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Title/Style of Cause: Renato Ticona Estrada, Cesar Ticona Olivares, Honoria Estrada de Ticona, Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada 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, Florentin Melendez.
Dated: 12 October 2005
Citation: Ticona Estrada v. Bolivia, Petition 712/04, Inter-Am. C.H.R., Report No. 45/05, OEA/Ser.L/V/II.124, doc. 5 (2005)
Represented by: APPLICANT: the Ombudsman of Bolivia
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I. SUMMARY

1. On August 9, 2004, the Inter-American Commission on Human Rights (hereinafter “the Commission” or “the IACHR”) received a petition lodged by the Ombudsman of Bolivia (hereinafter “the petitioner”) against the Republic of Bolivia (hereinafter “the State”) alleging the violation of the human rights of the following Bolivian citizens: Renato Ticona Estrada (with respect to Articles 1(1), 2, 3, 4, 5, 7, 8, and 25 of the American Convention on Human Rights--hereinafter “the American Convention”) and Article III of the Inter-American Convention on Forced Disappearance of Persons; and, César Ticona Olivares, Honoria Estrada de Ticona, Hugo Ticona Estrada and Rodo Ticona Estrada and Betzy Ticona Estrada direct family of Renato Ticona Estrada, for the alleged violation of Articles 5, 8, and 25 of the American Convention, for events which occurred in Bolivia on July 22, 1980.

2. In its response, the State requested that the petition be declared inadmissible due to failure to exhaust domestic remedies.

3. After examining the petition, and in accordance with the provisions of Articles 46 and 47 of the American Convention and with Articles 30 and 37 and other consistent provisions of its Rules of Procedure, the Commission decided to declare the petition admissible with regard to the alleged violations of Articles 2, 3, 4, 5, 7, 8, 13, and 25, and 1(1) of the American Convention on Human Rights (hereinafter “the American Convention”) and Articles I, III, IV and XI of the Inter-American Convention on Forced Disappearance of Persons. Consequently, the Commission

decided to notify the parties and to publish this report on admissibility and include it in its Annual Report.

II. PROCEDURES OF THE COMMISSION

4. On August 9, 2004, the IACHR received the petition lodged by the Ombudsman of Bolivia against the Republic of Bolivia, to the detriment of the alleged victims listed in paragraph 1 of this report. On November 30, 2004, the IACHR began to process the petition; it registered it as number 712/04, and transmitted the pertinent parts to the State, granting it a period of two months to submit its observations.

5. On February 9, 2005, the State requested the Commission to extend the period; on March 31, 2005, an extension for an additional 30 days was granted.

6. On February 9, March 18, and May 10, 2005, the Commission received communications from the petitioner requesting the admissibility of the case and objecting to the procedural delay of the State in submitting its observations, in accordance with the periods established in the IACHR Rules of Procedure. The first two communications were forwarded to the State on March 31, and the last one was sent to it on June 13, 2005.

7. On June 23, 2005, the IACHR received observations from the Bolivian State, and on June 28, 2005 they were transmitted to the petitioner, who was given a period of one month to submit observations.

8. On July 29, 2005, the Commission received the petitioner's observations on the State's response. In that communication, the petitioner requested that the following victims of violations of Articles 5, 8, and 25 of the American Convention be added: Rodo Ticona Estrada and Betzy Ticona Estrada, the brother and sister of Renato Ticona Estrada. On August 1, 2005, this communication was forwarded to the State, which was granted one month to submit any observations it deemed appropriate.

9. On September 21 the IACHR receives a communication of the State by means of which it shows his interest to initiate a process of friendly settlement. On September 22 the IACHR indicated to put itself at the disposal of the parts and to offer his good offices by virtue of the Article 48(1)(f) of the American Convention. On October 7 the IACHR receives a communication of the petitioner indicating not to be interested in entering a process of friendly settlement and requesting that the Commission continued with the case. The Commission gave transfer of the mentioned communication to the State on the same October 7, 2005.

III. POSITIONS OF THE PARTIES ON ADMISSIBILITY

A. Position of the Petitioner

10. The petitioner alleges that on July 22, 1980, at approximately 8:00 p.m., the brothers Renato Ticona Estrada (teacher and university student) and Hugo Ticona Estrada (university

leader and former union leader) were detained by an Army patrol in the vicinity of the control gate of Cala-Cala (Oruro), as they were heading for the village of Sacaca (Potosí), Bolivia.

11. He states that on that occasion, soldiers checked a list for the names of the brothers, and on seeing that the name of Hugo Ticona Estrada appeared on the list, they arrested both brothers. He further states that they took the identification documents, personal belongings, and money of the Ticona brothers, and as Sergeant Willy Valdivia Gumucio, Lieutenant René Veizaga Vargas and other soldiers from the Topater Regiment beat them, they were forced to say which political party they belonged to, whether they were leaders, what posts they held, and where the alleged weapons of the university were hidden.[FN1] He reports that the interrogation and beating lasted from about 8:30 p.m. until 3:00 a.m. of the next day (July 23). He further reports that the Ticona brothers were placed in front of the wall of the Cala Cala school, and that the soldiers fired at it repeatedly simulating the shooting of the brothers, in order to get them to talk. The petitioner points out that Renato Ticona was beaten repeatedly until he lost consciousness. He indicates that after the beating, the Ticona brothers were transferred by Colonel Melean in a military truck, first to the Vinto garrison/barracks, and then to the city of Oruro, where they were handed over to the Special Security Service (SES) in that city. The petitioner indicates that Renato Ticona had not recovered consciousness at the time of the transfer. He reports that Renato and Hugo Ticona were separated and transferred to the URME clinic[FN2] in Oruro, and that Hugo Ticona was released on November 4 1980, while Renato Ticona Estrada has been considered as a disappeared person since that date.[FN3]

[FN1] With regard to the arrest of the Ticona brothers, the petitioner indicates that in a voluntary statement deposed on April 12, 1984 in the city of Oruro, Erasmo Calvimontes Calvimontes, a military conscript serving in the Topater Regiment in Oruro in 1980 reported that on July 23, 1980, he was posted as a guard along with other soldiers at the Cala Cala gate under the orders of Melean, Veizaga, and Valdivia, when on instructions from superiors, they detained the brothers Hugo and Renato Ticona Estrada. The brothers were interrogated, while being beaten and kicked until they passed out, nearly dead. Moreover in his testimony on February 5, 1985 before the National Commission for Investigation of Disappeared Persons, citizen José Cadima Meza stated that “as Secretary General of the COMIBOL labor union, I was taken prisoner on July 21 1980 by military and civilian agents of the DIN and SES. [...] During my detention, I found out that the brothers Hugo and Renato Ticona had been arrested, and I also learned that one of them was hospitalized at a clinic as a result of the torture he had been subjected to. I later learned that he had disappeared, and, according to what was said by other prisoners, that the other brother was being held.

[FN2] The petitioner stated that at the time of the events, the URME clinic in Oruro was connected with the COSSMIL military hospitals.

[FN3] The petitioner reports that various hypotheses were going around: “according to one story, his body was transferred back to the Vinto barracks and at dawn on July 24, it was buried by other officers in the vicinity of that military post. According to another version Renato died at the Oruro SES and was then taken to La Paz in a van belonging to the prefecture. A third account, reported to Renato’s mother, stated that he was taken in a state of paralysis to the Military Headquarters in La Paz, with the number 00358. That version was confirmed in a statement to the mother by a ministerial official with the last name of Rico Toro. Rico Toro

promised to hand over Renato, but that never happened. A fourth version related that Renato was transferred to a safe house in the eastern part of the country. According to a fifth version, the former de facto president, Luis García Meza, reported that the Ticona Estrada brothers were detained and that Renato was buried. In any event, Renato Ticona Estrada was the victim of forced disappearance at dawn on July 23, 1980, after having been detained and tortured by State agents.”

12. He alleges that during the events described above, the Ticona brothers were not informed of the reasons for their arrest and not notified of any charges against them. Neither were they brought before a competent judge immediately after their arrest.

13. As for investigations undertaken by the domestic judicial system, he indicates that an investigation was initiated on April 7, 1983, and that despite the fact that 22 years have gone by, the criminal proceedings have not led to a lower court ruling in the matter, much less a final judgment.

14. Summarizing the criminal proceedings, the petitioner reported that on April 7, 1983, the National Commission for Investigation of Forced Disappearances of Citizens filed a criminal complaint with the Ministerio Público [Justice Department], to initiate an investigation into the events related to the forced disappearance of Renato Ticona Estrada. On February 18, 1983, the National Commission for Investigation of Disappeared Citizens filed criminal charges against Roberto Melean, Willy Valdivia Gumucio, René Veizaga Vargas, and Gumersindo Espinoza Valdivieso. On February 28, 1985, Honoria Estrada de Ticona and Hugo Ticona Estrada filed criminal charges against Gumersindo Espinoza Valdivieso and the partners in crime, accusing them of the “crime of political disappearance on presumption of murder of their next of kin, Renato Ticona Estrada.”

15. The petitioner reports that on July 4, 1983, the Third Judge for Preliminary Criminal Proceedings in La Paz opened preliminary criminal proceedings against Roberto Melean, Willy Valdivia Gumucio, René Veizaga Vargas, and Gumersindo Espinoza Valdivieso, because he determined that the reported acts were covered by punishment stipulated in various articles of the Criminal Code.

16. The petitioner indicates that on February 1, 1984, Gumersindo Espinoza Valdivieso was arrested in the city of Oruro and taken to the Third Court of Preliminary Criminal Proceedings of La Paz, where he presented his signed statement on February 6. The petitioner reports that despite the arrest warrants issued by the judge for the case, the other persons charged, Roberto Melean, Willy Valdivia Gumucio, and René Veizaga Vargas, never appeared to present their declarations. On May 6, 1985, the judge notified, cited, and summoned the other persons charged to appear, but they never either presented themselves to the court or were detained. On June 11, 1985, at the request of Gumersindo Espinoza, the judge for the case issued a decision granting temporary release [libertad provisional]. However that decision was revoked by the Second Criminal Chamber of the Superior Court of Justice of La Paz on June 17, 1985.

17. On July 5, 1985, Gumersindo Espinoza filed a motion for dismissal based on lack of a legal definition of the crime, which was declared in order on September 2, 1985. The defendant's case was dismissed and the case records were closed in his favor.[FN4] The petitioner reported, and the State confirmed in records it provided, that the proceedings initiated against the alleged perpetrators of the forced disappearance of Renato Ticona were closed in the first quarter of 1986.[FN5]

[FN4] Resolution No. 089/85 of the Third Court of Preliminary Criminal Proceedings of La Paz, Bolivia.

[FN5] Communication dated March 8, 2005 from the Ministerio Publico to the President of the Superior Court of Justice of the District of La Paz, where the case records were filed.

18. The petitioner alleges that in crimes against public order as in this case, the Ministerio Público had (and has) the obligation to act promptly, on its own initiative, to ensure that proceedings take place without delay.[FN6] He reports that the Ministerio Publico allowed the case to remain completely inactive for 20 years. The petitioner claims that the case was just reactivated in 2005, as a result of a complaint made by the Ombudsman to the Inter-American Commission on Human Rights. He reports that from February 28 1985, when the parents of Renato Ticona filed a criminal complaint and became plaintiffs, until March 10, 2005, the date on which Prosecutor Alave appeared before the Receiving Judge for Preliminary Criminal Proceedings [Juez Instructor Penal Liquidador] to pursue investigations in the case, 20 years and ten days had elapsed without even having completed the investigation, not to mention convicting the material and intellectual perpetrators of the reported crimes. Nor had the necessary efforts been made to find the remains of Renato Ticona Estrada, thereby keeping his next of kin in a perpetual state of anxiety.

[FN6] Article 5 of the former CPP in force at the time the events occurred states as follows:

“[C]riminal action arises out of public law ... for crimes prosecuted by the Ministerio Público, without prejudice to private complaints or accusations;” likewise, Art. 8 establish that “criminal action cannot be waived when it is brought by the ministerio público. Discontinuance or abandonment of a case by the victims neither stops nor interrupts criminal action under public law;” and, Art. 46 states that “it is the responsibility of prosecutors in criminal matters ... to promote and bring criminal action in crimes under public law, without relying on a complaint on the part of the victim; to monitor and control the proceedings as they occur by appearing in the offices in question and proposing the measures required to ensure that they are expeditious and are completed, and to verify serious complaints and ensure the prosecution of judges or public officials for crimes committed in the performance of their duties.”

19. The petitioner alleges that one of the reasons why the judicial investigation into the violations committed against Renato Ticona Estrada produced no results was the fact that the continuous crime of forced disappearance of persons was not established in Bolivian criminal legislation.

20. By virtue of the facts outlined above, the petitioner contends that the Bolivian State has incurred many violations of the American Convention: right to life (Article 4), right to humane treatment (Article 5), right to personal liberty (Article 7), right to a fair trial (Article 8), right to judicial protection (Article 25), right to participate in government (Article 23), and right to juridical personality (Article 3), all as a result of the detention, acts of torture, and cruel and degrading treatment of Hugo Ticona Estrada and subsequent forced disappearance of Renato Ticona Estrada. The State is also responsible for denial of justice and violation of the mental and moral integrity of Cesar Ticona, Honoria Estrada de Ticona, Hugo Ticona Estrada, Rodo Ticona Estrada, and Betzy Ticona Estrada, all of whom are members of the immediate family of the alleged disappeared victim.

21. As for the requirement of exhaustion of domestic remedies, the petitioner invokes the three exceptions contained in Article 46(2) of the American Convention. He based this argument on the following grounds: the circumstances in which the acts occurred, the lack of judicial clarification, failure to respect the right to a fair trial to act in a reasonable period of time, and an unwarranted delay in the proceedings.

22. As regards the first exception the petitioner cited the IACHR's 1981 Report on the Status of Human Rights in the Republic of Bolivia, where it concluded:

[in] light of the information, facts, and considerations referred to in this report, the Inter-American Commission on Human Rights has reached the conclusion that the Government of Bolivia, which took office on July 17, 1980, incurred serious violations of the human rights enshrined in the American Convention on Human Rights. These violations affect (...) © the right to personal liberty; hence, without fulfilling constitutional and legal requirements, such as the order by the competent authority to present charges, hundreds of persons were detained without trial, although some of them have been released. And also because the remedies of habeas corpus and amparo, judicial guarantees of the greatest importance for the protection of human rights, were not effective.[FN7]

[FN7] IACHR Report on the Status of Human Rights in the Republic of Bolivia, conclusions.

23. On this point, the petitioner contends that from July 17, 1980 to October 10, 1982, the day on which democracy returned to Bolivia, it was impossible to have recourse to justice to seek protection of human rights in the case of violations committed by the de facto government of Luis García Meza. For this reason the complaint filed by the National Commission for Investigation of Forced Disappearances with the regular courts in Bolivia, which led to the opening of criminal proceedings against Roberto Melean, Willy Valdivia Gumucio, René Veizaga Vargas, and Gumersindo Espinoza, was not acted on until April 7, 1983.

24. With regard to the second exception contemplated in Article 46(2)(b) of the Convention, the petitioner alleges that the National Commission for Investigation of Forced Disappearances and the members of the family of Renato Ticona Estrada encountered a series of obstacles in

their efforts to pursue criminal proceedings and exhaust judicial remedies. These obstacles included the lack of a definition of the crime of forced disappearance in Bolivian criminal law, the exclusive attention to the civil suit against García Meza et al to the detriment of other cases[FN8], and the fact that the National Commission for Investigation of Forced Disappearances was dissolved before it had completed its work.[FN9] The petitioner indicated as additional factors that made difficult the depletion of the internal resources the fact that the penal process took place in the city of La Paz, in the Third Circuit Criminal Court of Instruction but the relatives of Renato Ticona Estrada did not live in the above mentioned city. They informed that the parents of the presumed victim, lived until 1983 in the rural area of the department of Oruro and then in the department of Cochabamba. It is indicated that without the existence of the National Commission of Investigation of Forced Missing persons, it was impossible for the relatives of Renato Ticona to continue regularly the penal process for reasons of distance and lack of economic resources to settle the expenses of a lawyer who sponsors the cause. The petitioner therefore alleges that the situation of poverty of the family Ticona was another factor that affected in the fact that they could not exhaust the resources of the internal jurisdiction.

[FN8] The petitioner emphasized that the exclusive attention to the trial of responsibilities against García Meza went to the detriment of other cases that did not receive the attention owed by the judicial authorities and of the Public Prosecutor, and especially those in which there was a call for an investigation for forced disappearance of persons. The petitioner pointed out that in the same sentence that condemned García Meza and to his principal collaborators the following was mentioned tangentially:

In accordance to the report handle of folders 20 to 23, of the body N° 3 of the summary file, there is evidence of the capture of many persons and their disappearance, without any explanation given. The partial list of the missing persons, crime of lesa humanity which goes against the human rights, is the following: Juan de Dios Aramayo Vallejos, detained in October, 1980 in The Quiaca and moved to the Regiment Chichas of Tupiza; Julio César Delgado Echenique, militant of the MIR, detained on October 10, 1980, in La Paz; Gregorio Escalera Mendoza, Elías Rafael Flower, Carlos Gutiérrez Gutiérrez, Ernesto Laime Choque, José Luis Martínez Machicado, Raquel Pacheco Condori of Vargas, Esther Tita Manzano Coronado, Renato Enrique Ticona Estrada and others.

The petitioner denounced that in spite of this statement in the sentence, non of the persons condemned by the Supreme Court including Garcia Meza were charged as responsible for the forced disappearance of persons.

[FN9] As for the fate of the Commission, the petitioner cited the following extract:

“President Siles Suazo established the National Commission for Investigation of Forced Disappearances on October 28, 1982 ... for the purpose of investigating and clarifying the status of disappeared persons and of determining the responsibility of the perpetrators. It was a limited mandate ... which lasted from 1982 to 1984, and a final report was not issued, because it was dissolved before its investigation was completed (...). [I]t was the first Truth Commission in Latin America ... It received reports of 155 disappearances which took place between 1967 and 1982. Although in some cases the remains of some of the disappeared persons were discovered, the cases were never conclusively investigated. Andean Committee of Jurists, at <http://www.cajpe.org.pe/RIJ/cverdad/bo.htm>

25. Finally, with respect to the third exception contained in Article 46(2)(c), the petitioner claimed that neither the Ministerio Público nor the Fiscalía [Office of Public Prosecutor] complied with the obligation to ensure prompt and speedy proceedings and allowed the case to be closed in 1986, when they had an obligation to continue pursuing criminal legal action by virtue of their office. With regard to the observations of the State related to reactivation of the case and the fact that it is still active, the petitioner responds that in making this argument, the State is only taking responsibility for judicial action initiated in 2005, and is ignoring the inactivity of criminal proceedings for a period of time exceeding a reasonable period. In addition, the petitioner argues that the current proceedings taking place in the Bolivian courts are again experiencing delays. On the basis of these considerations, the petitioner alleges an unwarranted delay, since in the 22 years since the acts occurred, the criminal proceedings, which were opened with the preliminary investigation on June 4, 1983 and were closed in 1986, did not even complete the pretrial stage involving investigation and taking of evidence.

B. Position of the State

26. In its response, the State requested that the petition be declared inadmissible on the grounds of failure to exhaust domestic remedies.

27. The State contends that on October 28, 1982, the Bolivian government issued Supreme Decree No. 19,441, in which it established the National Commission for Investigation of Forced Disappearances, in addition to subsequent supplementary decrees that reflected the State's political will to take action against the crimes committed during authoritarian regimes. The State describes the judicial proceedings from 1983 to 1985 in terms similar to those of the petitioner.

28. It adds that in June 2003, the Bolivian government adopted a Supreme Decree to continue the work of the National Commission for Investigation of Disappeared Citizens by processing information for the discovery of the remains of the victims of forced disappearances. It further states that at the present time, the Judge for Preliminary Criminal Proceedings in the city of La Paz is in charge of the case and that he is acting to ensure pursuit of the investigation and the subsequent punishment of the persons responsible for the disappearance of Renato Ticona Estrada.

29. By virtue of the foregoing, the State argues that the petition should be declared inadmissible, since the investigation is ongoing, in guarantee of [the rights enshrined] in Articles 8 and 25 of the American Convention, and therefore domestic remedies have not been exhausted.

III. ANALYSIS ON JURISDICTION AND ADMISSIBILITY

A. Jurisdiction

30. The petitioner is authorized by Article 44 of the American Convention to lodge petitions with the IACHR. The petition states that the alleged victims are Renato Ticona Estrada, César Ticona Olivares, Honoria Estrada de Ticona, Hugo Ticona Estrada, and Rodo Ticona Estrada and Betzy Ticona Estrada, in respect of whom Bolivia undertook an obligation to respect and

guarantee the rights established in the American Convention. As for the State, the Commission notes that Bolivia has been a party to the American Convention since July 19, 1979, the date on which it deposited the relevant instrument of ratification. The Commission therefore has jurisdiction *ratione personae* to examine the petition.

31. The Commission has jurisdiction *ratione loci* to consider the petition, since it alleges violations of rights protected by the American Convention that took place on the territory of a State party to that Convention. Moreover, the IACHR has jurisdiction *ratione temporis* because the obligation to respect and ensure the rights protected by the American Convention was already in force for the State on the date that the events alleged in the petition occurred.

32. The Commission has jurisdiction *ratione materiae*, since the petition refers to complaints of violations of human rights protected by the American Convention. The Commission takes note of the fact that in the present case, the forced disappearance of a person is alleged. Considering that Bolivia ratified the Inter-American Convention on Forced Disappearance of Persons on May 5, 1999, the Commission will decide on the application of the Inter-American Convention on Forced Disappearance of Persons to this case, in the course of its examination of the merits of the case and depending on its factual determinations.

B. Admissibility Requirement

1. Exhaustion of domestic remedies

33. Article 46(1)(a) of the American Convention and Article 31 of the Rules of Procedure of the Commission establish as a requirement for admissibility of a petition that the remedies available under the domestic law of the State be previously exhausted.

34. In situations such as the case under consideration, which includes allegations of illegal detention, torture, and forced disappearance, the domestic remedies that must be taken into account for the purposes of the admissibility of the petition are related to the investigation and punishment of the perpetrators of these crimes, which under domestic legislation are crimes prosecuted by the courts. In the case in point, the petitioner invoked the exception to exhaustion of domestic remedies set forth in Article 46(2) of the American Convention, in view of the fact that over twenty-two years have elapsed since the forced disappearance of Renato Ticona, the facts have not been clarified, and there is evidence of a lack of access to justice through negligence, omission, and delay tactics on the part of the Judiciary and other government branches. In the view of the petitioner in the case, there was therefore an unwarranted delay in the administration of justice and a lack of due legal process to punish the perpetrators of the alleged violations.

35. The State, for its part, has specifically argued noncompliance with the requirement of prior exhaustion of domestic remedies on the grounds that the case is active in the national courts. However, the petitioner contends that the judicial investigation meant to clarify the facts and prosecute and punish the responsible parties was initiated in 1983, and has now lasted 22 years without resulting in even a lower court ruling, not to mention a final judgment. Thus, the

criminal proceedings have been extended over an unreasonable period of time, and access to a prompt, effective remedy has been denied.

36. The Commission considers the arguments put forward by the petitioner to be convincing, and concludes that application of the exceptions stipulated in Article 46(2) of the American Convention and Article 31(2) of the Rules of Procedure of the Commission is appropriate. In fact, on the date this report was prepared, namely twenty-two years after the forced disappearance of Renato Ticona Estrada, the State had not completed the criminal proceedings required to resolve the case in domestic courts of law. These proceedings began with the preliminary hearing on June 4, 1983, and were closed in 1986 without concluding the preliminary stage of investigation and evidence taking. The petitioner indicated that the proceedings reopened in 2005 were also beset with difficulties, and that the State has not yet punished the perpetrators of the alleged acts or found the mortal remains of Renato Ticona.[FN10]

[FN10] IACHR, Report 14/04 Admissibility, Peru, Case 11,568, Luis Antonio Galindo Cárdenas, February 27, 2004, par. 39 and 40. IACHR, Report 52/97, Admissibility, Nicaragua, Case 11.218 Arges Sequeira Mangas, February 18, 1998, par. 96.

37. The IACHR points out that application of the exceptions to the rule of exhaustion of domestic remedies described in Article 46(2) of the Convention is closely linked to determination of possible violations of certain rights established therein, such as guarantees of access to justice. However, Article 46(2) of the American Convention, by its nature and purpose, is a rule whose content is independent of the substantive provisions of the Convention. Therefore, a determination as to whether the exceptions to the rule of exhaustion of domestic remedies stipulated in that Article are applicable to the case in point should be made prior to and independently of an examination of the merits of the case, since it relies on a different standard of evaluation than the one used to determine whether or not there was a violation of Articles 8 and 25 of the Convention. It should be noted that the causes and effects that prevented exhaustion of domestic remedies in this case will be analyzed, insofar as relevant, in the report adopted by the Commission on the merits of the case, with a view to determining whether they in fact represented violations of the American Convention. On the basis of the foregoing arguments, the Commission is of the opinion that there are sufficient elements of proof to exempt the petitioner from the requirement of prior exhaustion of domestic remedies, pursuant to Article 46(2) of the American Convention.

2. Deadline for presentation of petitions to the IACHR

38. Article 32 of the Rules of Procedure of the IACHR states that in cases in which the exceptions to the requirement of prior exhaustion of domestic remedies are applicable, the petition must be presented within a reasonable period of time. The petitioners considered that because of the irregularities in the criminal proceedings and the situation of impunity in the case, the period of six months stipulated in the Convention does not apply.

39. In this case, the exceptions listed in Article 46(2) have already been examined by the IACHR in analyzing the requirement of prior exhaustion of domestic remedies stipulated in Article 46(1)(a), *ut supra* paragraph 34. By virtue of the circumstances analyzed, the Commission does not need to examine once again whether this exception would apply. In addition, taking into account the date of the alleged acts, the possibility of a situation of continued violation of human rights, and the status of the various domestic remedies used in Bolivia, the Commission considers that the petition under examination was submitted within a reasonable period of time.

3. Duplication of international proceedings and *res judicata*

40. It does not appear from the case files that the matter of the petition is pending settlement in another international proceeding or that it has been previously decided by the Inter-American Commission. It is therefore appropriate to consider the requirements established in Articles 46(1)(c) and 47(d) as having been met.

4. Characterization of the alleged facts

41. For the purposes of admissibility, the IACHR must determine whether the facts set forth in the petition tend to establish a violation of the rights enshrined in the American Convention, according to the requirement established in Article 47(b), or whether the petition, in accordance with Article 47(c), should be denied as “manifestly groundless or obviously out of order.”

42. The petition under consideration refers to alleged acts of arbitrary detention, torture, of the brothers Renato and Hugo Ticona, as well as the later forced disappearance of Renato Ticona, acts committed by agents of the Bolivian State to the detriment of the mentioned presume victims. Also the petition refers to violations of rights enshrined in the American Convention, to the detriment of Cesar Ticona, Honoria Estrada de Ticona, Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada, members of the immediate family of Renato Ticona Estrada. The Commission considers that the statement of the petitioners refers to acts which, if proven, could characterize violations of the rights established in Articles 3, 4, 5, 7, 8, 13, and 25 of the American Convention, and of the general obligations referred in Articles 1(1) and 2 of that instrument. These acts could also constitute a violation of Articles I, III, IV and XI of the Inter-American Convention on Forced Disappearance of Persons.

V. CONCLUSIONS

43. The Inter-American Commission is of the opinion that it is competent to consider the merits of the petition presented and that the case is in principle admissible, in accordance with the requirements established in Articles 46 and 47 of the American Convention. On the basis of the factual and legal arguments set forth in this report, and without prejudging the merits of the matter,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

DECIDES:

1. To declare admissible this petition regarding the alleged violation of Articles 1(1), 2, 3, 4, 5, 7, 8, 13, and 25 of the American Convention, and Articles I, III, IV and XI of the Inter-American Convention on Forced Disappearance of Persons.
2. To notify the Bolivian State and the petitioner of this decision.
3. To continue with an analysis 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; and Commissioners Evelio Fernández Arévalos, José Zalaquett, Freddy Gutiérrez, and Florentín Meléndez.