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Title/Style of Cause: Juan Carlos Flores Bedregal v. Bolivia  
Doc. Type: Decision  
Decided by: President: Luz Patricia Mejia Guerrero;  
First Vice President: Victor Abramovich;  
Second Vice President: Felipe Gonzalez;  
Commissioners: Sir Clare K. Roberts, Paulo Sergio Pinheiro, Florentin Melendez, Paolo G. Carozza.  
Dated: 4 August 2009  
Citation: Flores Bedregal v. Bolivia, Petition 616-06, Inter-Am. C.H.R., Report No. 65/09, OEA/Ser.L/V/II., doc. 51, corr. 1 (2009)

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## I. SUMMARY

1. On June 14, 2006 the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission,” or “the IACHR”) received a petition submitted by Olga Flores Bedregal (hereinafter also “the petitioner”), representing Mr. Juan Carlos Flores Bedregal (hereinafter also “the alleged victim” or “Mr. Flores Bedregal”), alleging violation by the State of Bolivia (hereinafter also “Bolivia,” “the State,” or “the Bolivian State”) of rights enshrined in Article 3 (recognition of juridical personality), Article 4 (right to life), Article 5 (right to humane treatment), Article 7 (right to personal liberty), Article 8 (right to a fair trial), and Article 24 (right to equal protection) as they relate to Article 1.1 (obligation to respect and guarantee rights) of the American Convention on Human Rights (hereinafter also “the American Convention,” “the Convention,” or “the ACHR”).

2. The petitioner alleged that in the context of the coup d’état led by Luís García Meza, on July 17, 1980 her brother, Juan Carlos Flores Bedregal, was forcibly disappeared in an attack on the Bolivian Workers’ Union (Central Obrera Boliviana – hereinafter also “the COB”). She noted that the alleged victim was last seen at the facilities of the Army General Staff, oppressive force of the period. She indicated that although relatives have petitioned all judicial bodies as well as other branches of government, the events still go unpunished as the circumstances of the disappearance have not been made clear, those responsible have not been punished, and the mortal remains of Mr. Flores Bedregal have not been located. She emphasized that there is a court order to declassify the army’s files, an order that has not been carried out.

3. For its part, the State reported on internal procedures to investigate and provide punishment for the events. It noted that former President Luís García Meza was subjected to a

trial of responsibilities (juicio de responsabilidades) that culminated in 1993 with a conviction against García Meza and his collaborators. The State indicated that later, in 1999, a criminal proceeding was filed against several persons regarding what had happened to Juan Carlos Flores Bedregal. It noted that first and second instance decisions were issued in this proceeding, with some of the accused being convicted and others acquitted, and that the cassation appeal filed by the parties is now pending. The State asked the Commission to take into consideration the complexity of the matter, the actions taken by judicial authorities and family members, as well as the filing of different defensive motions by the accused.

4. After examining the positions of the parties in the light of the admissibility requirements established in Articles 46 and 47 of the Convention, the Commission concluded that it is competent to hear the complaint and that the petition is admissible based on the alleged violation of rights enshrined in Articles 3, 4, 5, 7, and 8 of the American Convention as they relate to Article 1.1 of that instrument. By virtue of the principle of *iura novit curia*, the Commission incorporated the possible violation of Articles 13 and 25 of the American Convention and Articles I and III of the Inter-American Convention on Forced Disappearance of Persons. The Commission concluded that the petition is inadmissible in terms of the alleged violation of Article 24 of the American Convention. As a result, the Commission decided to notify the parties, to make this Admissibility Report public, and include it in its Annual Report.

## II. PROCESSING BY THE COMMISSION

5. The initial petition was received in June 14, 2006 and recorded under the number P 616-06. On August 15, 2006, the Commission requested additional information from the petitioner. The requested information was received on October 18, 2006.

6. On December 22, 2006, in accordance with Article 30.3 of its Rules of Procedure, the Commission sent the State the relevant sections of the petition, asking it to submit its response within a period of two months.

7. On August 27, 2007, April 23, 2008, and September 29, 2008, the State asked for extensions to respond to the petition. The Commission granted two one-month extensions, denied the third extension, and asked the State to submit the information requested as soon as possible.

8. On October 22, 2008 the State submitted its response to the petition, which was forwarded to the petitioners.

9. On July 3, 2007, November 8, 2007, January 15, 2008, July 14, 2008, April 13, 2009, April 27, 2009, May 12, 2009, May 13, 2009, May 21, 2009, and May 29, 2009, the petitioner submitted additional information, which was forwarded to the Bolivian State on a timely basis.

10. On May 27, 2009 the State asked for an extension to submit its observations. In response, the Commission asked the State to submit the information as soon as possible. As of the approval date of this report, no additional observations had been received.

### III. POSITIONS OF THE PARTIES

#### A. Petitioner

11. The petitioner stated that according to testimony from various persons, Juan Carlos Flores Bedregal disappeared on July 17, 1980 when in his capacity as a leader of the Revolutionary Workers' party and National Delegate he was attending a meeting of the Committee for the Defense of Democracy[FN1] at the headquarters of the Bolivian Workers' Union. The petitioner noted that the meeting had been called in response to an imminent coup d'état widely announced by the armed forces.

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[FN1] She explained that the Committee for Defense of Democracy was a group made up of political parties and union organizations to defend democracy.  
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12. According to the account, while the resolution on resistance to the coup was being read, the headquarters of the COB was attacked by gunfire from an armed group made up of military and paramilitary agents – which ordered the political and union leaders to surrender, in response to which a participant at the meeting asked them to stop shooting since they were unarmed. The petitioner stated that the attackers ordered them to descend to the street in a row and with their hands behind their heads, but when they identified the Socialist leader, Marcelo Quiroga Santa Cruz, they ordered him to step out of line and when he resisted, they shot him. The petitioner stated that Mr. Flores Bedregal reacted by trying to help him but was “felled by gunfire.”

13. The petitioner stated that according to witnesses, his body was taken to the Army General Staff in one of the ambulances used in the violent assault on the COB. The petitioner emphasized that according to what the accused themselves stated, both Marcelo Quiroga Santa Cruz and Juan Carlos Flores Bedregal were last seen at the Army General Staff but it is not clear whether they were alive. The petitioner stated that since that day the family has no knowledge of their brother or the location of his remains, although they began a tireless search in which they have submitted complaints to all agencies.

14. Regarding those complaints, the petitioner stated that on that same day, July 17, 1980, the relatives of Juan Carlos Flores denounced his disappearance nationally and internationally, which fact was recorded by the International Red Cross, Amnesty International, the Office of the United Nations High Commissioner for Refugees, the Commission of the [World] Council of Churches, and other institutions. The petitioner added that months later the International Red Cross informed his relatives regarding the murder of the alleged victim, but without any clarification regarding the circumstances or the location of his remains.

15. The petitioner noted that after the return to democracy, in 1984 the government created the National Commission on the Disappeared with the mandate to investigate forced disappearances for political motives. She stated that family members again reported the disappearance of the alleged victim to this commission, which conducted some investigations in which police agents of the repressive apparatus of the dictatorship declared that the lifeless

bodies of Marcelo Quiroga and Juan Carlos Flores were collected and handled. She added that these police agents provided false information that led to three exhumations of remains that upon study were determined not to belong to the alleged victim.

16. The petitioner stated that subsequently the relatives of Juan Carlos Flores Bedregal asked the Justice Committee of the House of Delegates to initiate a proceeding against Luís García Meza and his collaborators in the coup d'état of 1980. She stated that once the Parliament issued a resolution on the accusation – which included the assault on the COB and the murder of the alleged victim – the relatives became a civil party to the trial of responsibilities before the Supreme Court of Justice. In the view of the petitioner, although the trial concluded on April 21, 1993 with the conviction of the former dictator and eight other implicated persons, due to the characteristics of the proceeding, the murders that occurred during the takeover of the COB were not made clear nor was the location of the bodies determined.

17. The petitioner stated that due to errors in that investigation, on October 23, 1997 a commission was created to investigate the disappearance of Marcelo Quiroga Santa Cruz and thus that of Juan Carlos Flores, since both disappeared under the same circumstances. She stated that in 1999, based on the evidence gathered, this Commission delivered a report to the Superior Court of the District of La Paz recommending that a proceeding be opened up against some twenty repressive agents, among them military, police, and paramilitary personnel, based on their participation in the attack on the COB.

18. She indicated that in response to this report, in February 1999 the Public Prosecutor's Office initiated a proceeding against 17 individuals, in which the relatives of the alleged victim have acted as an intervening party. The petitioner emphasized the most relevant stages in the process, relating that on April 18, 2001 the Examining Magistrate issued a final order to investigate the crimes of armed insurrection against the security and sovereignty of the State, terrorism, concealment, and murder. She indicated that the final hearing was held in the court proceeding on September 26, 2007, leading to the reading of the conclusions.

19. She added that on December 12, 2007, the Second Criminal Court issued a decision i) sentencing three of the accused to three years in prison as perpetrators of the crimes of armed insurrection against the security and sovereignty of the State, terrorism, and concealment, in addition to being complicit in the crime of murder;[FN2] ii) sentencing six of the accused to three years in prison for the crime of concealment and false testimony; iii) sentencing one of the accused to two years in prison for the crime of concealment; and iv) acquitting six of the accused of the crimes of false testimony and concealment. The decision indicates the existence of criminal acts against other persons not included within the scope of the order, for which purpose the record was referred to the Office of the Public Prosecutor for the respective action.

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[FN2] According to the text of the decision, provided as an annex by the petitioner, two of the three persons convicted were held to be in contempt.

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20. The petitioner reported that she filed an appeal with the District Superior Court because she felt that due to “poor legal handling” on the part of the judge, the decision imposed “ridiculous penalties” on most of the accused. She added that when a second instance decision was handed down confirming nearly all points of the first instance decision, she filed a cassation appeal with the Supreme Court of Justice. She noted that the decision in this appeal remains pending as of this date.

21. She alleged that throughout this process a series of irregularities have been committed that, in her view, have resulted in a denial of justice. As an example, she mentioned that the process has been carried out extremely slowly, that deadlines established by domestic legislation for each stage in the process have not been met, and that hearings were often suspended due to the failure to appear of both the prosecutor and the accused, but the judge in the case did not use the legal mechanisms available to ensure their appearance. She emphasized that the judge failed to adopt measures to speed up the process, even though the dilatory strategy employed by the accused by obvious.[FN3] She indicated that the result was an evidence stage that lasted six years, in which there were periods of inactivity such as the year 2005 during which only three hearings were held, with a similar situation in 2006. She specified that the evidence stage concluded in September 2006 and that the indictment was issued in May of 2007.

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[FN3] She explained that this strategy consisted of an accused’s failure to appear at each hearing in order to achieve a suspension.  
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22. The petitioner mentioned that the negligent attitude of the court authorities is also reflected in the lifting of precautionary measures issued against the only person convicted for the most serious crimes, who was not deemed to be in contempt. She emphasized that although this is a very dangerous person, he is free and intimidating the relatives of the alleged victim.

23. The petitioner also alleged that the judge in the case did not require the processing of highly important evidence, such as statements from senior ranks responsible for the event, including Luís García Meza. She emphasized that in an interview submitted by him, he mentioned some data on the fate of the body of Marcelo Quiroga Santa Cruz. In the petitioner’s view, the statement of Mr. García Meza could have shed light on what happened to Juan Carlos Flores Bedregal as well. She added that, nonetheless, the hearing at which the former President was to make a statement was suspended due to health issues, without a new hearing being set for a later date. She stated that the judge in the case decided to close the evidentiary phase without hearing this statement. According to the petitioner, this was the last opportunity for Luís García Meza to make a statement before a competent authority and under oath regarding the events of July 17, 1980.

24. The petitioner also stated that the prosecutor has acted as a “decorative figure” in the process, without adequately assuming his accusatory role, due among other reasons to staff turnover. She specified that the prosecutor was replaced eleven times during the process. She noted that for his part the judge incorrectly assessed the evidence and improperly defined the

criminal conduct, resulting in the acquittal of some of the accused and the imposition of minimal penalties on most of the accused.

25. She added that despite the fact that the impetus for prosecution belonged to the State, throughout the investigation the alleged victim's relatives had to fill in the gaps created by the inactivity of the Office of the Public Prosecutor and to pay court costs such as stamps, summonses, and notarization, and even had to bear the cost of transporting the accused for their appearances at hearings. She stated that due to the State's unwillingness to assume its obligations, the relatives of the alleged victim felt defenseless because their financial situation makes it very difficult for them to continue assuming legal costs.

26. Finally, she alleged that in the context of the process, no efforts were made to find and return the mortal remains of Mr. Flores Bedregal. On this point, the petitioner stated that in the context of the criminal proceeding being conducted, the relatives of the alleged victim asked the Ministry of Defense to declassify the files which should contain information on his remains, since Mr. Flores Bedregal was last seen at the Army General Staff and those who carried out the assault on the COB were soldiers. She added that after she filed the complaint with the Inter-American Commission, she was told that that Ministry would declassify the files, but that so far no concrete measures have been taken in this regard.

27. She emphasized that when the criminal process was in the appeals phase, the respective judge ordered the declassification of the army intelligence files at the request of the family of the alleged victim, a process now under way. In a more recent communication, the petitioner reported that the army did not carry out the decision, arguing that a reasoned court order was required. She mentioned that this order was denied them because the court official who issued the order had already lost jurisdiction in the appeals phase, and the process is pending decision in the Supreme Court of Justice.

28. According to the petitioner, the facts related constitute violations of Articles 1.1, 3, 4, 5, 7, and 8 of the American Convention. In a more recent communication, the petitioner alleged a violation of the right to equal treatment on the part of the Executive, since it has consistently ordered a search for Marcelo Quiroga Santa Cruz without assigning importance to the disappearance of the alleged victim, despite the similar circumstances under which they disappeared.

#### B. State

29. The State referred to two proceedings related to the events recounted in the petition.

30. It stated that pursuant to a Congressional Resolution dated February 25, 1986 with respect to the events that occurred at the COB, Luís García Meza (former President of the Republic), Luís Arce Gómez (former Minister of the Interior, Migration, and Justice), and others were accused of the murder of Marcelo Quiroga Santa Cruz, Carlos Flores Bedregal, and Gualberto Vega. It stated that on April 21, 1993 the Supreme Court of Justice handed down a conviction for the crimes of murder, armed insurrection against the security and sovereignty of

the State, and criminal association. It added that this decision is being carried out, which demonstrates the State's interest in a clarification of the facts.

31. The State noted that some actions in this process were used as the basis for initiating criminal prosecution against Franz Pizarro Solano and others with respect to what happened to Juan Carlos Flores Bedregal.

32. With respect to the development of this process, the State indicated that it has 102 bodies, that an initial order of investigation was issued against three individuals for the crimes of murder, armed insurrection against the security and sovereignty of the State, terrorism, and concealment, and against nine individuals for the crimes of false testimony, concealment, and criminal association.

33. It indicated that expanded orders were later issued to include other defendants, and that a final order of investigation was issued on April 18, 2001. It added that once the case was referred for trial and procedures in this phase were carried out, a decision was issued on December 12, 2007 convicting ten of the accused and acquitting six others.

34. The State continued by stating that the parties submitted appeals, which were decided on August 22, 2008 by the Third Criminal Chamber of the Superior Court of the District of La Paz, confirming the decision in part and revoking the acquittal of some of the accused, whom it declared guilty of the crime of concealment and subject to prison terms of two years.

35. The State noted that the current status of the process is a referral to the Supreme Court of Justice, due to a cassation appeal filed by seven individuals.[FN4]

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[FN4] The State does not specify who filed this appeal.

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36. The Bolivian State asked the Commission to appreciate the complexity of the case and its effects in terms of the time needed to develop domestic proceedings. The State alleged that the complexity of the matter derives from the circumstances in which the events took place, i.e., during the dictatorship and in the context of the complex conduct of an unconstitutional military organization. It emphasized that those involved in the crime belonged to a military structure trained to make evidence disappear.

37. According to the State, another element that should be taken into consideration is the limited participation in the process of the "accusing institution"[FN5] at the time and weakness in the production of evidence. It added that another problem was ignorance of the domiciles of several of the accused.

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[FN5] The State does not explain whether it is referring to the Office of the Public Prosecutor or to the relatives of the alleged victim.

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38. The State indicated that the conduct of the judicial authorities should also be taken into consideration. In this respect, it added the last two texts of proceedings to demonstrate progress made in enforcing the decision,[FN6] in which the parties have been allowed to submit appeals in accordance with the law.

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[FN6] The State does not explain the reference to the “enforcement of the decision.” The Commission understands that the process is still in the appeals stage.  
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39. Among other difficulties that have delayed the process, the State mentioned the specifics of the criminal process under the previous procedural system, in which the judge had to investigate and take precautions to safeguard the procedural guarantees of the accused, while the Office of the Prosecutor had the role of “assisting” and “ruling.” It also indicated that the process included the practice of confirmation of evidence, which required a considerable amount of time.

40. The State also noted the excessive use of defensive methods by the accused, the affirmative treatment given to evidence offered by all parties, the process of confirming statements made before the Human Rights Committee of the House of Delegates, and the failure of the accused to appear at hearings.

41. With respect to the participation of the Flores Bedregal family, the State noted that it became a civil party acting in the preliminary investigation and trial phase through: offering documentary evidence and proposing interrogatories; requesting acceptance of testimony from Luís García Meza; requesting the allocation of funds for investigative purposes; requesting the parties to submit evidence; opposing bail; requesting the submission of documentation; requesting the presentation of arguments; dismissing referrals; requesting times and dates for submitting arguments; petitioning for the confrontation of witnesses or evidence; requesting the submission of information by other institutions; requesting the acceptance of witness statements; responding to motions; requesting decisions; submitting an appeal; appearing in the relevant stages; among other actions taken.

42. Finally, the State noted that a Resolution of the House of Delegates dated October 2, 1997 ordered a search for the remains of Marcelo Quiroga Santa Cruz, in which steps were also taken to search for the remains of Juan Carlos Flores Bedregal. It indicated that on May 4, 2000 an inter-institutional agreement was signed between the Third Examining Magistrate for Criminal Matters and the National Academy of Science of Bolivia, Museum of Natural History, Department of Paleontology, to carry out the search work.

#### IV. ANALYSIS OF COMPETENCE AND ADMISSIBILITY

##### A. Competence

43. The petitioner is empowered by Article 44 of the Convention to submit complaints to the IACHR. The alleged victim in the case was under the jurisdiction of the Bolivian State on the

date the alleged events began. As a result, the Commission is competent *ratione personae* to examine the petition. The Commission is competent *ratione loci* to hear the petition in that it alleges violations that began and continue to occur within the territory of a State party to the American Convention.

44. The State of Bolivia ratified the American Convention on July 19, 1979. In this respect, the Commission is competent *ratione temporis* in that the obligation to respect and guarantee the rights protected by the American Convention were already in effect for the State on the date when the events alleged in the petition would have occurred. Finally, the Commission is competent *ratione materiae*, because the petition reports violations of human rights protected by the American Convention.

45. As indicated below in paragraph 63, by virtue of the principle of *iura novit curia*, the Commission has incorporated the possible violation of various provisions of the Inter-American Convention on Forced Disappearance of Persons. The Bolivian State ratified this instrument on May 5, 1999. However, the Commission is competent to rule on possible violations of the Convention that continue in time although they may have begun prior to that date.

#### B. Exhaustion of Domestic Remedies

46. Article 46.1.a of the American Convention provides that in order for a complaint filed with the Inter-American Commission to be admissible in accordance with Article 44 of the Convention, domestic remedies must have been pursued and exhausted in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to hear the alleged violation of a protected right and, if appropriate, to give them the opportunity to resolve the matter before it is heard by an international body.

47. The prior exhaustion requirement applies when the national system actually makes available remedies that are adequate and effective to remedy the alleged violation. In this respect, Article 46.2 specifies that the requirement does not apply when domestic legislation does not afford due process of law for the protection of the right in question or if the alleged victim did not have access to the domestic remedies or if there is an unwarranted delay in rendering a decision under those remedies.

48. The Commission notes that although the State reported on the domestic judicial proceedings and asked that consideration be given to the complexity of the matter and some difficulties in the investigation, it did not expressly submit an objection based on a failure to exhaust domestic remedies, and thus tacitly waived this defense. For her part, the petitioner argued that the domestic process has been extremely slow and that both prosecutors and judges have committed a series of errors that have resulted in decisions that impose penalties that are minimal and not in proportion to what happened to the alleged victim.

49. Taking the above into account, the Commission considers it relevant to offer some considerations regarding compliance with the requirement to exhaust domestic remedies.

50. First, according to the information provided by the petitioner and not disputed by the State, the relatives of the alleged victim sought out the agencies available to them to establish what had happened to the victim and locate his remains by reporting his disappearance starting on the very date he disappeared, July 17, 1980. According to the available information, during the dictatorship no ex officio proceeding was conducted to clarify the facts.

51. The information provided by both parties indicates that since the return of democracy in Bolivia, four investigations have been conducted into what happened to Juan Carlos Flores Bedregal. The first investigation was conducted by the National Commission on the Disappeared, starting in 1984, in which testimony was gathered indicating the supposed location of the alleged victim, although his remains were not ultimately found. The second investigation was initiated by the Joint Committee of the National Congress and led to the trial of responsibilities and the 1993 conviction against Luís García Meza and his collaborators. The third investigation was conducted starting in 1997 by a Parliamentary Committee and delivered a report in 1999 to the Superior Court of the District of La Paz recommending that a proceeding be opened up against some twenty repressive agents. The fourth investigation was initiated by the Office of the Public Prosecutor in February 1999 in response to this report and is currently in the appeals stage.

52. Of these four proceedings, two are judicial in nature and directed to clarifying the events and identifying and criminally punishing those responsible and thus constitute suitable remedies in a case such as this. In this respect, the Commission will analyze these two proceedings in order to determine whether the domestic remedies have been exhausted. The Commission notes that the trial of responsibilities against former President Luís García Meza and his collaborators concluded with a conviction issued in a single instance decision of the Supreme Court of Justice on April 21, 1993. In addition, the Commission notes that in the context of the criminal proceeding initiated in February 1999, some of the accused were acquitted, first and second instance decisions were handed down convicting some of the accused and acquitting others, and the cassation appeal filed by the parties is now pending a decision.

53. Although the Bolivian State conducted a trial of responsibilities against some of the instigators of the events that resulted in the disappearance of Mr. Juan Carlos Flores Bedregal, the Commission considers that the opening of the second criminal proceeding in 1999 at the request of the National Congress can be considered an indication that the investigations and penalties derived from the trial of responsibilities were insufficient. Based on the information available at this stage, with 29 years having passed since the events and the first complaint filed by the relatives of the alleged victim, the circumstances of his disappearance have still not been cleared up, his fate or that of his mortal remains have not been determined, nor have the instigators or perpetrators of the crimes been punished.

54. The Commission notes that the State referred to the complexity of the matter and other difficulties in order to justify the delay in the second criminal proceeding. However, the State did not explain in concrete terms how the complexity of the matter and other difficulties created the delay. The Commission considers that these arguments are not sufficient to justify decades during which the State failed to take measures to initiate investigations ex officio nor the delays that, according to the available information, have occurred in the context of the proceedings

initiated, in which long periods of inactivity have been alleged to have occurred for causes attributable to court authorities and prosecutors in the Office of the Public Prosecutor.

55. In the merits phase, the Commission will analyze in detail whether the Bolivian State afforded the relatives of the alleged victim an effective remedy with due guarantees by means of these proceedings. However, the passage of nearly three decades since the events and ten years since the second criminal proceeding began, without any determination as to the fate of Mr. Flores Bedregal and without any final decision establishing what happened and punishing those responsible, is sufficient to conclude that there has been an unwarranted delay under the terms of Article 46.2.c of the American Convention.

#### C. Deadline for Submitting the Petition

56. Article 46.1.b of the Convention establishes that in order for the petition to be declared admissible, it must have been submitted within a period of six months from the date on which the interested party was notified of the final decision that exhausted the domestic jurisdiction. This rule does not apply when the Commission finds one of the exceptions to exhaustion of domestic remedies as established in Article 46.2 of the Convention. In such cases, the Commission must determine whether the petition was submitted in a reasonable period of time in accordance with Article 32 of its Rules of Procedure.

57. As indicated above in paragraph 55, the Commission concluded that in the instant case there has been an unwarranted delay in the decision, in accordance with Article 46.2.c of the American Convention. Taking into consideration the ongoing nature of the alleged forced disappearance of the alleged victim, as well as the failure to clear up his whereabouts or the corresponding responsibility, and the alleged denial of justice in the previous domestic proceedings and those that are still in progress, the Commission considers that the petition was submitted within a reasonable period of time.

#### D. Duplication of Proceedings and International *res judicata*

58. Article 46.1.c of the Convention provides that admission of petitions is subject to the requirement that the matter “is not pending in another international proceeding” and Article 47.d of the Convention stipulates that the Commission will not admit a petition that is substantially the same as a prior petition or communication already examined by the Commission or another international organization. In the instant case, the parties have not claimed the existence of either of these two circumstances of inadmissibility, nor are they deduced from the file.

#### E. Characterization of the Alleged Facts

59. For purposes of admissibility, the Commission must decide whether the petition presents facts that could characterize a violation, as stipulated in Article 47.b of the American Convention, [and] whether the petition is “manifestly groundless” or “obviously out of order” in accordance with subparagraph (c) of the same article. The standard for evaluating these points is different from that required to decide on the merits of a complaint. The Commission must perform a *prima facie* evaluation to examine whether the complaint provides the basis for an

apparent or potential violation of a right guaranteed by the Convention and not to establish the existence of a violation. Such examination is a summary analysis that does not involve a prejudgment or an advance opinion on the merits.

60. The Commission considers that the alleged forced disappearance of the alleged victim and the alleged situation of impunity in which that event remains could characterize violations of rights enshrined in Articles 3, 4, 5, 7, 8, and 25 of the American Convention, as they relate to the obligations established in Article 1.1 of said instrument, as well as the rights established in Article I of the Inter-American Convention on Forced Disappearance of Persons, all to the detriment of Juan Carlos Flores Bedregal. The Commission considers that these facts could also characterize a violation of rights enshrined in Articles 5, 8, and 25 of the American Convention as they relate to the obligations established in Article 1.1 of that instrument, to the detriment of the victim's relatives.

61. The Commission also considers that the failure to define the crime of forced disappearance of persons until the year 2006 could characterize a violation of Article III of the Inter-American Convention on Forced Disappearance of Persons, ratified by Bolivia on May 5, 1999.

62. In addition, the Commission considers that the alleged failure to respond to petitions made to various agencies of the Executive Branch regarding the declassification of Army files, as well as the alleged failure to comply with a court order establishing that declassification could characterize a violation of rights enshrined in Articles 13 and 25 of the American Convention as they relate to Article 1.1 of that instrument.

63. Violations of Articles 13 and 25 of the American Convention as well as Articles I and III of the Inter-American Convention on Forced Disappearance of Persons were not alleged by the petitioner and were incorporated by the Commission in accordance with the principle of *iura novit curia*.

64. Finally, the Commission considers that the petitioners did not submit sufficient evidence to characterize a violation of the right enshrined in Article 24 of the Convention.

## V. CONCLUSIONS

65. Based on the factual and legal considerations presented, and without prejudging the merits of the case, the Inter-American Commission concludes that the instant case satisfies the admissibility requirements established in Articles 46 and 47 of the American Convention and accordingly

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS,

DECIDES:

1. To declare the petition under study admissible with respect to Articles 3, 4, 5, 7, 8, 13, and 25 of the American Convention as they relate to the obligations established in Article 1.1 of

the same instrument, and with respect to Articles I and III of the Inter-American Convention on Forced Disappearance of Persons.

2. To declare the petition inadmissible with respect to the right enshrined in Article 24 of the American Convention.
3. To notify the State and the petitioner of this decision.
4. To initiate processing on the merits of the question.
5. To publish this decision and include it in the Annual Report to be submitted to the OAS General Assembly.

Done and signed in the city of Washington, D.C., on the 4th day of the month of August 2009.  
(Signed) Luz Patricia Mejía, President; Víctor E. Abramovich, First Vice-president; Felipe González, Second Vice-president; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Paolo G. Carozza, members of the Commission.