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Title/Style of Cause: Rainer Ibsen Cardenas and Jose Luis Ibsen Pena v. Bolivia
Doc. Type: Decision
Decided by: President: Clare K. Roberts;
First Vice-President: Susana Villaran;
Second Vice-President: Paulo Sergio Pinheiro;
Commissioners: Evelio Fernandez Arevalos, Jose Zalaquett, Freddy Gutierrez Trajo, Florentin Melendez.
Dated: 12 October 2005
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Represented by: APPLICANT: Mario Resine Ordone
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I. SUMMARY

1. On September 26, 2003, the Inter-American Commission on Human Rights (hereafter "the Commission or "the IACHR") received a petition against the Republic of Bolivia presented by Messrs. Mario Resine Ordoñe and Tito Ibsen (hereafter "the petitioners") alleging the illegal detention, torture and subsequent forced disappearance of the alleged victims Rainer Ibsen Cárdenas and José Luis Ibsen Peña, brother and father, respectively, of the petitioner Tito Ibsen, which events occurred in 1971 and 1973.

2. The petitioners maintained that to date there is no knowledge of the whereabouts of the victims. The petitioners also argued that, given the active participation of the victims' relatives in promoting investigations into the whereabouts of their loved ones, those family members had been the subject of threats and harassment by the accused.

3. With respect to the exhaustion of internal remedies, the petitioners argued that such an objection does not apply in this case because of unwarranted judicial delays in the criminal investigation which, now that more than 30 years have elapsed since the events, amount to a denial of justice.

4. In its response, the Bolivian State asked that the petition be declared inadmissible. In support of that request it cited the failure to exhaust internal remedies, and the lateness of the petition. The State also objected to some of the facts alleged by the petitioners, arguing that, with respect to Rainer Ibsen Cárdenas, according to versions from the Asociación de Familiares Mártires por la Democracia ("Association of Relatives of Martyrs for Democracy",

ASOFAMD), his remains were found in 1984 in the public cemetery of the city of La Paz, and were deposited in the ASOFAMD Mausoleum, as recorded in the records of that cemetery.

5. After examining the petition, pursuant to Articles 46 and 47 of the American Convention as well as Articles 30, 37 and concordant articles of its rules of procedure, the Commission decided to declare the petition admissible with respect to the alleged violations of Articles I, XVII, XVIII, XXV and XXVI of the American Declaration on the Rights and Duties of Man; Articles 3, 4, 7, 8, 13, 17, 24 and 25 and 1(1) of the American Convention on Human Rights (hereafter "the American Convention") and Articles I, III, IV and XI of the Inter-American Convention on Forced Disappearance of Persons. Consequently, the Commission has decided to notify the parties and to publish this Admissibility report and to include it in its Annual Report.

II. PROCEEDINGS BEFORE THE COMMISSION

6. On September 26, 2003, the IACHR received a petition submitted by Messrs. Mario Resine Ordoñez and Tito Ibsen alleging the illegal detention, torture and subsequent forced disappearance of the alleged victims Rainer Ibsen Cárdenas and José Luis Ibsen Peña.

7. The Commission recorded the petition under number 786/03 and on May 25, 2004, transmitted the relevant portions of the petition to the State, giving it two months to submit its response, pursuant to Article 30.3 of the rules of procedure. On November 30, 2004, the State requested an extension of 60 days for presenting its observations. In a note of December 8, 2004, the Commission granted the State an extension of 45 days, from the date of transmission of that communication.

8. On February 3, 2005, the State submitted its observations on the petition, requesting that it be declared inadmissible for lack of compliance with the requirement to exhaust internal remedies, and because the petition was brought too late, according to Article 46.1(b) of the American Convention. On February 9, 2005, the IACHR transmitted the State's response to the petitioners. On March 3 and on March 10 the IACHR received observations from the petitioners on the response from the State, and these were transmitted to the State on April 29, 2005.

9. On March 2, 2005, during its 122nd regular session, the Commission held a working meeting with the parties to consider aspects relating to the admissibility of the petition and the safety of members of the Ibsen family who had been pursuing the case through the domestic courts.

10. On March 10, April 18, and June 15, the petitioners presented additional information, which was transmitted to the State.

11. On June 30, 2005, the IACHR received a second response from the State.

III. POSITIONS OF THE PARTIES

A. Position of the petitioners

12. The petitioners allege that the Bolivian State committed multiple violations of the American Convention's provision relating to: the right to life (Article 4), the right to humane treatment (Article 5), the right to personal liberty (Article 7), the right to a fair trial (Article 8), the right to judicial protection (Article 25), the right to participate in government (Article 23), the right to juridical personality (Article 3), and the rights of the family (Article 17), all as a result of the detention of Rainer Ibsen Cárdenas and José Luis Ibsen Peña, their subjection to torture and to cruel and degrading punishment, and their subsequent forced disappearance.

13. The petitioners declared that in October 1971, Rainer Ibsen Cárdenas, a young man of 22, was arrested in the city of Santa Cruz without a court order, with no substantiated charges, and in violation of the standards of due process. After being held incommunicado, he was taken by State agents to the detention center in Political Order Department in Plaza Murillo, next to the Government Palace in the city of La Paz, where he was seen and had conversations with other detainees. According to testimony received, during the night of June 21, 1972, Rainer Ibsen Cárdenas was taken by State agents to one of the detention centers in Viacha y Achocalla, where he was tortured and then shot, in a staged escape bid, together with other alleged militants of the National Liberation Army (ELN). The petitioners maintained that the family of Rainer Ibsen Cárdenas were never informed of his death nor shown his body, and to this date his whereabouts are unknown.

14. The petitioners claimed that, after the disappearance of Rainer Ibsen Cárdenas, his father, José Luis Ibsen Peña, went in search of him, and as a result was the target of threats and harassment by State agents. Terrorized in this manner, the entire family sought refuge abroad. The family sold its assets in order to survive and to continue to pay a lawyer to pursue the case of young Rainer Ibsen Cárdenas. Subsequently, his father returned to Santa Cruz to take further steps in investigating his son's disappearance. He was arrested by State agents, acting without a court order, on February 10, 1973. Testimony reveals that he was taken to the El Pari detention center of the Departmental Directorate of Criminal Investigations (DIC) in the city of Santa Cruz, where he was held incommunicado and subjected to cruel treatment and torture.[FN1] On February 28, 1973, members of the Ibsen family went to the detention center and were told that he had been exiled to Brazil, at the expense and responsibility of the government. This fact was never confirmed, and there is no record of his having left Bolivia or entered Brazil on the date cited by State agents. The petitioners reported that, at that time, the personal effects of José Luis Ibsen Peña, including eyeglasses, dental plates, a watch and bloodstained articles of clothing, were returned to his family. The petitioners claimed that since that time they have heard nothing of the whereabouts of José Luis Ibsen Peña.

[FN1] The petitioners claimed that they had testimony from one of the defendants, Elias Moreno Caballero, who declared that Ibsen Peña was detained at El Pari, that he was seized by Hugo Mancilla, and that he had been accused of being a communist and the legal adviser to the Central Obrera Boliviana workers' movement

15. With respect to domestic remedies, the petitioners declared that, at the time the petition was submitted to the IACHR, the investigation was still pending before the Eighth Civil Court of Instruction, after several criminal courts had declined to hear it.

16. The petitioners maintained that on April 26, 2000, they sought to join and expand the action before the Fifth Criminal Court of Instruction of Santa Cruz in the case of José Carlos Trujillo Oroza. Those proceedings related to charges of deprivation of liberty, abuse and torture brought against Juan Antonio Elio Rivero and others held responsible for the forced disappearance of José Carlos Trujillo Oroza, Rainer Ibsen Cárdenas and his father José Luis Ibsen Peña. On May 20, 2000, the Fifth Criminal Court of Instruction rejected the application for joint and expanded action, and the petitioners appealed this ruling before the First Criminal Chamber of the Superior District Court of Santa Cruz. On October 4, 2000, that Chamber revoked the ruling, and ordered expansion of the initial proceedings against Ernesto Morant Lijeron, Pedro Perey González Monasterio, Elías Moreno Caballero, Juan Antonio Elio Rivero and Justo Sarmiento Alanes on charges of murder, under Article 252 of the Criminal Code, to include the cases of Rainer Ibsen Cárdenas and his father José Luis Ibsen Peña.

17. On November 10, 2000, the Fifth Criminal Court of Instruction accepted the defense objections invoking the statute of limitations and the death of one of the defendants,[FN2] and decided to close the case. That decision was based on the argument that, while the victims in this case had been murdered, their deaths had occurred in 1972 and 1973, and consequently the time limit for bringing criminal action had expired.[FN3] The First Chamber of the Superior District Court of Santa Cruz confirmed the challenged ruling on January 12, 2001.

[FN2] Rafael Loayza.

[FN3] Law of March 25, 1999 No. 1970: Code of Criminal Procedure
Article 29 (statute of limitations). Criminal action expires:

1. In 8 years for crimes punishable by maximum imprisonment of six years or more;
2. In 5 years, for crimes punishable by maximum imprisonment of between two years and six years;
3. In 3 years, for other crimes punishable by imprisonment; and
4. In 2 years for crimes not punishable by imprisonment.

Article 30. (Beginning of the term to expiry). The term to expire a show begins run as of the night on the day the crime was committed or ceased.

18. The petitioners reported that on July 27, 2001, the mother of José Carlos Trujillo Oroza lodged an appeal for amparo (constitutional protection) before the Second Civil Chamber of the Superior District Court of Santa Cruz, seeking to overturn the decisions of November 10, 2000, and January 12, 2001. That appeal was rejected and was subsequently submitted to the Constitutional Court for review.

19. In its judgment of November 12, 2001, the Constitutional Court accepted the appeal and revoked the ruling. Basing its decision on the findings of the Inter-American Court of Human Rights in the case of Carlos Trujillo Oroza versus the Bolivian State, the Constitutional Court

held that the decisions appealed failed to consider that in this case the time of the crime (murder) was not exactly established, and that the forced disappearance of persons is a permanent crime. While that decision was taken in relation to the case of José Carlos Trujillo Oroza, it also gave comfort to the Ibsen family in pursuing criminal action against the defendants.

20. The petitioners reported that, in light of the judicial impasse facing them in Santa Cruz, they decided to lodge an appeal before the courts of La Paz. On November 12, 2001, the Constitutional Court ordered continuation of the Santa Cruz proceedings, citing the constitutional principle of "single criminal prosecution", whereby there cannot be two simultaneous proceedings in the same case.

21. The petitioners reported that, following the judgment of the Constitutional Court, there ensued an interminable series of recusals by judges, many of which were declared illegitimate.[FN4]

[FN4] See also the article in the on-line journal of El Deber: Caso Trujillo: uno de los acusados pidió la libertad, at www.eldeber.com.bo/20050424/santacruz_18.html, according to which "one after another, 23 judges and 9 court members excused themselves from participating in the trial, citing friendship or hostility towards one party or the other, or saying they had issued some public opinion. Some of them were fined Bs 100, when it was demonstrated that their excuses were illegitimate". The petitioners submitted detail information on the excuses offered by justice officials since 2001. By way of example, they submitted some of the recusals for 2003: on April 9, 2003, the judge of the Eighth Criminal Court of Santa Cruz recused himself from further involvement in the case. Similar moves were made by the ninth criminal judge of Santa Cruz on April 26, 2003; by the 10th criminal judge on May 9, 2003; the first criminal judge on May 22, 2003; the second criminal judge on May 28, 2003; the third criminal judge on May 31, 2003; and the fourth criminal judge on June 11, 2003.

22. On July 4, 2002, the Attorney General's office requested the eighth criminal judge to stay provisionally the charges against Ernesto Morant Lijeron, Pedro Perey González Monasterio, Elías Moreno Caballero, Juan Antonio Elio Rivero and Justo Sarmiento Alanes. On August 13, 2002 the Eighth Judge opened proceedings against the defendants Justo Sarmiento Alanes, Pedro Perci Gonzáles Monasterio, Elías Moreno Caballero, Juan Antonio Elio Rivero, Ernesto Morant Lijeron and Oscar Manacho Vaca for deprivation of liberty, abuse and torture, and ordered that the case be returned to the Criminal Court for continuation of oral testimony and cross examination. On November 9, 2002, the evidentiary hearings were suspended because none of the defendants were present or represented in the courtroom.

23. On March 2, 2005, the petitioners informed the IACHR that on January 19, 2005, Judge Saul Saldaña Secos of the Superior Court of Santa Cruz declared the proceedings against all the defendants closed, and quashed all jurisdictional measures against them (ruling 04/2005).[FN5] On April 18, 2005, the First Civil Court of the Superior District Court of Santa Cruz, in light of the illegal recusals of the two criminal chambers, revoked the decision of Judge Saul Saldaña Secos, and ordered proceedings to continue without cost.

[FN5] Juzgado 5to. De Partido en los Penal Liquidador de la Capital Santa Cruz, Bolivia. Auto No. 04/2005 (extinction of criminal action) Plaintiffs: Ministerio Publico, Antonia Gladys Oroza Vda de Solon Romero, Rebeca Ibsen Castro. Defendants: 1) Oscar Menacho Vaca, 2) Pedro Percy González Monasterio, 3) Juan Antonio Elio Rivero, 4) Elías Moreno Caballero, 5) Ernesto Morant Ljjeron, 6) Justo Sarmiento Alanes. Decision of January 19, 2005.

24. The petitioners also complained of violation of Article 5 of the American Convention in relation to the relatives of the victims. They explained that in pursuing the investigations demanded by the victims' relatives, the petitioner Tito Ibsen and especially Dr. Rebeca Ibsen Castro,[FN6] acting as civil attorney, had to appeal to the courts for constitutional guarantees after they had been subjected to a series of threats and acts of intimidation by the defendants.

[FN6] Rebeca Ibsen Castro is the daughter of José Luis Ibsen Peña and the sister of Rainer Ibsen Castro.

25. The petitioners questioned the State's assertion that the remains of Rainer Ibsen Cárdenas were to be found in the mausoleum of ASOFAMD. They maintained that the victim's relatives were never officially informed of his whereabouts, and that the State failed to conduct a forensic investigation to determine the identity of the remains that the State alleges to be those of Rainer Ibsen Cárdenas. To date, the victim's family has seen no evidence to verify the assertion, because the remains have never been scientifically identified.[FN7] On this point, the petitioners claimed that the State has violated the right of the family to know the truth about the fate of Rainer Ibsen Cárdenas.

[FN7] In October 2003, Rebeca Ibsen Castro asked the local court of Warnes to order a full autopsy (involving paleontological, forensic and genetic examinations) of the remains of Rainer Ibsen Cardenas found in the public cemetery of La Paz in the ASOFAMD mausoleum. That examination has not yet been conducted.

26. Finally, in response to the State's arguments about activating the Interagency Council on Forced Disappearances,[FN8] the petitioners report that the victims' relatives were visited by an official of the President's office responsible for that Council who asked them for documentation on the disappearance of the two Ibsen men but then returned the documents, saying that there was no budget for the Council's operations.

[FN8] The Council was established in 2003 to pursue decisions of the Inter-American Court on Human Rights relating to the search for information for discovering the remains of victims of forced disappearance.

27. With respect to the requirements for admissibility, the petitioners argue that the case falls under the exception provided in Article 46.2 of the American Convention, because of the circumstances in which Rainer Ibsen Cárdenas and José Luis Ibsen Peña disappeared, the failure to obtain judicial clarification of the facts, and the unwarranted delay in criminal proceedings.

B. Position of the State

28. In its response of February 3, 2005, the State reported that criminal proceedings were at the plenary stage (i.e. the prelude to judgment and sentence). The latest developments in the case referred to the confessions submitted in September 2004 by Pedro Perci González Monasterio, Juan Antonio Elio Rivero, Oscar Monacho Vaca, Elías Moreno Caballero, Morant Lijeron and Sarmiento Alanes. Moreover, the State reported that, by order of the Ninth Criminal Court, Ernesto Morant Lijeron and Justo Sarmiento were under preventive arrest, while the other defendants were free on bail.

29. The State reported that on November 12, 2001, the Constitutional Court ordered continuation of criminal proceedings against Pedro Perci González Monasterio, Juan Antonio Elio Rivero, Oscar Monacho Vaca, Elías Moreno Caballero, Morant Lijeron and Sarmiento Alanes, who had invoked the statute of limitations.

30. In its response of June 30, 2005 the State argued that its determination to clarify the disappearances of José Luis Ibsen Peña and Rainer Ibsen Cárdenas and its battle against impunity in this case could be seen in the court decision of April 18, 2005 issued by the First Civil Chamber of the Superior District Court of Santa Cruz, which revoked the ruling of the Fifth Court of Santa Cruz quashing criminal action against the defendants and ordered proceedings to continue to their conclusion.

31. With respect to Rainer Ibsen Cárdenas, the State argued that, according to information from the ASOFAMD, it is a known fact that in 1984 his remains were found in the public cemetery of La Paz, deposited in the mausoleum of ASOFAMD, and that they were recorded in the records of the cemetery.

32. Finally, the State noted that on June 18, 2003 it established the Interagency Council on Forced Disappearances to process information for the discovery of the remains of victims of forced disappearance. By decree of January 9, 2004 for it amended the composition of the Council, which is now chaired by the Minister of the President's Office or his representative. Moreover, it reported that it has assigned a budget for fiscal year 2005 for the purpose, among others, of conducting forensic studies on the remains of disappeared persons such as Rainer Ibsen Cárdenas.

33. The State requested that the case be declared inadmissible because, in its view, the petitioners are making effective use of their access to justice; the Interagency Council is working to clarify forced disappearances and has a budget for forensic studies on the remains of

disappeared persons such as Rainer Ibsen Cárdenas; and the petitioners have failed to exhaust domestic remedies. The State also argues that the petition has been submitted too late.

IV. ANALYSIS OF JURISDICTION AND ADMISSIBILITY

A. Jurisdiction of the Commission, *ratione personae*, *ratione materiae*, *ratione temporis* and *ratione loci*

34. According to Article 44 of the American Convention and Article 23 of the IACHR rules of procedure, the petitioners have standing (*locus standi*) to lodge petitions with the Commission in respect of alleged violations of the rights established in the American Convention. Bolivia is a State Party to the Convention and consequently has international responsibility for violations of that instrument. The presumed victims are individuals for whom the State has pledged to respect and guarantee the rights enshrined in the Convention. Therefore, the Commission has jurisdiction *ratione personae* to examine the petition.

35. The Commission has jurisdiction *ratione materiae* because the petition complains of possible violations of human rights protected under the American Declaration on the Rights and Duties of Man and the American Convention.

36. The Commission has jurisdiction *ratione temporis* because the obligation to respect and guarantee the rights protected initially in the American Declaration and subsequently in the American Convention was already binding upon the State on the date the facts alleged in the petition were said to have occurred. The Commission notes that some of the alleged deeds violating the human rights of José Luis Ibsen Peña and Rainer Ibsen Cárdenas occurred prior to July 19, 1979, when Bolivia ratified the American Convention, by virtue of which the applicable source of law is, in principle, the American Declaration. This however does not preclude the Commission from determining in its report on the merits of the petition that a continuous situation of human rights violations exists, in which case the American Declaration and the American Convention would apply concurrently. On this point, both the Inter-American Court and the Commission have held that the American Declaration is a source of international obligations for member states of the OAS.[FN9] The IACHR has also confirmed "its practice of extending the scope of application of the American Convention to facts of a continuing nature that violate human rights prior to its ratification, but whose effects remain after its entry into force".[FN10] The case law of the inter-American system has held that forced disappearance of persons is a continuing or permanent crime and that its effects extend for as long as the fate or whereabouts of the alleged victims remain undetermined.[FN11] Consequently, the characteristics of this crime would place the State in a continuing violation of its international obligations, and therefore the Commission has jurisdiction *ratione temporis* to apply the American Convention.

[FN9] See Inter-American Court of Human Rights, Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Article 64 of the American Convention on Human Rights,

Advisory Opinion OC-10/89, July 14, 1989, Inter-Am. Ct. H.R. (Ser. A) No. 10 (1989). paras. 35-45; IACHR, James Terry Roach and Jay Pinkerton vs. United States, Case 9647, Res. 3/87, 22 September 1987, Annual Report 1986-1987, paras. 46-49, Rafael Ferrer-Mazorra et al; vs United States, Report N° 51/01, case 9903, 4 April 2001. See also Article 20 of the Statute of the Inter-American Commission on Human Rights.

[FN10] IACHR, Report N° 95/98 (Chile), 9 December 1998, Annual Report 1998, para. 27. See also IACHR, Annual Report 2001, Report N° 82/01 – Anibal Miranda, Case 12.000 (Paraguay), para 14. The Commission has also held that “once the American Convention entered into force [...], the Convention and not the Declaration became the source of legal norms for application by the Commission insofar as the petition alleges violations of substantially identical rights set forth in both instruments and those claimed violations do not involve a continuing situation”. Report N° 38/99 (Argentina), 11 March 1999, Annual Report 1998, para. 13

[FN11] I-A Court, Trujillo Oroza Vs. Bolivia, Reparations, Judgment of 27 February 2002; I-A Court, Blake, Preliminary Objections, Judgment of 2 July 1996.

37. The Commission has jurisdiction *ratione loci* to take cognizance of the petition, inasmuch as it alleges violations of rights protected under the American Declaration and the American Convention said to have taken place within the territory of a State party to those instruments. The Commission notes that, in this case, the forced disappearance of two persons is at issue. Recognizing that Bolivia ratified the Inter-American Convention on Forced Disappearance of Persons on May 5, 1999, the Commission will decide during the merits stage, and depending on factual findings, on applicability of the American Convention on Forced Disappearance of Persons to this case.

B. Exhaustion of domestic remedies

38. As a requirement for admissibility, Article 46(1)(a) of the American Convention requires that the remedies under domestic law have been pursued and exhausted.

39. In situations such as that posed by this petition, which includes allegations of torture and forced disappearance, the domestic remedies that must be considered for admissibility purposes are those related to the investigation and punishment of the persons responsible for those deeds, which translate in domestic legislation into crimes that are prosecuted *ex officio*. The petitioners invoke the exception to exhaustion of domestic remedies provided in Article 46(2) of the American Convention, on the grounds that more than 30 years have elapsed since the forced disappearance of the alleged victims and yet the facts have not been clarified, demonstrating that access to justice has been denied through negligence, omission and delaying tactics on the part of the judiciary. The petitioners maintain that this represents unwarranted delay in the administration of justice and the lack of an adequate legal process for punishing those responsible for the State’s alleged violations.

40. In this case, the Commission considers that there is validity to the exception of unwarranted delay in the rendering of judgment, pursuant to Article 46(2)(c) of the American Convention. At the date this report was prepared, i.e. more than 30 years after the forced

disappearance of Rainer Ibsen Cárdenas and José Luis Ibsen Peña, the State had not concluded the criminal proceedings necessary to resolve the matter within its internal jurisdiction.[FN12]

[FN12] IACHR. Report 14/04 Admissibility. Peru. Case 11.568, Luis Antonio Galindo Cárdenas, 27 February 2004, paras. 39 and 40. IACHR. Report 52/97, Admissibility, Nicaragua. Case 11.218 Arges Sequeira Mangas. 18 February 1998, para. 96.

41. By virtue of the foregoing, the Commission concludes that, even if domestic judicial remedies were not exhausted, there are grounds for exception to that rule, namely the "unwarranted delay in rendering a final judgment under the aforementioned remedies" stipulated in Article 46(2)(c) of the American Convention and in Article 31(2) c) of the IACHR rules of procedure.

42. It remains to be noted that the invocation of the exceptions to the rule of exhaustion of domestic remedies provided in Article 46(2) of the Convention is closely linked to the determination of possible violations of certain rights enshrined therein, such as guarantees of access to justice. However, Article 46.2 of the Convention, by its nature and purpose, is a rule with autonomous content vis-à-vis the substantive rules of the Convention. Consequently, a determination as to whether exceptions to the rule of exhaustion of domestic remedies are applicable to the case in question must be addressed before and separately from an analysis of the merits of the case, since it depends on a standard of appreciation different from that used in determining the violation of Articles 8 and 25 of the Convention. It must be noted that the causes and effects that have prevented the exhaustion of local remedies in this case will be analyzed, as applicable, in the report that the Commission will adopt on the merits of the dispute, in order to determine whether violations of the American Convention do indeed exist. In light of these arguments, the Commission considers that there are sufficient elements of judgment to exempt the petitioners from the exhaustion of domestic remedies, through application of Article 46.2 of the American Convention.

C. Time limit for submission of the petition

43. Article 32 of the Rules of Procedure of the IACHR provide that in those cases in which exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition must be presented within a reasonable period of time. The Bolivian State argues that the petition should be declared inadmissible as it is too late. The petitioners for their part have argued that irregularities in the criminal proceedings, as well as the situation of impunity that surrounds the case, should render inapplicable the six-month time limit stipulated in the Convention.

44. In the case at hand, the IACHR has already examined the exception provided in Article 46(2)(c) with respect to "unwarranted delay", in its analysis of the requirement of exhaustion of domestic remedies under Article 46(1)(a), in paragraph 40 above. In light of those circumstances, the Commission does not need to examine that exception further. Moreover, taking into account the dates of the alleged facts, the possibility of a continuing situation of human rights violations,

and the status of the various internal remedies attempted in Bolivia, the Commission considers that the petition was presented within a reasonable time.

D. Duplication of proceedings and res judicata

45. The petitioners informed the Commission that they had laid a complaint before the Working Group on Enforced or Involuntary Disappearances of the United Nations Human Rights Commission. In the Commission's view, the fact that the petitioners have reported the facts of this complaint to the Working Group on Enforced or Involuntary Disappearances of the United Nations Human Rights Commission does not prevent the Commission from considering the case. The IACHR has previously noted that proceedings before that body are not susceptible of providing an international settlement, under the terms required in Article 46(1)(c) of the Convention, taken in concordance with Article 39(2)(b) of the Commission's rules of procedure.[FN13] From the declarations of the petitioners, there is no evidence that this case is pending before any other international body or that it essentially duplicates a petition previously examined by the Commission or another international organization. The Commission therefore considers that the case meets the requirements of admissibility stipulated in Articles 46(1)(c) and 47(1)(d) of the Convention.

[FN13] See for example, IACHR Report 18/88 (Peru), Annual Report 1987-1988.

E. Characterization of the facts alleged

46. For purposes of admissibility, the IACHR must determine whether the facts set forth in the petition tend to establish violation of the rights guaranteed by the Convention, pursuant to Article 47(b), or whether the petition, pursuant to Article 47(c), should be rejected as "manifestly groundless or obviously out of order".

47. The petition in question refers to alleged acts of arbitrary detention, torture and forced disappearance committed by agents of the Bolivian State against Rainer Ibsen Cárdenas and José Luis Ibsen Peña. The Commission considers that the statement of the petitioners refers to facts that, if demonstrated, could characterize violations of the rights to liberty and to life, to protection from arbitrary arrest, and to due process, covered in Articles I, XXV and XXVI of the American Declaration on the Rights and Duties of Man, as well as with respect to the rights to juridical personality, personal liberty, humane treatment, life, freedom of expression, a fair trial, and judicial protection enshrined in Articles 3, 4, 5, 7, 8, 13 and 25 of the American Convention, and the obligation to respect those rights referred to in Article 1(1) of the treaty. These facts could also constitute violation of Articles I, III, IV and XI of the Inter-American Convention on Forced Disappearance of Persons. Moreover, consistent with the general principle of international legislation, that of *iura novit curia*, international organizations have the power and the duty to apply all pertinent legal provisions, even if they have not been invoked by the parties.[FN14] In light of this principle, the IACHR considers that the facts alleged by the petitioners could characterize violations of Article 5 of the American Convention with respect to the relatives of the presumed victims.

[FN14] IACHR, Report 38/96, Case 10.506, Argentina, 15 October 1996.

V. CONCLUSIONS

48. The Commission considers that it is competent to hear the petition, and that the petition is admissible in light of the requirements of Articles 46 and 47 of the American Convention on Human Rights and in light of the alleged violations committed against Rainer Ibsen Cárdenas and José Luis Ibsen Peña.

49. By virtue of the arguments of fact and of law set forth above, and without prejudging the merits of the case,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare, without prejudging the merits of the complaint, that the petition is admissible with respect to the facts alleged and with respect to Articles I (right to life, liberty and personal security), XXV (right of protection from arbitrary arrest), XXVI (right to due process of law) of the American Declaration on the Rights and Duties of Man, as well as with respect to 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), 25 (right to judicial protection), 13(1) (freedom of thought and expression) and 17(1) (protection of the family) of the American Convention, and the obligation to respect those rights referred to in Article 1(1) of the treaty. The Commission also declares that the petition is admissible with respect to Articles I, III, IV and XI of the Inter-American Convention on Forced Disappearance of Persons.
2. To transmit this report to the petitioners and to the State.
3. To continue its examination of the merits of the case.
4. To publish this decision and include it in its Annual Report to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights, in Washington, D.C., on the 12 day of October 2005. (Signed): Clare K. Roberts, President; Susana Villarán, First Vice-President; Paulo Sérgio Pinheiro, Second Vice-President; Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez Trajo, and Florentín Meléndez.