



Organization of  
American States



## **Inter-American Commission on Human Rights**

Application to the Inter-American Court of Human Rights  
in the case of  
*Rainer Ibsen Cárdenas and José Luis Ibsen Peña*  
Case 12.529  
against the Republic of Bolivia

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**APPLICATION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS  
WITH THE INTER-AMERICAN COURT OF HUMAN RIGHTS  
AGAINST THE STATE OF BOLIVIA  
CASE 12.529  
RAINER IBSEN CÁRDENAS AND JOSÉ LUÍS IBSEN PEÑA**

**I. INTRODUCTION**

1. The Inter-American Court on Human Rights (hereinafter the "Inter-American Commission," "the Commission," or "the IACHR") hereby submits to the Inter-American Court of Human Rights this application in case 12.529, Rainer Ibsen Cárdenas and José Luís Ibsen Peña, against the Republic of Bolivia (hereinafter the "Bolivian State," "the State," or "Bolivia") for the forced disappearance of both victims from October 1971 and February 1973 respectively, under the military dictatorship led by Hugo Banzer Suárez, facts followed by impunity, and by the lack of adequate reparation to their next of kin for the injury they sustained and the uncertainty regarding the whereabouts of one of the victims.

2. The Inter-American Commission requests the Court to find the State of Bolivia internationally responsible for failure in compliance with its international obligations and, therefore, in violation of articles 3 (right to juridical personality), 4 (right to life), 5 (right to humane treatment), 7 (right to personal liberty), 8 (right to a fair trial) and 25 (right to judicial protection), in connection with article 1(1) (obligation to respect rights) of the American Convention on Human Rights (hereinafter "the American Convention," or "the Convention"), as well as articles I and XI of the Inter-American Convention on the Forced Disappearance of Persons (hereinafter "the Convention on Forced Disappearance"), with prejudice to Rainer Ibsen Cárdenas and José Luís Ibsen Peña.

3. In addition, the Bolivian State is in violation of articles 5 (right to humane treatment), 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention in connection with article 1(1) of same, with prejudice to the next of kin of Rainer Ibsen Cárdenas and José Luís Ibsen Peña, their siblings and children respectively, Tito Ibsen Castro, Rebeca Ibsen Castro and Raquel Ibsen Castro, as well as their stepmother and spouse, respectively, Ms. Marta Castro Mendoza.

4. Moreover, the State has failed to comply with the obligation provided for by articles III and IV of the Inter-American Convention on the Forced Disappearance of Persons in that it did not established the crime of forced disappearance until the year 2006.

5. The instant case has been processed in accordance with the provisions of the American Convention, and is hereby submitted to the Court pursuant to article 34, as amended, of the Rules of Procedure of the Court. A copy of Report 93/08, prepared pursuant to article 50 of the Convention, is annexed to this application, as an appendix.<sup>1</sup>

6. The Commission considers that the submission of the instant case to the Court is justified by the obligation to have justice served as well as obtain reparations for the victims' next of kin. The instant case reflects a continuous violation of a series of rights provided for by the American Convention which began during a military dictatorship and that, to date, more than 37 years later, have not been clarified or punished, nor have

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<sup>1</sup> IACHR, Report No. 93/08 (Merits), Case 12.529, *Rainer Ibsen Cárdenas and José Luís Ibsen Peña*, October 31, 2008. Appendix 1

adequate reparations been provided. In addition, the whereabouts of Mr. José Luís Ibsen Peña or his mortal remains has not yet been established. The members of the Ibsen family continues to live with the consequences of the forced disappearance of their loved ones, aggravated by the lack of justice and uncertainty regarding the fate of one of them.

## II. PURPOSE OF THE APPLICATION

7. The purpose of this application is to respectfully request that the Court find that

- a) the State of Bolivia is responsible for the violation of the rights to recognition of juridical personality, to life, to humane treatment, to personal liberty, to a fair trial and to judicial protection, provided for by articles 3, 4, 5, 7, 8, and 25 of the American Convention, in connection with the general obligation to respect and guarantee human rights provided for by article 1.1 of same; and of articles I and XI of the Inter-American Convention on the Forced Disappearance of Persons, all with prejudice to Rainer Ibsen Cárdenas and José Luís Ibsen Peña;
- b) the State of Bolivia is responsible for the violation of the rights to humane treatment, to a fair trial, and to judicial protection, provided for by articles 5, 8, and 25 of the American Convention, in connection with the general obligation to respect and guarantee human rights established by article 1.1 of same, with prejudice to the following next of kin of Rainer Ibsen Cárdenas and José Luís Ibsen Peña: Martha Castro Mendoza (stepmother and spouse, respectively), Tito Ibsen Castro (brother and son, respectively), Rebeca Ibsen Castro (sister and daughter, respectively), and Raquel Ibsen Castro (sister and daughter respectively), and
- c) the State of Bolivia is responsible for the violation of articles III and IV of the Inter-American Convention on Forced Disappearance of Persons.

8. Based on the foregoing, the Inter-American Commission requests that the Court to order that the Bolivian State

- a) carry out an impartial and exhaustive investigation to prosecute and punish all those responsible as perpetrators and abettors of the forced disappearance of Rainer Ibsen Cárdenas and José Luís Ibsen Peña;
- b) establish the whereabouts of José Luís Ibsen Peña and, if applicable, to identify his mortal remains and deliver them to his next of kin;
- c) carry out actions for the recovery of the historical memory of Rainer Ibsen Cárdenas and José Luís Ibsen Peña;
- d) adopt legal, administrative and other measures necessary to avoid the repetition of facts similar to those of the instant case and, especially, measures to avoid the lack of diligence in investigation and to eliminate legal and other obstacles which have prevented their clarification, and the identification, and punishment of those responsible for grave human rights violations during military dictatorships;
- e) adopt measures for the rehabilitation of the victims' next of kin;
- f) provide reparations to the next of kin of Rainer Ibsen Cárdenas and José Luís Ibsen Peña for the pecuniary damage and nonpecuniary injury suffered; and

- g) to reimburse the costs and legal expenses related to the processing of this case before the Inter-American Commission and Court.

### III. REPRESENTATION

9. In accordance with the provisions of Articles 23 and 34 of the Court's amended Rules of Procedure, the Commission has appointed Commissioner Luz Patricia Mejía and Executive Secretary Santiago A. Canton to serve as its delegates in this case. Assistant Executive Secretary Elizabeth Abi-Mershed and attorneys Juan Pablo Albán and Silvia Serrano, specialists with the Commission's Executive Secretariat, have been appointed to serve as legal advisers.

### IV. JURISDICTION OF THE COURT

10. Under Article 62(3) of the American Convention, the Inter-American Court is competent to hear all cases concerning the interpretation and application of the provisions of this Convention that are submitted to it, provided that the states parties to the case recognize or have recognized its jurisdiction.

11. The Court has jurisdiction to hear this case. The State of Bolivia ratified the American Convention on July 19, 1979, and it accepted the Court's contentious jurisdiction on July 27, 1993.

12. Although the series of facts object of the instant case began before the date of Bolivia's ratification of the American Convention and therefore before the date said State accepted the Court's jurisdiction, the Court has recently reiterated its opinion, developed from its first cases on forced disappearance, as follows:

Since its first judgment in the case of *Velásquez-Rodríguez*,<sup>2</sup> the Court has reiterated that the forced disappearance of persons is a crime of a continuous or permanent nature,<sup>3</sup> and of a multiple offense nature, since it not only produces an arbitrary deprivation of freedom, but it puts the personal integrity, safety and the life itself of the detainee in danger.

The Court has established that in view of the nature of the rights violated,<sup>4</sup> a forced disappearance constitutes a grave violation of human rights that are nonderogable in

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<sup>2</sup> I/A Court H.R., *Case of Tiu-Tojín. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 52, citing *Case of Velásquez-Rodríguez v. Honduras*, para. 155; *Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs*. Judgment of September 22, 2006. Series C No. 153, paras. 81 to 85, and *Case of Heliodoro-Portugal v. Panama*, para. 106.

<sup>3</sup> I/A Court H.R., *Case of Tiu Tojín. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 52, noting that: "The European Court of Human Rights has also considered forced disappearance a continuous or permanent crime. *Loizidou v. Turkey*, App. No. 15318/89, 513 Eur. Ct. H.R. (1996)."

<sup>4</sup> I/A Court H.R., *Case of Tiu Tojín. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 52, citing the "Preamble of the Inter-American Convention on Forced Disappearance of Persons, which in what is relevant states: CONSIDERING that the forced disappearance of persons of persons violates numerous non-derogable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights."

character, producing a gross abandonment of the basic principles on which the Inter-American system is based.<sup>5</sup>

13. Especially, the Court has reiterated that

forced disappearance implies the violation of various human rights recognized in international human rights treaties, including the American Convention, and that the effects of such infringements - even though some may have been completed, as in the instant case - may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established.<sup>6</sup>

14. In addition, the Court is competent to hear the instant case since the Bolivian State ratified the Inter-American Convention on Forced Disappearance of Persons on May 5, 1999. Articles III and VII of said instrument provide that the offense of force disappearance "shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined" and its criminal prosecution shall not be subject to statutes of limitations.

15. In the instant case, the whereabouts of Rainer Ibsen Cárdenas was determined in the year 2008, when his remains were found, identified, and delivered to his next of kin, i.e., nearly 37 years after his disappearance, 29 years after the ratification of the American Convention, 15 years after the acceptance of the Court's jurisdiction, and 9 years after the ratification of the Convention on Forced Disappearance. Regarding José Luis Ibsen Peña, more than 36 years have elapsed without his whereabouts having been established or his remains found and identified. In this respect, the Court is competent *ratione temporis* to hear about the forced disappearance of both victims, because they constitute continuous or permanent violations, whose effects continue after the date in which the State ratified the American Convention and the Convention on Forced Disappearance, and submitted to the contentious jurisdiction of the Court.

## V. PROCESSING BEFORE THE INTER-AMERICAN COMMISSION<sup>7</sup>

16. On September 26, 2003, the Commission received the initial petition, which was recorded under Number P – 786 of 2003. The Commission transmitted the relevant parts of the petition on May 25, 2004, and requested that, pursuant to article 30(3) of its Rules of Procedure, it submit its response within two months.

17. On November 30, 2004, the Commission received a communication from the State requesting an extension to submit its response. A 45-day extension was granted on December 8, 2004. On February 5, 2005, the Bolivian State submitted its response, which was forwarded to the petitioners.

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<sup>5</sup> I/A Court H.R., *Case of Tiu Tojín. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 52, citing *Case of Gómez Palomino v. Peru. Merits, Reparations, and Costs*. Judgment of November 22, 2005. Series C No. 136, para. 92; *Case of the Serrano Cruz Sisters. Preliminary objections*. Judgment of November 23, 2004. Series C No. 118, para. 105; and *Case of Heliodoro Portugal v. Panama*, supra note 17, para. 118.

<sup>6</sup> I/A Court H.R., *Case of Blake. Preliminary Objections*. Judgment of July 2, 1996. Series C No. 27, para. 39. In this respect also see: I/A Court H.R., *Case of Trujillo-Oroza. Reparations and Costs* (Art. 63.1 of the Inter-American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, Separate Concurring Opinion of Judge Sergio García Ramírez, para. 10.

<sup>7</sup> The proceedings mentioned in this section can be found in the IACHR's file of the case, Appendix 3.

18. On March 2, 2005, during the Commission's 122<sup>nd</sup> regular session, a work meeting was held with the parties on matters related to the admissibility of the petition and the security situation of the members of the Ibsen family.

19. In March 2 and March 9, 2005 communications, the petitioners submitted their response, which was forwarded to the State on April 29, 2005.

20. On May 20 and June 15, 2005, the petitioners submitted additional information, which was forwarded to the State on May 20 and June 20, respectively. On June 30, 2005, the Bolivian State submitted its observations.

21. During the 123rd Regular Session, the Commission approved Report No. 46/05, in which it found the petition to be admissible. The parties were notified of the Admissibility Report on November 3, 2005. In that same communication, the parties were informed that the petition had been recorded under case No. 12.529 and, in accordance with Article 38.1 of the Commission's Rules of Procedure, the petitioners were asked to submit additional observations on the merits of the case within a period of two months. In accordance with Article 38.2 of its Rules of Procedure, the Commission also made itself available to the parties to reach a friendly settlement of the case in accordance with Article 48.1 f) of the American Convention.

22. On October 25, 2005 and November 7, 2005, the petitioners submitted briefs with additional information, which were forwarded to the State on January 10, 2006.

23. On December 28, 2005, a communication was received from the petitioners indicating that they had no additional observations and that they were not opposed to the friendly settlement offer made by the Commission. On January 31, 2006, based on the petitioners' brief, the Commission made itself available to the parties to seek a friendly settlement.

24. On March 3, 2006, the petitioners submitted a brief indicating their interest in a friendly settlement. On March 14, 2006, the Commission forwarded the petitioners' communication to the State.

25. On May 3, 2006, the Commission received a brief from the petitioners, in which they sought the adoption of a report on the merits, given the State's failure to respond.

26. On May 17, 2006, the Commission sent a communication to the parties informing them that pursuant to Article 41, paragraphs 4 and 6 of its Rules of Procedure, it considered its involvement in the friendly settlement process to have concluded.

27. On July 25 and on August 31, 2006, briefs were received from the Bolivian State, which were forwarded to the petitioners on August 15 and September 28, 2006, respectively.

28. On September 20, 2006, the petitioners submitted their observations, which were forwarded to the State on September 26, 2006.

29. On November 16, 2006, during the Commission's visit to Bolivia, a working meeting was held at which the parties agreed to reinstate the friendly settlement process.

30. On December 6, 2006, the State submitted additional information on the case, which was forwarded to the petitioners on December 19, 2006, with a request to both parties to inform the Commission regarding progress made in their negotiation of a friendly settlement agreement.

31. On January 3, 2007, a communication was received from the State attaching minutes from a meeting held between the parties. On January 16, 2007, a communication was received from the petitioners providing additional observations.

32. On January 23, 2007 the Commission again made itself available to the parties for the purpose of achieving a friendly settlement of the case.

33. On February 15, 2007, the petitioners submitted a brief in which they withdrew from the friendly settlement and provided additional information. On February 23, 2007, a communication was received from the State in which it indicated its interest in reaching a friendly settlement.

34. On March 29, 2007, the Commission forwarded the preceding communications to the parties, with a request that they indicate their desire to continue or end the friendly settlement process within a period of ten days.

35. On May 3, 2007, the petitioners submitted a communication with updated information and underscored their decision not to participate in any friendly settlement process.

36. On May 22, 2007, a communication was received from the State with additional information on the case, which was forwarded to the petitioners on June 12, 2007. On August 7 and 18, 2007 the petitioners submitted additional observations.

37. On September 4, 2007, the Commission informed the parties, pursuant to Articles 41.4 and 41.6 of its Rules of Procedure, that it had concluded its participation in the friendly settlement process. In addition and in accordance with Article 38.1 of its Rules of Procedure, the Commission sent the State the petitioners' observations regarding the merits of the case and asked the State to submit its additional observations within a period of two months.

38. On October 16, 2007, the State submitted additional information, which was forwarded to the petitioners on October 18, 2007.

39. On November 7, 2007, the State submitted a brief asking the Commission to sponsor a meeting between the parties to take up again the friendly settlement process. This communication was forwarded to the petitioners on November 13, 2007.

40. On November 21, 2007, the petitioners reiterated their rejection of the friendly settlement process and asked the Commission to issue a report on the merits. This communication was forwarded to the State on December 5, 2007.

41. On February 21, 2008, observations were received from the State, which were forwarded to the petitioners on March 4, 2008. On March 10, April 9 and August 21, 2008, the petitioners submitted additional observations, which were forwarded to the State on March 19, April 21, and August 29, respectively. On October 29, 2008 the State submitted its observations.

42. On October 31, 2008, during its 133<sup>rd</sup> regular session, the Commission approved its Report on the Merits 93/08, prepared pursuant to article 50 of the Convention. In this report, the Commission found that:

(...) the State of Bolivia violated the rights enshrined in Articles 3, 4, 5, 7, 8, and 25 of the American Convention on Human Rights, as they relate to the obligations established in Articles 1.1 and 2 of the same instrument, and Articles I, XVII, XVIII, and XXV of the American Declaration of the Rights and Duties of Man.

(...) the State of Bolivia violated the rights enshrined in Articles I, III, and XI of the Inter-American Convention on Forced Disappearance of Persons.<sup>8</sup>

43. In the aforementioned report, the Commission recommended that the Bolivian State

1. Conduct a complete, impartial, effective, and prompt investigation of the facts for the purpose of establishing and punishing the intellectual and material responsibility of all persons who participated in the events relating to the forced disappearance of Rainer Ibsen Cárdenas and José Luís Ibsen Peña.
2. Locate and deliver to the family the mortal remains of José Luís Ibsen Peña.
3. Deliver the mortal remains of Rainer Ibsen Cárdenas.
4. Adequately compensate the victims' relatives in both moral and material terms for the violations of their human rights.
5. Recognize its international responsibility for the events reported in case 12.529, Rainer Ibsen Cárdenas and José Luís Ibsen Peña.<sup>9</sup>

44. On November 12, 2008, the State was notified of Report 93/08 and was granted two months to report on the measures adopted in compliance with the Commission's recommendations.

45. On that same date, pursuant to the provisions of article 43(3) of its Rules of Procedures, the Commission informed the petitioners of the adoption of its report on the merits and its transmittal to the State, and requested them to state their position and that of the next of kin of the victims, within one month, regarding a possible submission of the case to the Inter-American Court.

46. On November 26, 2008, the Commission, in a confidential communication, transmitted the relevant parts of the report on the merits to the representatives and informed them of the report's transmission to the State.

47. In a December 12, 2008 communication, the petitioners expressed the wish of the victims' next of kin that the case be submitted to the Inter-American Court.

48. On January 12, 2009 the Bolivian State submitted a request for an extension in order to comply with the recommendations of Report 93/08 and provided a report on

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<sup>8</sup> IACHR, Report No. 93/08 (Merits), Case 12.529, *Rainer Ibsen Cárdenas and José Luís Ibsen Peña*, October 31, 2008, paras. 333 and 334. Appendix 1.

<sup>9</sup> IACHR, Report No. 93/08 (Merits), Case 12.529, *Rainer Ibsen Cárdenas and José Luís Ibsen Peña*, October 31, 2008, para. 335. Appendix 1.

progress to date. In the same communication, the State expressly and irrevocably acknowledged that the grant of an extension would have the effect of suspending the time period for submitting the case to the Court.

49. On February 6, 2009, the Commission granted the State a three month extension. In the same communication, the Commission requested the State to submit a report on April 10, 2009 regarding the measures adopted in compliance with the Commission's recommendations.

50. On May 6, 2009, the State requested another extension and presented additional information.

51. After consideration of the information available regarding the implementation of the recommendations of the report on the merits, and taking into account the lack of substantive progress in effective compliance and recommendations whose implementation remained pending, the May 8, 2009, the Commission decided to submit the instant case to the Inter-American Court.

**VI. ACKNOWLEDGEMENT OF THE FACTS AND ACKNOWLEDGEMENT OF RESPONSIBILITY FOR THE VIOLATION OF ARTICLES 3, 4, 5, 7, 8 AND 25 OF THE AMERICAN CONVENTION AND OF ARTICLES I, IV AND XI OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS**

52. The Commission wishes to highlight the fact that during the processing of the instant case the Bolivian State never disputed the facts of this application regarding the detention and subsequent disappearance of Rainer Ibsen Cárdenas and José Luís Ibsen Peña.

53. On January 12, 2009 the Bolivian State submitted a brief informing that on December 10, 2008 a public ceremony was held in the hall of the Office of the President of the Republic, to acknowledge international responsibility for the forced disappearance of the two victims of the instant case. The State informed that attending this ceremony were the Vice-president of the Republic, the Minister of Justice, the Vice-minister for Coordination with Social Movements, other state authorities, the representative of the United Nations High Commissioner for Human Rights, diplomatic missions, members of the high commands of the police and the armed forces, representatives of human rights organizations, civil society in general, and the victims' next of kin.

54. In this same brief, the State reiterated its acknowledgement of responsibility in the following terms:

The Bolivian State assumes its international responsibility for the violation of the rights provided for by articles 3, 4, 5, 7, 8, and 15 (sic) of the American Convention on Human Rights, in connection with the obligations established in article 1.1 of same; articles I, XVII, XVIII and XXV of the American Declaration of the Rights and Duties of Man, and for the violation of the rights provided for by articles I, IV, and XI of the Inter-American Convention on Forced Disappearance of Persons.

55. Bearing in mind the conclusions of Report 93/08, the Commission understands that reference to article 15 of the American Convention constitutes a typographical error and that the intention of the Bolivian State was to acknowledge its responsibility with respect to article 25 of that instrument. The IACHR also notes that

although it concluded in its Report 93/08 that the State violated article III of the Convention on Forced Disappearance, in connection with article IV of the same instrument, the State, in its acknowledgement, made reference to the latter norm but not to the former. The Commission therefore requests the Inter-American Court to require that the Bolivian State clarify if its acknowledgement of responsibility also includes article III of the Inter-American Convention on the Forced Disappearance of Persons.

56. The Commission appreciates the lack of disputation of the facts on the part of the Bolivian State and its acknowledgement of international responsibility, and requests that the Court take note of both facts and that their implications be included in its judgment.

## VII. CONSIDERATIONS IN FACT

### A. Assessment of the evidence

57. The Court, from its first cases onwards, has established less formal criteria than those provided for in domestic legislations for its assessment of evidence. In this respect it has always stressed that a rigid determination of the quantum of evidence necessary to substantiate a ruling is not required, bearing in mind that international courts have the power to appraise and assess the evidence according to the rules of competent analysis. To establish the international responsibility of a State for the violation of the rights of a person, they have ample powers in the assessment of evidence presented before them regarding the relevant facts, pursuant to the rules of logic and on the basis of experience.<sup>10</sup>

58. The assessment and scope of the set of presumptions that arise from the facts and that, according to experience, are valid and logical, even when there is no direct evidence of these facts, is of special importance in the instant case. In cases of forced disappearance, whose purpose is to erase any and all material traces of the crime, the Court has relied on “circumstantial or indirect evidence or by logical inference” to establish the existence of the violation.<sup>11</sup> In this regard, it has been the opinion of the Court that persons who have disappeared in a context of violence may be presumed to be dead.<sup>12</sup> In addition, from the cases Velásquez-Rodríguez and Godínez-Cruz onwards, the Court has inferred that there has been the infliction of torture before death, when there have been prolonged detentions over which there has been no mechanism of judicial control.<sup>13</sup>

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<sup>10</sup> I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 160, citing I/A Court H.R., *Case of Almonacid-Arellano. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 69. See also I/A Court H.R., *Case of Juan Humberto Sánchez. Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs (Art. 67 of the Inter-American Convention on Human Rights)*. Judgment of November 26, 2003. Series C No. 102, para. 42.

<sup>11</sup> See I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, para. 108, and I/A Court H.R., *Case of Velásquez Rodríguez*, Judgment of July 29, 1988. Series C No. 4, para. 131, on the importance of circumstantial or presumptive evidence.

<sup>12</sup> Corte I.D.H., I/A Court H.R., *Case of Bámaca-Velásquez* Judgment of November 25, 2000. Series C No. 70, para. 173, citing I/A Court H.R., *Case of Castillo-Páez*. Judgment of November 3, 1997. Series C No. 34, paras. 71-72; I/A Court H.R., *Case of Neira-Alegría et al.*, Judgment of January 19, 1995. Series C No. 20, para. 76; I/A Court H.R., *Case of Godínez-Cruz*, Judgment of January 20, 1989. Series C No. 5, para. 198, and I/A Court H.R., *Case of Velásquez-Rodríguez*, judgment on the merits of July 29, 1988, Series C No. 4, para. 188.

<sup>13</sup> I/A Court H.R., *Case of Velásquez-Rodríguez*, judgment on the merits of July 29, 1988, Series C No. 4, para. 156; I/A Court H.R., *Case of Godínez-Cruz*, Judgment of January 20, 1989. Series C No. 5, para. 164.

59. In addition, the determination that a case is part of a pattern of human rights violations also has evidentiary consequences. The Court has held that if it is proven for the case at hand that it formed part of an alleged pattern of human rights violations, "it is reasonable to assume and conclude that there is an international responsibility of the State."<sup>14</sup> Therefore, "if it has been proved that the State promotes or tolerates the practice of forced disappearance of persons, and the case of a specific person can be linked to this practice, either by circumstantial or indirect evidence, or both, or by pertinent logical inference, then this specific disappearance may be considered to have been proven."<sup>15</sup>

60. The Court's case law has attached significant value to "press clips" as evidence,<sup>16</sup> especially in cases of forced disappearance,<sup>17</sup> bearing in mind that one of the characteristics of this behavior is to not leave any traces or evidence of the fact in order to obstruct the investigation.

## B. Context

61. In the context of the uprisings that occurred in Santa Cruz between August 19 and 21, 1971, then Colonel Hugo Banzer Suárez led a coup d'état and set up a three-man governing Military Junta, which included himself, Colonel Andrés Sélich Chop, and General Jaime Florentino Mendieta Vargas. This junta would later delegate its functions with full powers to the Office of the President of the Republic under Hugo Banzer Suárez,<sup>18</sup> who created the Political Order Department (hereinafter also "the DOP"), the purpose of which was the repression of his political opponents.<sup>19</sup>

62. His dictatorial government lasted six years and eleven months and initially consisted of the Armed Forces and the political parties of the Revolutionary Nationalist Party (hereinafter also "the MNR"). During his regime constitutional guarantees were suspended,

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<sup>14</sup> I/A Court H.R., *Case of Juan Humberto Sánchez. Interpretation of the Judgment of Preliminary Objection, Merits, Reparations and Costs (Art. 67 of the Inter-American Convention on Human Rights)*. Judgment of November 26, 2003. Series C No. 102, para. 108. I/A Court H.R., *Case of Bámaca-Velásquez*. Judgment of November 25, 2000. Series C No. 70, paras. 130-131; I/A Court H.R., *Case of Cantoral-Benavides*. Judgment of August 18, 2000. Series C No. 69, paras. 47-48; I/A Court H.R., *Case of Blake*, Judgment of January 24, 1998. Series C No. 36, paras. 47, 49, and 51.

<sup>15</sup> I/A Court H.R., *Case of Bámaca-Velásquez*. Judgment of November 25, 2000. Series C No. 70, para. 130.

<sup>16</sup> I/A Court H.R., *Case of Bueno-Alves*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 46; I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 62; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 86.

<sup>17</sup> I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, para. 56, citing: I/A Court H.R., *Case of Cantos*. Judgment of November 28, 2002. Series C No. 97, para. 39; I/A Court H.R., *Case of Baena-Ricardo et al.* Judgment of February 2, 2001. Series C No. 72, para. 78; I/A Court H.R., *Case of the Mayagna (Sumo) Awás Tingni Community*. Judgment of August 31, 2001. Series C No. 79, para. 94.

<sup>18</sup> IACHR, *Report on the Situation of Human Rights in Bolivia*, OEA/Ser.L/V/II.53 doc.6 rev.2 of October 13, 1981. Chapter V. Annex 1; Center for International Relations and Development Studies (CIDOB), *Biografía de Hugo Banzer Suárez* [Biography of Hugo Banzer Suárez]. Available at: [http://www.cidob.org/es/documentacion/biografias\\_lideres\\_politicos/america\\_del\\_sur/bolivia/hugo\\_banzer\\_suarez](http://www.cidob.org/es/documentacion/biografias_lideres_politicos/america_del_sur/bolivia/hugo_banzer_suarez). Annex 3.

<sup>19</sup> Application submitted by the Inter-American Commission on Human Rights to the Inter-American Court of Human Rights in the Case of Trujillo-Oroza. Chapter III. Annex 2. All the facts in Chapter III of this application were acknowledged during the proceedings by the Bolivian State.

leftist political parties were declared illegal, the Central Obrera Boliviana workers movement was suspended, and various universities were closed.<sup>20</sup>

63. Subsequently, due to the decision that some MNR members made to abandon the government, a Supreme Decree of November 9, 1974 ordered the suspension of all political parties and unions.<sup>21</sup>

64. Due to social and political pressures, on December 1, 1977, Hugo Banzer issued a decree,<sup>22</sup> calling for general elections for the offices of President, Vice President, Senators, and Representatives.<sup>23</sup> As a result of the return to the path of democracy, a general amnesty measure was announced on December 21, 1977, which included many political and union leaders who had been exiled from the country.<sup>24</sup>

65. Bolivian civil society organizations, reports provided by the family members of victims, as well as testimony from former political prisoners all assert that atrocious human rights violations were committed during the dictatorship of Hugo Banzer in the context of a policy of repressing groups and/or individuals identified as enemies or opponents of the regime. Thus, numerous historical documents and compiled testimony tell of illegal and arbitrary detentions and the existence of clandestine concentration camps and detention centers used to interrogate, torture, and/or “disappear” political prisoners. These centers include the one at Achocalla near La Paz and El Pari in the city of Santa Cruz,<sup>25</sup> where the victims in this case were imprisoned.

66. A 1976 report from the Central Obrera Boliviana on the human rights situation during the dictatorship detailed the torture to which prisoners were routinely subjected as follows: closed fist beatings; cells flooded with water where prisoners were left overnight; cigarette burns; putting needles and wooden splinters under their nails; beatings with belts; rape; beating with wood; electric prods; hanging by the feet; cuts; rubber tubes; two inch garrote; hot iron; total solitary confinement; simulated execution by firing squad; tormented screams; disrobing women; threat of arresting a parent, sibling, spouse, or son; and constant prison transfers while never letting the prison know where he might be taken.

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<sup>20</sup> Center for International Relations and Development Studies (CIDOB), *Biografía de Hugo Banzer Suárez* [Biography of Hugo Banzer Suárez]. Available at: [http://www.cidob.org/es/documentacion/biografias\\_lideres\\_politicos/america\\_del\\_sur/bolivia/hugo\\_banzer\\_suarez](http://www.cidob.org/es/documentacion/biografias_lideres_politicos/america_del_sur/bolivia/hugo_banzer_suarez). Annex 3.

<sup>21</sup> IACHR, *Report on the Situation of Human Rights in Bolivia*, OEA/Ser.L/V/II.53 doc.6 rev.2 of October 13, 1981. Chapter V. Annex 1

<sup>22</sup> IACHR, *Report on the Situation of Human Rights in Bolivia*, OEA/Ser.L/V/II.53 doc.6 rev.2 of October 13, 1981. Chapter V. Annex 1.

<sup>23</sup> IACHR, *Report on the Situation of Human Rights in Bolivia*, OEA/Ser.L/V/II.53 doc.6 rev.2 of October 13, 1981. Chapter V. Annex 1

<sup>24</sup> IACHR, *Report on the Situation of Human Rights in Bolivia*, OEA/Ser.L/V/II.53 doc.6 rev.2 of October 13, 1981. Chapter V. Annex 1

<sup>25</sup> Asociación de Familiares de Desaparecidos y Mártires de la Liberación Nacional [Association of Relatives of Martyrs for Democracy] (ASOFAMD) and Central Obrera Boliviana [Bolivian Trade Union Federation] (COB). *Banzer: Genio y figura...Para que no se olvide. Nunca más*. [La Paz: Crear Impresiones (Publisher), 2008. Available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc>. Annex 5. This document relates human rights violations that were committed during the dictatorship of Hugo Bánzer and compiles a large number of statements from persons who were detained.

<sup>26</sup> *Asociación de Familiares de Desaparecidos y Mártires de la Liberación Nacional* [Association of Relatives of Martyrs for Democracy] (ASOFAMD) and *Central Obrera Boliviana* [Bolivian Trade Union Federation]

67. Although there is no certainty regarding the number of victims of political violence during this era, ASOFAMD published a list showing that during the time the regime lasted there were at least 68 forced disappearances, 35 of which were carried out under "Operation Condor," and 78 extrajudicial executions, as well as acts of torture and the mass exile of hundreds of political and union leaders.<sup>27</sup>

68. In the 1979 session of the National Congress, the legislature initiated a trial of responsibilities against former President Hugo Banzer Suárez and former comptrollers, former ambassadors, and others<sup>28</sup>. As part of that process, on September 5, 1979, the Association of Relatives of Martyrs for Democracy sent a letter to the National Congress expressing their indignation over assertions to the effect that the charges against Hugo Banzer were slanderous. They stated that "so that once again public opinion will know the true and real bloody acts carried out by Banzer and reserving our right to initiate and pursue each and every one of the cases, we provide below a partial list of the victims of General Hugo Bánzer Suárez, victims who were sacrificed in prison, tortured, or persecuted." A list of 89 people who had been murdered and disappeared was attached<sup>29</sup>.

69. According to the complaint, most of the crimes committed have not been investigated. According to the information available, the pressure exerted by some human rights and civil society organizations led to some attempts to hold Hugo Bánzer Suárez responsible. However, this was not possible given his advanced age, serious health condition, and subsequent death in 2002. It's important to mention that in December 2001, Argentine Federal Judge Rodolfo Canicota Corral formally asked the government of Bolivia to capture and extradite General Hugo Banzer for the crimes committed during his alleged participation in "Operation Condor".<sup>30</sup>

### C. Regarding the Ibsen family

70. Mr. José Luís Ibsen Peña was born in Chile on October 7, 1925<sup>31</sup> and became a naturalized Bolivian citizen on March 26, 1947 under Ministerial Resolution of the

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(COB). *Banzer: Genio y figura...Para que no se olvide. Nunca más.* [La Paz: Crear Impresiones (Publisher), 2008. Available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc>. Annex 5.

<sup>27</sup> ASOFAMD, *Bulletin*, August 2007: "35 Años después de la Dictadura de Hugo Bánzer Suárez – 1971 – 2006" [35 Years after the Dictatorship of Hugo Bánzer Suárez, 1971-2006]. Available at: <http://www.asofamd.org/index.php?sn=258>. Annex 4.

<sup>28</sup> Selections from the impeachment trial [*Juicio de responsabilidades*] against Hugo Bánzer Suárez. Annex 20.

<sup>29</sup> Selections from the impeachment trial [*Juicio de responsabilidades*] against Hugo Bánzer Suárez. Annex 20.

<sup>30</sup> News item published on December 28, 2001 by BBCmundo.com, "Banzer: Bolivia analizará extradición" [Banzer: Bolivia to examine extradition request], available at: [http://news.bbc.co.uk/hi/spanish/latin\\_america/newsid\\_1731000/1731160.stm](http://news.bbc.co.uk/hi/spanish/latin_america/newsid_1731000/1731160.stm); news item published on January 13, 2002 in the weekly *Tiempo de Opinión*, "Fallo de la Operación Cóndor fue una "'Asociación Ilícita'" [Judge Found Operation Condor to Be "Criminal Conspiracy"]. p. 7. Annex 29; news item published on January 13, 2002 in *La Prensa*, "Las tiranías Latinoamericanas" [Tyrannies of Latin America]. Author: Marcos Roitman Rosenmann. Annex 29; and news item published on January 9, 2002 in *El País*, "Extradición: Tuto Leaves Banzer in Supreme Court's Hands". Section 4a. Annex 29.

<sup>31</sup> Birth certificate of José Luis Ibsen Peña. Annex 12. The baptismal certificate states his birthdate as October 6, 1925; however, the birthdate held as the correct one is October 7, 1925, as shown in the birth certificate issued by the Civil Registry and Identification Service.

Ministry of Governance, Justice, and Immigration, which recognized that he was the son of Alicia Peña, a Bolivian national.<sup>32</sup>

71. Regarding his work and professional life, between 1941 and 1962 José Luís Ibsen Peña held various positions in Bolivia, among them construction manager for Vivienda Propia S.A.<sup>33</sup>, an assistant at Sociedad Anónima Comercial Industrial<sup>34</sup>, a member of the accounting and personnel management department of Construcciones Basweek<sup>35</sup>, construction journeyman with the Rafael Gilbert construction company<sup>36</sup> and clerk with the La Paz branch of the Banco Popular del Perú<sup>37</sup>. On September 10, 1970, José Luís Ibsen Peña received a degree in Law, Politics, and Social Sciences from the Gabriel René Moreno Autonomous University".<sup>38</sup>

72. In terms of his family life, José Luís Ibsen Peña married Asunta Isaura Cárdenas on July 31, 1948<sup>39</sup>. Rainer Ibsen Cárdenas was born of this union on October 18, 1949 in La Paz, Bolivia.<sup>40</sup> Asunta Isaura Cárdenas died on March 10, 1959.<sup>41</sup>

73. On September 2, 1960, José Luís Ibsen Peña married Martha Castro Mendoza.<sup>42</sup> The children born of this union are Rebeca, Tito, and Raquel Ibsen Castro, who were born on August 14, 1962 in Cochabamba, Bolivia<sup>43</sup>, August 27, 1964 in Santa Cruz, Bolivia,<sup>44</sup> and October 4, 1972 in Santa Cruz, Bolivia,<sup>45</sup> respectively.

74. On February 18, 1970, Rainer Ibsen Cárdenas received a bachelor's degree in Humanities from the Gabriel René Moreno University, which qualified him to continue his university studies.<sup>46</sup>

#### **D. On the disappearance of Rainer Ibsen Cárdenas**

75. In October 1971, Rainer Ibsen Cárdenas disappeared from his daily activities in the city of Santa Cruz, Bolivia. According to the information that his relatives were able to gather, upon being arrested Rainer Ibsen was taken to the Political Order Department in the

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<sup>32</sup> Ministerial Decision of the Ministry of the Interior, Justice, and Immigration. Annex 12.

<sup>33</sup> Employment certificate from the Vivienda Propia corporation. Annex 13.

<sup>34</sup> Employment certificate from the corporation Sociedad Anónima Comercial Industrial. Annex 13.

<sup>35</sup> Employment certificate from the corporation Construcciones Basweek. Annex 13.

<sup>36</sup> Employment certificate from the Rafael Gilbert construction company. Annex 13.

<sup>37</sup> Employment certificate from Banco Popular del Perú. Annex 13.

<sup>38</sup> Degree in Law, Politics, and Social Sciences of José Luís Ibsen Peña. Annex 13.

<sup>39</sup> Marriage certificate of José Luís Ibsen Peña and Asunta Isaura Cárdenas. Annex 12.

<sup>40</sup> Birth certificate of Rainer Ibsen Cárdenas. Annex 12.

<sup>41</sup> Death certificate of Asunta Isaura Cárdenas. Annex 12.

<sup>42</sup> Marriage certificate of José Luís Ibsen Peña and Martha Castro Mendoza. Annex 12.

<sup>43</sup> Birth certificate of Rebeca Ibsen Castro. Annex 12.

<sup>44</sup> Birth certificate of Tito Ibsen Castro. Annex 12.

<sup>45</sup> Birth certificate of Raquel Ibsen Castro. Annex 12.

<sup>46</sup> Bachelor's Degree in Humanities of Rainer Ibsen Cárdenas. Annex 13.

city of La Paz and taken months later to a detention center in Achocalla.<sup>47</sup> Although there is no certainty regarding the dates of these transfers, the Commission considers it proven that from his arrest until June 19, 1972, the date of his death, Rainer Ibsen Cárdenas was held in the custody of the security forces of the Political Order Department at the above-mentioned detention centers as a political prisoner for being an alleged member of the National Liberation Army (hereinafter also “the ELN”)<sup>48</sup>.

76. The Achocalla detention center was very close to the city of La Paz, some 8 or 10 kilometers away. It was an old railroad station, where the only building left was called

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<sup>47</sup> As related by the petitioners in the initial petition received on September 26, 2003, and not disputed by the State. See also: Initial petition received on September 26, 2003. Annex 21. Petition to expand and join the criminal complaint of April 26, 2000. Annex 21; news item from the weekly *Aquí* (April 30 – May 6, 1983. Annex 29; the radio novella *Siete Años de Dictadura, Sangre, Dolor y Luto* [Seven Years of Dictatorship, Blood, Pain, and Mourning]. Compact disc 1. Chapters 21, 22, 23, 24, and 25. Annex 10; *Asociación de Familiares de Desaparecidos y Mártires de la Liberación Nacional* (ASOFAMD) and *Central Obrera Boliviana* (COB). *Banzer: Genio y figura...Para que no se olvide. Nunca más*. [La Paz: Crear Impresiones (Publisher), 2008. Available at: <http://www.somosunradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc>. Annex 5. This publication documents that Rainer Ibsen Cárdenas was detained in October 1971 and remained in the custody of the State for nine months until he subsequently disappeared.

<sup>48</sup> As related by the petitioners in the initial petition received on September 26, 2003, and not disputed by the State; petition to expand and join the criminal complaint of April 26, 2000. Annex 21; news item from the weekly *Aquí* (April 30 – May 6, 1983. Annex 29; handwritten death certificate of June 21, 1972. Annex 16; news item from the morning daily *Presencia* of June 22, 1972. Annex 29; news item from *La Nación* of Santa Cruz of February 18, 2000: “Interview of a political prisoner in 1972, Renato Díaz Matta.” Annex 29. The interviewee indicated that “They arrested your son, Rainer Ibsen Cárdenas, because in those days the young men who are now *Miristas* were known as the ELN. They killed this young man in La Paz when he was already a prisoner; they applied the “law of flight” to him and killed him”; selections from the impeachment trial of Hugo Banzer Suárez. Annex 20. In this trial ASOFAMD submitted a list of people murdered and disappeared during the dictatorship, which included Rainer Ibsen Cárdenas as “shot in La Paz on June 21, 1972”; news item in the weekly *Aquí* (April 30-May 6, 1983). Annex 29. Also see the following documents that include Rainer Ibsen Cárdenas as one of those who disappeared and/or who were murdered during the dictatorship of Hugo Banzer Suárez: Organización Demócrata Cristiana de América [Christian Democratic Organization of America], *Informe del Secretariado Latinoamericano de Derechos Humanos* [Report of the Latin American Secretariat for Human Rights] No. 43 of April, 1977: *Violaciones a los derechos humanos en Bolivia* [Human Rights Violations in Bolivia]. Annex 6; public invitation of ASOFAMD, August 21, 1979: *Homenaje del Pueblo a sus Mártires* [The People’s Tribute to Its Martyrs]. Annex 7; news item in the newspaper *La Razón* of May 26, 1996. Annex 29; newspaper column, *Tiempo de Opinión* of January 6, 2002. Annex 29; Germán Vargas Martínez, *Responsabilidad: ¿Juicio o Sainete? Juicio de responsabilidades contra el Gral. Hugo Banzer Suárez y otros*. [Responsibility: Trial or Farce: The Impeachment Trial against General Hugo Banzer Suárez et al.] (La Paz: Ediciones Moxos [Publisher], 1982. Annex 8; ASOFAMD, Bulletin, August 2007: “35 Años después de la Dictadura de Hugo Bánzer Suáres – 1971 – 2006”, available at: <http://www.asofamd.org/index.php?sn=258>; news item of the newspaper *El Deber* of October 16, 2000. Annex 29. This article was on the disappearances of Rainer and José Luís Ibsen. The article states that: “Rainer Ibsen Cárdenas was 21 years old and a university student. He was abducted in Santa Cruz in early October 1971 during the de facto government led by now constitutional President Hugo Banzer. He was transferred to La Paz and later to Achocalla where he was tortured until his death in 1972. His relatives are now demanding that the Chief Executive demonstrate his innocence in this event (...) In the case of Rainer, his body was recovered and buried on the premises of what was the Sucre pavilion in the General Cemetery; however, this site was demolished by the municipal government of La Paz some years ago. In any case, according to his family, he was transferred to another site in the same cemetery. The article indicates that “Ibsen’s remains were needed as evidence by the Head of the Socialist Party 1, Marcelo Quiroga Santa Cruz, to document torture and genocide in the trial of responsibilities in 1979 against General Hugo Banzer (...)”; news item in *Presencia* of June 4, 2000. Annex 90. In this news item Tito Ibsen Castro stated that: “First it was my brother and later my father. My brother, Rainer Ibsen Cárdenas, was 22 and studying in the city of Santa Cruz. He was abducted in early 1971 and transferred to Achocalla in La Paz, where they tortured him sadistically; he was imprisoned for more than a year until he was murdered in June 1972. We learned this through an official news item from the [Public] Relations Department of the Ministry of the Interior, in which they also accuse him of being a member of the National Liberation Army. They said they killed him because he was fleeing along with other alleged ELN militants in La Paz. We also know they applied the law of flight to him. Like many other people at that time, my brother was detained without any justification and without due process (...)”; News item in the weekly *El Juguete Rabioso* [The Raging Toy], May 2002. Annex 29.

“Stone House.” Near this building there are various houses or dwellings. The place that some civil society organizations call the “Achocalla prisoners’ camp” was used as a center for torture and was also the place where they carried out most of the prisoner executions. The Stone House was used exclusively for women prisoners, while the houses and dwellings were where they carried out torture and murder and housed male prisoners transferred from other detention centers.<sup>49</sup> Statements from people who were held there indicate that the most atrocious crimes, torture, and abuse were carried out in late May and during the months of June and July 1972. The case of Rainer Ibsen Cárdenas is found among the examples.<sup>50</sup>

77. The presence of Rainer Ibsen Cárdenas at the installations of the Political Order Department and at the Achocalla,<sup>51</sup> detention centers is corroborated in recently compiled testimony, as follows:

“Manuel Helguero and Rainer Ibsen were imprisoned in the first cell for those held in solitary by the DOP (of La Paz); Emilio Alé and Coronado were in the second cell; finally, Enrique Ortega was in the largest cell. At approximately 10:30 p.m. they told them to get ready to leave, suggesting that they take everything they had with them. On the day before he was killed, Enrique Ortega, assuming that he would be killed, wrote the following sentence on the door of his cell for his wife: “... and Mayta, my dear daughter, this night seems to be the final one, but nothing will have ended.” During the night on that day (the 17<sup>th</sup> or 18<sup>th</sup>) [1972] Emilio Alé and Coronado were transferred. They applied the law of flight to Manuel, Rainer, and Enrique and killed them at Achocalla.” (Testimony of a prisoner held at the DOP prison).

“On Thursday they took them to the prison where the women are. They kept them in solitary for a few days and one night they came and shot them. We heard various shots and then silence and noise from movement. Later they said on the radio that they were killed because they were trying to escape. We couldn’t learn anything more. I talked to a guard and he told me his version. He told me the three of them were in some sheds, and they took them out one by one to the Viacha plains.” (Testimony from a prisoner at Achocalla).<sup>52</sup>

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<sup>49</sup> Asociación de Familiares de Desaparecidos y Mártires de la Liberación Nacional (ASOFAMD) and Central Obrera Boliviana (COB). *Banzer: Genio y figura...Para que no se olvide. Nunca más.* [La Paz: Crear Impresiones (Publisher), 2008. Available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc>. Annex 5; radio novella *Siete Años de Dictadura, Sangre, Dolor y Luto*. Compact disc 1. Chapters 21, 22, 23, 24, and 25. Annex 10

<sup>50</sup> Asociación de Familiares de Desaparecidos y Mártires de la Liberación Nacional (ASOFAMD) and Central Obrera Boliviana (COB). *Banzer: Genio y figura...Para que no se olvide. Nunca más.* [La Paz: Crear Impresiones (Publisher), 2008. Available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc>. Annex 5. The examples are related literally as follows: “Between May 23 and 24, Pedro Morant Saravia died from being beaten. The day after he arrived at the concentration camp, I saw a group of torturers enter his cell, next to mine. During the week they beat him with sticks of wood and a candelabra from the old chapel...At that time I would have preferred to be the person being tortured rather than hear the wrenching screams from this fellow who was slowly dying” “On the 31<sup>st</sup> of that same month the student Ivo Stanbuck died after suffering interminable torture, along with Ignacio Salvador Dorsa (a young Argentine arrested seven months earlier). Around that date Jaime Gómez Tapia was also executed. On June 19, the victims were Enrique Ortega, Jorge Helguero Suárez, and Rainer Ibsen Cardenas, and later Oscar Pérez suffered the same fate.”; radio novella *Siete Años de Dictadura, Sangre, Dolor y Luto*. Compact disc 1. Chapters 21, 22, 23, 24, and 25. Annex 10.

<sup>51</sup> Radio novella *Siete Años de Dictadura, Sangre, Dolor y Luto*. Compact disc 1. Chapters 21, 22, 23, 24, and 25. Annex 10.

<sup>52</sup> Asociación de Familiares de Desaparecidos y Mártires de la Liberación Nacional (ASOFAMD) and Central Obrera Boliviana (COB). *Banzer: Genio y figura...Para que no se olvide. Nunca más.* [La Paz: Crear Impresiones (Publisher), 2008. Available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc>. Annex 5.

78. On June 22, 1972 an item was published in the morning newspaper *Presencia*, under the title “Three ELN militants died in an attempt to flee,” citing the text of the official communiqué of June 21, 1972 from the Public Relations Department of the Ministry of the Interior, indicating: (sic) “as the result of a skirmish that occurred when some ELN prisoners tried to escape, Enrique Ortega Hinojosa, (aka) “Víctor Guerra”, Rainer Ibsen Cárdenas, (aka) “Pedro”, and Jorge Helguero Suárez (aka) “Manuel” died in the shootout, and two security guards were wounded”.<sup>53</sup>

79. A hand written document named as a “death certificate” of Rainer Ibsen Cárdenas indicates that he died on June 19, 1972 and that the cause of his death was “internal hemorrhage caused by a bullet.”<sup>54</sup> This information has not been ratified through the criminal procedure and until now the actual circumstances and causes of death remain unknown.

80. The remains of Rainer Ibsen Cárdenas were exhumed on February 20, 2008. A preliminary report was issued on July 15, 2008, concluding that one of the bodies exhumed from the ASOFAMD mausoleum had a 99.7% probability of belonging to Rainer Ibsen.<sup>55</sup>

81. After both they had been notified of Report 93/08 on the merits of the instant case, both the petitioners and the State simultaneously informed the Commission that in the month of November the final report of the Argentine Forensic Anthropology Team had been issued, according to which the remains of Rainer Ibsen Cárdenas had been conclusively identified, and had been delivered to his next of kin on November 11, 2008. Although the State provided two compact discs on the aforementioned final report, the Commission does not have its conclusions.<sup>56</sup>

## **E. On the disappearance of José Luís Ibsen Peña**

82. On November 10, 1971, José Luís Ibsen Peña left Bolivia and entered Argentina. On the 19<sup>th</sup> of the same month he left that country, returning to Bolivia on the same date.<sup>57</sup> Later, in May 1972, José Luís Ibsen Peña was in the city of Camiri, Santa Cruz<sup>58</sup>, where he established his law office<sup>59</sup>.

83. On February 10, 1973, José Luís Ibsen Peña was detained in the city of Santa Cruz and taken to the installations at the El Pari Detention Center<sup>60</sup>, where he was

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<sup>53</sup> News item from the morning daily *Presencia* of June 22, 1972. Annex 29.

<sup>54</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz [*Juzgado Quinto de Partido Liquidador en lo Penal de Santa Cruz*] of January 19, 2005. Annex 21; Handwritten death certificate of June 21, 1972. Annex 16.

<sup>55</sup> Preliminary Report of the Argentine Forensic Anthropology Team. Annex 25.

<sup>56</sup> Petitioners’ brief received on December 12, 2008; brief of the State received on January 12, 2009; compact discs with selections of the Final Report of the Argentine Forensic Anthropology Team.

<sup>57</sup> Copies of José Luis Ibsen Peña’s passport. Annex 14.

<sup>58</sup> Manuscript of José Luís Ibsen Peña dated May 16, 1972. Annex 15.

<sup>59</sup> Commercial registration. Annex 13.

<sup>60</sup> Communication dated April 15, 1973 addressed to the Bar Association of Santa Cruz. Annex 17. Regarding Mr. Ibsen Peña’s stay at El Pari. Also see: news item in *La Nación* of Santa Cruz of February 18, 2000. “Interview with a political prisoner in 1972, Renato Díaz Matta.” In this interview, Renato Díaz Matta

beaten by the director of that center<sup>61</sup>. The El Pari detention center located in the city of Santa Cruz, was a Police Section where they housed prisoners of some importance and committed acts of torture and murder<sup>62</sup>.

84. On February 21, 1973, he was visited by his wife, Martha Castro de Ibsen, and his son, Tito Ibsen Castro, who found that he had been beaten. On February 28, 2003, his wife and children were informed that he had been removed from this section for exile to Brazil. Since that date they have no knowledge of his whereabouts or the location of his remains<sup>63</sup>.

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referring to an attorney who was imprisoned in a cell next to his said: "They took me from there to La Paz where I was imprisoned until after Christmas and for the four days that I was held in isolation there, in the cell next to me was Dr. José Luís Ibsen Peña, who they disappeared;" Response brief from the State received on February 3, 2005. Annex. Minutes from the public hearing of the confession of Elías Moreno Caballero on September 9, 2004, who stated: (sic) "at that time you asked me whether I knew Luís Ibsen yes I knew him I don't deny it he was my friend a lawyer who liked to do favors for the working poor, we were often together at many parties because he liked to sing, he sang he recited but he never did anything bad to anyone, they took him arrested Hugo Mancilla, as in my previous statement, since he was counsel for the central obrera boliviana, for that reason they took him because they said he was a communist (...) I will continue regarding the doctor, they arrested him and took him there to Pary, I remember well because he was my friend (...) there they made him bring Abraham Baptista and others, who I didn't know, a bloody type, very tough, they told me I had to give an exam, I wasn't in charge of the political prisoners".

<sup>61</sup> Record of the hearing of the accused Antonio Elio Caballero on December 28, 2004, mentioned by the petitioners in their brief dated April 9, 2008 and referred to by the State in a brief received on July 25, 2006.

<sup>62</sup> Asociación de Familiares de Desaparecidos y Mártires de la Liberación Nacional (ASOFAMD) and Central Obrera Boliviana (COB). *Banzer: Genio y figura...Para que no se olvide. Nunca más.* [La Paz: Crear Impresiones (Publisher), 2008. Available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc>. Annex 5.

<sup>63</sup> As related by the petitioners in the initial petition received on September 26, 2003, and not disputed by the State; April 15 communication addressed to the Santa Cruz Bar Association. Annex 17. Also see several reports, books, and news items including José Luís Ibsen Peña as one of those who disappeared during the dictatorship of Hugo Banzer Suárez: news item of the weekly newspaper *Aquí*, August 24-30, 1985 issue. Annex 29; ASOFAMD. August 2007 Bulletin. "35 Años después de la Dictadura de Hugo Bánzer Suárez – 1971 – 2006," available at: <http://www.asofamd.org/index.php?sn=258>. Annex 4. News item of the newspaper *El Deber* of October 16, 2000. Annex 29. This article was on the disappearances of Rainer and José Luís Ibsen: "After the abduction the Ibsen family started the search, but they suffered persecution, so that the father of the student, José Luís Ibsen Peña, went into exile in Argentina and returned to Bolivia on November 19, 1971. José Luís worked as an independent attorney in Camiri and later in Montero, but on February 10, 1973 we was detained and transferred to the cells at El Pari, in Santa Cruz, where the Political Order Department (DOP) operated. Rainer's father was held for 18 days while they arranged his exile to Brazil (...) When his relatives when to the jail in Pari they were told that the man had already left. In reality, they had killed him (...);" Notes item on *Presencia* of June 4, 2000 in which Tito Ibsen stated: "When my brother disappeared, all of us in my family were worried, particularly my father, José Luís Ibsen Peña, who was an independent attorney and did everything possible to learn the whereabouts of my brother. Apparently that bothered them, he investigated too much and they detained him and exiled him to (sic) Córdoba-Argentina, from there he went to Buenos Aires and on November 19, 1971 he entered the country legally. After he returned, everything was suspicious, some time went by and we learned that my brother had been murdered. We had to continue living despite what was happening to us. My father when to work in Camiri and later in Montero, it seems that all the persecution had ended but one Saturday, on February 10, 1973, my father was detained and taken to the cells at the El Pari section where the DOP was. That time they locked him up and held him in solitary, accusing him of being a leftist based on alleged family history, he was held there for 18 days. HE KNEW ABOUT HIS END. They made us think they were arranging his exile to Brazil and told us by telephone that he'd left the country, but he never left. When we learned that my father was going to be exiled, we went immediately to the El Pari section and there they told us that he had left at dawn ...(...) that day there was a transportation shutdown and there were no airplane departures or any transport to Brazil, we checked the documents or visa with which he could have left the Brazilian consulate, but they had no information, and the fact is that we had my father's passport, at that point we were chilled because we connected the dots and there was nothing else to think other than that my father was dead. Two days before his death and alleged exile, my father asked me to take his personal items home with me, it seemed that he knew about his end. I did so, that time I was eight years old, I hid everything in my underwear so they wouldn't search me since they searched everything even the

## **F. On subsequent efforts by the family**

85. On April 15, 1973, Mrs. Martha Castro de Ibsen went to the Bar Association of Santa Cruz, asking that steps be taken to secure the release of Mr. José Luís Ibsen Peña, or at least find out where he was. In this document, Mrs. Castro reported that in September 1971 Mr. Ibsen Peña was fired from the Medical Service of Yacimientos Petrolíferos Fiscales Bolivianos, for alleged accusations they made against him involving political activities. She explained that he was arrested in the same month and advised to leave the country, so he had to go to Argentina, where he stayed a few days in the city of Buenos Aires, from where he returned to Bolivia because of his inability to find work and his family's financial situation. She also reported that he was arrested on February 10, 1973 and taken to the installations at El Pari, where he remained until February 28 of the same year, when he was removed from that section without the family's having any information on where he was taken<sup>64</sup>.

## **G. On domestic judicial proceedings**

86. Some background will be included below regarding the investigation of the forced disappearance of José Carlos Trujillo Oroza, since the Ibsen family joined that proceeding and, as of 2000, investigations are being conducted jointly on what happened to Trujillo and to Rainer Ibsen Cárdenas and José Luís Ibsen Peña.

### **1. Preliminary stage before the Judicial Technical Police**

87. On January 9, 1999, the District Coordinating Office of Public Defense asked the Prosecutor's Office of the District of Santa Cruz (hereinafter also "the Prosecutor's Office of Santa Cruz") to initiate judicial police proceedings on the disappearance of José Carlos Trujillo Oroza on February 2, 1972. On January 11, 1999, the Prosecutor's Office of the District of Santa Cruz ordered referral to the Judicial Technical Police for that purpose. On May 26, 1999, the Judicial Technical Police made the corresponding report. In this stage, some evidence was taken, particularly statements from the accused and some witness statements.<sup>65</sup>

### **2. Preliminary investigation stage**

88. On March 27, 2000, a preliminary investigation order was issued against Justo Sarmiento Alanes, Pedro Percy Gonzáles Monasterios, Elías Moreno Caballero, and Antonio Guillermo Elio for the offenses of deprivation of liberty, abuse, and torture. On April 18, 2000, an order was issued expanding the preliminary investigation order to include Ernesto Morant Lijerón, Oscar Menacho Vaca, and Rafael Loayza. On April 24, 2000, the accused Juan Antonio Elio Rivero, Justo Sarmiento Alanes, Pedro Percy Gonzáles Monasterios, and Elías Moreno Caballero appeared to make statements.<sup>66</sup>

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*basket of food, my father gave me his watch, dentures, bloody socks, and a farewell note to my mother, after that we never learned anything more about him";* News item in the weekly *El Juguete Rabioso*, May 2002. Annex 29.

<sup>64</sup> Communication dated April 15, 1973 addressed to the Bar Association of Santa Cruz. Annex 17.

<sup>65</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005 007. Annex 21.

<sup>66</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005 007. Annex 21.

89. On April 26, 2000, Rebeca Ibsen Castro – sister of Rainer Ibsen Cárdenas and daughter of José Luís Ibsen Peña – filed a petition with the Fifth Criminal Examining Magistrate’s Court of the Judicial District of Santa Cruz (hereinafter also “the Fifth Criminal Court”) to join and expand the complaint in that same proceeding, particularly against Ernesto Morant Lijerón (Chief of the Political Order Department), Pedro Percy Gonzales Monasterio (Agent of the Political Order Department), Elías Moreno Caballero (Employee of the Criminal Investigation Directorate), Juan Antonio Elio Rivero (Under-Secretary of the Ministry of the Interior), and Justo Sarmiento Alanes (Agent of the Political Order Department), all of whom were identified by the complainants as the perpetrators of the crimes and forced disappearances that occurred during the dictatorship of 1971 to 1978, including the crimes against Rainer Ibsen Cárdenas and José Luís Ibsen Peña.<sup>67</sup> In this complaint, Rebeca Ibsen Castro indicated that her brother, Rainer Ibsen Cárdenas, was detained and killed in the city of La Paz in June of 1972 by agents of the Ministry of the Interior at the time and that the following year, in February of 1973, her father, José Luís Ibsen Peña, was imprisoned in the cells of El Pari and later disappeared without his family’s ever having knowledge of his whereabouts after that.<sup>68</sup> The petition to expand the complaint was based on incorporating the offense of murder against the above-mentioned persons. In addition, in this brief, the family of Rainer Ibsen Cárdenas and José Luís Ibsen Peña became a civil party for purposes of reparations.<sup>69</sup>

90. On May 20, 2000, the Fifth Criminal Court issued an order rejecting the petition to expand the preliminary investigation order. The basis for this decision was that the detention and later death of Rainer Ibsen Cárdenas would have occurred in the city of La Paz and the judge in the case was not competent to hear matters relating to another jurisdiction, and with respect to the detention and subsequent disappearance of José Luís Ibsen Peña, the facts did not fall within the framework of the provisions of Article 35 of the Code of Criminal Procedure<sup>70</sup> since while some of the accused did fall within the scope of that article, the events had occurred otherwise, so that the complainant needed “to make application to the court through a separate proceeding, in order to enforce her rights”<sup>71</sup>.

91. This order was appealed by Rebeca Ibsen Castro on June 2, 2000, with the argument that it violated her interests and procedural rights, repeating her petition that the criminal case be opened up against those under investigation for the crimes of genocide, murder, deprivation of liberty, abduction, torture, and abuse.<sup>72</sup>

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<sup>67</sup> Petition to expand and join the criminal complaint dated April 26, 2000. Annex 21

<sup>68</sup> Final Order to Prosecute issued by the Eighth Criminal Examining Magistrate’s Court [*Juzgado Octavo de Instrucción en lo Penal*] of the Judicial District of Santa Cruz. Annex 21.

<sup>69</sup> Petition to expand and join the criminal complaint dated April 26, 2000. Annex 21.

<sup>70</sup> Article 35 of the Code of Criminal Procedure provides that: “Criminal action cannot be filed or pursued by: the direct descendant against his relative in the ascending line and vice versa, to the fourth degree by blood or adoption; collateral relatives among themselves, to the second degree by blood or adoption; spouses and companions among themselves; and a person convicted based on false testimony, calumny, or bribery; unless they do so for crimes committed against them or against their relatives in the ascending line or descendents, spouse, companion, or siblings. Minors or those declared incompetent may only file criminal action through their legal representatives.” Annex 26.

<sup>71</sup> Decision of October 4, 2000 of the First Criminal Chamber of the Superior Court of Justice of Santa Cruz. Annex 21. This decision makes reference to the appeal filed by Raquel Ibsen Castro.

<sup>72</sup> Decision of October 4, 2000 of the First Criminal Chamber of the Superior Court of Justice of Santa Cruz. Annex 21. This decision makes reference to the first instance decision of the Fifth Court regarding the petition for expansion and joinder.

92. On October 4, 2000, the First Criminal Chamber of the Superior Court of Justice of Santa Cruz ruled on the above appeal by overturning the order on appeal and expanding the initial proceeding for the alleged commission of murder. The considerations expressed by that Chamber include:

(...) by rejecting the petition to expand the preliminary investigation order and complaint submitted by Rebeca Ibsen Castro, the judge acted incorrectly and in haste, without taking into account that there are clearly sufficient items of evidence and adjudicable substance to justify expanding the initial proceeding against Ernesto Morant Lijerón, Pedro Percy Gonzáles Monasterio, Elías Moreno Caballero, Juan Antonio Elio Rivero, and Justo Sarmiento Alanes, for the alleged commission of the crime of murder, as provided by Art. 252 of the Penal Code, with reference to the detention and subsequent disappearance of the citizens José Luís Ibsen Peña and Rainer Ibsen Cárdenas in 1971 and thereafter; in that what is being investigated in this summary proceeding is directed to the investigation of the legal truth of the facts in the complaint, the points in the criminal charge, ensuring the presence of the accused and their civil and criminal responsibility, in order to introduce these into the trial itself or order acquittal in one of the ways established in Art. 220 of the Code of Criminal Procedure; so that having demonstrated the existence of other related facts against the named accused, as established by the documentation provided by the complainant, it is feasible to overturn the order under appeal and expand the preliminary investigation order against the indicated persons, in compliance with and pursuant to Art. 169. 1, a portion of the above-mentioned criminal proceeding.<sup>73</sup>

93. On June 1, 2000, the accused Ernesto Morant Lijerón appeared to provide a statement.<sup>74</sup>

94. On August 10, 2000 and September 18, 2000, answering statements were taken.<sup>75</sup>

95. On October 17, 2000, the accused Ernesto Morant Lijerón, Pedro Percy Gonzáles, Elías Moreno Caballero, Juan Antonio Elio Rivero, and Justo Sarmiento Alanes invoked the statute of limitations.<sup>76</sup>

96. On November 10, 2000, the Fifth Criminal Court accepted the objection invoking the statute of limitations filed by the accused Elías Moreno Caballero, Antonio Elio Rivero, Justo Sarmiento Alanes, Pedro Percy Gonzáles Monasterio, and Ernesto Morant Lijerón, based on the death of the accused Rafael Loayza and the passage of time in the case of the others. As a result, this court ordered that the case be sent to the archives. The considerations in the decision include:

(...) although the conduct of the accused does present sufficient evidence to proceed with an investigation, it is no less true that the passage of time means that such evidence is limited by the inaction of the victims, which criminal law sees as forgiveness or forgetting, so that from the time a criminal act is committed, the prosecution thereof cannot be ongoing and continuous (...) although it is true that legal doctrine has recognized these offenses as ongoing offenses, it is no less true that said offenses (ongoing offenses) cease in terms of their commission or effects,

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<sup>73</sup> Decision of October 4, 2000 of the First Criminal Chamber of the Superior Court of Justice of Santa Cruz. Annex 21.

<sup>74</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>75</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>76</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

by willful act or causes beyond one's will, or in this case and for purposes of the statute of limitations the crimes were discovered and can be analyzed in the case that concerns us, the facts were discovered almost immediately and there was inaction on the part of the victims; with respect to the crime of MURDER one must consider that this is an instantaneous crime where action and consummation appear in a single act, and the complainants have shown that in the case of José Carlos Trujillo Oroza, Rainer Ibsen Cárdenas, and José Luís Ibsen Peña their deaths occurred in the first and second case in 1972 and in the third case in 1973; thus it is established that the facts fall within the scope of the provisions of Art. 29 (1) as it relates to Art. 30 of Law 1970, so that the right to bring criminal action is now time barred.<sup>77</sup>

97. This ruling was appealed by Rebeca Ibsen Castro with the argument that it violated human rights, due process, laws in effect, and international conventions. For its part, on December 16, 2000, the Office of the Prosecutor of the District of Santa Cruz asked the Superior Court of Justice to confirm the order that was appealed.<sup>78</sup>

98. On January 12, 2001, the First Criminal Chamber of the Superior Court of Justice of the District of Santa Cruz confirmed the order under appeal, based on the same arguments.<sup>79</sup>

99. On November 12, 2001, in the context of a an appeal for constitutional protection filed by Mrs. Antonia Gladys Oroza, widow of Solón Romero, the Constitutional Court handed down a decision whereby it overturned the decisions of November 10, 2000 and January 12, 2001 issued by the Fifth Criminal Court and the First Criminal Chamber of the Superior Court of Justice of the District of Santa Cruz, respectively, and ordered that the proceeding continue. The Constitutional Court based its decision on the fact that "having established the ongoing nature of the crime of illegal deprivation of liberty, the crime for which the accused are being tried (...), and that the victim has not recovered his liberty so far; consequently the statute of limitations has not begun to run; in that in order to calculate the limitation on ongoing crimes, one must begin to count as of the day the commission of the crime ceases."<sup>80</sup>

100. On April 5, 2002, Mrs. Antonia Gladys Oroza, widow of Solón Romero, petitioned to expand the preliminary investigation order for the crime of abduction. This petition was rejected on June 1, 2002 based on failure to meet formal requirements, in a decision that was appealed by Rebeca Ibsen Castro on June 10, 2002. This appeal was rejected on June 11, 2002 for not involving the same person who filed the initial expansion.<sup>81</sup>

101. On May 16, 2002, the Prosecutor's Office of the District of Santa Cruz asked the Eighth Criminal Examining Magistrate's Court (hereinafter also "the Eight Criminal Court") to expand the preliminary investigation for the crimes of abduction and criminal association.<sup>82</sup> This petition was rejected by that Court on June 1, 2002.<sup>83</sup>

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<sup>77</sup> Decision of November 10, 2000 of the Fifth Criminal Examining Magistrate's Court of the Judicial District of Santa Cruz [*Juzgado Quinto de Instrucción en lo Penal del Distrito Judicial de Santa Cruz*]. Annex 21.

<sup>78</sup> Brief submitted by the Prosecutor's Office of the District of Santa Cruz dated December 16, 2000. Annex 21.

<sup>79</sup> Decision of the First Criminal Chamber of the Superior Court of Justice of the District of Santa Cruz of January 12, 2001. Annex 21.

<sup>80</sup> Decision of the Constitutional Court of November 12, 2001. Annex 21.

<sup>81</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>82</sup> Petition to expand the preliminary investigation order of May 16, 2002. Annex 21.

102. On July 4, 2002, the Prosecutor's Office of the District of Santa Cruz asked the Eighth Criminal Court to issue a provisional order to acquit Justo Sarmiento Alanes, Pedro Percy Gonzales Monasterio, Elías Moreno Caballero, Juan Antonio Elio Rivero, and Ernesto Morant Lijerón for the alleged commission of the crimes of deprivation of liberty, abuse and torture, and murder. The basis for this petition was that, based on the statements, the criminal responsibility of the accused was not clear. The text of the petition stated: "From what has been related before, carefully analyzing both documentary evidence and the charging and answering statements, it is evident that the complainant does not prove that it was the accused who committed the actions being denounced, there being insufficient evidence demonstrating the culpability of the accused."<sup>84</sup>

103. On August 13, 2002, the following persons had appeared to make statements: Juan Antonio Elio Rivero; Justo Sarmiento Alanes; Pedro Percy González Monasterio; Elías Moreno Caballero; Oscar Menacho Vaca; and Ernesto Morant Lijerón.<sup>85</sup> In their statements, they indicated that they knew of the detention of José Carlos Trujillo Oroza only through the press and also indicated in general terms their lack of connection to the detentions of political prisoners during that period. None of the accused referred to Rainer Ibsen Cárdenas or José Luís Ibsen Peña.<sup>86</sup>

104. On August 13, 2002, the Eight Criminal Court issued a final decision ordering the prosecution of Justo Sarmiento Alanes, Pedro Percy González Monasterio, Elías Moreno Cabello, Juan Antonio Elio Rivero, Ernesto Morant Lijerón, and Oscar Menacho Vaca for the alleged commission of the crimes of deprivation of liberty, abuse, and torture. As a result, the decision was made to send the case file to the Criminal Court to continue the oral testimony and argument. The crime of murder was eliminated based on the following argument:

Regarding the crime of the murder of José Carlos Trujillo Oroza, Rainer Ibsen Cárdenas, and José Luís Ibsen Peña, the formulation of this crime requires the physical presence of the corpse or remains, which does not happen in the instant case, so that the existence of the *corpus delicti* has not been demonstrated by any means in the course of the investigations (...) in addition, the criminal definition of Art. 252 has various forms of commission and the complainants have not specified which form or forms were the means used to commit the crime (...) in criminal matters the burden of proof falls exclusively on the accusing party and since the accusing party has not produced these necessary elements to convince the judge of the commission of the crime of murder, the presumption of innocence must necessarily be applied.<sup>87</sup>

105. The foregoing was the only reference to Rainer Ibsen Cárdenas and José Luís Ibsen Peña in the above decision. In the section relating to the crimes of deprivation of liberty, abuse, and torture, reference was made only to the evidence provided by Mrs.

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<sup>83</sup> Order of the Eighth Criminal Magistrate's Court of the District of Santa Cruz dated June 1, 2002. Annex 21.

<sup>84</sup> Motion for acquittal dated July 4, 2002. Annex 21.

<sup>85</sup> Final Order to Prosecute issued by the Eighth Criminal Magistrate's Court of the Judicial District of Santa Cruz. Annex 21.

<sup>86</sup> Final Order to Prosecute issued by the Eighth Criminal Magistrate's Court of the Judicial District of Santa Cruz. Annex 21.

<sup>87</sup> Final Order to Prosecute issued by the Eighth Criminal Magistrate's Court of the Judicial District of Santa Cruz. Annex 21.

Gladys Antonia Oroza regarding the incidents detrimental to her son, José Carlos Trujillo Oroza. Reference was made in only general terms to the fact that “during the period of the military dictatorship in those days, abuses and violations against citizens’ rights and guarantees were frequent, as can be appreciated in the press clippings attached to the proceeding.”<sup>88</sup>

106. On August 23, 2002, Rebeca Ibsen Castro filed an appeal against the final investigation order.<sup>89</sup>

107. On October 25, 2002, the Second Chamber of the Superior Court of the District of Santa Cruz partially overturned the order rejecting the petition to expand the complaint and decided to open the preliminary investigation against the accused in order to investigate the crime of murder as well.<sup>90</sup>

108. On November 9, 2002, the Third Criminal Court of the Judicial District of Santa Cruz suspended the confession hearing due to the absence of all the accused and their defense attorneys.<sup>91</sup>

109. On December 31, 2002, a hearing was held to consider the motion for precautionary measures to replace preventive detention, which was denied.<sup>92</sup> On March 25, 2003, the accused repeated their motion requesting measures to replace preventive detention.<sup>93</sup>

110. On April 3, 2003, a Criminal Settlement Court issued an order to refer the case file to the Eighth Criminal Court for the purpose of expanding the preliminary investigation order to include the crime of murder, pursuant to the decision of October 25, 2002.<sup>94</sup>

111. On September 10, 2003, after 20 successive recusals by judges, the proceeding was filed in the Warnes Examining Magistrate’s Court.<sup>95</sup> On October 1, 2003, an order to expand the preliminary order to investigate to include the crime of murder was issued against all the accused, except for Rafael Loaiza Villegas, given his death.<sup>96</sup>

112. On October 20, 2003, Mrs. Gladys Oroza, widow of Solón Romero, requested the expansion of the preliminary investigation order to include the crimes of criminal association and criminal organization.<sup>97</sup>

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<sup>88</sup> Final Order to Prosecute issued by the Eighth Criminal Magistrate’s Court of the Judicial District of Santa Cruz. Annex 21.

<sup>89</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>90</sup> Decision of the Second Criminal Chamber of the Superior Court of the District of Santa Cruz of October 25, 2002. Annex 21.

<sup>91</sup> Orders to suspend dated November 9, 2002. Annex 21.

<sup>92</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>93</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>94</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>95</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>96</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>97</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

113. On October 20, 21, 22, 27, 29, and 30, 2003, the measure replacing preventive detention was applied to Justo Sarmiento Alanes, Elías Moreno Caballero, Oscar Menacho Vaca, Pedro Percy González Monasterios, Juan Antonio Elio Rivero, and Ernesto Morant Lijerón, respectively.<sup>98</sup>

114. On November 21, 2003, the court proceeded to open up the discovery period.<sup>99</sup>

115. The court was in recess between November 22 and December 18, 2003.<sup>100</sup>

116. On January 7, 2004, Juan Antonio Elio Rivero brought up the issue of the statement of limitations<sup>101</sup>.

117. On January 23, 2004, Rebeca Ibsen Castro submitted a brief suggesting that the statute of limitations does not apply to crimes against humanity.<sup>102</sup>

118. On January 28, 2004, the issue of the statute of limitations was rejected.<sup>103</sup>

119. On April 29, 2004, a hearing was held for judicial inspection and reconstruction of the facts.<sup>104</sup>

120. On June 7, 2004, the final order to prosecute was issued against Ernesto Morant Lijerón and Justo Sarmiento Alanes for the crimes of deprivation of liberty, abuse and torture, criminal association, criminal organization, and murder; against Oscar Menacho Vaca and Pedro Percy González Monasterios for the crimes of deprivation of liberty, abuse and torture, criminal associations, and criminal organization; against Juan Antonio Rivero for the crime of concealment amounting to complicity; and against Elías Moreno Caballero for the crime of concealment.<sup>105</sup>

### **3. Plenary stage**

121. On September 1, 2004, Mr. Percy González Monasterio appeared before the Ninth Criminal Settlement Court (hereinafter also “the Ninth Criminal Court”) at a public confession hearing, in which he declared that as part of his duties as Director of Political Order between March 1, 1972 and March 4, 1973, he had no knowledge of the existence of political prisoners and learned of the disappearances that are the subject of investigation precisely when proceedings began in 1999.<sup>106</sup>

122. On September 6 and 7, 2004, Mr. Juan Antonio Elio Rivero appeared before the Ninth Criminal Court in a public confession hearing, in which he stated that he held the

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<sup>98</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>99</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>100</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>101</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>102</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>103</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>104</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>105</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>106</sup> Record of public confession hearing of Pedro Percy González Monasterio of September 1, 2004. Annex 21.

position of the Undersecretary of the Ministry of the Interior from August 1971 until late 1972, in which he performed administrative duties only and had no influence on decisions relating to State security. He indicated that he had no knowledge of the disappearance of Rainer Ibsen Cárdenas or José Luís Ibsen Peña.<sup>107</sup>

123. On September 8, 2004, Mr. Oscar Menacho Vaca appeared before the Ninth Criminal Court in a public confession hearing in which he stated that in the performance of his police duties in Santa Cruz between the years 1965 and 1973, he exercised entirely administrative functions and had no connection to any political matters. He stated that he never participated in detentions of political opponents of the regime and that his duties were limited to common crimes.<sup>108</sup>

124. On September 9, 2004, Mr. Elías Moreno Caballero appeared before the Ninth Criminal Court for a public confession hearing in which he stated, in the relevant sections, that: "at that time you asked me whether I knew Luís Ibsen yes I knew him I don't deny it he was my friend a lawyer who liked to do favors for the working poor, we were often together at many parties because he liked to sing, he sang he recited but he never did anything bad to anyone, they took him arrested Hugo Mancilla, as in my previous statement, since he was counsel for the central obrera boliviana, for that reason they took him because they said he was a communist (...) I will continue regarding the doctor, they arrested him and took him there to Pary, I remember well because he was my friend (...) there they made him bring Abraham Baptista and others, who I didn't know, a bloody type, very tough, they told me I had to give an exam, I wasn't in charge of the political prisoners"<sup>109</sup>.

125. September 13, 2004, Mr. Ernesto Morant Lijerón appeared before the Ninth Criminal Court in a public confession hearing in which he stated that when he took charge of the headquarters of the Criminal Investigation Department, in September 1971, there were political prisoners in the El Pari cell "but those prisoners, I never knew them because it was a military government, and there was a man named Abraham Baptista so that we civilians had no influence with political prisoners, all these accusations raised against me is a vile calumny." He also indicated that he had no knowledge of the disappearances that are the subject of investigation.<sup>110</sup>

126. On September 14, 2004, Mr. Justo Sarmiento Alanes appeared before the Ninth Criminal Judge in a public confession hearing in which he stated that during his employment with the License Registration Department of the Criminal Investigation Division, between 1971 and 1973, he did not learn of the disappearances that are being investigated.<sup>111</sup> On that same date, the precautionary measure of preventive detention was ordered against Justo Sarmiento Alanes and Ernesto Morant Lijerón.<sup>112</sup>

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<sup>107</sup> Record of public confession hearing of Juan Antonio Elio Rivero of September 6 and 7, 2004. Annex 21.

<sup>108</sup> Record of public confession hearing of Oscar Menacho Vaca of September 8, 2004. Annex 21.

<sup>109</sup> 109 Record of public confession hearing of Elías Moreno Caballero of September 9, 2004. Annex 21.

<sup>110</sup> Record of public confession hearing of Ernesto Morant Lijerón of September 13, 2004. Annex 21.

<sup>111</sup> Record of public confession hearing of Justo Sarmiento Alanes of September 14, 2004. Annex 21.

<sup>112</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

127. On September 22 and 27, 2004, the accused Oscar Menacho Vaca, Pedro Percy Gonzáles Monasterio, and Juan Antonio Elio Rivero asked the Fifth Criminal Settlement Court to dismiss the criminal action.<sup>113</sup>

128. Between October and December, 2004, hearings were held for opening and continuing arguments.<sup>114</sup>

129. On November 25, 2004, the Office of the President of the Supreme Court of Justice issued an official letter ordering the Ninth Criminal Court to “give priority to resolving the proceeding” due to the complaint filed with the Inter-American Commission on Human Rights against the Bolivian State.<sup>115</sup>

130. On December 28, 2004, the accused Elías Moreno Caballero expanded his statement, asserting that he found José Luís Ibsen Peña being beaten with a stick by Ernesto Morant Lijerón, who hit him once more in his presence until he fell to the ground. He also stated that he heard snorting noises and saw them cover him with a blanket and that, according to another employee, they had taken him to some cemetery.<sup>116</sup>

131. On January 19, 2005, the Fifth Criminal Settlement Court decided to declare the criminal action dismissed as time barred and the respective precautionary measures without effect, in accordance with the final paragraph of Article 133 and the second paragraph of the Third Temporary Provision of the Code of Criminal Procedure<sup>117</sup>, based on the fact that the delays could be attributed to government authorities and the civilian party and not to the accused. The considerations in this decision include:

(sic) the delay in the process has been due to the following factors: i) delays in issuing the respective rulings; ii) delays in expressing the corresponding requests; iii) delays on the part of officials handling proceedings in various courts (preliminary investigation, party, Superior District Court) in complying with notices of various

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<sup>113</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>114</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>115</sup> Petitioners’ brief received on March 10, 2005. Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>116</sup> Record of the hearing of Antonio Elio Caballero on December 28, 2004, mentioned by the petitioners in their brief dated April 9, 2008. In its brief dated July 25, 2006, the State, when reporting that it had carried out a visual inspection at the cemetery “where Mr. Ibsen Peña’s remains were found,” suggested the truth of the petitioners’ assertion that the accused had provided relevant information on the death and possible location of the remains of José Luís Ibsen Peña.

<sup>117</sup> *Article 133.- (Maximum duration of the process).*

All proceedings shall have a maximum duration of three years from the first action in the proceeding, except in the case of contempt of court.

The grounds for suspending under the statute of limitations shall suspend the procedural deadline.

When these grounds disappear, the procedural period shall begin to run again, calculating the time already elapsed.

When the deadline expires, the judge or court in the proceeding, *ex officio* or at the request of a party, shall declare the criminal action lapsed.

*Third temporary provision.- (Duration of process).*

Cases that must be handled according to the previous procedural regime must be concluded within a maximum period of five years, counting from the publication of this Code.

Judges shall establish, *ex officio* or at the request of a party, the passage of this period and when applicable shall declare the criminal action terminated and shall have the case archived. Annex 26.

decisions handed down; iv) the civilian party intermittently – and in some cases for long periods – remained silent without pursuing the respective procedural activity; v) the same thing happened with the Public Prosecutor’s Office, which also failed to pursue the case with the procedural energy established by law; vi) recusals of all the examining magistrates in the capital, including the examining magistrate of Cotoca (a total of 20 recusals); vii) recusals of court members, both to settle jurisdictional appeals and when they acted as an appeals court (a total of twelve recusals); viii) recusals by two prosecutors; ix) the civilian party submitted a series of appeals that in one way or another delayed the process, and even withdrew partially from the appeal of the preliminary investigation order, where she asked that it be expanded to include murder; x) this process has been characterized by the inconsistency of the intervening procedural subjects, as in the case of the Public Defenders – whose only role is to defend those accused who lack financial resources – however, in judicial police actions it acts as the accuser; xi) one of the higher courts (Criminal Chamber I), despite the partial withdrawal from expansion of the preliminary investigation order for murder, does not take that petition into account and in order No. 338 dated October 25, 2002 expanded the preliminary order for murder; xii) the file with the order expanding the case for murder is referred to the court in the month of March 2003, after five months; xiii) with this decision the trial, which was already in the plenary stage, required the Judge of the Eighth Criminal Court to order that the case be sent to the Eighth Criminal Examining Magistrate’s Court; xiv) when the case was referred to the Eighth Criminal Examining Magistrate’s Court, the series of recusals by all the examining magistrates in the capital plus the examining magistrate of Cotoca began; xv) the accused made use of the remedies provided by law for their technical defense such as: a) appeal of the preliminary investigation order, b) reversal of the preliminary investigation order, c) preliminary objections d) appeals of precautionary measures.<sup>118</sup>

132. On April 18, 2005, the First Civil Chamber of the Superior Court of Justice of Santa Cruz, at the appeals level, overturned the earlier order and ordered prosecution of the case until a decision could be reached. The considerations in this decision include:

(sic) (...) the crime of forced disappearance of persons, a crime not defined in our system of criminal law, it is also true that what is being considered in the final investigation order, on the basis of which the proceeding is conducted, does include the definition of illegal deprivation of liberty (...) a definition that as established in Constitutional Court Decision No. 1190/01 of November 12, 2001 is not subject to the statute of limitations as long as the effects of the deprivation do not cease, and in this case, none of the persons indicated as disappeared (...) have reappeared since the time their disappearance was reported

(...)

Independently of the above, the judge cannot base his decision on an apparent delay attributable to the Office of the Public Prosecutor and the complainant parties, when the reality tells us that the accused have also participated in that delay, and the judge, as the person directing the process, must act *ex officio*, and did not do so, to achieve the prompt clarification of the facts; but even so such reasons do not constitute grounds for the dismissal of the action, in that it has been demonstrated by constitutional decision that the crime of illegal deprivation of liberty does not lapse as long as the person does not recover their freedom.<sup>119</sup>

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<sup>118</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

<sup>119</sup> Decision of the Superior Court of Justice of Santa Cruz of April 18, 2005. Annex 21. The decision is not complete but there is no dispute between the parties regarding the date of this decision. Both the petitioners and the State, in communications dated June 15 and 30, 2005, respectively, stated that this court issued the order on April 18, 2005.

133. On May 16 and 19, 2005, the accused Ernesto Morant Lijerón and Justo Sarmiento Alanes, respectively, sought through an appeal the cessation of preventive detention based on the principal argument of a delay in completing the process.<sup>120</sup>

134. On June 16, 2005, Rebeca Ibsen Castro and Antonia Gladys Oroza, widow of Solón Romero, sought reversal of the precautionary measures replacing preventive detention granted to the accused Oscar Menacho Vaca on September 8, 2004, alleging that he had been caught in the act of committing the crime of extortion. Based on this, the First Civil and Commercial Court of Santa Cruz revoked the alternative measures and ordered detention of the aforementioned accused at the Santa Cruz Palmasola Rehabilitation Center.<sup>121</sup>

135. Notwithstanding the above, on February 1, 2006, Justo Sarmiento and Ernesto Morant were in prison at the Palmasola prison, while the remaining accuseds were under alternative measures.<sup>122</sup>

136. On March 23, 2006, the case was in the argument stage and the prosecution witnesses had made their statements.<sup>123</sup>

137. On March 27, 2006, a hearing was held on the accuseds' request to end preventive detention. At the hearing, the First Civil Judge of Santa Cruz, ordered: i) cessation of preventive detention of the accused Ernesto Morant Lijerón and Justo Sarmiento Alanes; ii) as an alternative, house arrest under police surveillance; iii) appearances before the judge once a week; and iv) bail of 80,000 bolivars for each of the accused.<sup>124</sup> This decision was appealed both by the accused and by the complainant Rebeca Ibsen.<sup>125</sup>

138. On April 24, May 12, May 18, and May 23, 2006, hearings for arguments were suspended given the absence of Rebeca Ibsen Castro and the prosecution witnesses.<sup>126</sup>

139. On May 9, 2006, Mrs. Rebeca Ibsen submitted a brief to the Ministry of Justice and Human Rights, filing a complaint regarding the actions of the public defender in the case and, in general, denouncing the situation of impunity.<sup>127</sup>

140. A hearing for accepting testimony from prosecution witnesses during arguments was planned for May 12, 2006, but was dismissed due to the absence of the

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<sup>120</sup> Briefs filing appeal dated May 16 and 19, 2005. Annex 21..

<sup>121</sup> Order of June 16, 2005 from the First Civil and Commercial Court of Santa Cruz. Annex 21.

<sup>122</sup> Report of the Prosecutor's Office of the District of Santa Cruz dated February 1, 2006. Annex 21.

<sup>123</sup> Report of the Prosecutor's Office of the District of Santa Cruz dated February 1, 2006. Annex 21.

<sup>124</sup> Memorandum dated May 12, 2006 from the First Civil and Commercial Judge of Santa Cruz. Annex 21.

<sup>125</sup> Memorandum dated May 12, 2006 from the First Civil and Commercial Judge of Santa Cruz. Annex 21.

<sup>126</sup> Record of suspensions of hearings dated April 24, May 12, May 18, and May 23, 2006. Annex 21.

<sup>127</sup> Brief submitted to the Ministry of Justice and Human Rights dated May 9, 2006. Annex 21.

complainant Rebeca Ibsen and the prosecution witness.<sup>128</sup> In view of the absences of Mrs. Rebeca Ibsen in the proceeding, at the urging of the Office of the Public Prosecutor, she was given notice to avoid delay in the normal prosecution of the case.<sup>129</sup>

141. On May 15, 2006, Rebeca Ibsen sent a brief to the First Civil and Commercial Court of Santa Cruz (hereinafter also "the First Civil Judge"), responding to the notice, indicated that she was absent only once for health reasons, while on the other occasions she and her witnesses were in court but at a prudent distance from the accused, given the "constant public show of aggression" against them.<sup>130</sup>

142. On May 31, 2006, Rebeca Ibsen sent a communication to the Superior Court of Justice of the District of Santa Cruz, reporting alleged procedural irregularities on the part of the First Civil Judge.<sup>131</sup>

143. After recusals by the First Civil Court and the Sixth Civil and Commercial Court of Santa Cruz, this latter court sent the case file to the Seventh Civil Court (hereinafter also "the Seventh Civil Court") on August 16, 2006.<sup>132</sup>

144. On September 6, 2006, the Seventh Civil Court set October 3, 2006 as the date for hearing arguments. The Court also set up a visual inspection hearing by the Eighth Army Division "for purposes of verifying the existence of the disappeared."<sup>133</sup> On November 15, 2006, the process continued in the argument stage, commissions had been sent to the cities of Warnes and La Paz, and experts requested by the parties had been appointed.<sup>134</sup>

145. On September 30, 2007, the prosecutors in the case petitioned for a final decision from the judge in the case. Specifically, they asked him to declare that the criminal action against Ernesto Morant Lijerón had lapsed, since although there was sufficient evidence that he was directly responsible for the unlawful detentions of university students and other persons, for the torture in the middle of the night, and was the person who took the prisoners out to the second patio of the El Pari jail, he had died. They also requested that a conviction be handed down against Justo Sarmiento Alanes and Oscar Menacho Vaca since there was complete evidence that they were involved in the torture, abuse, and crimes against humanity against José Carlos Trujillo and José Luís Ibsen Peña. In addition, they asked that an acquittal order be handed down for Pedro Percy González Monasterio, Juan Antonio Elio Rivero, and Elías Moreno Caballero. None of the petitions from the Prosecutor's Office referred to what happened to Rainer Ibsen Cárdenas."<sup>135</sup>

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21. <sup>128</sup> Memorandum of May 12, 2006 from the First Civil and Commercial Judge of Santa Cruz. Annex

21. <sup>129</sup> Memorandum of May 12, 2006 from the First Civil and Commercial Judge of Santa Cruz. Annex

21. <sup>130</sup> Brief submitted to the First Civil and Commercial Court of Santa Cruz dated May 15, 2006. Annex

<sup>131</sup> Brief submitted to the Superior Court of Justice of Santa Cruz on May 31, 2006. Annex 21.

<sup>132</sup> Case file referred on August 16, 2006. Annex 21.

<sup>133</sup> Order of September 6, 2006 of the Seventh Civil and Commercial Court of Santa Cruz. Annex 21.

<sup>134</sup> Report to the Superior Court of the District of Santa Cruz dated November 15, 2006. Annex 21.

21. <sup>135</sup> Opinion on the merits from the Office of the Public Prosecutor dated September 30, 2007. Annex

146. On December 6, 2008, the Seventh Civil and Commercial Court of Santa Cruz [*Juzgado Séptimo de Partido en Material Civil y Comercial de Santa Cruz*] handed down a judgment in the first instance in which it: i) sentenced Oscar Menacho Vaca and Justo Sarmiento Alanes to two years and eight months in prison and a fine equivalent to 100 days in prison for the crime of aggravated unlawful deprivation of liberty with prejudice to José Carlos Trujillo Oroza and José Luís Ibsen Peña; ii) Juan Antonio Elio Rivero was sentenced to two years and eight months in prison and a fine equivalent to 100 days in prison, as an accomplice in the crime of unlawful deprivation of liberty of José Carlos Trujillo Oroza and José Luís Ibsen Peña; iii) Pedro Percy González Monasterio was acquitted of the crime of unlawful deprivation of liberty on the grounds of incomplete evidence, and iv) Oscar Menacho Vaca, Justo Sarmiento Alanes, Pedro Percy González Monasterio and Juan Antonio Elio Rivero were acquitted of the crimes of degrading treatment and torture, criminal association, criminal organization, murder and obstruction of justice, because “the fact object of the accusation do not constitute a crime pursuant to the statute of limitations on action, provided for by article 29 of Law 1970, and because of the principle prohibiting retroactive application of the law.”<sup>136</sup>

#### **H. On the recusals of judges and prosecutors during the course of criminal proceedings and the resulting disciplinary proceeding**

147. During the criminal process, at least 34 judges and two prosecutors excused themselves from hearing the case, including judges with penal, civil and family jurisdiction.<sup>137</sup>

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<sup>136</sup> Judgment of December 6, 2008 from the Seventh Civil and Commercial Court of Santa Cruz. Annex 21.

<sup>137</sup> This information can be found in: Text of disciplinary proceeding 84-03, Annex 22; Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21; Recusal brief dated June 6, 2006, Annex 21; the list of the authorities who recused themselves, the respective dates of their recusals and, according to the information available, the reasons offered for the recusals is as follows:

- - Between January 2, 2001 and November 2001, seven judges and three prosecutors of the Superior Court of the District of Santa Cruz recused themselves from hearing an appeal for constitutional protection relating to the case, each of them three times during this period.

- On March 15, 2002, the Fifth Criminal Examining Magistrate of the Judicial District of Santa Cruz recused herself from hearing the matter, as she had issued an opinion earlier regarding the inadmissibility of the statute of limitations and the ongoing nature of the crimes in the case.

- On March 23, 2002, the Sixth Criminal Examining Magistrate of the Judicial District of Santa Cruz agreed to the petition to recuse herself from hearing the case, in that she had issued an opinion regarding it.

- On March 25, 2002, the Seven Criminal Examining Magistrate of the Judicial District of Santa Cruz recused himself from hearing the case, in that he had issued an opinion earlier on the inadmissibility of the statute of limitations, and had supported Rebeca Ibsen Castro in lodging the complaint.

- On April 20, 2002, a prosecutor from the District of Santa Cruz recused himself from handling the matter because he was related to one of the attorneys whose name appeared in the case file.

- On April 28, 2002, a prosecutor in the District of Santa Cruz recused herself from handling the matter based on her strong dislike of Rebeca Ibsen Castro.

- On April 9, 2003, the Eight Criminal Judge recused himself from hearing the case, since in the final decision of August 13, 2002 he had issued an opinion on including the crime of murder.

- On April 26, 2003, the Ninth Criminal Examining Magistrate of the Judicial District of Santa Cruz recused herself from hearing the case, since in her capacity as Public Defender she had issued an opinion on the case.

- On May 9, 2003, the Tenth Criminal Examining Magistrate of the Judicial District of Santa Cruz recused himself from hearing the case, since when refuting the decision adopted

148. As a result of the numerous recusals by judges in the criminal process, disciplinary complaint No. 84-2003 was submitted on August 21, 2003.<sup>138</sup> On October 22, 2003, the Judiciary Council issued Resolution 173-2003, ordering that an investigation be opened against one criminal judge, eight civil judges, a Cotoca judge, and two prosecutors in the Second Criminal Chamber who recused themselves from hearing the case.<sup>139</sup>

149. On February 2, 2004, disciplinary proceeding No. 12/2004 was initiated through an opening order from the Judiciary Council, based on a sufficiency of evidence to presume that very serious offenses had been committed in the recusals by 13 judges.<sup>140</sup>

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earlier in the process to dismiss the criminal action as time barred, he had issued an opinion on including the crime of murder.<sup>137</sup>

- On May 22, 2003, the First Criminal Examining Magistrate of the Judicial District of Santa Cruz recused himself from hearing the case, since in his capacity as Public Defender he had issued an opinion on the case.

- On May 28, 2003, the Second Criminal Examining Magistrate of the Judicial District of Santa Cruz recused herself from hearing the case due to her dislike of Rebeca Ibsen Castro.

- On May 31, 2003, the Third Criminal Examining Magistrate of the Judicial District of Santa Cruz recused himself from hearing the case, since in the context of a social event he had expressed an opinion regarding the non-applicability of statutory limitations to crimes against humanity.

- On June 11, 2003, the Fourth Criminal Examining Magistrate of the Judicial District of Santa Cruz recused himself from hearing the case, since in the context of a social event he had issued an opinion on the criminal responsibility of the accused.

- On July 15, 2003, the Second Civil and Commercial Examining Magistrate recused himself from hearing the case.

- On July 30, 2003, the Third Civil and Commercial Examining Magistrate recused himself from hearing the case.

- On August 4, 2003, the Fourth Civil and Commercial Examining Magistrate recused himself from hearing the case.

- On August 5, 2003, the Fifth Civil and Commercial Examining Magistrate recused himself from hearing the case.

- On August 8, 2003, the Sixth Civil and Commercial Examining Magistrate recused himself from hearing the case.

- On August 11, 2003, the Seventh Civil and Commercial Examining Magistrate recused himself from hearing the case.

- On August 12, 2003, the Eighth Civil and Commercial Examining Magistrate recused himself from hearing the case.

- On August 14, 2003, the Ninth Civil and Commercial Examining Magistrate recused himself from hearing the case.

- On August 19, 2003, the Tenth Civil and Commercial Examining Magistrate recused himself from hearing the case.

- On August 21, 2003, the First Family Matters Examining Magistrate recused himself from hearing the case.

- On August 25, 2003, the Second Family Matters Examining Magistrate recused himself from hearing the case.

- On August 28, 2003, the Third Family Matters Examining Magistrate recused himself from hearing the case.

- On August 30, 2003, the Examining Magistrate of Cotoca recused herself from hearing the case.

- On June 6, 2006, the First Civil Judge recused himself from hearing the case, given the environment of mutual hostility generated with the complainant Rebeca Ibsen, in view of her verbal and written attacks.

<sup>138</sup> Text of disciplinary proceeding 84-03, Annex 22.

<sup>139</sup> Text of disciplinary proceeding 84-03, Annex 22.

<sup>140</sup> Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21; Text of disciplinary proceeding 84-03, Annex 22.

150. On April 29, 2004, Resolution 128-04 was issued and declared as proven the accusation against the defendants: Dr. Roque Leños Krutzfeld, Fourth Criminal Settlement Examining Magistrate; Dr. Napoleón Julio Alba Flores, Second Civil Examining Magistrate, and Dr. Juan Carlos Guzmán Rivas, Third Civil Examining Magistrate. They received the punishment of suspension from their duties for three months without compensation for having committed serious disciplinary offenses. Regarding the first and third judges, they were also found to have committed very serious disciplinary offenses and the decision was thus made to forward copy of the ruling for recording in the Judicial Salary Schedule system. This ruling was confirmed in September 2004 and implemented in October 2004.<sup>141</sup>

#### I. On the search for the remains of Rainer Ibsen Cárdenas

151. In volume II of the documents from the Trial of Responsibilities initiated by then Representative Marcelo Quiroga Santacruz against Hugo Banzer Suárez during the 1979-1980 legislative session, there is a transcript of testimony indicating: (sic) "The referenced communication indicated that, along with my brother, Enrique, they had killed two other students: Rayner Ibsen Cárdenas and Jorge Helguero Suárez. To find the place where he had been buried I had to make many inquiries. After many difficulties, with a certificate from the General Cemetery, which I obtained for legal purposes, I managed to find his niche in block 318, first row, No. 4. But to the right are niches 7 and 9, where the remains of Rayner Ibsen and Jorge Helguero are located."<sup>142</sup>

152. On February 18, 1983, through a news conference, the National Commission for the Investigation of Forced Disappearances publicly declared to the national and international public that within the last days the illegal burial with the changed names of fourteen cases considered forcibly disappeared had been established throughout the government of General Hugo Bánzer Suárez. The illegal burial of the fourteen corpses were executed under the instruction of repressive organisms of the Interior Ministry from back then, and without the presence of the victims' relatives, that until then had ignored the whereabouts of their beloved."<sup>143</sup>

153. On February 28, 1983 the National Commission for the Investigation of Forced Disappearances, requested to the Public Ministry the exhumation and necropsy testing of 6 people, including that of Rainer Ibsen Cárdenas.<sup>144</sup> The criteria used to mention those names is unknown.

154. The weekly *Aquí* of April 30 to May 6, 1983 published an article titled "Disappeareds: clandestine burials identified." The article notes the appearance of the remains of four individuals, including the remains of Rainer Ibsen, "a student in Santa Cruz who was arrested on the orders of Hugo Bánzer in September 1971 and disappeared on June 21, 1972 at the Achocalla concentration camp."<sup>145</sup>

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<sup>141</sup> Certificate from the Judiciary Council of November 9, 2007. Annex 23.

<sup>142</sup> Selections from the impeachment trial against Hugo Banzer Suárez. Annex 20.

<sup>143</sup> Record of news conference of February 18, 1983. Annex 18.

<sup>144</sup> Request addressed to the Office of the Public Prosecutor dated February 28, 1983. Annex 19.

<sup>145</sup> News item from the weekly *Aquí*, April 30-May 6, 1983. Annex 29.

155. On October 7, 2003, Rebeca Ibsen went to the Examining Magistrate in the town on Warnes, asking him to order and proceed with an autopsy on the remains of Rainer Ibsen Cárdenas, which were allegedly located at the ASOFAMD mausoleum at the General Cemetery of La Paz. She also asked that paleontological, forensic, and genetic tests be performed on those remains.<sup>146</sup>

156. On October 20, 2006, Rebeca Ibsen asked the Seventh Civil Court to proceed with the autopsy on the alleged remains of Rainer Ibsen Cárdenas, which were located at the back of the ASOFAMD mausoleum at the General Cemetery of La Paz. She also asked that paleontological, forensic, and genetic tests be performed.<sup>147</sup>

157. On October 21, 2006, the Seventh Civil Court issued an order whereby it “released the commission” to implement the petition and ordered that ASOFAMD be summoned for the requested purpose, indicating that implementation was the responsibility of the respective judge in La Paz.<sup>148</sup>

158. On November 7, 2006, Rebeca Ibsen Castro asked the Seventh Civil Judge to correct the error in the commission for the purpose noted above, in that the commission had been directed to “any civil judge of the city of La Paz” when, in her view, it would be correct to commission “any criminal judge of the Criminal District of La Paz.”<sup>149</sup>

159. In December 2006, the Prosecutor’s Office of the District of La Paz received the order issued by the Seventh Civil Court to proceed with the autopsy at the ASOFAMD mausoleum at the General Cemetery on the remains of Rainer Ibsen Cárdenas, in addition to paleontological, forensic, and genetic tests. Mr. Tito Ibsen Castro appeared to request that ASOFAMD, the Inter-Institutional Council for the Clarification of Forced Disappearances, the Ministry of Foreign Relations and Worship, and the Forensic Research Institute be expressly notified.<sup>150</sup>

160. In a meeting held between the representatives of the aforementioned entities, the decision was made to publish a notice in all print media with national circulation so that the relatives of the victims of the military dictatorships of Hugo Banzer, Natusch Busch, and Luís García Meza who had someone buried at the ASOFAMD Mausoleum would appear. It was also decided that Argentine anthropologists should be present.<sup>151</sup>

161. On December 12, 2006 and January 8, 2007, Mr. Tito Ibsen Castro sent a brief to the Prosecutor handling such matters in La Paz asking him to set a date and time for the exhumation and inspection of the remains that might belong to Rainer Ibsen Cárdenas. He also asked that the court proceed to notify ASOFAMD, CIEDEF, the Forensic Research Institute, and the Ministry of Foreign Relations and Worship.<sup>152</sup>

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<sup>146</sup> Brief submitted to the Warnes Examining Magistrate’s Court on October 7, 2003. Annex 24..

<sup>147</sup> Brief submitted to the Seventh Civil Court dated October 20, 2006. Annex 24.

<sup>148</sup> Order of the Seventh Civil Court of October 21, 2006. Annex 24.

<sup>149</sup> State’s brief received on December 6, 2006. Annex. Brief submitted to the Seventh Civil Court dated November 7, 2006. Annex 24.

<sup>150</sup> Report to the Under-Secretary of Foreign Relations and Worship dated March 15, 2007. Annex 24.

<sup>151</sup> Report to the Under-Secretary of Foreign Relations and Worship dated March 15, 2007. Annex 24.

<sup>152</sup> Briefs to the trial prosecutor of the District of La Paz in charge of the case dated December 12, 2006 and January 8, 2007. Annex 24.

162. On January 17, 2007,<sup>153</sup> the Prosecutor handling such matters in the District of La Paz sent an official letter to the Forensic Research Institute, asking for an anthropological team made up of a forensic geneticist and a person responsible for forensic drawing and photography to perform the visual technical inspection, the exhumation, and the related scientific confirmation of the remains, assuming they would be found at the ASOFAMD Mausoleum, who should appear on January 22, 2007 to carry out this procedure.<sup>154</sup> In addition, the prosecutor ordered the Chief of the Homicide Division of the Crime Fighting Force to assign an investigator who should notify ASOFAMD, the Inter-Institutional Council for the Clarification of Forced Disappearances, and the Ministry of Foreign Relations and Worship, all in order to comply with the commission ordered by the Seventh Civil Court.<sup>155</sup>

163. On January 22, 2007, when the exhumation was going to be carried out, ASOFAMD submitted a brief to the Prosecutor handling such matters in the District of La Paz, seeking to suspend the exhumation. It argued that CIEDEF needed to be presided over by a "delegation from the President of the Republic through the Ministry of Justice and not the Coordinating Director of the Ministry of Justice. The brief also indicated that the exhumation request did not specify which forensic expert or anthropologist would provide the technical expertise, which in its view, violated the principle of disclosure. It also indicated that the exhumation should be disclosed to and authorized by the relatives of the people whose remains were located at the mausoleum. It indicated that some remains were found before the ASOFAMD mausoleum was built, some of which were not completely and scientifically identified at the time, so they were interred in the mausoleum. It indicated that, for this reason, a detailed technical and scientific examination needed to be done on the remains that were not identified, so that ASOFAMD was arranging for members of the Argentine forensic anthropology team to arrive.<sup>156</sup>

164. On the same date, the Prosecutor handling such matters for the District of La Paz accepted the request to suspend, ordering ASOFAMD to provide the Prosecutor's Office with published names of victims by January 26, 2007.<sup>157</sup> On January 25, 2007, ASOFAMD attached the respective press notices and indicated that an expert from the Argentine forensic anthropology team would be in Bolivia on February 7, 2007.<sup>158</sup>

165. On January 25, 2007, Tito Ibsen Castro submitted a brief to the Prosecutor handling such matters for the District of La Paz, expressing his objection to ASOFAMD's request to suspend the exhumation. This brief indicated that "it is totally ironic and grotesque that the Association of Relatives of Martyrs for Democracy, 20 years after having found the remains of our brother and having public knowledge of the requests we made to various administrations – asking them to hand over the remains to us – against the backdrop of the exhaustion of the domestic jurisdiction, at this late date, would consider the request issued by the Office of the Public Prosecutor (...) as being an order that violated the principle of disclosure. We feel that the disclosure referred to should have been made at least once every three months over these more than 20 years, calling upon the victims' relatives to

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<sup>153</sup> The note indicates January 17, 2006; however, based on the chronological order, the Commission understands that this involves a typographical error and that the correct date corresponds to 2007.

<sup>154</sup> Official letter to the Forensic Research Institute, January 17, 2006.

<sup>155</sup> Official letter to the Chief of the Homicide Division of the Crime Fighting Force, January 17, 2007. Annex 24.

<sup>156</sup> Brief of ASOFAMD, January 22, 2007. Annex 24.

<sup>157</sup> Order of the trial prosecutor of the District of La Paz of January 22, 2007. Annex 24.

<sup>158</sup> Brief of ASOFAMD, January 25, 2007. Annex 24.

appear, obtain authorization, and subsequently be given the remains, of course with prior scientific confirmation. Thus, it is not fair, legal, ethical, or consistent to so recently remember the principle of disclosure (...) Based on the data the State provided to the Commission, it is established that it is ASOFAMD that knows the location of the remains of our brother, because it is they who found them at the General Cemetery of the city of La Paz in 1984 and reported that the remains are noted in the records of that cemetery."<sup>159</sup>

166. These communications were repeated on January 29, 2007, since the date of the exhumation had been changed to February 2, 2007.<sup>160</sup>

167. On February 2, 2007, the exhumation was again halted at the request of ASOFAMD, given that the Argentine experts had not yet arrived.<sup>161</sup> Only a visual inspection of the site was conducted.<sup>162</sup>

168. On February 21, 2007, the Ministry of Justice sent an official letter to the Prosecutor in La Paz, asking him to appoint as official experts the Argentine anthropologist Silvana Turner and her professional team, so that they could carry out the exhumation and identification of the remains of Rainer Ibsen Cárdenas and determine the causes of his death.<sup>163</sup>

169. Some days later, the Argentine anthropologist Silvana Turner appeared and indicated that she would go with her team to the exhumation, which was set to take place on March 20, 2007,<sup>164</sup> for which purpose an official letter was sent to the Forensic Research Institute on March 16, 2007.<sup>165</sup>

170. On the same date, the experts Silvana Turner and Mariana Alejandra Segura, an Argentine national, were appointed to carry out the exhumation and identification of Rainer Ibsen Cárdenas. They were sworn in on March 20, 2007,<sup>166</sup> on which date ASOFAMD submitted a brief to the Prosecutor in La Paz, asking that the expert analysis be carried out during the morning for reasons related to climate and weather, and that a chain of custody be established for the exhumed remains, for which the participation of the Forensic Research Institute is essential.<sup>167</sup>

171. On March 21, 2007, between 9:00 a.m. and noon, the bones of two individuals were exhumed by the appointed experts.<sup>168</sup>

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<sup>159</sup> Brief to the trial prosecutor of the District of La Paz, dated January 25, 2007. Annex 24.

<sup>160</sup> Official letters to the Chief of the Homicide Division of the Crime Fighting Force and the Forensic Research Institute, January 29, 2007. Annex 24.

<sup>161</sup> Report to the Chief of the Homicide Division, February 3, 2007. Annex 24.

<sup>162</sup> Suspension order dated February 2, 2007. Annex 24.

<sup>163</sup> Official letter from the Ministry of Justice dated February 21, 2007 Annex 24.

<sup>164</sup> Report to the Under-Secretary for Foreign Relations and Worship, March 15, 2007. Annex 24.

<sup>165</sup> Official letter to the Forensic Research Institute. Annex 24.

<sup>166</sup> Actas de designación de 16 de marzo de 2007 y de juramentación de 20 de marzo de 2007. Anexo 24.

<sup>167</sup> Brief to the trial prosecutor of La Paz, dated March 20, 2007. Annex 24.

<sup>168</sup> Official letter to the Forensic Research Institute dated March 23, 2007. Annex 24.

172. On March 22, 2007, Tito Ibsen Castro submitted a brief to the Prosecutor in La Paz, asking him to take blood samples from both himself and his sister, Rebeca Ibsen Castro, so that DNA paternity comparison tests could be performed on the exhumed remains.<sup>169</sup>

173. On March 23, 2007, the Prosecutor in La Paz asked the Forensic Research Institute to see that the exhumed remains remained in custody until the second half of the month of April 2007.<sup>170</sup>

174. On March 23, 2007, the Argentine forensic anthropology team proceeded to deliver the preliminary report to the Prosecutor of La Paz, indicating that none of the exhumed bones matched the characteristics of Mr. Rainer Ibsen Cárdenas and consideration was thus given to continuing exhumations at the ASOFAMD mausoleum, on a date to be determined. Mr. Tito Ibsen left this delivery proceeding without signing the record.<sup>171</sup>

175. The preliminary report indicates as follows: "The remains of Rainer Ibsen Cárdenas had been interred at the General Cemetery of La Paz, along with other people at the so-called ASOFAMD Pantheon, after having been exhumed earlier from a niche in the same cemetery. With respect to the physical data on Mr. Rainer Ibsen Cárdenas, we have the following information: Sex: Male. Age: 26 years. Height: 1.70 m. The documentation provided includes a death certificate indicating as the cause of death: 'cranioencephalic trauma and internal hemorrhaging caused by bullets (...)' The conclusion is that the biological profiles of the remains exhumed and analyzed as LP-A12 and LP A3 are not consistent with the general physical characteristics described for Ibsen Cárdenas. In addition, traces of the wounds described in the death certificate assigned to him are noted. The final report will be delivered later and will expand on what has been described here and attach drawings and photographic information on the work done."<sup>172</sup>

176. On May 10, 2007, the Argentine Forensic Anthropology Team issued a final report in which it concluded that: "The biological profile – including sex, age group, height, laterality, dental characteristics – of the remains coded as LP-A1 is not consistent with the corresponding *premortem* data of Mr. Rainer Ibsen Cárdenas."<sup>173</sup>

177. On June 28, 2007, Tito Ibsen Castro went to the Prosecutor of La Paz to complain that after the preliminary report from the forensic anthropology team, the process had become bogged down and the return of the Argentine experts to exhume the other bodies could not be effected. He also asked the Prosecutor to issue a request that ASOFAMD submit the original documents relating to the location and transfer of the remains of Rainer Ibsen Cárdenas from Block 318, Row No. 4, Niche No. 7 from the General Cemetery to its mausoleum.<sup>174</sup> This request was repeated on July 24, 2007.<sup>175</sup>

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<sup>169</sup> Brief to the trial prosecutor of La Paz, dated March 22, 2007. Annex 24.

<sup>170</sup> Official letter to the Forensic Research Institute dated March 23, 2007. Annex 24.

<sup>171</sup> Report to the Chief of the Homicide Division, March 27, 2007. Annex 24.

<sup>172</sup> Preliminary Report on the Exhumation and Forensic Anthropology Analysis Work, March 23, 2007. Annex 25.

<sup>173</sup> Final Report from the Forensic Anthropology Team, May 10, 2007. Annex 25.

<sup>174</sup> Brief to the trial prosecutor of La Paz, dated June 28, 2007. Annex 24.

<sup>175</sup> Brief to the trial prosecutor of La Paz, dated July 24, 2007. Annex 24.

178. On November 5, 2007, a Memorandum of Understanding on Technical Cooperation was signed between the Ministries of Justice of the Republics of Bolivia and Argentina, the purpose of which is to coordinate and carry out cooperative actions for the recovery, analysis, and identification of the remains of persons who disappeared or were killed for political reasons, which would be exhumed from the ASOFAMD Mausoleum.

179. In July 2008 the preliminary report on the exhumations carried out on February 20, 2008 was released. The report established that one of the bodies exhumed from the ASOFAMD mausoleum had a 99.7% probability of belonging to Rainer Ibsen.<sup>176</sup>

180. In November 2008 the Argentine Forensic Anthropology Team released its final report on the exhumations of February 20 of that same year, in which one of the bodies found was identified as belonging to Rainer Ibsen Cárdenas.<sup>177</sup>

#### **J. On the search of the remains of José Luís Ibsen Peña**

181. On April 19, 2006, a visual inspection was conducted at the site where, according to a statement from the accused Elías Moreno Caballero, the mortal remains of José Luís Ibsen Peña would be found, with the conclusion that the information provided by the accused was insufficient, making it impossible to determine the exact location.<sup>178</sup>

182. On June 26, 2006, Rebeca Ibsen Castro sent a memorandum to the Prosecutor's Office of the District of Santa Cruz, asking that the Prosecutor attached to the case be told to proceed with the forensic analysis of two graves at the La Cuchilla cemetery and subsequent study of any remains found in order to determine if they corresponded to the body of José Luís Ibsen Peña.<sup>179</sup>

183. On August 10, 2006, Rebeca Ibsen sent a communication to the Prosecutor's Office of the District of Santa Cruz, with copy to the Prosecutor assigned to the case, attaching: i) a photograph of José Luís Ibsen Peña; ii) a certified photocopy of his passport; iii) professional degree; iv) baptismal certificate; v) military service identification; vi) certification of identification registry entry; and vii) Swiss watch and eyeglass case, which could be used to perform expert analyses to detect traces of physical violence. She also asked that she be considered as the daughter for the pathological, forensic, and/or genetic tests in the case.<sup>180</sup>

184. On August 14, 2006, Rebeca Ibsen submitted a brief to the Prosecutor's Office of the District of Santa Cruz, with copy to the Prosecutor assigned to the case, complaining that the digs were paralyzed because the anthropologist had returned to the city of La Paz, which in her view was evidence of the lack of will to continue with the work, which could not be carried out in a period of 24 hours. In this respect, she asked that

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<sup>176</sup> Petitioners' brief of August 28, 2008. Preliminary Report of the Argentine Forensic Anthropology Team.

<sup>177</sup> Petitioners' brief received on December 12, 2008, and brief from the State received on January 12, 2009; compact discs with selections from the Final Report of the Argentine Forensic Anthropology Team.

<sup>178</sup> Memorandum dated May 12, 2006 from the First Civil and Commercial Judge of Santa Cruz. Annex 24.

<sup>179</sup> Brief submitted to the district prosecutor of Santa Cruz, dated June 26, 2006. Annex 24.

<sup>180</sup> Brief seeking evidence, dated August 10, 2006. Annex 24.

measures be taken to dig both at the indicated sites and around them and to exhume any remains that might be found.<sup>181</sup>

185. On August 22, 2006, skull, kneecap, humerus, and femur bones and part of a lower jaw with four teeth were found during a search for the remains of José Luís Ibsen Peña at La Cuchilla cemetery. The procedure was done using the mechanical arm of a toothed backhoe.<sup>182</sup>

186. On September 1, 2006, the Seventh Civil Court was informed that the bones found at the excavation at La Cuchilla cemetery were being studied at the Forensic Research Institute to confirm their identity.<sup>183</sup>

187. On September 8, 2006, Mrs. Rebeca Ibsen Castro sent a communication to the Prosecutor's Office of the District of Santa Cruz asking him to take the case away from Prosecutor Pura Cuellar Ortiz because of: i) incorrect gathering of evidence when excavating a grave; ii) monopoly of the investigation without the participation of the police; iii) irresponsible handling of the remains found; iv) obstruction, distortion, misinformation provided to the parties and experts on entry, access to, study, or checking of evidence; and v) absence of secure conditions for preserving the evidence and pursuing the proceedings.<sup>184</sup>

188. To date no other measures have been taken to search for the remains of José Luís Ibsen Peña. There is no knowledge of the results from earlier studies either, but the recent briefs from the parties indicate that the remains of Mr. Ibsen Peña continue to be "disappeared."

#### **K. On actions pursued by relatives by other branches of Government**

189. On January 26, 2001, relatives of Rainer Ibsen Cárdenas and José Luís Ibsen Peña asked the Attorney General of the Republic for a copy of the evidence submitted during the trial of responsibilities against Hugo Banzer Suárez, with respect to the murder of their relatives during the dictatorship. As instructed by the Attorney General, on February 14, 2001 they sent a memorandum to Jorge Quiroga Ramírez, then President of the Senate. Given the lack of a response, on August 23, 2001, the Permanent Human Rights Assembly sent a note to Mr. Enrique Toro, then President of the Senate, repeating the request.<sup>185</sup>

190. Given the lack of a response, on January 11, 2002, Tito Ibsen Castro, Martha Castro de Ibsen, Cristina de Quiroga Santa Cruz, María Soledad Quiroga Trigo, and Rodrigo Quiroga Trigo went to the President of the Republic at the time, Jorge Quiroga Ramírez, to repeat their request for information on the status of the trial of responsibilities initiated in 1979 by Marcelo Quiroga Santa Cruz against General Hugo Banzer Suárez and his collaborators.<sup>186</sup>

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<sup>181</sup> Brief seeking continued search for evidence. Annex 24.

<sup>182</sup> News item of August 23, 2006. Annex 29.

<sup>183</sup> Brief submitted to the Seventh Civil and Commercial Court of Santa Cruz dated September 1, 2006. Annex 24.

<sup>184</sup> Brief seeking separation of the Prosecutor's Office from the case, dated September 8, 2006. Annex 24.

<sup>185</sup> Request for information, dated January 11, 2002. Annex 27.

<sup>186</sup> Request for information, dated January 11, 2002. Annex 27.

191. On January 16, 2002, the individual in charge of the Historical Archives of the Office of the President of the National Congress and the Vice President of the Republic sent an official letter to the Chair of the Constitution, Justice, and Judicial Police Committee to inform him that "having reviewed the files existing in the Document Collection of the Historical Archives of the National Congress, I found that the files do not exist and thus I cannot provide you with the information you mentioned."<sup>187</sup>

192. On October 7, 2002, Tito Ibsen Castro went to the then Minister of Justice and Human Rights seeking an interview and to inform her of the judicial obstruction endured under the previous administration with regard to human rights violations committed against his brother and father.<sup>188</sup> After meeting with that Minister, on December 3, 2002, Mr. Tito Ibsen Castro sent her another communication again noting the obstruction of justice, alleging delaying tactics as well as the constant change of courts, the recusals of prosecutors, and the lack of knowledge and appropriate classification of the crime. He also asked that she take steps to ensure that the appropriate procedures would be initiated against these authorities.<sup>189</sup> As a result of these complaints, on December 23, 2002, the Under-Secretary of Justice sent a communication to the Office of the Attorney General of the Republic, denouncing the Fifth Criminal Examining Magistrate, the Eighth Criminal Examining Magistrate, and the Third Criminal Judge, all of the Judicial District of Santa Cruz.<sup>190</sup> On February 24, 2003, the same Under-Secretary informed the Office of the Attorney General of the Republic of the contact information for Tito Ibsen Castro, suggesting that he inform him regarding his rights in the context of that process, although he had not established himself as a complainant.<sup>191</sup>

193. On December 16, 2002, Tito Ibsen Castro went to the then President of the National Congress to repeat his request for public acceptance of the files relating to the indicated trial of responsibilities.<sup>192</sup>

194. On December 20, 2002, Tito Ibsen Castro went to then President of the Republic, Gonzalo Sánchez de Lozada, asking him to recognize the disappearance and extrajudicial execution of his brother and father, as well as the guarantee of due process and public acceptance of the documents submitted by Marcelo Quiroga Santa Cruz, in the trial of responsibilities, the original document from which he wanted to restore to the National Congress and its historical archives.<sup>193</sup> This communication was answered on February 3, 2003 informing Mr. Tito Ibsen Castro that the handling of the issue was entrusted to the Ministry of Justice and Human Rights.<sup>194</sup>

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<sup>187</sup> Official letter from the historical archive of the National Congress, January 16, 2002. Annex 27.

<sup>188</sup> Brief submitted to the Minister of Justice and Human Rights, December 3, 2002. Annex 27.

<sup>189</sup> Brief submitted to the Minister of Justice and Human Rights, December 3, 2002. Annex 27.

<sup>190</sup> Brief of the Under-Secretary of Justice to the Office of the Attorney General of the Republic, December 23, 2002. Annex 27.

<sup>191</sup> Brief of the Under-Secretary of Justice to the Office of the Attorney General of the Republic, February 24, 2003. Annex 27.

<sup>192</sup> Response brief from the Office of the President of the National Congress and Vice President of the Republic, January 8, 2003. Annex 27.

<sup>193</sup> Brief submitted to the President of the Republic, 2002. Annex 27.

<sup>194</sup> Response brief, February 3, 2003. Annex 27.

195. On December 20, 2002, Mr. Tito Ibsen Castro went to the Office of the Public Defender to denounce the lack of a response from the various authorities he had sought out in his search for justice because of what had happened to his brother and father, particularly the refusal by the National Congress to accept the original of documents submitted by Marcelo Quiroga Santa Cruz in 1979 to initiate the trial of responsibilities against Hugo Banzer Suárez.<sup>195</sup>

196. On November 23, 2002, the Confederation of Professionals of Bolivia issued a resolution whereby it decided to: "Support the actions undertaken before the Office of the Vice President of the Republic to replace the documents from the attempted Trial of Responsibilities of 1979 suggested by Marcelo Quiroga Santa Cruz, the documentation of which will be delivered by Dr. Tito Ibsen Castro."<sup>196</sup>

#### **L. Administrative and legislative measures adopted by the bolivian State with respect to forced disappearances**

197. The National Commission for Investigation of Forced Disappearances was created on October 28, 1982, during the administration of President Hernán Siles Suazo,<sup>197</sup> and received 115 reports of forced disappearances carried out between 1967 and 1982. However, the Commission was dissolved in 1984 without achieving conclusive investigations or issuing a final report.<sup>198</sup>

198. On June 18, 2003, the Inter-institutional Council for the Clarification of Forced Disappearances was created; its principal functions are: i) to follow up the decisions of the Inter-American Court of Human Rights and other international bodies; and ii) to process information on the remains of individuals who were the victims of forced disappearances, for the purpose of obtaining clarification.<sup>199</sup>

199. On March 11, 2004, Law 2640 created the National Commission for the Exceptional Compensation of Victims of Political Violence,<sup>200</sup> the purpose of which is to categorize and compensate economically and morally the victims of political violence under the dictatorial governments of 1964 to 1982. As of July 2007, this commission had received 55 requests for reparations for forced disappearances, only one of which has an

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<sup>195</sup> Brief submitted to the Ombudsman's Office, December 20, 2002. Annex 27.

<sup>196</sup> List or resolutions from the Confederation of Professionals of Bolivia. Annex 28.

<sup>197</sup> Decreto Supremo 19241 de 28 de octubre de 1982. Anexo 26.

<sup>198</sup> Information provided by the Ministry of Justice of the Government of Bolivia, July 16, 2007. *Summary of Presentation for the Hearing of the Inter-American Commission on Human Rights on Forced Disappearances*. Annex 11.

<sup>199</sup> Supreme Decree 27089 of June 18, 2003, as amended by Supreme Decree 27309 of January 9, 2004, by Law 3351 of February 21 of 2006, and by Supreme Decree on Regulations [*Decreto Supremo Reglamentario*] 28631 of March 8, 2006. Annex 26.

<sup>200</sup> Supreme Decree 28015 of February 22, 2005. Annex 26. Supreme Decree 28015 of February 22, 2005 approved the regulations and procedure for reparations for persons against whom acts of political violence had been committed under unconstitutional governments, between November 4, 1964 and October 10, 1982. In addition, Law 3275 of December 9, 2005 extended the deadline for submitting requests for exceptional reparations.

Administrative Resolution recognizing the status of victim with respect to Mr. Renato Ticona Estrada for the crime of forced disappearance.<sup>201</sup>

200. Similarly, the Ministry of Defense, within the framework of the regulations for the Law Organizing the Executive Branch, is assigned the role of protecting and promoting human rights, as well as the role of ensuring compliance with international treaties and agreements on the subject<sup>202</sup>. Accordingly, within this legal framework, efforts have been made to develop the project “Clarification of Forced Disappearances in the context of the Struggle against Impunity and Democracy Building – period 1964 to 1982.”<sup>203</sup>

201. On January 18, 2006, under Law 3326, the penal code incorporated the criminal definition of the offense of forced disappearance of persons in the following terms: “Anyone who with the authorization, support, or acquiescence of any State agency deprives one or more persons of liberty and deliberately hides, denies information on the recognition of the deprivation of liberty or on the whereabouts of persons, thus impeding the exercise of remedies and procedural guarantees, shall be punished with imprisonment for five to fifteen years. If the action results in serious physical and psychological harm to the victim, the punishment shall be from fifteen to twenty years in prison. If the perpetrator of the action is a public official, the maximum penalty shall be increased by one third. If the action results in the death of the victim, the punishment of thirty years in prison shall be imposed.”<sup>204</sup>

## VIII. CONSIDERATIONS IN LAW

### A. The concept of forced disappearance of persons and its application to the victims

202. The constant case law of the inter-American system on cases of forced disappearance of persons has indicated that this phenomenon constitutes an unlawful act that gives rise to a multiple and continuing violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, giving rise to other related crimes. It is in sum, a crime against humanity that entails a crass abandonment of the essential principles upon which the inter-American system is based.<sup>205</sup>

203. According to the Inter-American Court,

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<sup>201</sup> Information provided by the Ministry of Justice of the Government of Bolivia on July 16, 2007: *Summary of Presentation for the Hearing of the Inter-American Commission on Human Rights on Forced Disappearances*. Annex 11.

<sup>202</sup> Supreme Decree 28631 of March 8, 2006. Annex 26.

<sup>203</sup> Information provided by the Ministry of Justice of the Government of Bolivia on July 16, 2007: *Summary of Presentation for the Hearing of the Inter-American Commission on Human Rights on Forced Disappearances*. Annex 11.

<sup>204</sup> Law 3326 of January 18, 2006. Annex 26.

<sup>205</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs. Judgment of September 22, 2006. Series C, No. 153, para. 82; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C, No. 136, para. 92; I/A Court H.R., *Case of the Serrano Cruz Sisters*. Preliminary Objections. Judgment of November 23, 2004. Series C, No. 118, paras. 100 to 106; I/A Court H.R., *Case of Molina Theissen*. Reparations (art. 63.1 of the American Convention on Human Rights). Judgment of July 3, 2004. Series C., No. 108, para. 41; IACHR, Report 101/01. Case 10.247 et al., *Extrajudicial Executions and Forced Disappearances of Persons*. Peru. October 11, 2001, para. 178

[t]he need to consider integrally the offense of forced disappearance of an autonomous, continuing or permanent nature, composed of multiple elements with their complex interrelationships, and related criminal acts, can be deduced not only from the its definition in the abovementioned Article III of the Inter-American Convention on Forced Disappearance of Persons, the *travaux préparatoires* for this instrument,<sup>206</sup> its preamble and provisions, but also from Article 17(1) of the 1992 United Nations Declaration on the Protection of all Persons from Forced Disappearance, which even adds one further element, related to the obligation to investigate, by indicating that this must be considered “a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts have not been clarified.” International case law also reflects this understanding,<sup>207</sup> as do Articles 4 and 8(1)(b) of the abovementioned United Nations international convention on this matter.<sup>208</sup>

204. The facts of the instant case precisely demonstrate the integral connection among the different aspects of a disappearance. The two victims were forcibly made to disappear in 1971 and 1973 respectively, first the son and then the father who was looking for his whereabouts and seeking to find out what had happened to him. Among the distinctive characteristics of a disappearance are the ways in which it is carried out in order to hide any and all evidence of the facts, those responsible, and the fate of the victim. In addition, a way is found in which the lack of clarification of the facts and the establishment of who is responsible inflict terror not only in the direct victim but also in his next of kin and society in general.

205. The Commission takes note of the recent decision by the Inter-American Court in the case of *Heliodoro Portugal*; in this case, taking into account certain issues on the facts and on its competence *ratione temporis*, it applied a different approach to forced disappearance, dividing its constitutive elements and stressing the violation of the right to personal freedom provided for by article 7 of the American Convention. In this case, in applying a presumption regarding the date of death, the Court likened forced disappearance of a victim to an extrajudicial execution, but considered the violation of the right to personal liberty as continuing in nature.

206. According to its case law taken as a whole, the Commission considers forced disappearance to be a complex violation of human rights that continues in time until as long as the whereabouts of the victim or his remains is unknown. A disappearance as such ceases only when the victim appears or his remains are found. The Commission has applied an integral approach that allows for the analysis and establishment of the full scope of state responsibility for this human rights violation, understanding it as a continuous violation. It should be understood that, for the family and for society in general, the

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<sup>206</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs. Judgment of September 22, 2006. Series C, No. 153, para. 82, citing: *Annual Report of the Inter-American Commission on Human Rights 1987-1988*, Chapter V.II. “This offense ‘will be considered continuing or permanent as long as the whereabouts or the fate of the victim has not been established’.” (OEA/CP-CAJP, *Report of the President of the Working Group responsible for examining the draft Inter-American Convention on Forced Disappearance of Persons*, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, of January 25, 1994, p. 10).

<sup>207</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs. Judgment of September 22, 2006. Series C, No. 153, para. 82, citing: European Court of Human Rights, *Cyprus v. Turkey*, judgment of 10 May 2001, Application No. 25781/94, paras. 136, 150 and 158; United Nations Human Rights Committee, case of *Ivan Somers v. Hungary*, Communication No. 566/1993, 57th session, CCPR/C/57/D/566/1993 (1996), July 23, 1996, para. 6.3; case of *E. and A.K. v. Hungary*, Communication No. 520/1992, 50th session, CCPR/C/50/D/520/1992 (1994), May 5 1994, para. 6.4, and case of *Solorzano v. Venezuela*, Communication No. 156/1983, 27th session, CCPR/C/27/D/156/1983, March 26, 1986, para. 5.6.

<sup>208</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs. Judgment of September 22, 2006. Series C, No. 153, para. 83.

experience lived is that of a forced disappearance, with all of its consequences, until such time as the whereabouts of the victim are established, or his remains are found and identified. The Commission considers that the application of the concept of extrajudicial execution without the location of the remains, does not reflect the full scope of state responsibility,<sup>209</sup> and is inconsistent with the experience lived by the next of kin and the community.

207. Based on the foregoing, the Commission shall prove that what happened to the victims in the instant case belongs to the category of forced disappearance of persons; in the case of Rainer Ibsen Cárdenas, it ceased in the year 2008 when his remains were identified, and in the case of José Luís Ibsen Peña it continues to this day, because his fate or the whereabouts of his mortal remains is still uncertain.

208. Article II of the Inter-American Convention on Forced Disappearance of Persons provides that:

For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.

209. The facts narrated in the previous chapter prove that Rainer Ibsen Cárdenas and José Luís Ibsen Peña were detained and held in custody by security agents of the State in detention centers for political prisoners, and they were seen as such by several people, until the time of their disappearance.

210. Although there is no available information indicating that the state agents denied having made the detentions or the fact that the victims were under their custody, the existing versions regarding the events had the purpose of misleading from the truth. The official media said that Rainer Ibsen Cárdenas had died “in a firefight” [refriega] in which several state agents had been injured. However, there is sufficient evidence to conclude that Rainer Ibsen had disappeared for 36 years, until the year 2008, when his remains were located and identified; and there is yet no information on what happened, or on the exact date and the circumstances surrounding his death. With respect to José Luís Ibsen Peña, the next of kin were informed that he had been exiled to Brazil. Nevertheless, more than 36 years after he disappeared in the custody of state agents, his whereabouts are still unknown.

211. In addition, it was not until the year 2008 that Rainer Ibsen Cárdenas’ next of kin received information on the location and identification of his remains; this was not achieved due to an ex officio action on the part of the State, but based on a formal request for the exhumation of a group of bodies among which the victim’s might be found. This means that during 36 years there were no steps taken to locate the victim.

212. The Commission does not share the State’s position that the forced disappearance of Rainer Ibsen Cárdenas ceased on 1983 when the illegal common grave was found. The Commission does not consider, either, that from that date onwards the next of kin were aware of what had happened. The Commission underscores that at that time no

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<sup>209</sup> See: European Court of Human Rights, *Case of Varnava and Others Vs. Turkey*. January 10, 2008. Para. 112.

forensic exam was conducted to establish the identity of the remains that were found. This exam was conducted 25 years later. In this respect, in accordance with the case law of the organs of the inter-American system, Rainer Ibsen Cárdenas remained as a disappeared person until July 2008, when his remains were identified. Moreover, the perpetrators and abettors in his murder and the circumstances under which it took place have not yet been clarified. In the case of José Luís Ibsen Peña, to date no effective measures have been taken to find him or locate his remains. To all this must be added, as will be explained in further detail below, the lack of any diligent investigation and punishment of those responsible.

213. Based on the foregoing and taking into account the detailed arguments that follow in the light of the provisions of the American Convention applicable to the case, the Commission requests that the Court find that Rainer Ibsen Cárdenas and José Luís Ibsen Peña were the victims of forced disappearance in violation of article I and of the guarantees provided for by article XI of the Inter-American Convention on Forced Disappearance of Persons.

**B. Violation of the right to personal liberty (articles 7 and 1.1 of the American Convention)**

214. Article 7 of the American Convention, in its relevant section, establishes:

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to ensure his appearance for trial.

215. The Inter-American Court has stated that "Article 7 of the Convention contains two distinct types of regulations: one general and another specific. The general one is contained in the first subparagraph: "[e]very person has the right to personal liberty and security," while the specific one is composed of a series of guarantees that protect the right not to be deprived of liberty unlawfully (Art. 7.2) or in an arbitrary manner (Art. 7.3), to be informed of the reasons for the detention and the charges brought against him (Art. 7.4), to judicial control of the deprivation of liberty and the reasonable length of time of the remand in custody (Art. 7.5), to contest the lawfulness of the arrest (Art. 7.6) and not to be detained for debt (Art. 7.7)."<sup>210</sup> The Court has also stated that any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of

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<sup>210</sup> I/A Court H.R., *Chaparro Álvarez and Lapo Íñiguez v. Ecuador Case*. Preliminary objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C, No. 170. para. 51.

Article 7.1 thereof, because the failure to protect the guarantees of the person deprived of liberty leads to the lack of protection of that person's right to liberty.<sup>211</sup>

216. According to the case law of the Inter-American Court, in cases of forced disappearance of persons, it is not necessary to perform a detailed analysis of the detention with respect to each of the guarantees established in Article 7 of the American Convention. In the view of the Inter-American Court, when it is proven that the deprivation of liberty constituted a step prior to the execution or disappearance of the victims, it is not necessary to determine whether the alleged victims were informed of the reasons for their detention, if this occurs outside the limits and conditions established in the legislation in effect at the time of the events, or if the detention was unreasonable, unpredictable, or disproportionate.<sup>212</sup>

217. In addition, the Court has stated that when examining an alleged forced disappearance it should be taken into account that the deprivation of liberty of the individual must be understood merely as the beginning of the constitution of a complex violation that is prolonged over time until the fate and whereabouts of the alleged victim are established.<sup>213</sup>

218. In what follows, the Commission will prove the violation each victim's right to personal liberty.

#### **1. With respect to Rainer Ibsen Cárdenas**

219. According to the information available, which has not been disputed by the State, Rainer Ibsen Cárdenas disappeared from his daily activities in the city of Santa Cruz, Bolivia in the month of October, 1971. Although there are no details regarding his arrest, it has been established that the student Rainer Ibsen was held in custody under a dictatorship, against the norms of the Constitution, and within a state of permanent suspension of fundamental rights and constitutional guarantees. It has also been proven that Rainer Ibsen was held during several months in clandestine detention centers in the city of La Paz by members of the Political Order Department, that he was held incommunicado as a political prisoner for his alleged link with the National Liberation Army, and that this was part of a state policy of unlawful and arbitrary detentions followed by torture, extrajudicial execution and/or forced disappearance of persons who had been singled out as dangerous to national security or as opposing the regime of then President Hugo Banzer Suárez.

220. It is evident that the arrest of Rainer Ibsen Cárdenas was not due to his involvement in the commission of any crime nor that it was to prosecute him for one. To the contrary, the reason for his detention was his alleged membership of the National Liberation Army, and there is no evidence that he was prosecuted at all.

221. The existing evidence proves that Rainer Ibsen Cárdenas was arrested with the purpose of transferring him to centers for the detention of political prisoners where torture and extrajudicial executions were carried out, and measures necessary to make the victims disappear were adopted, as indeed happened in his case.

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<sup>211</sup> I/A Court H.R., *Chaparro Álvarez and Lapo Íñiguez. v. Ecuador Case*. Preliminary objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C, No. 170. para. 54.

<sup>212</sup> I/A Court H.R., *La Cantuta Case*. Judgment of November 29, 2006 Series C, No. 162. para. 109.

<sup>213</sup> I/A Court H.R., *Case of Heliodoro Portugal*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 12, 2008, para. 112.

## **2. With respect to José Luís Ibsen Peña**

222. According to the information available, which has not been disputed by the State, José Luís Ibsen Peña was arrested with the use of force on February 10, 1973 in the city of Santa Cruz by plain clothed State's security officers. It has also been proven through testimony and the confession of one of the accused that José Luís Ibsen Peña was held at detention center for political prisoners that existed under the dictatorship, called El Pari, in the same city of Santa Cruz for 18 days, until February 28, 1973; after this date his next of kin knew nothing more of his whereabouts.

223. In similar fashion to what has been noted in supra paragraph 219, it has been proven that the arrest of José Luís Ibsen Peña took place under a dictatorship, against the norms of the Constitution, and within a state of permanent suspension of fundamental rights and constitutional guarantees. It has also been proven that José Luís Ibsen Peña was arrested as a political prisoner, apparently for his links to the *Central Obrera Boliviana*, and his detention had the purpose of submitting him to interrogation, to acts against his personal integrity and his subsequent forced disappearance, as indeed was the case.

224. The foregoing items are sufficient for the Court to find that the arrests of Rainer Ibsen Cárdenas and José Luís Ibsen Peña was an act of abuse of power, they were not ordered by a competent authority, and that their purpose was not to hand them over to a judge or other official authorized by law to decide regarding the legality of their detention, but to interrogate them, torture them, and execute them and/or forcibly make them disappear.<sup>214</sup> In this respect, the Commission requests that the Inter-American Court find that the Bolivian State violated, with prejudice to Rainer Ibsen Cárdenas and José Luís Ibsen Peña, the right to personal liberty as well as the guarantees provided for by articles 7.1, 7.2, 7.3, 7.4 and 7.5 of the American Convention, in connection with article 1.1 of same.

### **C. Violation of the right to humane treatment (articles 5 and 1.1 of the American Convention)**

225. Article 5 of the American Convention establishes as follows:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

226. Regarding the rights enshrined in Articles 5.1 and 5.2 of the Convention, the Court has repeatedly stated that "torture and cruel, inhuman, or degrading punishment or treatment are strictly prohibited by international human rights law. The absolute prohibition on both physical and psychological torture today belongs to the realm of international *jus cogens*. That prohibition survives even under the most difficult circumstances such as war, threat of war, combating terrorism and any other crimes, state of siege or emergency,

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<sup>214</sup> See the Court's analysis in: I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006. Series C, No. 162, para. 109.

internal riot or conflict, suspension of constitutional guarantees, domestic political unrest, or other public emergencies or disasters.”<sup>215</sup>

227. The Court has also established that illegal and arbitrary detention in and of itself places the victim in a situation of vulnerability from which the potential risk arises that other rights may be violated as well, such as the right to humane treatment and to be treated with respect for their dignity.<sup>216</sup> Since its examination of the cases of Velásquez-Rodríguez and Godínez-Cruz, the Court has inferred the existence of torture before death in cases of prolonged detention where there are no mechanisms of judicial control.<sup>217</sup>

228. In this connection the Court has stated, beginning with its earliest case law on this subject that:

[...] investigations into the practice of disappearances and the testimony of victims who have regained their liberty show that those who are disappeared are often subjected to merciless treatment, including all types of indignities, torture and other cruel, inhuman and degrading treatment, in violation of the right to physical integrity recognized in Article 5 of the Convention.<sup>218</sup>

### **1. With respect to Rainer Ibsen Cárdenas and José Luís Ibsen Peña**

229. As can be seen from the context and the facts narrated, one of the places of detention where Rainer Ibsen was held, i.e., the Achocalla center close to the city of La Paz, was used for the confinement of political prisoners, and for the habitual practice of torture.

230. The passage of time and the lack of diligence on the part of the authorities charged with investigating the facts and with identifying in a timely manner the remains of Rainer Ibsen Cárdenas, added to the manner in which this type of acts was carried out, within the framework of a dictatorship, to avoid the surfacing of any evidence and to ensure impunity, constitute the factors preventing the availability of information regarding the specific acts to which the victim was subjected. However, the Commission requests that the Court, in keeping with its analysis of prior cases, given the context in which he was deprived of his liberty, his transfer to a center used to torture and make prisoners disappear, and his subsequent death at the hands of agents of state security, find that Rainer Ibsen Cárdenas was subjected to acts against his personal integrity.

231. In the case of José Luís Ibsen, in addition to the fact that it has been established that he was held in the El Pari prison in the city of Santa Cruz, where it was common to practice nocturnal torture on the part of officers of the Department of Political

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<sup>215</sup> I/A Court H.R., *Bueno Alves Case*. Judgment of May 11, 2007. Series C., No. 164. para. 76; I/A Court H.R., *The Miguel Castro-Castro Prison Case*. Judgment of November 25, 2006. Series C, No. 160. para. 271; and I/A Court H.R., *Baldeón García Case*. Judgment of April 6, 2006. Series C, No. 147. para. 117.

<sup>216</sup> I/A Court H. R., *Case of Baldeón-García*. Judgment of April 6, 2006. Series C, no. 147, para. 119; I/A Court H.R., *Case of López-Álvarez*. Judgment of February 1, 2006. Series C, No. 141, para. 104; I/A Court H. R., *Case of Juan Humberto Sánchez*. judgment of June 7, 2003. Series C, No. 99, para. 96. Along similar lines also see: ECHR, *Case of Ireland v. the United Kingdom*, Judgment of 18 January 1978, Series A No. 25. para. 167.

<sup>217</sup> I/A Court H. R., *Case of Velásquez-Rodríguez*. Merits, Judgment of July 29, 1988. Series C, No. 4, para. 156; I/A Court H. R., *Case of Godínez-Cruz*. Judgment of January 20, 1989. Series C, No. 5, para. 164.

<sup>218</sup> I/A Court H. R., *Case of Velásquez-Rodríguez*. Merits, Judgment of July 29, 1988. Series C, No. 4, paras. 156 and 157.

Order, there is the testimony of one of the accused in the domestic criminal proceedings, indicating that the victim was subjected to strong blows with a stick by another of the accused, who at the time was the Chief of the Department of Political Order. Furthermore, his next of kin have stated before several instances that on February 21, 1973, in a visit with him, they found him completely beaten and in a mental state of anguish, as if he could foresee his fate.

232. The Commission considers that the fact that the victims were arrested and taken to centers for the detention of political prisoners, where they were made to disappear proves that they were placed in a situation of vulnerability and lack of protection that affected their physical, mental, and moral integrity. The *modus operandi* itself in the facts of the case, within the context of a well-known repetition of this type of practices, leads to the inference that both men experienced deep feelings of fear, anguish, and defenselessness. As the Court has noted in prior cases, in the least serious of situations, they were submitted to cruel, inhumane or degrading treatment when they witnessed acts perpetrated against other people, their concealment or execution, all of which made them anticipate their fate.<sup>219</sup>

233. The Commission furthermore underscores the additional injury to the mental and moral integrity of Mr. Ibsen Peña before his own arrest, because of the disappearance of his son Rainer Ibsen Cárdenas, the version publicized by the Ministry of the Interior regarding his death, the impossibility of verifying his alleged death, the lack of information regarding his whereabouts or the location of his mortal remains and, generally, the uncertainty with respect to what had really happened to him.

## 2. With respect to the victims' next of kin

234. As the Court has reiterated, the next of kin of the victims of human rights violations can also be, in turn, victims.<sup>220</sup> In several cases, the Court has considered that the mental and moral integrity of the victims' next of kin has been violated in light of the additional suffering experienced "as a result of the specific circumstances surrounding the violations committed against their loved ones and of the subsequent acts or omissions by State authorities with respect to the incidents at issue here."<sup>221</sup>

235. Specifically, in cases of forced disappearance, the Court has held that it can be understood that the violation of the right to mental and moral integrity of the victims' next of kin is a direct result, precisely, of this phenomenon, which causes them severe anguish owing to the act itself, which is increased, among other factors, by the constant refusal of the State authorities to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred.<sup>222</sup>

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<sup>219</sup> The Court made a substantially similar analysis in: I/A Court H. R., *Case of La Cantuta*, Judgment of November 29, 2006. Series C, No. 162, para. 113.

<sup>220</sup> I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs. Judgment of September 22, 2006. Series C, No. 153, para. 96; I/A Court H.R., *Case of Ximenes-Lopes*. Judgment of July 4, 2006. Series C No. 149, para. 156, and I/A Court H.R., *Case of López-Álvarez*, Judgment of February 1, 2006, Series C, No. 141, para. 119.

<sup>221</sup> I/A Court H.R., *Case of Gómez-Palomino*. Judgment of November 22, 2005. Series C, No. 136, para. 60; I/A Court H.R., *Case of the "Mapiripán Massacre."* Judgment of September 15, 2005. Series C, No. 134, paras. 144 and 146.

<sup>222</sup> I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006. Series C, No. 162, para. 132; I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs. Judgment of September 22, 2006. Series C, No. 153, para. 97, and I/A Court H.R., *Case of Gómez-Palomino*. Judgment of November 22, 2005. Series C, No. 136, para. 61.

236. The Commission has narrated facts that prove the degree of injury to the mental and moral integrity of the victims' next of kin, i.e., Ms. Marta Castro Mendoza, stepmother of Rainer Ibsen Cárdenas and spouse of José Luís Ibsen Peña, and Tito Ibsen Castro, Rebeca Ibsen Castro and Raquel Ibsen Castro, siblings of Rainer Ibsen Cárdenas, and children of José Luís Ibsen Peña.

237. With respect to Marta Castro Mendoza and Tito Ibsen Castro, it has been proven that they visited Mr. Ibsen Peña in the El Pari center of detention, where they found him to have been beaten and whose demeanor indicated that he presaged his fate. Moreover, it has been proven that Ms. Marta Castro Mendoza went to the Bar Association on April 15, 1973 to ask for help in view of her lack of information on the whereabouts of her husband since February 28, 1973.

238. The evidence submitted also indicates that the children of José Luís Ibsen Peña carried out a campaign in search of clues to the whereabouts of their brother and father, through reiterated requests before several state institutions regarding the state and the copies of the impeachment trial brought against Hugo Banzer Suárez following the complaint filed by Marcelo Quiroga Santacruz during the 1979-1980 legislative session.

239. In addition, as the Commission will explain in detail in the section on the rights to a fair trial and to judicial protection, faced with the lack of an ex officio investigation by the State on the forced disappearance of her next of kin, Rebeca Ibsen Castro, in representation of her family, filed a request for a joinder to the criminal complaint which had prompted the investigation of the forced disappearance of José Carlos Trujillo Oroza. More than eight years have transpired since this motion and to date the disappearances of her father and brother have not been clarified, nor have those responsible as perpetrators or abettors been adequately punished. In the domestic proceedings, the next of kin of the victims have had the burden of proving the forced disappearance of their family members, and of moving forward the search for their remains. Furthermore, they have had to face the lack of will on the part of the judiciary to investigate the facts since at least 34 judges have recused themselves from hearing the case and the burden of proof has been handed over to the victims' next of kin. In summary, to date the close relatives of Rainer Ibsen Cárdenas and José Luís Ibsen Peña remain in a state of uncertainty regarding the events, and impunity continues to prevail with regard to the facts, adding to the pain already felt due to the loss of their loved ones.

240. Based on the foregoing, the Commission requests that the Court find that the Bolivian State is in violation of the rights provided for by articles 5.1 and 5.2 of the American Convention with prejudice to Rainer Ibsen Cárdenas and José Luís Ibsen Peña, as well as of the right to mental and moral integrity established by article 5.1 of the Convention, with prejudice to Marta Castro Mendoza, Tito Ibsen Castro, Rebeca Ibsen Castro and Raquel Ibsen Castro, all in connection with the obligations to respect and guarantee rights established by article 1.1 of same.

#### **D. Right to life (articles 4 and 1.1 of the American Convention)**

241. Article 4 of the American Convention establishes:

1. Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.

242. The Inter-American Court has repeatedly stated that the right to life is a fundamental human right, the full exercise of which is a prerequisite for the enjoyment of all other human rights.<sup>223</sup> The Court has also said that this means that the States have the obligation to guarantee the creation of the conditions required in order that violations of this inalienable right do not occur, as well as the duty to prevent their agents, or individuals, from endangering that right.<sup>224</sup> According to the Court, the purpose or object of the Convention, as an instrument for the protection of the human being, requires that the right to life be interpreted and enforced so that its guarantees are practical and effective (*effet utile*).<sup>225</sup>

243. As the Court has indicated repeatedly in its case law, “compliance with the duties imposed by Article 4 of the American Convention, in conjunction with Article 1.1 thereof, does not only presuppose that no person can be arbitrarily deprived of his life (negative duty), but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction.”<sup>226</sup> Thus it is that, in the words of the Court:

The States must adopt all necessary measures to create a legal framework that deters any possible threat to the right to life; establish an effective legal system to investigate, punish, and redress deprivation of life by State officials or private individuals; and guarantee the right to unimpeded access to conditions for a dignified life. Especially, States must see that their security forces, which are entitled to use legitimate force, respect the right to life of the individuals under their jurisdiction.<sup>227</sup>

#### 1. With respect to Rainer Ibsen Cárdenas

244. The location, examination, and identification of the remains of Rainer Ibsen Cárdenas, as well as the testimony of persons who assert that they saw him in the custody of agents of the State, prove that Rainer Ibsen died at the hands of security agents of the State, on a date and under circumstances yet to be determined, as the result of at least three gunshot wounds to the head.

245. However, for the Commission, the fact that there is sufficient evidence regarding the death of the victim does not entail a change in the understanding of the acts perpetrated against him, such as forced disappearance. This is because the remains of the victim were not located and identified until July 2008 as the result of the forensic anthropology report, which indicated that one of the bodies exhumed from the ASOFAMD

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<sup>223</sup> I/A Court H.R. *Zambrano Vélez et al. v. Ecuador Case*. Merits, Reparation, and Costs. Judgment of July 4, 2007. Series C, No. 166. para. 78; I/A Court H.R., “*Street Children*” (*Villagrán Morales et al.*) Case. Judgment of November 19, 1999. Series C, No. 63. para. 144.

<sup>224</sup> I/A Court H.R., “*Street Children*” (*Villagrán Morales et al.*) Case. Judgment of November 19, 1999. Series C, No. 63. para. 144.

<sup>225</sup> I/A Court H.R. *Zambrano Vélez et al. v. Ecuador Case*. Merits, Reparation, and Costs. Judgment of July 4, 2007. Series C, No. 166. para. 79; I/A Court H.R., *Baldeón García Case*. Judgment of April 6, 2006. Series C, No. 147. para. 83.

<sup>226</sup> I/A Court H.R. *Zambrano Vélez et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C, No. 166. para. 80; I/A Court H.R., “*Street Children*” (*Villagrán Morales et al.*) Case. Judgment of November 19, 1999. Series C, No. 63. para. 144.

<sup>227</sup> I/A Court H.R. *Zambrano Vélez et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment July 4, 2007. Series C, No. 166. para. 81; I/A Court H.R., *Montero Aranguren et al. (Retén de Catia) Case*. Judgment of July 5, 2006. Series C, No. 150. para. 66.

Mausoleum has a 99.7% probability of belonging to a half brother of Tito and Rebeca Ibsen Castro.

246. According to the Court's case law and to international consensus regarding the concept of forced disappearance, it is understood that a person continues to be classified as disappeared, and that the crime is ongoing until such time as their whereabouts are determined, or their remains are found. The Commission understands that Rainer Ibsen Cárdenas was forcibly made to disappear until July 2008,<sup>228</sup> with all the consequences entailed for his next of kin and for society in general. The discovery of his remains and their identification 36 years after his disappearance cannot retroactively change the acts to an extrajudicial execution instantaneously carried out. In this respect, the Commission requests the Court to find that Rainer Ibsen Cárdenas was a victim of forced disappearance, which includes, inter alia, the violation of the right to life, which was ongoing until the date on which his mortal remains were identified.

## 2. With respect to José Luís Ibsen Peña

247. It has been proven that José Luís Ibsen Peña was deprived of his liberty on February 10, 1973, beaten and made to disappear in the following weeks by agents of the Department of Political Order. His next of kin have not known his whereabouts since February 28, 1973, the date on which they were informed that Mr. Ibsen Peña had been exiled to Brazil. Thirty-six years have transpired and to date his fate or the location of his mortal remains continue to be unknown.

248. According to the case law of the Inter-American Court, the practice of disappearances has frequently involved the secret execution of those detained, without trial, followed by concealment of the corpse in order to eliminate any material evidence of the crime and to ensure absolute impunity, which entails a brutal violation of the right to life, established in Article 4 of the Convention.<sup>229</sup> The case law of the inter-American system has also established that the fact that a person has disappeared over a long period of time and within a context of violence is a reasonable basis to conclude that the person was killed.<sup>230</sup>

249. The Commission understands that this presumption has been historically used by the organs of the inter-American system to allow an integral analysis of the phenomenon of forced disappearance, with all of its aspects, including the imminent threat to the right to life and the fateful death of the great majority of its victims. The Commission wishes to underscore that this presumption has been applied in the victims' favor and that it cannot be considered to be a factor to conclusively establish the specific date of the death of a person or of the Inter-American Court's competence *ratione temporis*. In this respect, the Commission requests the Court to continue applying the presumption of death in cases of forced disappearance as a mechanism to encompass the full scope of state responsibility, in a *pro homine* sense.

250. Based on the foregoing, the Commission requests the Court to find that the Bolivian State violated, with prejudice to Rainer Ibsen Cárdenas and José Luís Ibsen Peña,

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<sup>228</sup> Regarding the legal finding of a situation of forced disappearance to the location and full identification of the remains, see: I/A Court H.R., *Case of La Cantuta*. Judgment of November 29, 2006. Series C, No. 162, para. 114.

<sup>229</sup> I/A Court H.R. *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C, No. 109, para. 154; I/A Court H.R. *Case of Bámaca-Velásquez*. Judgment of November 25, 2000. Series C, no. 70, para. 130.

<sup>230</sup> I/A Court H. R., *Case of Velásquez-Rodríguez*. Judgment of July 29, 1988. Series C, No. 4, para. 188.

the right to life provided for by article 4 of the American Convention, in connection with the obligations to respect and guarantee rights established by article 1.1 of same.

**E. Right to a juridical personality (articles 3 and 1.1 of the American Convention).**

251. Article 3 of the American Convention provides that:

Every person has the right to recognition as a person before the law.

252. This norm enshrines the right that every human being has, by virtue of his being human, to be recognized as a person before the law. In this connection, the Inter-American Court has held that “every human person is endowed with juridical personality, which imposes limits to State power. The juridical capacity varies in virtue of the juridical condition of each one to undertake certain acts. Yet, although such capacity of exercise varies, all individuals are endowed with juridical personality. Human rights reinforce the universal attribute of the human person, given that to all human beings correspond likewise the juridical personality and the protection of the Law, independently of her existential or juridical condition.”<sup>231</sup>

253. The recognition of judicial personality is an essential and necessary requirement for legal standing and for the exercise of all rights, since without it the person does not have the protection and guarantees provided by law, simply because he or she is invisible to it.

254. By nature, the forced disappearance of persons seeks the legal annulment of the individual to remove him or her, precisely, from the protection granted by laws and justice. In this way, the apparatus of repression guarantees that the persons may be deprived of their rights with impunity, placing them outside the reach of any possible judicial protection. The purpose of those who execute forced disappearance is to operate outside of the scope of the rule of law, hiding any evidence of a crime, and in this way seeking to escape from investigation and punishment, and preventing that the person or his or her next of kin may file any action or, should action be filed, that it be successful in any way.

255. The Commission has established in this regard that:

disappearance seems to be a method used to avoid enforcing legal provisions established to defend individual freedom, physical integrity, the dignity and the very life of the person. The Commission has pointed out that this procedure in practice makes inoperative legal rules enacted in some countries to avoid unlawful detention and the use of physical and psychological coercion against detainees [...].<sup>232</sup>

256. In addition, the Commission notes that beginning with its very first case law, the Court has consistently established the multiple offense nature of the forced disappearance of persons (*supra*).<sup>233</sup> In this respect, it has held that:

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<sup>231</sup> I/A Court H.R., *Juridical Condition and the Human Rights of the Child*. Advisory Opinion OC-17/02 of August 28, 2002. Series A. No. 17, para. 34.

<sup>232</sup> IACHR, *Annual Report 1986-87*, Chapter V: II.

<sup>233</sup> I/A Court H.R., *Case of Heliodoro Portugal*. Judgment of August 12, 2008, para. 106; I/A Court H.R., *Case of Goiburú et al.* Judgment of September 22, 2006. Series C, No. 153, paras. 81-85; I/A Court H.R., *Case of Gómez-Palomino*. Judgment of November 22, 2005. Series C, No. 136, para. 92, and I/A Court H. R., *Case of Velásquez-Rodríguez*. Judgment of July 29, 1988. Series C, No. 4, para. 155.

[...] forced disappearance affects different juridical rights and it continues owing to the deliberate intention of the alleged perpetrators, who, by refusing to provide information on the victim's whereabouts maintain the offense throughout time [...] Consequently, the examination of a possible forced disappearance should not be approached in an isolated, divided and fragmented manner, considering merely the detention, or the possible torture, or the risk of loss of life, but rather the focus should be on all the facts presented in the case [...] <sup>234</sup>

257. This multiple violation of the essential rights of a person is precisely possible because he or she is outside of the scope of the law, deprived of juridical personality. Accordingly, and bearing in mind the ongoing nature of this crime, and although the Commission understands that juridical personality dies with the individual, who can no longer be the subject of rights and responsibilities, the Commission nevertheless considers that in the case of forced disappearance it is not possible to establish this extinguishing of juridical personality since there is the impossibility of ascertaining if the person is still alive or not. It is for this reason that, among the multiple rights affected by forced disappearance is the right to recognition of juridical personality for those who are victims of such a practice. Moreover, the Commission understands that the deprivation of juridical personality precisely constitutes the means by which the violation of all the other rights affected by force disappearance is sought and effectuated.

258. The violation of the right to be recognized as a person before the law caused by the phenomenon of forced disappearance is of such magnitude that several states of the region have decided to adopt specific legislation differentiating it from extrajudicial execution. The state prevents the exercise of rights and duties of living persons since it is the state who denies their final fate. For example, in the case of persons detained-disappeared who are still alive, the state denies them access to a judge regarding their detention, and in the case of persons detained-disappeared who have been executed, the rights of the next of kin, such as inheritance rights, are also obstructed by the legal uncertainty surrounding the person detained-disappeared.

259. In this respect, the Commission realizes that the Inter-American Court established in the *Bámaca-Velásquez* case that the Inter-American Convention on Forced Disappearance of Persons (1994) does not refer expressly to the juridical personality among the elements that typify the complex crime of forced disappearance of persons and that "in these circumstances, it is not in order to invoke an alleged violation of the right to juridical personality or other rights embodied in the American Convention."<sup>235</sup> Nevertheless, the Commission notes that subsequently, in a judgment handed down under a state acknowledgement of responsibility, the Court considered that the aforementioned norm had been violated in a case of forced disappearance.<sup>236</sup> In addition, in its most recent case law,<sup>237</sup> the Court itself cites article 1.2 of the 1992 United Nations Declaration on the Protection of All Persons from Enforced Disappearance, which provides that forced disappearance constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law.

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<sup>234</sup> I/A Court H.R., *Case of Heliodoro Portugal*. Judgment of August 12, 2008, para. 112.

<sup>235</sup> I/A Court H.R. *Case of Bámaca-Velásquez*. Judgment of November 25, 2000. Series C, no. 70, paras. 180 and 181.

<sup>236</sup> I/A Court H.R. *Case of Trujillo-Oroza*. Judgment of January 26, 2000. Series C, No. 64, para. 41.

<sup>237</sup> I/A Court H.R., *Case of Heliodoro Portugal*. Judgment of August 12, 2008, para. 108.

260. For its part, the Human Rights Committee has found that one of the rights that could be violated in cases of forced disappearance of persons is the right to recognition of juridical personality. In this respect the Committee has stated the following:

The Committee points out that intentionally removing a person from the protection of the law for a prolonged period of time may constitute a refusal to recognize that person before the law if the victim was in the hands of the State authorities when last seen and, at the same time, if the efforts of his or her relatives to obtain access to potentially effective remedies, including judicial remedies (...) have been systematically impeded. In such situations, disappeared persons are in practice deprived of their capacity to exercise entitlements under law, including all their other rights under the Covenant, and of access to any possible remedy as a direct consequence of the actions of the State, which must be interpreted as a refusal to recognize such victims as persons before the law.<sup>238</sup>

261. In the instant case, the disappearance of Rainer Ibsen Cárdenas and José Luís Ibsen Peña had an objective: to deprive them of their juridical personality, thus leaving them out of the legal and institutional order itself. Indeed, in the context in which they occurred, their disappearances were the means for the perpetrators to seek impunity for their acts, guaranteed by the impossibility of the victim and his next of kin to seek judicial protection, in view of the constant and systematic lack of any investigation related to their whereabouts, since this information was denied and/or distorted by the authorities. In this respect, the Commission has held that:

The objective of those who perpetrate a disappearance is to operate beyond the margins of the law, to conceal all evidence of their crimes, and to escape any sanction. When a disappearance is carried out, the fundamental protections established by law are circumvented and the victim is left defenseless. For the victim, the consequence of an enforced disappearance is to be denied every essential right deemed to inhere in the very fact of being human. In this way, the act of enforced disappearance violates the right of the individual under Article 3 of the American Convention "to recognition as a person before the law."<sup>239</sup>

262. Based on the foregoing arguments, the Commission requests that the Court find that the State of Bolivia violated, with prejudice to Rainer Ibsen Cárdenas and José Luis Ibsen Peña, the right to recognition of their juridical personality, provided for by article 3 of the American Convention, in connection with article 1.1 of same.

#### **F. Right to a fair trial and to judicial protection (articles 8.1 and 25.1 of the American Convention)**

263. Article 8.1 of the American Convention 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.

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<sup>238</sup> Human Rights Committee of the International Covenant on Civil and Political Rights. Communication 1327/04. *Grioua v. Algeria*. paras. 7.8 and 7.9.

<sup>239</sup> See IACHR, Report No. 11/98, Case 10.606, Samuel de la Cruz Gómez, Guatemala, April 7, 1998, para. 57, available at: <http://www.cidh.oas.org/annualrep/97eng/Guatemala10606.htm>

264. Article 25.1 of the American Convention establishes:

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent tribunal for protection against act 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.

265. The Court has stated that “as a result of the protection granted by Articles 8 and 25 of the Convention, the States are obliged to provide effective judicial recourses to the victims of human rights violations that must be substantiated according to the rules of due process of law.”<sup>240</sup>

266. With respect to the rights of the relatives of the victims of human rights violations to obtain justice and redress, the Court has stated that

From Article 8 of the Convention it is evident that the victims of human rights violations, or their next of kin, should have substantial possibilities to be heard and to act in the respective proceedings, both to clarify the facts and punish those responsible, and to seek due reparation.<sup>241</sup>

267. Along the same lines, the Court has stated that victims’ relatives have the right, and States the obligation, to have what happened to the victims effectively investigated by State authorities; to pursue a proceeding against those responsible for the offenses; to have relevant punishment imposed on them as appropriate; and to secure reparation for the damages and injuries suffered by those relatives.<sup>242</sup> Accordingly, once they have knowledge of an event involving a human rights violation, particularly affecting the rights to life, personal integrity, and personal liberty,<sup>243</sup> state authorities have the duty *ex officio* and without delay to open up a serious, impartial, and effective investigation,<sup>244</sup> which must be conducted within a reasonable period of time.<sup>245</sup>

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<sup>240</sup> I/A Court H.R., *Cantoral Huamaní and García Santa Cruz v. Peru Case*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C, No. 167. para. 124; I/A Court H.R., *La Rochela Massacre Case*. Judgment of May 11, 2007. Series C, No. 163. para. 145; I/A Court H.R., *Miguel Castro-Castro Prison Case*. Judgment of November 25, 2006. Series C, No. 160. para. 381; and I/A Court H.R., *Severed Congressional Employees (Aguado Alfaro et al.) Case*. Judgment of November 24, 2006. Series C, No. 158, para. 106.

<sup>241</sup> I/A Court H.R., *García Prieto et al. v. El Salvador Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C, No. 168. para. 102; I/A Court H.R., “*Street Children*” (*Villagrán Morales et al.*) *Case*. Judgment of November 19, 1999. Series C, No. 63. para. 227; and I/A Court H.R., *Serrano Cruz Sisters v. El Salvador Case. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C, No. 120, para. 63.

<sup>242</sup> I/A Court H.R., *García Prieto et al. v. El Salvador Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C, No. 168. para. 103; I/A Court H.R., *Bulacio v. Argentina Case. Preliminary objections, Merits, Reparations and Costs*. Judgment of September 18, 2003. Series C, No. 100, para. 114; and I/A Court H.R., *Miguel Castro-Castro Prison Case*. Judgment of November 25, 2006. Series C, No. 160. para. 382.

<sup>243</sup> I/A Court H.R., *Cantoral Huamaní and García Santa Cruz v. Peru Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C, No. 167. para. 100.

<sup>244</sup> I/A Court H.R., *García Prieto et al. v. El Salvador Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 20, 2007. Series C, No. 168. para. 101; I/A Court H.R., *Gómez Paquiyauri Brothers Case*. Judgment of July 8, 2004. Series C, No. 110. Paras. 146; I/A Court H.R., *Cantoral Huamaní and García Santa Cruz v. Peru Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C, No. 167. para. 130.

<sup>245</sup> I/A Court H.R., *Bulacio Case*. Judgment of September 18, 2003. Series C, No. 100. para. 114; I/A Court H.R., *La Rochela Massacre Case*. Judgment of May 11, 2007. Series C, No. 163.

268. On the content of the duty to investigate “with due diligence,” the Inter-American Court has stated that investigations must be conducted using all legal means available and must be directed to determining the truth.<sup>246</sup> Similarly, the Court has indicated that the State has the duty to ensure that everything necessary is done to learn the truth and that those responsible are punished,<sup>247</sup> with the involvement of every state agency.<sup>248</sup>

269. The Court has also stated that the authorities must adopt reasonable measures to secure the physical evidence needed to conduct the investigation.<sup>249</sup>

270. Although the obligation to investigate is an obligation as to means rather than results, it must be assumed by the State as its own legal duty and not just a formality predestined to be ineffective,<sup>250</sup> or a mere step taken by individual interests that depends on the procedural initiative of the victims or their relatives or the provision of evidence by private individuals.<sup>251</sup>

271. With respect to the reasonable period guarantee, the Court has established that three elements must be considered in order to determine the reasonability of the time incurred: a) the complexity of the matter; b) the procedural activities carried out by the interested party; and c) the conduct of judicial authorities.<sup>252</sup>

272. Based on the cited precedents, the Commission shall prove that in the instant case the Bolivian State did not carry out a serious and diligent investigation, nor did it do so in a reasonable time period, regarding the forced disappearance of the victims and hence failed in its duty to guarantee the rights to life, to personal integrity and personal liberty, and to ensure the rights to truth, justice, and reparations to the next of kin.

273. It has been established herein that criminal proceedings took nine years; that on December 6, 2008 a judgment in the first instance was handed down, in which: i) three of the accused were sentenced to two years and eight months of imprisonment for

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para. 146; I/A Court H.R., *Miguel Castro-Castro Prison Case*. Judgment of November 25, 2006. Series C, No. 160. para. 382.

<sup>246</sup> I/A Court H.R., *García Prieto et al. v. El Salvador Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment, November 20, 2007. Series C, No. 168. para. 101.

<sup>247</sup> I/A Court H.R., *Case Bulacio*. Judgment of September 18, 2003. Series C, No. 100. para. 114; I/A Court H.R., *La Rochela Massacre Case*. Judgment of May 11, 2007. Series C, No. 163. para. 146; I/A Court H.R., *Miguel Castro-Castro Prison Case*. Judgment of November 25, 2006. Series C, No. 160. para. 382.

<sup>248</sup> I/A Court H.R., *Cantoral Huamaní and García Santa Cruz v. Peru Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 10, 2007. Series C, No. 167. para. 130; I/A Court H.R., *Pueblo Bello Massacre Case*. Judgment of January 31, 2006. Series C, No. 140. para. 120; and I/A Court H.R., *Huilca Tecse Case*. Judgment of March 3, 2005. Series C, No. 121, para. 66.

<sup>249</sup> I/A Court H.R., *Zambrano Vélez et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C, No. 166. para. 122.

<sup>250</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C, No. 4. para. 177; I/A Court H.R., *Cantoral Huamaní and García Santa Cruz v. Peru Case*. Preliminary Objection, Merits, Reparations and Costs. Judgment of July 19, 2007. Series C, No. 167. para. 131; and I/A Court H.R., *Zambrano Vélez et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C, No. 166. para. 120.

<sup>251</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C, No. 4. para. 177; I/A Court H.R., *Zambrano Vélez et al. v. Ecuador Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C, No. 166. para. 120.

<sup>252</sup> I/A Court H.R., *Escué Zapata v. Colombia Case*. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C, No. 165. para. 72; I/A Court H.R., *La Cantuta Case*. Judgment of November 29, 2006 Series C, No. 162. para. 102.

committing the crime of deprivation of liberty; ii) one of the accused was acquitted of the charge of deprivation of liberty, and iii) all four of the accused were acquitted, based on the statute of limitations, of the crimes of degrading treatment and torture, criminal association, criminal organization, murder and obstruction of justice. In not a single operative paragraph of the judgment was there any reference to what happened to Rainer Ibsen Cárdenas. These conclusions refer only to José Carlos Trujillo Oroza and José Luís Ibsen Peña.

274. In the first place, the Commission underscores the fact that the investigation of the forced disappearance of Rainer Ibsen Cárdenas and José Luís Ibsen Peña was begun on April 26, 2000, as the result of a request filed by Rebeca Ibsen Castro in representation of her next of kin, to join a criminal complaint for the disappearance of José Carlos Trujillo Oroza. This means that for approximately 28 years the Bolivian State did not initiate an ex officio investigation of the facts, despite that the victims appeared in the list of disappeared persons attached to the impeachment trial against Hugo Banzer in 1979, and whose names were, moreover, widely known. Although the Bolivian State created a commission in 1982 to clarify the forced disappearances during the military dictatorships, this commission was closed down in 1984 without its having finished the investigations that could have given rise to criminal proceedings against those responsible.

275. In and of itself this fact carries with it the failure to comply with the state's responsibility to ex officio initiate and promote investigations, including the obligation to provide effective remedies to the victims of human rights violations and to their next of kin, pursuant to articles 8.1 and 25.1 of the American Convention.

276. The Commission wishes to stress that this grave omission on the part of the Bolivian Government had two effects.

277. The first is that the Ibsen family was forced to promote the investigation through a criminal complaint that, according to domestic criminal procedure, shifts the burden of proof to the party promoting the criminal proceeding, in this case, the Ibsen family. Consequently, which can be seen through documentary evidence, the complainants had to assume the burden of being investigators, file evidence and initiate procedures to locate and identify the remains of their next of kin. Moreover, throughout the proceedings, several judicial authorities took the position that the burden of proof, as well as the obligation of moving the proceedings forward, rested with the victims' next of kin. For example, on August 13, 2002, the Eighth Criminal Court handed down a final order to prosecute the accused, in which it stated that:

[r]egarding the crime of the murder of (...) Rainer Ibsen Cárdenas, and José Luís Ibsen Peña, the formulation of this crime requires the physical presence of the corpse or remains, which does not happen in the instant case, so that the existence of the *corpus delicti* has not been demonstrated by any means in the course of the investigations (...) in addition, the criminal definition of Art. 252 has various forms of commission and the complainants have not specified which form or forms were the means used to commit the crime (...) in criminal matters the burden of proof falls exclusively on the accusing party and since the accusing party has not produced these necessary elements to convince the judge of the commission of the crime of murder, the presumption of innocence must necessarily be applied.<sup>253</sup>

278. Similarly, on January 19, 2005, the Fifth Criminal Court decided to declare the criminal action dismissed as time barred, emphasizing that "(...) the civilian party

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<sup>253</sup> Final Order to Prosecute issued by the Eighth Criminal Magistrate's Court of the Judicial District of Santa Cruz. Annex 21.

intermittently – and in some cases for long periods – remained silent without pursuing the respective procedural activity.”<sup>254</sup>

279. The second effect was that, due to the passage of time, the possibilities of securing truthful testimony and evidence to determine the facts and punish those responsible were substantially reduced. For example, it is worthwhile to note that to date two of the accused have died; against one of them, in the opinion of the Office of the Prosecutor, there was sufficient evidence that he had committed acts of torture against José Luís Ibsen Peña in the El Pari jail. However, the passage of time, and his death, extinguished the possibility of criminal action. In addition, the lack of an autopsy, plus the 35-year delay in initiating procedures to find the body of Rainer Ibsen Cárdenas, necessarily diminishes prospects for finding evidence of torture prior to his death, or regarding the circumstances surrounding it.

280. In addition to the effects directly derived from the State’s failure to initiate an ex officio investigation, the criminal proceeding that took place was characterized by lack of diligence in the gathering of evidence, lapses in procedural action, and the obstruction of the investigation by the judiciary itself.

281. It should be emphasized that a considerable amount of time in the process of investigation and in the criminal proceedings was devoted to defining the crimes for which the accused were to be investigated, and to establish whether criminal action was barred by the statute of limitations.

282. In addition, in the few months devoted to collecting evidence, only confessions from the accused testimony from other persons were taken. Available information does not show the existence of any other procedures to refute the veracity of the official versions regarding the death of Rainer Ibsen in a “firefight” or of the alleged exile of José Luís Ibsen to Brazil. Indeed, the evidence available demonstrates that the procedures practiced to clarify the facts with regard to Rainer Ibsen Cárdenas were minimal.

283. The Commission underscores that the legal framework applicable to the accused constituted an obstacle to the punishment of those responsible for what happened to the victims. Indeed, domestic judicial authorities found that prosecution for the crimes of murder and torture were barred by the statute of limitations because by nature they are of immediate commission, and that the only crime that could be maintained in the charges was the one of deprivation of liberty, since according to the Constitutional Court this crime is ongoing until the time in which the affected person recovers his or her liberty. Specifically for the case of Rainer Ibsen Cárdenas this crime was also considered time barred, since his remains appeared in 1983, time at which, according to a December 6, 2008 ruling, his deprivation of liberty ended. In view of the foregoing, the Commission understands that prospects for obtaining justice through domestic criminal proceedings are minimal.

284. Another aspect hindering the course of the investigation was the recusal of at least 34 judges and two prosecutors from examining the case. Without raising the issue of whether these recusals were appropriate or out of order, the Commission requests the court to examine the dilatory and obstructionist effects that they had in the domestic proceedings.

285. In the first place, it should be noted that the recusals of all the criminal judges of the district of Santa Cruz caused that the case finally was examined by a civil

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<sup>254</sup> Ruling of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005. Annex 21.

judge. As part of the duty of the state to investigate human rights violations with due diligence and to provide effective remedy to the next of kin of the victims so that they can be heard and obtain justice, there is the obligation to comply with minimum standards of suitability of the judicial authorities charged with carrying out the investigations. It is the opinion of the Commission that in the instant case the Ibsen family had the right to have the fate of the victims investigated by an authority established for that purpose, i.e. by a criminal judge who had guarantees of suitability to direct the processing of the case.

286. In addition, the aforementioned recusals, in and of themselves, brought about delays in the proceedings. The facts indicate that on August 25, 2002 it was decided to include the crime of murder in the case, but this inclusion was made effective only until September 2003. During the intervening 11 months, the only procedures in the record are the recusals of the judicial authorities.

287. Other delays attributable to state authorities were noted by the Fifth Criminal Settlement Court, in a decision dated January 19, 2005, as follows:

(sic) the delay in the process has been due to the following factors: i) delays in issuing the respective rulings; ii) delays in expressing the corresponding requests; iii) delays on the part of officials handling proceedings in various courts (preliminary investigation, party, Superior District Court) in complying with notices of various decisions handed down; (...) v) the same thing happened with the Public Prosecutor's Office that also failed to pursue the case with the procedural energy established by law; vi) recusals of all the examining magistrates in the capital, including the examining magistrate of Cotoca (a total of 20 recusals); vii) recusals of court members, both to settle jurisdictional appeals and when they have acted as an appeals court (a total of twelve recusals); viii) recusals by two prosecutors; (...) x) this process has been characterized by the inconsistency of the intervening procedural subjects, as in the case of the Public Defenders – whose only role is to defend those accused who lack financial resources – however, in the judicial police actions it acts as the accuser; xi) one of the higher courts (Criminal Chamber I) despite the partial withdrawal from expansion of the preliminary investigation order for murder, does not take that petition into account and in order No. 338 dated October 25, 2002 expanded the preliminary order for murder; xii) the file with the order expanding the case for murder is referred to the court in the month of March 2003, after five months; xiii) with this decision the trial, which was already in the plenary stage, required the Judge of the Eighth Criminal Court to order that the case be sent to the Eighth Criminal Examining Magistrate's Court; xiv) when the case was referred to the Eighth Criminal Examining Magistrate's Court, the series of recusals by all the examining magistrates in the capital plus the examining magistrate of Cotoca began (...).<sup>255</sup>

288. The Commission understands that forced disappearance of persons is a phenomenon whose complexity may bring about delay in the investigations. However, in the instant case, delays have not been the result of the nature of the matter or of particularly complex judicial procedures. Although the Bolivian State informed the Commission that Ms. Rebeca Ibsen was causing delays in the proceeding due to her absence from hearings of arguments, documentary evidence demonstrate that said absences were no more than three and that the delay occasioned was no greater than two months, in April and May of 2003. Thus considered, it is evident that the periods of lack of activity and

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Anexo 21.

of delay generally in the proceeding have been mainly those of the judicial authorities in charge of the investigation.

289. In this respect and in accordance with the criteria established by the Court, the Commission requests the Court to conclude that the investigation and the criminal proceeding were not carried out with due diligence and have disregarded the guarantee of a reasonable time period.

290. Regarding the procedures carried out to locate the remains of the victims, available evidence indicates that the State did not order the exhumation of a group of bodies, one of which could be the one belonging to Rainer Ibsen Cárdenas, until the year 2007 and did so in response to repeated requests on the part of the complainant, despite the fact that there existed documentation since 1979 indicating the possible location of his remains.

291. It should be noted that the belated identification of the remains of Rainer Ibsen Cárdenas has had no effect on the criminal proceeding, in which no order was given to obtain more detailed evidence to verify reports of his torture. The Commission also emphasizes that although the discovery of Rainer Ibsen's body demonstrated the falsity of the official version of his death as resulting from action to avert his attempt to flee – since at least three bullet holes were found in the bony remains of the victim's head – available information indicates that the persons in charge of security in the Achocalla detention center were not summoned to court at the time Rainer Ibsen was detained.

292. With respect to the search for the body of José Luís Ibsen Peña, a single search procedure for remains was carried out, based on the testimony of one of the accused. This procedure, as is attested to in the annexes, was carried out without adopting measures for the proper safeguarding of the evidence and with the use of methods that endangered the integrity of the material recovered. In particular, the search for remains was performed using a toothed backhoe. After this procedure there has been no advance in the identification of the remains, and as a consequence Mr. Ibsen Peña to date is still disappeared.

293. Based on the foregoing, the Commission requests the Court to find that the State of Bolivia violated the rights provided for by articles 8.1 and 25.1 of the American Convention, in connection with the general obligations established by article 1.1 of same, with prejudice to Rainer Ibsen Cárdenas, José Luís Ibsen Peña, Martha Castro Mendoza, Tito Ibsen Castro, Rebeca Ibsen Castro and Raquel Ibsen Castro.

**G. General obligation to respect and guarantee (article 1.1 of the American Convention)**

294. Article 1.1 of the Convention establishes that:

The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

295. In this regard, the Court has established that:

Article 1.1 is essential in determining whether a violation of the human rights recognized by the Convention can be imputed to a State Party. In effect, that article charges the States Parties with the fundamental duty to respect and guarantee the rights recognized in the Convention. Any impairment of those rights which can be attributed under the rules of international law to the action or omission of any public authority constitutes an act imputable to the State, which assumes responsibility in the terms provided by the Convention. [footnote needed here; I quoted from Velásquez Rodríguez, 1988 Judgment]

296. In accordance with Article 1.1, any exercise of public power that violates the rights recognized in the Convention is unlawful. In that sense, in any situation in which a State body or official or a public institution improperly violates one of such rights, failure to fulfill the duty of respect enshrined in that article is assumed.

297. That conclusion is independent of whether the body or official has acted in violation of provisions of domestic law or overstepped their authority, in that it is a principle of international law that the State is answerable for actions taken by its agents under cover of their official capacity and for their omissions even when acting outside the limits of their competence or in violation of domestic law.<sup>256</sup>

298. In this regard, the Inter-American Court has stated that, based on Article 1.1 of the American Convention:

[...] the State is under the obligation to respect the rights and liberties recognized therein and to organize public authority in such a way as to ensure to all persons under its jurisdiction the free and full exercise of human rights. The above obligation applies independently of whether those responsible for violation of said rights are agents of public authority, private individuals, or groups of individuals, as according to the rules of International Human Rights Law, action or omission by any public authority is an act attributable to the State, one that involves its responsibility under the terms set forth in that Convention.<sup>257</sup> [check this citation; I took language from Juan Humberto Sanchez Case, see footnote 266]

299. As a result of the violation of the rights enshrined in Articles 3, 4, 5, 7, 8 and 25 of the American Convention, the State failed to meet its obligation to respect the rights and freedoms enshrined therein and to ensure the free and full exercise of those rights for all persons subject to its jurisdiction.<sup>258</sup> Thus, the Bolivian State has the duty to organize the governmental apparatus and all structures through which the exercise of public power is manifested in such a way that they are capable of legally ensuring the free and full exercise of human rights. As stated by the Inter-American Court, this duty is imposed regardless of whether those responsible for the violations of those rights are agents of public power, individuals, or groups,<sup>259</sup> in that according to the rules of International Human Rights law, an

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<sup>256</sup> I/A Court H.R., *"Five Pensioners" Case*. Judgment of February 28, 2003. Series C, No. 98, para. 163; I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C, No. 79, para. 154; I/A Court H.R., *Baena Ricardo et al. Case* Judgment of February 2, 2001. Series C, No. 72, para. 178; and I/A Court H.R., *Caballero Delgado and Santana Case*. Judgment of December 8, 1995. Series C, No. 22, para. 56.

<sup>257</sup> I/A Court H.R., *"Five Pensioners" Case*. Judgment of February 28, 2003. Series C, No. 98, para. 163; Court.

<sup>258</sup> I/A Court H.R., *Juan Humberto Sánchez Case*. Judgment of June 7, 2003. Series C, No. 99, para. 142; I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C, No. 70, para. 210; I/A Court H.R., *Caballero Delgado and Santana Case*. Judgment of December 8, 1995. Series C, No. 22; I/A Court H.R., *Godínez Cruz Case*. Judgment, January 20, 1989. Series C, No. 5, paras. 175 and 176; and I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C, No. 4, paras. 166 and 167.

<sup>259</sup> I/A Court H.R., *Juan Humberto Sánchez Case*. Judgment of June 7, 2003. Series C, No. 99, para. 142; I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C, No. 70, para. 210; and

action or omission by any public authority constitutes an action imputable to the State that assumes responsibility in the terms provided by the Convention itself.<sup>260</sup>

#### **H. Articles III and IV of the Inter-American Convention on Forced Disappearance of Persons**

300. Article III of the Inter-American Convention on Forced Disappearance of Persons establishes:

The States parties undertake to adopt, in accordance with their constitutional procedures, the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity. This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined.

The States Parties may establish mitigating circumstances for persons who have participated in acts constituting forced disappearance when they help to cause the victim to reappear alive or provide information that sheds light on the forced disappearance of a person.

301. Article IV of the Inter-American Convention on Forced Disappearance of Persons states:

The acts constituting the forced disappearance of persons shall be considered offenses in every State Party. Consequently, each State Party shall take measures to establish its jurisdiction over such cases in the following instances:

- i. When the forced disappearance of persons or any act constituting such offense was committed within its jurisdiction;
- ii. When the accused is a national of that state;
- iii. When the victim is a national of that state and that state sees fit to do so.

Every State Party shall, moreover, take the necessary measures to establish its jurisdiction over the crime described in this Convention when the alleged criminal is within its territory and it does not proceed to extradite him.

This Convention does not authorize any State Party to undertake, in the territory of another State Party, the exercise of jurisdiction or the performance of functions that are placed within the exclusive purview of the authorities of that other Party by its domestic law.

302. At the time of the events in the case in dispute, Bolivia had not defined the crime of forced disappearance. On January 18, 2006, through Law 3326, the definition of the crime of forced disappearance of persons was incorporated in the Penal Code in the following terms:

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C I/A Court H.R., *"White Van" (Paniagua Morales et al.) Case*. Judgment of March 8, 1998. Series C, No. 37, para. 174.

<sup>260</sup> I/A Court H.R., *Juan Humberto Sánchez Case*. Judgment of June 7, 2003. Series C, No. 99, para. 142; I/A Court H.R., *"Five Pensioners" Case*. Judgment of February 28, 2003. Series C, No. 98, para. 163; I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C, No. 70, para. 210; I/A Court H.R., *Mayagna (Sumo) Awas Tingni Community Case*. Judgment of August 31, 2001. Series C, No. 79, para. 154; and I/A Court H.R., *Baena Ricardo et al Case*. Judgment of February 2, 2001. Series C, No. 72, para. 178.

Anyone who with the authorization, support, or acquiescence of any State agency deprives one or more persons of liberty and, deliberately conceals [or] denies information on the recognition of the deprivation of liberty or the whereabouts of the person, impeding the exercise of procedural remedies and guarantees, shall be punished with imprisonment of five to fifteen years.

If the incident results in serious physical or mental injuries to the victim, the punishment shall be fifteen to twenty years in prison.

If the perpetrator of the offense is a public official, the maximum penalty shall be increased by one third.

If the incident results in the death of the victim, the punishment of thirty years in prison shall be imposed.”

To be forwarded to the Executive Branch, pursuant to constitutional purposes.

Done in the Meeting Room of the Honorable National Congress, on January 5, 2006.

303. The Commission appreciates the typification of the crime of forced disappearance of persons in the Criminal Code of Bolivia and believes that it constitutes an importance advance in the development of laws akin to the principles established in the international human rights instruments ratified by the State. However, the Commission requests the Court to find that between May 5, 1999 and January 18, 2006, the Bolivian State failed to comply with its obligation under article III of the Inter-American Convention on Forced Disappearance of Persons, in connection with article IV of same.

## **IX. REPARATIONS AND COSTS**

304. Based on the foregoing facts in this application and on the constant jurisprudence of the Inter-American Court, which has found that “it is a principle of international law that any violation of an international obligation that has produced damage entails the obligation to repair it adequately,”<sup>261</sup> the Commission submits its claims regarding reparations and costs that the Bolivian State must provide as a consequence of its responsibility for the human rights violations committed with prejudice to the victims.

305. Bearing in mind the Court’s Rules of Procedure, which grant the individual autonomous representation, the Commission will limit itself in what follows to describe general criteria related to reparations and costs which it considers the Court should apply in the instant case. The Commission understands that it is up to the victims and their representatives to seek processing of their demands, pursuant to article 63 of the American Convention and article 24 and others of the Court’s amended Rules of Procedure. Should the next of kin of the victims not exercise this right, it is requested that the Court grant the IACHR a procedural opportunity to quantify the pertinent claims. The Inter-American Commission also would like to indicate that it will inform the Court at the appropriate time if it has any observations regarding the quantification of claims of the next of kin of the victims or their representatives.

### **A. Obligation to repair**

306. An essential function of justice is to remedy the harm caused to the victim. This function must be expressed through a rectification or restitution and not only through

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<sup>261</sup> I/A Court H.R., *Case of Cantoral-Huamaní and García-Santacruz*. Judgment of July 10, 2007. Series C, No. 167, para. 156; I/A Court H.R., *Case of Zambrano-Vélez et al.*, Judgment of July 4, 2007. Series C, No. 166, para. 103, and I/A Court H.R., *Case of Escué-Zapata*. Judgment of July 4, 2007. Series C, No. 165, para. 126.

compensation, which does not re-establish the moral balance nor returns what was taken away.

307. Article 63.1 of the American Convention provides that:

If the Court finds that there has been a violation of a right or freedom protected by this Convention, the Court shall rule that the injured party be ensured the enjoyment of his right or freedom that was violated. It shall also rule, if appropriate, that the consequences of the measure or situation that constituted the breach of such right or freedom be remedied and that fair compensation be paid to the injured party.

308. The United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power also provides ample guarantees for those who suffer economic loss, physical or mental injury and “a substantial impairment of their fundamental rights” through acts or omissions, including the abuse of power. Victims or their next of kin have the right to seek redress and to be informed that this is their right.<sup>262</sup>

309. As the Court has constantly indicated in its jurisprudence, Article 63(1) of the American Convention embodies an accepted tenet that is a fundamental principle of contemporary International Law on the responsibility of States. The occurrence of a wrongful act that is attributable to a State gives rise to the State’s international liability, and its resulting duty to make reparation for and remove the consequences of the violation.<sup>263</sup>

310. Reparations are crucial to guarantee that justice be served in an individual case, and constitute a mechanism that raises the decision of the Court beyond the scope of moral condemnation. Reparations consist of the measures that seek to make the effect of violations committed disappear. The reparation of injury caused by an infraction of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists of restoring the situation that existed prior to the violation.

311. If full restitution is not possible, as in the instant case, it is up to the Inter-American Court to order that a series of measures be adopted so that, in addition to guaranteeing respect for the rights violated, the consequences of the breaches in the case are remedied and compensation be paid for the damage caused.<sup>264</sup>

312. The obligation to make reparation is governed by international law in all of its aspects (scope, nature, modes and determination of beneficiaries), and may not be subject to modification or suspension by the respondent State through invocation of provisions of its own domestic law.<sup>265</sup>

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<sup>262</sup> U.N. A/RES/40/34 of November 29, 1985, paras. 1, 4 and 5.

<sup>263</sup> I/A Court H. R., *Case of La Cantuta*. Judgment of November 29, 2006, Series C, No. 162, para. 200; I/A Court H. R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 414; I/A Court H.R., *Case of Montero-Aranguren et al. (Detention Center of Catia) v. Venezuela*. Judgment of July 5, 2006. Series C No. 150, para. 116.

<sup>264</sup> I/A Court H. R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006, Series C, No. 162, para. 201; ; I/A Court H. R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 415; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 143.

<sup>265</sup> I/A Court H.R., *Case of Cantoral-Huamán and García-Santacruz*. Judgment of July 10, 2007. Series C, No. 167, para. 190; I/A Court H.R., *Case of Zambrano-Vélez et al.*, Judgment of July 4, 2007. Series C, No. 166, para. 148; I/A Court H. R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006, Series C, No. 162, para. 200, and I/A Court H. R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 415.

313. In the instant case, the Inter-American Commission has proven that the Bolivian State is internationally responsible for the violation of the rights to a juridical personality, to life, to humane treatment, to personal liberty, to a fair trial and to judicial protection, provided for by articles 3, 4, 5, 7, 8 and 25 of the American Convention, in connection with the general obligation to respect and guarantee human rights provided for by article 1.1 of same, and for the violation of articles I and XI of the Inter-American Convention on Forced Disappearance of Persons, with prejudice to Rainer Ibsen Cárdenas and José Luís Ibsen Peña. In addition, the Commission has proven that the State is responsible for the violation of the rights to humane treatment, to a fair trial, and to judicial protection, provided for by articles 5, 8, and 25 of the American Convention, in connection with the general obligation to respect and guarantee human rights provided for by article 1.1 of same, with prejudice to Tito Ibsen Castro, Rebeca Ibsen Castro, Raquel Ibsen Castro and Martha Castro Mendoza. Finally, the Commission has proven that the Bolivian State is internationally responsible for the violation of articles III and IV of the Inter-American Convention on Forced Disappearance of Persons.

#### **B. Reparations measures**

314. To remedy the situation of the victims or their next of kin, the State must comply with the following obligations: "obligation to investigate and publish the facts that can be reliably established (truth); obligation to prosecute and punish those responsible (justice); obligation to fully redress the pecuniary and non-pecuniary harm caused (reparation) and obligation to remove from the security organs all those known to have committed, ordered, or tolerated these abuses (creation of security forces worthy of a democratic state). These obligations are not alternatives to each other, nor optional; the State responsible must comply with each and every one of them in the measure of its possibilities and in good faith."<sup>266</sup>

315. The Court has noted that reparations are measures aimed at the removal of the effects of violations.<sup>267</sup> These measures include the different forms in which a State may assume the international responsibility in which it has incurred; according to international law they consist of measures of restitution, compensation, rehabilitation, satisfaction, and non-repetition.<sup>268</sup>

316. The United Nations Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation of Gross Violations of Human Rights and Fundamental

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<sup>266</sup> Méndez, Juan E., "El Derecho a la Verdad frente a las graves violaciones a los Derechos Humanos", [The Right to the Truth in Cases of Grave Human Rights Violations] in: *La Aplicación de los Tratados sobre Derechos Humanos por los Tribunales Locales* [The Application of Human Rights Treaties by Domestic Courts], CELS, 1997, p. 517.

<sup>267</sup> I/A Court H. R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006, Series C, No. 162, para. 202; ; I/A Court H. R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 416; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 144.

<sup>268</sup> United Nations, final report presented by Theo Van Boven, Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation of Gross Violations of Human Rights and Fundamental Freedoms, E/CN.4/Sub2/1990/10, 26 July 1990. See also: I-A Court, *Case of Blake* (Art. 63.1 of the American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, para. 31; *Case of Suárez-Rosero*, Reparations (Art. 63.1 of the American Convention on Human Rights) Judgment of 20 January 1999. Series C No. 44, para. 41.

Freedoms has classified this right's components into four general categories: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>269</sup> In the opinion of the Special Rapporteur on the Question of the Impunity of Perpetrators of Human Rights Violations, the measures include: the Cessation of continuing violations, verification of the facts and full and public disclosure of the truth, an official declaration or a judicial decision restoring the dignity, reputation and legal rights of the victim and/or of persons connected with the victim, an apology, including public acknowledgement of the facts and acceptance of responsibility, judicial or administrative sanctions against persons responsible for the violations, preventing the recurrence of violations, etc.

317. In addition, the then existing Commission on Human Rights of the United Nations held that:

In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>270</sup>

318. Considering the time elapsed and the nature and magnitude of the harm caused, it is the opinion of the Commission that in the instant case full restitution is not possible. The selection of reparations measures requested is based on this conclusion.

319. Based on the criteria established by inter-American and universal case law, the Commission submits its conclusions and claims regarding reparations measures in the case of Rainer Ibsen Cárdenas and José Luís Ibsen Peña.

#### **1. Measures of cessation**

320. A fundamental element arising from the establishment of a state's responsibility for human rights violations is the requirement that the wrongful behavior will cease.<sup>271</sup>

321. Cessation has been described as "the negative aspect of future performance, concerned with securing an end to continuing wrongful conduct." It has, therefore, preventive character. In the case of *Paniagua-Morales et al.*, the Court found that:

there existed and still exists in Guatemala the situation of impunity with regard to the acts of the instant case, impunity meaning the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention, in view of the fact that the State has the obligation to use all the legal means at its disposal to combat that situation, since

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<sup>269</sup> "Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117." E/CN.4/Sub.2/1996/17

<sup>270</sup> United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities E/CN.4/Sub.2/1996/17, "The Administration of Justice and the Human Rights of Detainees. Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law," prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117, May 24, 1996, para. 7.

<sup>271</sup> I/A Court H. R., *Case of Castillo-Páez*. Reparations (Art. 63.1 of the American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, para. 52.

impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.<sup>272</sup>

322. In addition, an essential requirement for reparations in this case is to establish who the perpetrators were and what happened to the disappeared victims.<sup>273</sup> Regarding the investigation of who were responsible for the violation, the Court has consistently held that it naturally derives from conventional obligations, and constitutes a requirement to eradicate generalized conditions of impunity.<sup>274</sup> In its own words:

[t]he State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible [and] to impose the appropriate punishment [...]<sup>275</sup>

323. In this respect, it is the opinion of the Commission that investigation constitutes a measure not only of satisfaction but also of cessation because, as long as the State has not complied with its obligation to appropriately investigate, prosecute, and punish the human rights violations in the instant case, it remains in continuous violation of the rights established by articles 8 and 25, and of the obligation provided for by article 1.1 of the American Convention.

324. The Court has also held that:

the State must remove all the obstacles and mechanisms *de facto* and *de jure* that maintain impunity, grant sufficient guarantees of security to witnesses, judicial authorities, prosecutors, other judicial agents, and the next of kin of the victims, and use all possible measures to advance the proceeding.<sup>276</sup>

325. Pursuant to the Court's case law, and given the particular gravity of the violations in the instant case, a full reparation requires that the Bolivian State investigate with due diligence, in a serious, impartial, and exhaustive manner, the forced disappearance of Rainer Ibsen Cárdenas and José Luís Ibsen Peña, in order to clarify the historic truth of the facts, and to prosecute and punish all those responsible, including not just the perpetrators but also the abettors. To this end, it must adopt all necessary judicial and administrative measures to complete the investigation, to find, prosecute, and punish all

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<sup>272</sup> I/A Court H.R., *Case of the "White Van" (Paniagua-Morales et al.)*. Judgment of March 8, 1998. Series C No. 37, para. 173.

<sup>273</sup> I/A Court H.R., *Case of Durand and Ugarte*. Judgment of August 16, 2000. Series C No. 68, operative paragraph 7.

<sup>274</sup> The Court has defined impunity as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention." See, in this connection, I-A Court H.R., *Case of the Gómez-Paquiyaui Brothers*. Judgment of July 8, 2004. Series C No. 110, para. 148; I/A Court H. R., para. 148; I/A Court H.R. *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C, No. 109, para. 175, and I/A Court H.R., *Case of Bámaca-Velásquez*. Reparations and Costs (Art. 63.1 of the American Convention on Human Rights). Judgment of February 22, 2002. Series C No. 91, para. 64.

<sup>275</sup> I/A Court H.R., *Case of Velásquez-Rodríguez*. Merits. Judgment of July 29, 1988. Series C No. 4, para. 174; I/A Court H.R., *Case of Castillo-Páez*. Merits. Judgment of November 3, 1997. Series C No. 34, para. 90.

<sup>276</sup> I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 226; I/A Court H.R., *Case of Carpio-Nicolle et al.* Merits, Reparations and Costs. Judgment of November 22, 2004. Series C No. 117, para. 134. Also see: I/A Court H.R., *Case of Almonacid-Arellano et al.* Preliminary Objections, Merits, Reparations and Costs. Judgment of September 26, 2006. Series C No. 154, para. 156.

participants in the facts, and report on the results. The State is under the obligation to investigate and punish all those responsible for the obstruction of justice, the covering up, and the impunity that have prevailed in connection with these facts.

326. The State, in addition, must begin an exhaustive search for the whereabouts of José Luís Ibsen Peña, followed by the identification of his remains and, should they be found, their delivery to his next of kin. As long as these measures are not carried out, the forced disappearance of the victim and its effects will continue to be ongoing.

327. It should be noted that the victims' next of kin should have full access and standing to act in all the stages and instances of the aforementioned investigations and proceedings, in accordance with domestic law and the norms of the American Convention.

## **2. Measures of satisfaction**

328. Satisfaction has been understood as any and all measures that the perpetrator of a violation must adopt in accordance with international instruments or customary law, with the aim of recognizing the commission of an unlawful act.<sup>277</sup> There is satisfaction when, generally in cumulative fashion, there is an apology, or any other gesture demonstrating the acknowledgement of responsibility for the act in question, and the prosecution and punishment of the individuals responsible, when appropriate.<sup>278</sup>

329. The Court has stated on numerous occasions that each individual and society as a whole have the right to be informed of what has happened with respect to human rights violations.<sup>279</sup>

330. The nature and gravity of the facts of the instant case require that, in addition to the investigation, search for the location, identification, and return of moral remains, the State adopt measures to dignify the memory of the victims.

331. The Commission appreciates the acknowledgement of responsibility made by the State, in compliance with the recommendations of Report 93/08 on the merits of the instant case.

332. Notwithstanding the above, the Commission requests that the Court hand down the order for additional measures of satisfaction, including:

- to publicize the results of the internal investigation and punishment proceedings, in order to assist in the realization of the right to truth of the victims' next of kin and of Bolivian society as a whole;
- to publish in a national newspaper the judgment that the Court will eventually hand down;
- to carry out a project for the recovery of the historical memory of Rainer Ibsen Cárdenas and José Luís Ibsen Peña.

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<sup>277</sup> Brownlie, *State Responsibility, Part 1*. Oxford: Clarendon Press, 1983, p. 208.

<sup>278</sup> Brownlie, *State Responsibility, Part 1*. Oxford: Clarendon Press, 1983, p. 208.

<sup>279</sup> I/A Court H.R., *Case of Bueno-Alves*. Merits, Reparations and Costs. Judgment of May 11, 2007. Series C No. 164, para. 90; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 347.

### 3. Guarantees of non-repetition

333. In addition, the Commission considers that the State is under the obligation to prevent the recurrence of human rights violations such as these and, consequently, requests that the Court order the Bolivian State to implement the necessary legal, administrative, and other measures to avoid repetition of similar acts and, especially, measures to prevent the lack of diligence in investigations and to eliminate legal and other obstacles that have prevented clarification, identification, and punishment of those responsible for grave human rights violations during military dictatorships. The Commission stresses that the passage of time allows impunity to consolidate and limits prospects of serving justice in cases such as the instant case.

### 4. Measures of rehabilitation

334. The Commission also requests the Court to hand down the order to the State of Bolivia to adopt rehabilitation measures for the next of kin of the victims. These measures should include psychological rehabilitation.

### 5. Measures of compensation

335. The Court has established the basic criteria to be followed in determining what could constitute an adequate and effective indemnity that will serve as just economic compensation to redress the damages sustained as a result of human rights violations. As such, the Court has held that the indemnity is purely compensatory in nature and will be granted to the extent and in an amount sufficient to compensate for the pecuniary and non-pecuniary damages caused.<sup>280</sup>

336. The Commission's view is that the Court should set the amount of compensation to which the victims in the present case are entitled, relying on the considerations of equity that have always informed the Court's decisions on matters of reparations and in keeping with its earlier jurisprudence.

#### 5.1. Pecuniary damages

337. The Court's case law on the matter of reparations has consistently been that pecuniary damages include both the *damnum emergens* and the *lucrum cessans*, and non-pecuniary or moral damages for the victim and, in certain cases, for his immediate family.<sup>281</sup>

338. *Damnum emergens* has been defined as the direct and immediate damage caused to assets as a result of what happened.<sup>282</sup>

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<sup>280</sup> I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 210; I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.* Merits, Reparations and Costs. Judgment of June 21, 2002. Series C No. 94, para. 204, and I/A Court H.R., *Case of Garrido and Baigorria*. Reparations and Costs. Judgment of August 27, 1998. Series C No. 39, para. 41.

<sup>281</sup> I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, paras. 213 and 214; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 423.

<sup>282</sup> I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 215; I/A Court H.R., *Case of Loayza-Tamayo*. Reparations and Costs (Art. 63.1 of the American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, para. 147, and I/A Court H.R., *Case of Aloeboetoe et al.* Reparations and Costs (Art. 63.1 of the American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, para. 50.

339. *Lucrum cessans*, on the other hand, has been defined as the economic earnings or benefits lost or not received by virtue of a given event and that can be quantified by certain measurable and objective indicators.<sup>283</sup>

340. Notwithstanding any claims that the representatives of the victim and his next of kin may make at the appropriate stage in the proceedings, the Commission is asking the Court, in exercise of its broad authority, to set an amount, in equity, as compensation for *damnum emergens* and *lucrum cessans*.

## 5.2. Non-pecuniary damages

341. On the matter of non-pecuniary damage, the Court has written that:

Non pecuniary damage may cover both the suffering and distress caused to the direct victim and the victim's relatives, the impairment of values of major personal significance, and the non pecuniary changes to the victim's or the victim's family's living conditions. Since accurately quantifying non pecuniary damage is impossible, such damage can only be compensated, for the purpose of providing comprehensive reparation to the victim, through the payment of such sum of money or the provision of such goods or services of monetary worth as may be determined by the Court, in fairness and at its reasonable judicial discretion, and through public action or works aimed at giving recognition to the victim's human dignity and preventing any further human rights such as the transmission of a message of official disapproval of the corresponding violations to human rights and of commitment with the efforts tending to avoid the repetition of the violations.<sup>284</sup>

342. Given the nature of the instant case, the Commission requests the Court, should it deem it appropriate, to set the amount of compensation for non-pecuniary damages based on the principle of equity.

## C. Beneficiaries

343. Article 63(1) of the American Convention requires that the consequences of a violation be remedied and that "fair compensation be paid to the injured party." The persons entitled to such compensation are generally those directly affected by the events that the violation involved.

344. Given the nature of the instant case, the beneficiaries of any reparations that the Court should see fit to order the Bolivian State to make are the victims named in the present application and their family members who have suffered pecuniary and/or non-pecuniary damages as a consequence of the human rights violations alleged. According to the information in the case file, the immediate family members include:

- Tito Ibsen Castro (brother and son, respectively)
- Rebeca Ibsen Castro (sister and daughter, respectively)
- Raquel Ibsen Castro (sister and daughter, respectively)

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<sup>283</sup> See, e.g., ; I/A Court H.R., *Case of Carpio-Nicolas et al.* Judgment of November 22, 2004. Series C No. 117, para. 105 and ff; I/A Court H.R., *Case of De la Cruz-Flores*. Judgment of November 18, 2004. Series C No. 115, paras. 151 and 152.

<sup>284</sup> I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 216; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 430; I/A Court H.R., *Case of the Ituango Massacres*. Judgment of July 1, 2006 Series C No. 148, para. 383, and I/A Court H.R., *Case of the Pueblo Bello Massacre*. Judgment of January 31, 2006. Series C No. 140, para. 254.

- Martha Castro Mendoza (stepmother and spouse, respectively)

#### **D. Costs and expenses**

345. The Court has consistently held in its case law that costs and expenses must be considered part of the concept of reparation set forth in Article 63(1) of the American Convention, since the activity of the victim, his heirs or his representatives to obtain international justice entails disbursements and financial commitments that must be compensated.<sup>285</sup>

346. In the instant case, the Commission requests the Court, once it has heard from the representatives of the victim and his next of kin, to order the State of Bolivia to pay the duly proven reasonable and necessary costs and expenses incurred in litigating this case in the domestic system and in the Inter-American human rights system.

#### **X. CONCLUSION**

347. The forced disappearance of the victims, the anguished search for them by their next of kin, the prolonged uncertainty regarding their whereabouts or the location of their mortal remains, the total lack of investigative activity by the State over nearly thirty years, the delay and lack of due diligence in the tardy investigation and criminal prosecution, the lack of clarification of the facts, the absence of a legal framework that will allow to appropriately punish those responsible as perpetrators and abettors, and hence the impunity regarding the facts, all constitute violations of the rights provided for by articles 3, 4, 5, 7, 8 and 25 of the American Convention, in connection with article 1.1 of same, and of articles I, III, IV and XI of the Inter-American Convention on Forced Disappearance of Persons.

#### **XI. PETITUM**

348. Based on the foregoing arguments in fact and in law, the Inter-American Commission on Human Rights requests that the Court find that:

- a) the State of Bolivia is responsible for the violation of the rights to juridical personality, to life, to humane treatment, to personal liberty, to a fair trial and to judicial protection, provided for by articles 3, 4, 5, 7, 8 and 25 of the American Convention, in connection with the general obligation to respect and guarantee human rights established by article 1.1 of same, as well as of articles I and XI of the Inter-American Convention on Forced Disappearance of Persons, with prejudice to Rainer Ibsen Cárdenas and José Luís Ibsen Peña;
- b) the State of Bolivia is responsible for the violation of the rights to humane treatment, to a fair trial, and to judicial protection, provided for by articles 5, 8, and 25 of the American Convention, in connection with the general obligation to respect and guarantee human rights established by article 1.1 of same, with prejudice to the following next of kin of Rainer Ibsen Cárdenas and José Luís Ibsen Peña: Martha Castro Mendoza (stepmother and spouse, respectively), Tito Ibsen Castro (brother and son, respectively), Rebeca Ibsen Castro (sister and

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<sup>285</sup> I/A Court H.R., *Case of La Cantuta*. Merits, Reparations and Costs. Judgment of November 29, 2006. Series C No. 162, para. 243; I/A Court H.R., *Case of the Miguel Castro-Castro Prison*. Judgment of November 25, 2006. Series C No. 160, para. 455; I/A Court H.R., *Case of the Dismissed Congressional Employees (Aguado-Alfaro et al.)* Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2006. Series C No. 158, para. 152.

daughter, respectively) and Raquel Ibsen Castro (sister and daughter, respectively); and

- c) the State of Bolivia is responsible for the violation of articles III and IV of the Inter-American Convention on Forced Disappearance of Persons.

And consequently to order the State to:

- a) carry out an impartial and exhaustive investigation in order to prosecute and punish all the perpetrators and abettors of the forced disappearance of Rainer Ibsen Cárdenas and José Luís Ibsen Peña;
- b) search for the whereabouts of José Luís Ibsen Peña and, if appropriate, to identify and return his mortal remains to his next of kin;
- c) to conduct measures towards the recovery of the historical memory of Rainer Ibsen Cárdenas and José Luís Ibsen Peña;
- d) to adopt the necessary legal, administrative, and other measures to prevent the recurrence of events similar to those subject of the instant case and, especially, measures to avoid lack of diligence in investigations and to eliminate legal and other obstacles preventing the clarification, identification, and punishment of those responsible of grave human rights violations during military dictatorships;
- e) adopt measures of rehabilitation for the victims' next of kin;
- f) provide compensation to the next of kin of Rainer Ibsen Cárdenas and José Luís Ibsen Peña for pecuniary and non-pecuniary damages; and
- g) pay the costs and legal expenses incurred in litigating the instant case with the Inter-American Commission and Court.

## **XII. SUPPORTING EVIDENCE**

### **A. Documentary evidence**

349. The following is a list of the documentary evidence currently available:

**APPENDIX 1.** IACHR, Report No. 93/08 (Merits), Case 12.529, *Rainer Ibsen Cárdenas and José Luís Ibsen Peña*. Bolivia, October 31, 2008.

**APPENDIX 2.** IACHR, Report No. 46/05 (admissibility), Petition 786-03, *Rainer Ibsen Cárdenas and José Luís Ibsen Peña*. Bolivia, October 31, 2008.

**APPENDIX 3.** Record of the proceedings before the Inter-American Commission on Human Rights.

**ANNEX 1.** Relevant selections from: IACHR, Report on the Situation of Human Rights in the Republic of Bolivia, OEA/Ser.L/V/II.53 doc.6 rev.2, October 13, 1981.

**ANNEX 2.** Relevant selections from the application of the Inter-American Commission with the Inter-American Court of Human Rights in the Case of Trujillo Oroza. Chapter III.

**ANNEX 3.** Centro de Investigación de Relaciones Internacionales y Desarrollo (CIDOB). *Biografía de Hugo Banzer Suárez*. Available at:

[http://www.cidob.org/es/documentacion/biografias\\_lideres\\_politicos/america\\_d\\_el\\_sur/bolivia/hugo\\_banzer\\_suarez](http://www.cidob.org/es/documentacion/biografias_lideres_politicos/america_d_el_sur/bolivia/hugo_banzer_suarez).

- ANNEX 4.** ASOFAMD. Boletín de agosto de 2007. *35 Años después de la Dictadura de Hugo Bánzer Suárez – 1971 – 2006*. Available at: <http://www.asofamd.org/index.php?sn=258>.
- ANNEX 5.** Asociación de Familiares de Detenidos, Desaparecidos y Mártires de la Liberación Nacional en Bolivia (ASOFAMD) and Central Obrera Boliviana (COB). *Banzer: Genio y figura...Para que no se olvide. Nunca más*. Editorial: Crear Impresiones. La Paz, 2008. Available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc>.
- ANNEX 6.** Relevant selections from: Organización Demócrata Cristiana de América. Informe del Secretariado Latinoamericano de Derechos Humanos No. 43 de abril de 1977. *Violaciones a los derechos humanos en Bolivia*.
- ANNEX 7.** Public invitation of ASOFAMD. 21 de agosto de 1979. *Homenaje del Pueblo a sus Mártires*.
- ANNEX 8.** Relevant selections from: Germán Vargas Martínez. *Responsabilidad: ¿Juicio o Sainete? Juicio de responsabilidades contra el Gral. Hugo Banzer Suárez y otros*. Ediciones Moxos. La Paz, 1982.
- ANNEX 9.** Boletín informativo de ASOFAMD. *Ellos, ¿dónde están? Si estoy en tu memoria soy parte de la historia*. Edición especial. Mayo de 2000.
- ANNEX 10.** Radio Novela - *Siete Años de Dictadura, Sangre, Dolor y Luto*. Compact discs.
- ANNEX 11.** Information provided by the Ministry of Justice of Bolivia on July 16, 2007. *Resumen de Exposición para la Audiencia de la Comisión Interamericana de Derechos Humanos sobre Desapariciones Forzadas*.
- ANNEX 12.** Certifications of civil status of the victims and their next of kin

This annex includes:

Birth certificate of José Luís Ibsen Peña  
Ministerial Decision of the Ministry of the Interior, Justice and Immigration  
Marriage certificate of José Luís Ibsen Peña and Asunta Isaura Cárdenas  
Birth certificate of Rainer Ibsen Cárdenas.  
Death certificate of Asunta Isaura Cárdenas  
Marriage certificate of José Luís Ibsen Peña and Martha Castro Mendoza.  
Birth certificate of Rebeca Ibsen Castro.  
Birth certificate of Tito Ibsen Castro.  
Birth certificate of Raquel Ibsen Castro.

- ANNEX 13.** Academic and work certificates

This annex includes:

- Commercial registration.
- Employment certificate from the Vivienda Propia corporation
- Employment certificate from the corporation Sociedad Anónima Comercial Industrial.
- Employment certificate from the corporation Construcciones Basweek.
- Employment certificate from the Rafael Gilbert construction company
- Employment certificate from Banco Popular del Perú
- Degree in Law, Politics, and Social Sciences of José Luís Ibsen Peña.
- Bachelor's Degree in Humanities of Rainer Ibsen Cárdenas

**ANNEX 14.** Copies of José Luís Ibsen Peña's passport.

**ANNEX 15.** Manuscript of José Luís Ibsen Peña dated May 16, 1972.

**ANNEX 16.** Handwritten death certificate dated June 21, 1972.

**ANNEX 17.** Communication addressed to the Santa Cruz Bar Association, dated April 15, 1973.

**ANNEX 18.** Minutes of a press conference dated February 18, 1983.

**ANNEX 19.** Petition to the Office of the Public Prosecutor dated February 28, 1983.

**ANNEX 20.** Selections from the impeachment trial [*Juicio de Responsabilidades*] of Hugo Banzer Suárez

**ANNEX 21.** Requests, decisions and records of the criminal investigation related to the forced disappearance of Rainer Ibsen Cárdenas and José Luís Ibsen Peña.

This annex includes:

- Petition to join and expand criminal complaint dated April 26, 2000.
- Decision of the First Criminal Chamber of the Superior Court of Justice of Santa Cruz of October 4, 2000
- Decision of the Fifth Criminal Examining Magistrate's Court of the Judicial District of Santa Cruz [*Juzgado Quinto de Instrucción en lo Penal del Distrito Judicial de Santa Cruz*], dated November 10, 2000.
- Brief of the Office of the Prosecutor of the District of Santa Cruz dated December 16, 2000.
- Decision of the First Criminal Chamber of the Superior Court of Justice of the District of Santa Cruz of January 12, 2001.
- Decision of the Constitutional Court of November 12, 2001.
- Petition to expand the initial complaint dated May 16, 2002.

Order of the Eighth Criminal Examining Magistrate's Court of the Judicial District of Santa Cruz.

Motion for acquittal dated July 4, 2002

- Decision of the Second Criminal chamber of the Superior Court of the District of Santa Cruz dated October 25, 2002
- Orders to suspend, dated November 9, 2002.
- Record of public hearing of the confession of Pedro Percy González Monasterio of September 1, 2004

- Record of public hearing of the confession of Juan Antonio Elio Rivero of September 6 and 7, 2004.
- Record of public hearing of the confession of Oscar Menacho Vaca of September 8, 2004
- Record of public hearing of the confession of Elías Moreno Caballero of September 9, 2004.
- Record of public hearing of the confession of Ernesto Morant Lijerón of September 13, 2004.
- Record of public hearing of the confession of Justo Sarmiento Alanes of September 14, 2004.
- Record of hearing of the accused Antonio Elio Caballero
- Decision of the Fifth Criminal Settlement Court of Santa Cruz of January 19, 2005
- . Decision of the Superior Court of Justice of Santa Cruz of April 18, 2005
- Briefs filing appeal dated May 16 and 19, 2005
- Order of June 16, 2005 of the First Civil and Commercial Court of Santa Cruz
- Report of the Prosecutor's Office of the District of Santa Cruz dated February 1, 2006.
- Report of the Prosecutor's Office of the District of Santa Cruz dated March 23, 2006
- Brief filed with the First Civil and Commercial Court of Santa Cruz dated May 15, 2006
- Record of suspension of hearings of April 24, May 12, May 18, and May 23, 2006
- Brief submitted to the Superior Court of Justice of Santa Cruz dated May 31, 2006.
- Recusal brief dated June 6, 2006
- Referral of case file dated August 16, 2006.
- Order of the Seventh Civil and Commercial Court of September 6, 2006
- Opinion on the Merits from the Office of the Public Prosecutor dated September 30, 2007.
- Final order to prosecute handed down by the Eighth Criminal Examining Magistrate's Court of the Judicial District of Santa Cruz
- Judgment handed down by the Seventh Civil and Commercial Court of Santa Cruz of December 6, 2008

**ANNEX 22.** Text of disciplinary proceeding 84-03

**ANNEX 23.** Certificate from the Judiciary Council of November 9, 2007.

**ANNEX 24.** Requests, decisions, and records related to the search for the remains of Rainer Ibsen Cárdenas and José Luís Ibsen Peña

This annex includes:

- Brief submitted to the Examining Magistrate's Court of Warnes dated October 7, 2003
- Memorandum of the First Civil and Commercial Judge of Santa Cruz of May 12, 2006
- Memorandum to the Prosecutor's Office of the District of Santa Cruz
- Brief seeking evidence dated August 10, 2006
- Brief seeking continued search for evidence.

- Brief submitted to the Seventh Civil and Commercial Court of Santa Cruz dated September 1, 2006.
- Brief seeking separation of the Prosecutor's Office from the case, dated September 8, 2006
- Brief submitted to the Seventh Civil Court dated October 20, 2006
- Order of the Seventh Civil Court of October 21, 2006.
- Brief submitted to the Seventh Civil Court dated November 7, 2006.
- Report to the Superior Court of the District of Santa Cruz, dated November 15, 2006.
- Escrito al Fiscal de Materia del Distrito de La Paz de 12 de diciembre de 2006 y 8 de enero de 2007. Briefs to the Trial Prosecutor of the District of La Paz in charge of the case dated December 12, 2006 and January 8, 2007.
- Official letter to the Forensic Research Institute, dated January 17, 2007.
- Official letter to the Chief of the Homicide Division of the Crime Fighting Force, dated January 17, 2007.
- Brief of ASOFAMD dated January 22, 2007.
- Order from the Trial Prosecutor of the District of La Paz of January 22, 2007.
- Brief of ASOFAMD dated January 25, 2007.
- Brief to the Trial Prosecutor of the District of La Paz dated January 25, 2007.
- Official letters to the Chief of the Homicide Division of the Crime Fighting Force, dated January 29, 2007.
- Report to the Chief of the Homicide Division dated February 3, 2007.
- Order of Suspension of February 2, 2007
- Official letter from the Ministry of Justice dated February 21, 2007.
- Official letter to the Forensic Research Institute
- Report to the Under Secretary for Foreign Affairs and Worship of March 15, 2007
- Appointment record dated March 16, 2007 and record of swearing in dated March 20, 2007.
- Brief to the Trial Prosecutor of La Paz dated March 20, 2007
- Official letter to the Forensic Research Institute dated March 23, 2007
- Brief to the Trial Prosecutor of La Paz dated March 22, 2007
- Report to the Chief of the Homicide Division of March 27, 2007
- Brief to the Trial Prosecutor of La Paz dated June 28, 2007
- Brief to the Trial Prosecutor of La Paz dated July 24, 2007

**ANNEX 25.** Forensic reports

This annex includes:

- Preliminary Report on the Exhumation and Forensic Anthropology Work dated March 23, 2007
- Final Report of the Argentine Forensic Anthropology Team dated May 10, 2007.
- Preliminary Report of the Argentine Forensic Anthropology Team
- Compact discs with selections from the Final Report of the Argentine Forensic Anthropology Team

**ANNEX 26.** Relevant Laws and Decrees

This annex includes:

- Supreme Decree 19241 of October 28, 1982

- Articles 35, 133, and Third Temporary Provision of the Code of Criminal Procedure.
- Supreme Decree 27089 of June 18, 2003, as amended by Supreme Decree 27309 of January 9, 2004, by Law 3351 of February 21 of 2006, and by Supreme Decree on Regulations [*Decreto Supremo Reglamentario*] 28631 of March 8, 2006.
- Law 3275 of December 9, 2005.
- Law 3326 of January 18, 2006.
- Supreme Decree 28631 of March 8, 2006.

**ANNEX 27.** Steps and procedures with other state authorities.

This annex includes:

- Request for information dated January 11, 2002
- Official letter from the historical archive of the National Congress dated January 16, 2002.
- Brief submitted to the Minister of Justice and Human Rights dated October 7, 2002.
- Brief submitted to the Minister of Justice and Human Rights dated December 3, 2002.
- Brief submitted to the Office of the Ombudsman [Defensoría del Pueblo] dated December 20, 2002
- Brief of the Under-Secretary of Justice to the Office of the Attorney General of the Republic, December 23, 2002.
- Brief of the Under-Secretary of Justice to the Office of the Attorney General of the Republic, dated February 24, 2003.
- Response brief from the President of the National Congress and the Vice-president of the Republic, dated January 8, 2003
- Brief submitted to the President of the Republic in 2002
- Response brief of February 3, 2003
- Brief submitted to the Minister of Justice and Human Rights dated May 9, 2006

**ANNEX 28.** List of resolutions of the Confederation of Professionals of Bolivia

**ANNEX 29.** News items.

This annex includes:

- News item of the morning newspaper *Presencia* of June 22, 1972
- News item of the weekly *Aquí*, issue of April 30-May 6, 1983
- News item of the weekly *Aquí*, issue of August 24-30, 1985.
- News item of *La Razón* of May 26, 1996.
- News item in *La Nación* of Santa Cruz of February 18, 2000, "Interview with a Political Prisoner in 1972, Renato Díaz Matta."
- News item in *Presencia* of June 4, 2000
- News item in *El Deber* of October 16, 2000
- News item published on December 28, 2001 by the BBC news agency: "Banzer: Bolivia analizará extradición," available at: [http://news.bbc.co.uk/hi/spanish/latin\\_america/newsid\\_1731000/1731160.stm](http://news.bbc.co.uk/hi/spanish/latin_america/newsid_1731000/1731160.stm).

- News item published on January 9, 2002 in *El País*, "Extradición: Tuto deja a Banzer en manos de la Corte Suprema," Section 4.
- News item published in the January 13, 2002 issue of the weekly *Tiempo de Opinión*: "Fallo de la Operación Cóndor fue una 'asociación ilícita'."
- Press article published in *La Prensa*, January 13, 2002: "Las tiranías latinoamericanas," by Marcos Roitman Rosenmann
- Column in *Tiempo de Opinión*, January 6, 2002
- News item in the weekly *El Juguete Rabioso*, May 2002
- News item of August 23, 2006.

**ANNEX 30.** Powers of attorney.

**ANNEX 31.** *Curriculum vitae* of Waldo Albarracín, expert witness offered by the Commission.

**ANNEX 32.** *Curriculum vitae* of Ana María Romero de Campero, expert witness offered by the Commission.

350. The Commission would like to explain at the outset that some of the copies of some of the documents it has attached as annexes, in particular, *inter alia*, certain sections of domestic judicial proceedings, and certain news items and articles are the best versions the Commission has available and has been able to obtain to date. Some of the pages are incomplete or illegible.

351. In view of the foregoing, the Commission petitions the court to require the illustrious State of Bolivia to send certified copies of all the documents of the domestic proceedings regarding the facts, as well as authenticated copies of applicable legislation and the full Final Report of the Argentina Forensic Anthropology Team, which contains the identification of the remains of Rainer Ibsen Cárdenas.

## **B. Testimony**

352. The Commission requests that the Court hear the testimony of the following victims:

- Tito Ibsen Castro, who will offer testimony on the disappearance of his brother and father, the steps taken to ascertain their whereabouts, the lack of will on the part of the State to investigate the facts, and on the consequences of all the above, and other matters relevant to the object and purpose of this application.
- Rebeca Ibsen Castro, who will offer testimony on the disappearance of her brother and father, the steps taken to ascertain their whereabouts, the lack of will on the part of the State to investigate the facts, the obstacles encountered in their attempt to clarify the facts and punish those responsible, and on the consequences of all the above, and other matters relevant to the object and purpose of this application.
- Raquel Ibsen Castro, who will offer testimony on the disappearance of her brother and father, the steps taken to ascertain their whereabouts, the lack of will on the part of the State to investigate the facts, and on the consequences of all the above, and other matters relevant to the object and purpose of this application.

- Martha Castro Mendoza, who will offer testimony on the disappearance of her stepson and spouse, the steps taken to ascertain their whereabouts, the lack of will on the part of the State to investigate the facts, and on the consequences of all the above, and other matters relevant to the object and purpose of this application.

353. The Commission requests the court to hear the testimony of the following witness:

- Renato Esteban Díaz Matta, who will offer testimony on what happened to Rainer Ibsen Cárdenas during the time he was in the La Paz detention center, and to José Luís Ibsen Peña during the time he was in the El Pari detention center in the city of Santa Cruz, and other matters relevant to the object and purpose of this application.

### **C. Expert witnesses**

354. The Commission petitions the Court to hear the opinion of the following expert witnesses:

- Waldo Albarracín, former Ombudsman of Bolivia, who will testify regarding the difficulties encountered in the judicial investigation of the human rights violations committed during the military dictatorship of Hugo Banzer Suárez and on the prospects for obtaining justice in the instant case, and other matters relevant to the object and purpose of this application.
- Ana María Romero de Campero, former Ombudswoman of Bolivia, who will testify regarding the context within which the facts of the instant case took place, and in particular on the human rights situation during the military dictatorship of Hugo Banzer Suárez, and other matters relevant to the object and purpose of this application.

## **XIII. PARTICULARS ON THE ORIGINALCOMPLAINANTS AND THE VICTIMS**

355. In keeping with the provisions of Article 34 of the Court's Rules of Procedure, as amended, the Inter-American Commission presents the following information: the next of kin of the victims have appointed the attorneys Mario Rellini Ordoñez and Daniel Enríquez Tordoya, and Tito Ibsen Castro (brother and son of the victims, respectively) as their representatives for the processing of this case before the inter-American system, as attested to by the attached documents.<sup>286</sup>

356. The representatives of the victims and their next of kin have established their domicile at: [REDACTED]

Washington, D.C.  
May 12, 2009

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<sup>286</sup> See Annex 30, powers of attorney.