, para. 46.

[23] General comment No. 36 (2018), para. 27; *García Mendoza and Gutiérrez Julca v. Peru* (CCPR/C/134/D/3664/2019), para. 8.7.

[24] A/HRC/47/55, para. 42: the Office of the United Nations High Commissioner for Human Rights acknowledges the steps taken by the Office of the Attorney General to investigate human rights violations committed by members of the security forces. According to the Office of the Attorney General, between August 2017 and April 2021, 716 security officers and 40 civilians were charged with serious human rights violations, and 153 were convicted. On 1 May 2021, it was announced that 12 Bolivarian National Guard officers had been indicted for the homicide of Juan Pablo Pernalete, allegedly killed as a result of the impact of a tear gas canister during a protest in 2017.

Annex

Individual opinion of Committee member Rodrigo A. Carazo (dissenting)

1. I respectfully disagree with the Committee's reasoning and opinion. The victim was the subject of an extrajudicial execution carried out by law enforcement officers of the State Party, arising from the arbitrary and grossly excessive use of force, for which the State Party must be condemned.

2. The State Party repeatedly affirms in the case file that it is investigating the events that led to the death of Juan Pablo Pernalete with the purpose of identifying those responsible (para. 6.5). The investigation produced the following results: (a) 13 agents of the Bolivarian National Guard were charged with the death of the demonstrator (ibid.); (b) the demonstrators threw "Molotov cocktails, stones, bottles and other blunt objects" at the State agents (para. 6.11); (c) Mr. Pernalete threw Molotov cocktails at the agents (the film provided shows only one device being thrown by the victim, and it has not been claimed or proved that this thrown device – or any others, if there were any – caused harm or injury to any person); and (d) in order to throw the Molotov cocktail, the deceased "moved away from the group", according to the State, which is evident from the photos provided (para. 6.11); however, it cannot be deduced from the photographic evidence that, in order to do, so the demonstrator "approached" the agents of the Bolivarian National Guard (ibid.), which explains the fact that no physical harm was caused to other persons by bombs thrown from a distance (see the photos again). The protester's violence did not result in injury or death and the State does not claim that it did.

3. The State Party never denies that law enforcement officers detonated tear gas canisters but claims that these actions "served a legitimate purpose and were necessary and proportionate to ensure public order". It was enough, in my dissenting view, for one of those canisters, fired at point-blank range in the fray, to produce a 4-cm diameter contusion with ecchymosis on the victim's chest, which caused him to die before he reached the outpatient's clinic in Chacao.

4. In drafting the communication two years after the events, the victim's parents, being psychologically affected by the overall picture, and not having been at the demonstration in which their son died, put forward "an erroneous version of the events", as the State puts it, claiming that they did so in bad faith and that they subsequently corrected this version (para. 8.6). This "contradiction" is used by the Committee, in a completely disproportionate manner (para. 10.5), to conclude, without further ado, that it "does not have sufficient evidence to determine whether the use of force by the agents was disproportionate". On that basis, it declares inadmissible the allegations of violations of the victim's and his parents' rights, restricting itself to considering violations of procedural obligations.

5. This is a great shame. Footnote 25 of the present communication cites a report issued by the United Nations High Commissioner for Human Rights, paragraph 42 of which states that, according to the Public Prosecution Service, between August 2017 and April 2021 (the period during which the events in this communication occurred), 716 security agents and 40 civilians were charged with serious human rights violations, 153 of whom were convicted.

6. An entire culture of relentless repression is being overlooked in this case.

7. There is absolutely no proportion between the established facts and an erroneous (subsequently corrected) piece of information. The victim was the subject of an extrajudicial execution carried out by law enforcement officers of the State Party, resulting from the arbitrary and grossly excessive use of force. The Committee is turning a blind eye to this highly deplorable action by the State.