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Institution: Inter-American Court of Human Rights
Title/Style of Cause: Renato Ticona Estrada, Honoria Estrada de Ticona, Cesar Ticona Olivares, Hugo, Betzy and Rodo Ticona Estrada v. Bolivia
Doc. Type: Judgement (Merits, Reparations and Costs)
Decided by: President: Cecilia Medina-Quiroga;
Vice President: Diego Garcia-Sayan;
Judges: Sergio Garcia Ramirez; Manuel E. Ventura Robles; Leonardo A. Franco; Margarete May Macaulay; Rhadys Abreu-Blondet
Dated: 27 November 2008
Citation: Ticona Estrada v. Bolivia, Judgement (IACtHR, 27 Nov. 2008)
Represented by: APPLICANT: Waldo Albarracin Sanchez
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In the case of Ticona Estrada et al.,

The Inter-American Court of Human Rights (hereinafter, the "Inter-American Court", the "Court" or the "Tribunal"), pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, the "Convention" or the "American Convention") and Articles 29, 31, 53(2), 55, 56 and 58 of the Court's Rules of Procedure (hereinafter, the "Rules of Procedure") delivers this Judgment.

I. INTRODUCTION OF THE CASE AND PURPOSE OF THE APPLICATION

1. On August 8, 2007, the Inter American Commission on Human Rights (hereinafter, the "Commission" or the "Inter-American Commission") filed with the Court, in accordance with Articles 50 and 61 of the American Convention, an application against the Republic of Bolivia (hereinafter, the "State" or "Bolivia"), originating in petition No. 12.527, forwarded to the Secretariat of the Commission on August 9, 2004 by the Ombudsman of Bolivia (hereinafter, the "representative" or the "Ombudsman"). On October 12, 2005, the Commission adopted the Report on Admissibility No. 45/05 [FN1] and the Report on Merits No. 112/06 on October 26, 2006 [FN2], pursuant to the terms of Article 50 of the Convention which contain certain recommendations that, according to the Commission, were not satisfactorily adopted by the State; for this reason, on July 27, 2007, it decided to bring the case to the jurisdiction of the Court. The Commission appointed Florentín Meléndez (Commissioner), and Mr. Santiago A. Canton (Executive-Secretary) as Delegates and Elizabeth Abi- Mershed (Deputy Executive Secretary) and Debora Benchoam, Manuela Cuvi Rodríguez and Silvia Serrano (all of them, lawyers and specialists of the Executive Secretary) as legal advisors.

[FN1] In the Report on Admissibility No. 45/05, the Commission decided to admit the petition No. 712/04 in relation to the rights enshrined in 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.

[FN2] In the Report on the Merits No. 112/06, the Commission concluded that the State violated the rights enshrined in Articles 3 (Right to Juridical Personality), 4 (Right to life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a fair trial) and 25 (Right to Judicial Protection) of the American Convention, as well as the Articles I, III, IV and XI of the Inter-American Convention on Forced Disappearance of Persons, all of them to the detriment of Renato Ticona and Articles 5 (Right to Humane Treatment) and 7 (Right to Personal Liberty) of the Convention to the detriment of Hugo Ticona. Likewise, it concluded that the State violated Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, to the detriment of Renato Ticona's next-of-kin. Lastly, the Commission decided that the State failed to comply with a part of Article 2 (Domestic Legal Effects) and 1(1) (Obligation to Respect Rights) of said treaty.

2. The application refers to the alleged forced disappearance of Renato Ticona Estrada (hereinafter, "Renato Ticona", "Mr. Ticona Estrada" or the "victim") as of July 22, 1980, date on which he and his brother, Hugo Ticona Estrada (hereinafter, "Hugo Ticona" or "Hugo") were detained by an Army patrol in the vicinity of the control gate of Cala-Cala in Oruro, Bolivia; the application also relates to the alleged impunity that surrounded the case for more than 27 years since the occurrence of such event, as well as the long denial of justice experienced by the next-of-kin of Renato Ticona and the alleged lack of reparation of said next-of-kin for the damages caused as a consequence of the lost of a loved one. Moreover, the Commission stated that given the fact that the Court has no jurisdiction *ratione temporis* to hear the illegal and arbitrary detention and the tortures suffered by Hugo Ticona in the year 1980, it did not include the allegation of these violations in the application. Nevertheless, the Commission did include the alleged denial of justice of which Hugo Ticona was an alleged victim as of the date on which the State acknowledged the competence of the Court to hear such violations.

3. In the application, the Commission requested that this Tribunal adjudge and declare that the State violated the rights of Renato Ticona as enshrined in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, as well as Articles I, III and XI of the Inter-American Convention on Forced Disappearance of persons (hereinafter, "IACFDP"). In addition, the Commission requested the Court to declare that Bolivia has violated the rights contained in Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention, to the detriment of the next-of-kin of Renato Ticona; in particular, his parents, María Honoria Estrada Figueroa de Ticona (hereinafter, "Honorio Estrada de Ticona") and César Ticona Olivares, as well as his brothers Hugo Ticona and Rodo Ticona Estrada (hereinafter, "Rodo Ticona") and his sister, Betzy Ticona Estrada (hereinafter, "Betzy Ticona"). The foregoing in relation to the general obligations to respect and ensure the rights contained in Article 1(1) (Obligation to Respect Rights). Furthermore, the Commission considered that the State failed to comply with the duty to adopt domestic legal provisions according to the provisions of Article 2 (Domestic Legal

Effects) of the American Convention, in relation to Articles I and III of the IACFDP. Finally, the Commission requested the Court to order certain measures of reparations.

4. On October 31, 2007, Mr. Waldo Albarracín Sánchez, Ombudsman of Bolivia, acting as representative of the alleged victims' next-of-kin (hereinafter, the "representative") [FN3] filed a brief containing pleadings, motions and evidence (hereinafter, "brief containing pleadings and motions") under the terms of Article 23 of the Rules of Procedure. Regarding the statement of facts, the representative ascribed to the facts mentioned in the Commission's application, though he emphasized and completed some aspects contained in it. Likewise, the representative agreed with the legal arguments expressed in the application and the resulting violations stated therein. Moreover, it concluded that the State has made no effort to locate the remains of Renato Ticona and that it has not conducted a serious and effective investigation in relation to the criminal procedure conducted in order to shed light on the forced disappearance of Renato Ticona. Based on the foregoing, the representative requested the Court to order the State the adoption of certain measures of reparations.

[FN3] The brief of pleadings and motions was also signed by Mr. Guido Ibarguen B., human rights advisor. Nevertheless, on October 29, 2007, Mr. Ibarguen informed that, in the case brought before the Court's attention, he would no longer represent the next-of-kin of Ticona Estrada as from November 1, 2007.

5. On January 29, 2008, the State filed a brief containing the response to the petition and observations to the brief of pleadings and motions (hereinafter, "response to the petition") in which it stated that it fully agreed with the statement of facts expressed by the Commission and the representative. Nevertheless, it further alleged that "it wished to emphasize some of the aspects and add some information to the facts put forward by the Commission" and by the representative. As to the facts, the State acknowledged its international responsibility for the rights contained in Articles 1(1) (Obligation to Respect Rights), 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention and Articles I, III and XI of the IACFDP, to the detriment of Renato Ticona and Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the Convention, in relation to Article 1(1) (Obligation to Respect Rights) of the same treaty, to the detriment of Honoria Estrada de Ticona, César Ticona Olivares, Hugo, Betzy and Rodo Ticona Estrada, all of them mentioned by the Inter-American Commission, with which the Ombudsman agreed. Nevertheless, the State expressed that it did not acquiesce to "the reparations requested by the legal representative of the family" and informed the Court its intention to reach a friendly settlement with the alleged victims in order to solve the case at hand. On November 7, 2007, the State appointed Mr. Martin Callisaya Coaquira, Bolivia Ambassador to Costa Rica, to be the Agent and Mr. Victor Ángel Montecinos Willca, Prime Secretary, as Deputy Agent.

6. On March 25 and 26, 2008, respectively, the representative and the Commission filed the observations to the acknowledgement of international responsibility made by the State.

II. PROCEEDINGS BEFORE THE COURT

7. The Commission's application was notified to the State [FN4] and to the representative on September 28, 2007. During the proceedings before this Tribunal, the President of the Court (hereinafter, the "President") ordered to receive, by means of affidavits [FN5] the testimonies of four people and the expert opinions of three people [FN6] proponent by the Inter-American Commission and the representative, as well as the expert opinion of one person proposed by the representative only; in turn, the parties had the opportunity to present observations thereto. Furthermore, taking into account the special circumstances of the case, the President summoned the Inter-American Commission, the representative and the State to a public hearing in order to hear the statement rendered by one alleged victim. On July 17, 2008, the State filed a brief containing observations to the affidavits presented by the Commission and the representatives and, among other things, objected to the aspects contained therein and requested the Court to order an addendum to said testimonies, sending a questionnaire of ten questions to such end. On July 18, 2008, this Secretariat, following the instructions of the President, requested the Commission and the representative to file observations to such request, which were received on July 25 and 29, 2008, respectively. On August 1, 2008, by means of a communication of the Secretariat, following the instructions of the President, the parties were advised that "once the statements and the expert opinions rendered by means of affidavits are received, they are forwarded to the parties in order for them to present the corresponding observations, preserving, in this way, the right to defend. Said statements are considered documentary evidence. In the instant case, the State exercised said right by means of the observations filed on July 17, 2008". Furthermore, in such communications it was pointed out that "having obtained such statements, which were received at the Secretariat [...] the President deem[ed] the request made by the [...] State to be untimely".

[FN4] When the application was served on the State, the State was informed on the right to appoint a judge ad hoc in order to participate in the consideration of the case. Nevertheless, the State did not make use of such right.

[FN5] Order of the President of June 9, 2008.

[FN6] On June 26, 2008, the representative informed that the expert opinion of Mr. Róger Cortéz Hurtado could not be handed down and waived the right to present such opinion.

8. Said public hearing was held on August 13, 2008 during the XXXV Period of Extraordinary Sessions of the Court in the city of Montevideo, Uruguay [FN7]. To this hearing, there appeared: a) on behalf of the Inter-American Commission: Luz Patricia Mejía, Delegate, and Manuela Cuvi, advisor; b) on behalf of the representatives: Waldo Albarracín Sánchez, Ombudsman of Bolivia, Marcelo Claros Pinilla and Fernando Zambrana Sea, advisors; and c) on behalf of the State: Ambassador Martín Callisaya Coaquira, Agent; Víctor Montecinos, Deputy Agent; Zahir Ferrufino, Chief of the Defense Unit and Internacional Legal Representation; Yovanka Oviden, Minister Advisor, Embassy of Bolivia to Costa Rica; Iván Morales, General Director of Legal Affairs; Ministry of Justice and Human Rights; Luis Rojas, responsible of the International Legal Representation's Division; Mónica Alvarez, Responsible of the Human Rights Division; Fiorella Caldera, Lawyer of the Human Rights Division; Dora Villaroel,

President of the Superior Court of the District of La Paz; Blanca Alarcón, officer of the Third Criminal Chamber of the District of La Paz; and María Eugenia Iriarte, District Prosecutor of the District of La Paz.

[FN7] Order of the Court of August 8, 2008.

9. On September 19, 2008, the Commission and the representatives filed their respective closing arguments. In addition, on September 22, 2008, the State filed the closing arguments and attached several exhibits.

10. On October 1, 2008, the Secretariat, following the instructions of the President and based on Article 45 of the Rules of Procedure, ordered the parties to present certain legislation in order to consider it as evidence to facilitate adjudication of the case and it also ordered the Commission and the representative to present observations to the act of acknowledgment of international responsibility made by the State on September 10, 2008, as mentioned by the State in the closing arguments. On October 17 and 20, 2008, the representative filed the evidence so requested. Moreover, on October 20, 2008, the State filed the legislation requested as evidence to facilitate adjudication of the case. The Commission did not present the requested evidence to facilitate adjudication of the case. On November 5, 12 and 18, 2008 the State forwarded several documents related to the case at hand. On November 12 and 18, 2008 the Commission and the representatives presented briefs related to the instant case.

III. PARTIAL ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

11. In the brief containing the response to the petition, the State acknowledged its responsibility and stated that “as to the facts, the Bolivian State fully ascribed to the arguments put forward by the Commission and [the representative]”.

12. As to the legal arguments, the State mentioned:

The Bolivian State acknowledges its international responsibility regarding the rights contained [in Articles] 1(1), 3, 4, 5, 7, 8 [and] 25 of the [American Convention on Human Rights], I, III [and] XI of the Inter-American Convention on Forced Disappearance of Persons in relation to Renato Ticona Estrada, [and Articles] 5, 8 [and] 25 of the [American Convention on Human Rights,] in conjunction with Article 1(1) therein, in relation to César Ticona Olivares, Honoria Estrada Figueroa, Hugo, Rodo and Betzy Ticona Estrada, all of them mentioned by the Inter-American Commission on Human Rights, with which the Ombudsman agreed.

13. As to the reparations so requested, the State pointed out that “it d[id] not accept the Commission’s application and the brief filed by the victims and next-of-kin regarding the request of reparations filed”.

14. Furthermore, during the public hearing, the State agent repeated that it partially acknowledged its international responsibility and apologized to the next-of-kin of Renato Ticona, under the following terms:

[...] repeated that the Bolivian State accepts its international responsibility and the resulting legal consequences for the violation of the rights enshrined in Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in connection with Article 1(1) (Obligation to Respect Rights) of the American Convention [...] as well as Articles I, III and IX of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Renato Ticona Estrada. Moreover, the violation of Articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) of the American Convention [...] in relation to Article 1(1) therein, to the detriment of César Ticona Olivarez, Honoria Estrada Figueroa, Hugo, Rodo and Betzy Ticona Estrada. In this sense, within the framework of the [...] hearing, in [his] capacity of Agent of the Bolivian State, I am allowed to ratify the acknowledgment of international responsibility made by means of communication of January 28, 2008, as a response to the petition, to apologize to the next- of-kin of Renato Ticona Estrada, beginning with [Hugo Ticona] and represented by the Ombudsman, all of them present at this hearing. Violated rights as from July 22, 1980, date on which Renato Ticona is considered a disappeared person [...].

[...]

In this context, on behalf of the Bolivian State, I apologize for the human rights violations committed against Renato Ticona and the suffering caused to his family and I want you, my dearest brother, Hugo Ticona Estrada, to accept this apology.

15. Without prejudice to the foregoing, the State pointed out in the closing arguments that:

[...] the legal issues asserted by the Ombudsman and the Commission in the hearing held in the city of Montevideo on August 13 [2008] are not part of the acknowledgment of international responsibility, namely: (i) the human rights violations based on alleged tortures that Hugo Ticona Estrada would [have suffered] and (ii) the duty of the Bolivian State to acknowledge responsibility regarding the facts related to [...] tortures that Mr. Hugo Ticona Estrada would have suffered.

16. Finally, as to this aspect, the State further alleged that the arguments expressed by the Ombudsman and the Commission regarding the alleged tortures would jeopardize the principle of legal certainty of the Inter-American system for the protection of human rights, inasmuch as such aspect has not been asserted in the petition filed against the State, therefore the Court would have not subject-matter or *ratione temporis* jurisdiction to rule over this request. To support this position, the State transcribed the assertions made by the Commission as to the alleged tortures that Hugo Ticona would have suffered; such transcriptions are cited in paragraph 2 and 89 of this Judgment. As a consequence, the State understands that the scope of the acknowledgment of international responsibility as to Hugo Ticona regarding Article 5 of the Convention is limited to subsection 5(1) which provides: “[E]very person has the right to have his physical, mental, and moral integrity respected”.

17. Moreover, the State made it clear that in the brief containing the response to the petition of January 29, 2008 it did not include Article 2 (Domestic Legal Effects) of the Convention in the acquiescence made, inasmuch as it considers there has been important legislative progress as to the issue of forced disappearance of persons. According to the State, the crime of forced disappearance of persons is established by the domestic legislation in the present; several important human rights conventions have been ratified and there is a constitutionality bloc in charge of dealing with international human rights treaties, which is binding.

18. Furthermore, the Commission stated that it positively valued the acceptance of the facts made by the State, insofar as it "constitutes a positive contribution to the development of the proceedings and the enforcement of the principles enshrined in the American Convention", which the Commission later on repeated at the public hearing and in the final written arguments. Nevertheless, in said final written arguments, the Commission pointed out that in the application, it did argue the violation of Article 2 of the American Convention and that, despite the fact that the crime of forced disappearance has been established in the Bolivian Criminal Code, the facts of the instant case happened before such criminal classification; therefore the Commission considers that the State failed to comply with the obligation established in said Article by having not adopted the legislative measures necessary to classify such crime, until the year 2006. Moreover, the Commission specified some of the aspects regarding the alleged violations of Articles 8 and 25 of the Convention to the detriment of Hugo Ticona (*infra* para. 90).

19. In addition, the representative expressed its great pleasure as to the acknowledgment of responsibility made by the State regarding the facts and rights denounced before the Inter-American system for the protection of human rights, which it repeated during the public hearing. Nevertheless, the representative pointed out that there are still certain aspects in dispute regarding the compliance with the recommendations made by the Inter-American Commission.

20. Under the provisions of Articles 53(2) and 55 of the Rules of Procedure, in the exercise of its inherent power of international legal protection of human Rights, the Court may determine if an acknowledgment of international responsibility made by a respondent government, offers a sufficient ground in the terms of the American Convention, to continue or not with the determination of the merits, reparations, and costs [FN8].

[FN8] Article 53. Discontinuance of a case.

[...]

2. If the respondent informs the Court of its acquiescence to the claims of the party that has brought the case as well as to the claims of the representatives of the alleged victims, their next of kin or representatives, the Court, after hearing the opinions of the other parties to the case, shall decide whether such acquiescence and its juridical effects are acceptable. In that event, the Court shall determine the appropriate reparations and indemnities.

Article 55. Continuance of a case.

The Court may, notwithstanding the existence of the conditions indicated in the preceding paragraphs, and bearing in mind its responsibility to protect human rights, decide to continue the consideration of a case.

21. In this sense, the Court notes that the expression “whether such acquiescence and its juridical effects are acceptable” as well as the entire text of Article 55 of the Rules of Procedure show that these acts are not, in themselves, binding on the Court. Since proceedings brought before the Court seek the protection of human rights, a matter of international public order which goes beyond the will of the parties, the Court must ensure that such acts are acceptable for the purposes sought by the Inter-American System. In doing so, the Court must not only verify the formal conditions of said acts, but also examine them in relation to the nature and seriousness of the alleged violations, the requirements and interests of justice, the specific circumstances surrounding a particular case, and the attitude and position of the parties [FN9].

[FN9] Cfr. Case of Myrna Mack Chang v. Guatemala. Merits, reparations, and costs. Judgment of November 25, 2003. Series C N° 101, para. 105; Case of the Ituango Massacres v. Colombia. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 1, 2006. Series C N° 148, para. 58; and Case of Kimel v. Argentina. Merits, Reparations, and Costs. Judgment of May 2, 2008. Series C N° 177, para. 24.

22. As to the facts, the Court notes that the State admitted the facts put forward in the application by the Commission. Nevertheless, in the final arguments, the State made it clear that the human rights violations regarding the alleged torture that Hugo Ticona would have suffered or the facts related to that situation fall outside the acknowledgement of international responsibility (supra para. 15). Based on the foregoing, the Court declares that there is no more disputed facts at issue but there is still a controversy regarding the facts related to the alleged torture suffered by Hugo Ticona Estrada (infra para. 93).

23. Regarding the legal claims, the Tribunal declares that there is no controversy as to the violation of Articles 4, 5, 7, 8, 25 and 1(1) of the American Convention and Article 1 of the IACFDP, to the detriment of Renato Ticona, as well as Articles 5, 8, 25 and 1(1) of the Convention, to the detriment of the next-of-kin of Ticona Estrada, namely: Honoria Estrada de Ticona, César Ticona Olivares, Hugo Ticona, Betzy Ticona and Rodo Ticona.

24. By virtue of the above, the Court shall now turn to the corresponding chapter in order to analyze and precise the violations so established. Moreover, it is worth mentioning that although the State acquiesced to the alleged violation of Article 3 of the American Convention, the Court deems it is appropriate to analyze it in the pertinent section of Chapter VI, in the same way that Articles III and XI of the IACFDP are analyzed in Chapters VI and VIII.

25. Besides, the Court considers that there is still a dispute regarding the alleged violation of Articles 8 and 25 of the Convention to the detriment of Hugo Ticona for the alleged denial of justice; therefore, this aspect shall be analyzed in the corresponding section of Chapter VII. There is also a dispute about the alleged violation of Article 2 of the Convention, which shall be examined in another chapter. Lastly, the Court notes that there is still a controversy regarding the determination of the possible reparations; therefore, it shall analyze such aspect in the chapter

corresponding to the measures of reparations appropriate for this case, taking into account the arguments of the parties.

26. The Court further considers that the partial acknowledgment of responsibility made by the State is a valuable contribution to the development of these proceedings, to the fulfillment of the judicial functions of the Inter-American system for the protection of human rights, to the effectiveness of the principles underlying the American Convention, and to the conduct to which States are bound in this regard [FN10], as a result of the commitments undertaken as parties to the international instruments on human rights [FN11]. In turn, it is worth mentioning that in a similar contentious case, already solved by the Court, the State had the same attitude and acknowledged its international responsibility. In this sense, this Tribunal values the attitude of the State for its significance within the framework of the Inter-American system for the protection of human rights.

[FN10] Cf. Case of Trujillo Oroza v. Bolivia. Merits. Judgment of January 26, 2000. Series C N° 64, para. 42; Case of Albán Cornejo et al. v. Ecuador. Merits, reparations, and costs. Judgment of November 22, 2007. Series C N° 171, para. 24; and Case of Kimel v. Argentina, supra note 9, para. 25.

[FN11] Cf. Case of Carpio Nicolle et al. v. Guatemala. Merits, reparations, and costs. Judgment of November 22, 2004. Series C N° 117, para. 84; Case of Albán Cornejo et al. v. Ecuador, supra note 10, para. 24; and Case of Kimel v. Argentina, supra note 9, para. 25.

27. Finally, bearing in mind the powers vested in the Court as an international body for the protection of human rights, it deems it necessary to render judgment adjudicating on the issues of fact and the merits of the case and the effects thereof, as a way of contributing to reparation the damage inflicted upon the next-of-kin of Renato Ticona, to prevent that similar facts may happen again in the future, and in sum, to meet the aims of the Inter-American system for the protection of human rights [FN12]. Without prejudice to the effects of the partial acquiescence made by the State, the Court considers it is necessary to analyze the facts of the instant case and made some clarifications regarding the way in which the committed violations were set forth in the context and circumstances of the case, as well as certain aspects related to the obligations established in the American Convention and other international treaties; to such end, this Tribunal shall open the corresponding chapters.

[FN12] Cf. Case of the Mapiripán Massacre v. Colombia. Merits, reparations, and costs. Judgment of September 15, 2005. Series C N° 134, para. 69; Case of Albán Cornejo et al. v. Ecuador, supra note 10, para. 25; and Case of Kimel v. Argentina, supra note 9, para. 28.

IV. COMPETENCE

28. The Court has jurisdiction over this case, under the terms of Articles 62(3) and 63(1) of the American Convention, given the fact that Bolivia has been a State Party to the Convention

since July 19, 1979 and has accepted the binding jurisdiction of the Court on July 27, 1993. The State ratified the Inter-American Convention on Forced Disappearance of Persons on May 5, 1999, which entered into force on June 5, 1999.

29. This Tribunal has considered in previous cases that it has jurisdiction *ratione temporis* to examine actions and omissions associated with on-going or lasting violations if such actions begin prior to the date of recognition of the jurisdiction of the Court and persist even after that date, without transgressing the principle of non-retroactivity [FN13].

[FN13] Cf. Case of Blake v. Guatemala. Preliminary Objections. Judgment of July 2, 1996. Series C N° 27, para 39 and 40; Case of Nogueira de Carvalho et al. v. Brazil. Preliminary Objections and Merits. Judgment of November 28, 2006. Series C N° 161 para. 45; and Case of Heliodoro Portugal v. Panamá. Preliminary Objections, Merits, reparations, and costs. Judgment of August 12, 2008. Series C N° 186, para. 25.

30. Furthermore, even though the State recognized the contentious jurisdiction of the Court on July 27, 1993, taking into account that the State expressly acknowledged the events that occurred as from July 22, 1980, the Tribunal considers that Bolivia has waived its right to claim any temporary limitation to the exercise of the Court's jurisdiction and, therefore, it has recognized the Court's contentious jurisdiction so that such Tribunal may examine all the facts and decide on the resulting violations, if any, in the case at hand.

V. EVIDENCE

31. Based on the provisions of Articles 44 and 45 of the Rules of Procedure, as well as on the Court's case-law regarding evidence and the assessment thereof [FN14], the Court shall examine and assess the documentary evidence forwarded by the Commission, the representative and the State at the different procedural stages or as evidence to facilitate the adjudication of the case requested by the President, as well as the testimonial evidence, written expert opinions and the testimony rendered at the public hearing, on the basis of sound judgment, within the applicable legal framework. [FN15]

[FN14] Cf. Case of Baena Ricardo et al. v. Panamá. Merits, reparations, and costs. Judgment of February 2, 2001. Series C N° 72, para. 68; Case of Yvon Neptune v. Haití. Merits, reparations, and costs. Judgment of May 6, 2008. Series C N° 180 para. 22; and Case of Heliodoro Portugal v. Panamá, *supra* note 13, para 64.

[FN15] Cf. Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 25, 2001. Series C N° 76 para. 76; Case of Yvon Neptune v. Haití, *supra* note 14, para 22; and Case of Heliodoro Portugal v. Panamá, *supra* note 13, para. 64.

A) Documentary and Testimonial Evidence

32. The Court, following the decision of the President, received the written statements of the following persons:

- a) Honoria Estrada de Ticona, alleged victim and witness proposed by the Commission and the representative; mother of Renato Ticona. He rendered a statement regarding the forced disappearance of his son, the steps taken to locate him and the situation of the family after the disappearance.
- b) Cesar Ticona Olivares, alleged victim and witness proposed by the Commission and the representative; father of Renato Ticona. He rendered a statement regarding the forced disappearance of his son, the steps taken to locate him and the situation of the family after the disappearance.
- c) Rodo Ticona Estrada, alleged victim and witness proposed by the Commission and the representative; brother of Renato Ticona. He rendered a statement regarding the forced disappearance of his brother; the steps taken to locate him and the situation of the family after he disappeared.
- d) Betzy Ticona Estrada, alleged victim and witness proposed by the Commission and the representative; sister of Renato Ticona. She rendered a statement regarding the forced disappearance of her brother; the steps taken to locate him and the situation of the family after he disappeared.
- e) Andrés Guatire Hirsch and Zulema Callejas Guzmán, expert witnesses proposed by the Commission and the representative. They rendered an opinion regarding the damage caused to the next-of-kin of Renato Ticona Estrada, as a consequence of his forced disappearance, the steps taken to locate him and the situation of the family after his disappearance.
- f) Ana María Romero del Campero, expert witness proposed by the Commission and the representative. She rendered an opinion regarding the context of human rights violations during the period that Renato Ticona Estrada disappeared and the lack of judicial investigation in cases similar to the instant case.
- g) Rosario Baptista Canedo, expert witness proposed by the representative. She rendered an opinion regarding the development of the judicial proceeding initiated by the National Commission on Forced Disappeared; the analysis is based on two periods between 1983 and 1986 and 2005 until March, 2007.

33. Furthermore, at the public hearing, the Court heard the statement made by Hugo Ticona Estrada, alleged victim and brother of Renato Ticona. He rendered a statement regarding the forced disappearance of his brother, the steps taken to locate him and the situation of the family after he disappeared, for which he made a detailed description of the economic, financial and physical impairments he went through as of the disappearance of Renato. Moreover, he referred to the lack of measures of reparations at the domestic level.

B) Evidence Assessment

34. In the case at hand, as in many other cases [FN16], the Court admits the evidentiary value of such documents forwarded by the parties in the procedural stage that have not been disputed nor challenged, or its authenticity questioned. In relation to the documents forwarded as evidence to facilitate the adjudication of the case (supra, para. 10), the Court admits them into the body of evidence, pursuant to the provisions of Article 45(2) of the Rules of Procedure.

[FN16] Cf. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C N° 4 para. 140; Case of Heliodoro Portugal v. Panamá, supra note 13, para. 27; and Case of Bayarri v. Argentina. Preliminary Objections, Merits, reparations, and costs. Judgment of October 30, 2008. Series C N° 187, para. 35.

35. Furthermore, the Tribunal admits the documents furnished by the representative together with the brief containing observations to the acquiescence and the documents furnished by the State during the public hearing, since it deems they are useful for the resolution of the instant case and have not been challenged nor its authenticity questioned.

36. As to the additional documents forwarded by the State together with the final written arguments, that is, the documents presented by the State on November 5, 12 and 18, 2008, as well as the briefs presented by the representatives and the Commission on November 12 and 18, 2008, the Tribunal admits them since it considers they could be useful for the instant case.

37. In relation to the statements rendered by Honoria Estrada de Ticona (supra para. 32(a)), César Ticona Olivares (supra para. 32(b)), Rodo Ticona (supra para. 32(c)), and Betzy Ticona (supra para. 32(d)), about which the State made some objections to the questions and answers "since they refer to the investigations in relation to the torture of Hugo Ticona Estrada due to the fact that the State does not consider them relevant for the purpose of the proceeding", the Court shall determine in the corresponding section of Chapter VII whether the investigations conducted as a result of the alleged torture of Hugo Ticona become part of this proceeding and, if applicable, shall assess said testimonies on the basis of sound judgment, as long as they adjust to the purpose defined in the Order of the President of June 9, 2008 (supra note 5). Furthermore, this Tribunal notes that the testimonial statements must be assessed together with all the evidence in the case and not in isolation, since the victims or their next-of kin have a direct interest in the case. [FN17].

[FN17] Cf. Case of Loayza Tamayo v. Perú. Merits. Judgment of September 17, 1997. Series C. N° 33, para. 43; Case of Castañeda Gutman v. México. Preliminary Objections, Merits, reparations, and costs. Judgment of August 6, 2008. Series C N° 184, para. 72; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 68.

38. Regarding the expert opinion jointly rendered by Andrés Guatire Hirsch and Zulema Callejas Guzmán (supra para. 32(e)) and the expert opinion rendered by Rosario Baptista Canedo (supra para. 32(g)), the State challenged them upon considering that said testimonial evidence was "introduced outside the procedure", given the fact that such opinions were rendered prior to the filing of the Commission's petition and before the issuance of the Order of the President. This Court verifies that the expert opinions were rendered in March, 2007, from which it can be deduced that, in fact, they were rendered prior to the Order of the President that so required them. This Tribunal notes that said expert opinions were presented to the Inter-American Commission during the proceedings brought before it and that the Commission attached them to

the application. Based on the foregoing, pursuant to Article 44(2) of the Rules of Procedure, the Court admits the previously mentioned expert opinions, which it shall assess on the basis of the body of evidence and sound judgment.

39. Moreover, the State also challenged the expert opinion rendered by Rosario Baptista Canedo since “it lacks from the objectivity typical of a procedural and technical expert report, due to the fact that far from doing an analysis of the [thirteen] volumes that form part of the case file [...], she only briefly analyzes the first [four] volumes of the case file”, resulting thereby incomplete. Regarding the argument of the State, this Court has verified that said expert opinion is incomplete, as mentioned by the State, since it does not cover the entire case file. Nevertheless, that argument is not a sufficient ground to suppress this evidence for that it shall be assessed in the corresponding section.

40. As to the expert opinion rendered by Ana María Romero del Campero (supra para. 32(f)), which has not been challenged by the State, the Court admits it taking into account the purpose of said expert opinion established by the Order of the President of June 9, 2008 and shall assess it on the basis of the body of evidence and sound judgment.

41. As to the testimony rendered by Hugo Ticona (supra para. 33), which has not been challenged by the State, this Tribunal considers it is relevant inasmuch as it adjusts to the purpose defined by the Order of the President, by means of which such evidence was requested (supra note 5) and it also points out that it must be assessed together with all the evidence and not in isolation, since the deponent has a direct interest in the case. [FN18]

[FN18] Cf. Case of Loayza Tamayo v. Perú, supra note 17, para. 43; Case of Heliodoro Portugal v. Panamá, supra note 13, para. 68; and Case of Bayarri v. Argentina, supra note 16, para. 49.

42. As to the press releases submitted by the Commission, the representative and the State, this Tribunal has considered that such documentation could be assessed whenever they relate to notorious and public acts or statements made by State's officers or when they bear out some aspects related to the case. [FN19]

[FN19] Cf. Case of Velásquez Rodríguez, supra note 16, para. 146; Case of Heliodoro Portugal v. Panamá, supra note 13, para. 79; and Case of Bayarri v. Argentina, supra note 16, para. 38.

43. As the evidentiary items incorporated into the body of evidence of the instant case that have been assessed, the Court shall now proceed to analyze the alleged violations considering the facts already acknowledged and those which may come to be proven, [FN20] included in each chapter as pertinent. Likewise, the Court shall consider the parties' arguments it deems relevant, taking into consideration the acceptance of facts and acquiescence to the claims made by the State.

[FN20] This Judgment refers to facts that this Tribunal considers proven taking into account the State's acceptance of facts. Some of these facts have been completed with evidentiary items or they are supervening facts, in which case there appear the corresponding notes at the footnotes.

VI. ARTICLE 3 (RIGHT TO JURIDICAL PERSONALITY), [FN21] 4 (RIGHT TO LIFE), [FN22] 5 (RIGHT TO HUMANE TREATMENT), [FN23] AND 7 (RIGHT TO PERSONAL LIBERTY) [FN24] OF THE AMERICAN CONVENTION ON HUMAN RIGHTS, IN RELATION TO ARTICLES 1(1) THEREIN, AS WELL AS ARTICLES I [FN25] AND XI [FN26] OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS

[FN21] Article 3

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

[FN22] Article 4

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

[FN23] Article 5

Every person has the right to have his physical, mental and moral integrity respected.

No one shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. All persons deprived of their lives shall be treated with respect for the inherent dignity of the human person.

[FN24] Article 7

Every person has the right to personal liberty and security

[FN25] Article I.

The State Parties to this Convention undertake:

a. Not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees;

[FN26] Article XI. Every person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law.

The States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.

44. In this chapter, the Court shall analyze the violation of the human rights enshrined in the American Convention, as well as the alleged non-compliance with IACFDP. In this sense, the Tribunal shall explain the context in which the facts of the instant case occurred, as well as those facts that constituted the forced disappearance of Renato Ticona, and then it shall specifically analyze the corresponding Articles.

A) Context and forced disappearance of Renato Ticona

45. The State has acknowledged that in 1980 the democratic process that it was being instituted in Bolivia, was interrupted by a coup d' etat led by General Luis García Meza, who established a regime of repression, in which military forces and premilitary groups committed serious violations of human rights within a framework of impunity that benefited the systematic practice of illegal detentions, tortures and forced disappearance of people.

46. On July 17, 1980, the Presidential Palace was taken by the military forces and the acting Constitutional President, Mrs. Lidia Gueiler, was obliged to resign from office. The headquarters of the Bolivian Workers' Federation, where CONADE [National Committee for the Defense of Democracy] had regular meetings, was attacked and its leaders "imprisoned". The Socialist Party's presidential candidate, Marcelo Quiroga Santa Cruz, was executed at the hands of government agents and "[t]he communication media [were] taken over, looted, and in some cases, destroyed and completely controlled". The political organization of the State was substantially modified in the hands of the Armed Forces through the Governing Junta that assumed the functions of the executive, legislative and judicial powers and also exercised the constituent power.

47. During the dictatorship of Luis García Meza, a policy of intimidation, harassment and extermination was implemented against members of the Revolutionary Leftist Movement [MIR] and any group of persons, political or union organization that could constitute opposition, albeit peaceful, to the purposes of the Military Junta. The security forces and the paramilitary groups acting on instructions from and in the charge of the Ministry of the Interior committed serious human rights violations in an environment surrounded by impunity on the part of State authorities.

48. In this context, thousand of persons were detained without respecting the requirements of the Constitution and a regular practice of unlawful duress and tortures was developed, especially during interrogation. The following were the principal methods used to conduct interrogations: blindfolded prisoners are beaten; electric shocks; intimidation of the prisoner or members of his family; mock executions; cigarette burns; psychological duress and sexual abuse. These abuses have occurred, among other places, in the facilities of the Army Intelligence Services (Miraflores headquarters); at the headquarters of the Division of Political Order (DOP) and in offices of the Ministry of the Interior.

49. After the return to democracy in 1982, it was agreed by consent to investigate the crimes committed during the de- facto government of General Luis García Meza. The investigations conducted made it possible for the National Congress to bring charges against him before the Supreme Court of Justice on February 25, 1986. The Supreme Court found General Luis Garcia Meza, Colonel Luis Arce Gómez and their collaborators responsible for the commission of eight groups of crimes: Sedition and restriction on the rights of the people; armed upbringing; organization of irregular armed groups; adoption of orders against the Constitution and law; deprivation of liberty; attempt against the right to freedom of the press; illegal advantages and violation of the autonomy of the University. The condemnatory judgment established that the actions done during the de-facto regime were "prepared and planned acts". In said judgment, Renato Ticona Estrada is mentioned in the partial list of disappeared people. [FN27]

[FN27] Cf. Judgment delivered by the Supreme Court of Justice in the trials of responsibility initiated by the Office of the Public Prosecutor and collaborating parties against Luis García Meza and his cohorts, of April 21, 1993 - Sucre, Bolivia (Appendices to the answer of the complaint, Appendix 3, Volume 4, p. 2853)

Forced disappearance of Renato Ticona

50. Renato Ticona was born on November 12, 1954 in Sacaca, Potosí (Bolivia) and at the moment of his disappearance, he was 25 years old. [FN28] He had a Diploma in Humanities issued by the Technical University of Oruro, Bolivia and he worked as a music teacher in Escuela Mariano Baptista. [FN29] Furthermore, he was attending the seventh semester of Agricultural Engineering at the School of Agricultural and Livestock Sciences of the Technical University of Oruro. [FN30]

[FN28] Cf. Birth certificate of Renato Ticona Estrada issued on April 6, 2002 by the National Electoral Court, Civil Registry, Bolivia (appendices to the application, appendix 3, volume I, p. 959).

[FN29] Cf. Certification of Escuela Mariano Baptista, rendering of services in the field of Education of the Basic course, of May 30, 1978 (Appendices to the brief of requests and motions, Appendix 10, p. 1833).

[FN30] Cf. Certificate UTO.FCAP.CERT N° 042/04 of January 23, 2004, issued by the School of Agricultural and Livestock Sciences of the Technical University of Oruro (Appendices to the brief of requests and motions, Appendix 15, p. 1843).

51. The State has acknowledged that the night of July 22, 1980, Renato Ticona and his oldest brother, Hugo Ticona, were detained by a military patrol, in the vicinity of a control gate of Cala-Cala, Oruro, while they were heading to Sacaca, Potosí, to visit their sick grandfather. Afterwards, state agents strip them off of their belongings, beat them and torture them. At the moment of the detention, Ticona's brothers were not informed of the charges brought against them nor were they brought before the competent judicial authority. After being hardly beaten for several hours, the state agents transferred them to a military post in Vinto, from where they were taken to the offices of the Special Security Service [SES], also known as the Division of Public Order (hereinafter, "DOP") and handed over to the chief of that unit. That was the last time that Hugo Ticona or any other next-of-kin heard from Renato Ticona's whereabouts. Some of the detainees at the DOP's cells, in Oruro, are witnesses of the fact that Ticona Estrada's brothers were deprived of liberty in said place. On April 15, 2004, Luis García Meza acknowledged, in an interview conducted by Radio Panamericana, that the personnel under his command was responsible for the detention of Ticona's brothers and subsequent disappearance of Renato Ticona.

52. When they heard about the detention of their sons, the parents of Ticona Estrada's brothers turned to several authorities and state institutions [FN31] to learn about the whereabouts

of them, without obtaining any answer. Thanks to the information provided by a social worker, the next-of-kin heard that Hugo Ticona was badly injured and that state agents transferred him to the clinic URME in a deplorable physical condition, as a consequence of the torture he had suffered. Afterwards, he was taken to the military hospital of COSSMIL in the city of La Paz, where he was held incomunicado for two weeks. He was then transferred to the DOP of La Paz until September 12, 1980 when he saw his parents one more time and then, they took him to Conija, Department of Pando, where he spent the night. Finally, he was then transferred to Puerto Cavinás, Department of Beni, where he was imprisoned in a barracks with the possibility of getting out once a week under supervision, until November 4, 1980, date on which he was released.

[FN31] The Commission pointed out in the application some of the legal actions carried out: a) On July 25, 1980, the next-of-kin turned to the Prefecture of Police to learn about the whereabouts of his son, without obtaining any answer; b) on August 30, 1980, the parents of Renato Ticona sent a note to Colonel Hernán Ferrel Lobo, Commander of the First Army Corp, requesting information on their children; c) Rodo Ticona, eldest brother of Hugo Ticona, went to the clinic called URME, passing himself off as somebody else since entrance was prohibited, and in there he saw his brother, Hugo, from a distance but he could not talk to him; d) the next-of-kin of Renato Ticona turned to the Military Unit N° 2, of Oruro, to file briefs with the Prefect without obtaining any answer regarding the whereabouts of Renato; e) in December, 1980, the parents of Renato Ticona went to the city of La Paz after hearing a rumour, according to which his son, Renato, was paralyzed at the Joint Chiefs of Staff. Due to the lack of answer, on January 22, 1981, the parents of Renato Ticona headed to the city of La Paz to have an interview with the Undersecretary of the Ministry of Foreign Affairs and Worship to investigate his son's whereabouts and to present a brief mentioning the absolute secrecy surrounding this matter on the part of the authorities of Oruro and La Paz, despite the collaboration of the International Red Cross, the Church, among others; f) since Renato Ticona remained disappeared, his next-of-kin and the Episcopal Commission made "several trips" to meet the Undersecretary of the Ministry of Foreign Affairs and Worship, without obtaining any answer; g) on July 24, 1981, they met with the President of the Republic, General Luis García Meza Tejada in order to initiate an investigation on the disappearance of their son, Renato; h) on August 25, 1981 they filed a complaint for the disappearance of Renato with the Commanders Junta; i) on December 27, 1982, they requested the Prefect of Oruro to conduct an investigation on the disappearance of their son; j) on October 28, 1983, the parents of Renato Ticona requested the General Officer of the Armed Forces to shed light on the disappearance of their son. Furthermore, they pointed out that semi-official sources knew that their son was in bad shape, in a security house or military property; k) on July 28, 1984, the parents of Renato Ticona asked the Ministry of Interior, Migration and Justice, to shed light on the disappearance of Renato Ticona; l) On May 16, 1986, the Local University Federation of Oruro requested the Commander in Chief of the Armed Forces to speed up the investigation and the delivery of the mortal remains of Renato Ticona; m) on November 19, 1986, the next-of-kin of Renato Ticona appeared at the offices of the Commander in Chief of the Army to learn about the whereabouts of their son. In this place, a Captain advised them to communicate with a Colonel who would know about the final destination of their son; but when they met him, that person told them he had nothing to do with the disappearance of their son and identified the people who were, at that moment, at the

regiment. Moreover, said Colonel stated that he did not appear before the justice because of distrust; however, he was one of the military and police officers who were notified by citation of the criminal procedure for the crimes committed against Renato Ticona; n) on September 3, 1997, the national member of the Parliament, Raúl Araoz Velasco requested information from the Ministry of Government regarding the forced disappearance of Renato Ticona Estrada and the progress of the investigations; o) on January 26, 2003, Hugo Ticona requested the Human Rights Commission of the Parliament to order the continuation of the investigation on the forced disappearance of his brother and p) as of the disappearance of Renato Ticona, his parents have been interviewed by the press; on such occasions, they denounced the lack of answer from the State regarding the forced disappearance of their son.

53. More than 28 years have passed since Renato Ticona is disappeared, and his whereabouts or the location of his remains is still unknown. [FN32]

[FN32] Cf. Judgment of January 8, 2008 delivered by the Third Magistrate's Court on Criminal Matters for the Judicial District of La Paz (Appendices to the response to the petition, Appendix 3, Volume 12, p. 4716 to 4737).

B) Details regarding Articles 3, 4, 5 and 7 of the American Convention, in relation to Article 1(1) therein and Articles I and XI of the IACFDP.

54. The Court has indicated that for the analysis of an alleged forced disappearance, the continuous and multiple-offense nature of the disappearance itself should be taken into account, [FN33] which are reflected in the IACFDP that provides that “ forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees [;] This offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined”.

[FN33] Cf. Case of the Serrano Cruz Sisters v. El Salvador. Preliminary Objections. Judgment of November 23, 2004. Series C N°. 118, para. 100; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 112.

55. Furthermore, the Court has noted that other international treaties [FN34] consider that the following cumulative and concurring elements constitute forced disappearance: a) the deprivation of liberty against the will of the person concerned; b) involvement of governmental officials, at least directly or by acquiescence, and c) refusal to disclose the fate and whereabouts of the person concerned. [FN35]

[FN34] Cf. United Nations Economic and Social Council, Report of the Working Group on Enforced or Involuntary Disappearances, General Observations to Article 4 of the Declaration on the Protection of all Persons from Enforced Disappearance, of January 15, 1996 4/1996/38), para. 55 and International Convention for the Protection of all Persons against Enforced Disappearances. United Nations. Art.2.

[FN35] Cf. Case of Gómez Palomino v. Perú. Merits, reparations, and costs. Judgment of November 22, 2005. Series C N° 136, para. 97; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 110.

56. The Tribunal has observed that “the forced disappearance constitutes a violation of different legal interests that continues in time depending on the perpetrators’ will who, by refusing to offer information on the victim’s whereabouts, keep committing that violation at every moment. Therefore, when analyzing a case of forced disappearance, it should be noted that the deprivation of liberty must only be understood as the constitution of a complex violation that continues in time until the fate and whereabouts of the alleged victim is known. Based on the foregoing, it is necessary then to consider in full the forced disappearance as an autonomous and continuous or permanent crime, with multiple and intricately interconnected elements. As a consequence, the analysis of a possible forced disappearance should not be approached in an isolated, divided and segmented way, based only on the detention or possible torture or risk to lose one’s life, but on the set of facts presented in the case brought to the Court’s attention, taking into account the case-law of the Tribunal regarding the interpretation of the American Convention, as well as the Inter-American Convention on Forced Disappearance of Persons for those State Parties that ratified such treaty.” [FN36]

[FN36] Cf. Case of Heliodoro Portugal v. Panamá, supra note 13, para. 112.

57. Article 7 of the American Convention establishes that every person has the right to personal liberty. In this sense, the Court has repeated that a restriction to this right must be carried out only due to the causes and the conditions previously established by the Political Constitutions or by the laws enacted pursuant to them (material aspect), as well as strictly subject to the procedures objectively defined in the same (formal aspect).” [FN37]

[FN37] Cf. Case of Gangaram Panday v. Surinam. Merits, reparations, and costs. Judgment of January 21, 1994. Series C N° 16, para. 47; Case of García Asto and Ramirez Rojas v. Perú. Preliminary Objections, Merits, reparations, and costs. Judgment of November 25, 2005. Series C N° 137 para. 105; and Case of Servellón García et al. v. Honduras. Merits, reparations, and costs. Judgment of September 21, 2006. Series C N° 152, para. 89.

58. Regarding Article 5 of the Convention, this Tribunal has mentioned that forced disappearance violates the right to humane treatment since “the mere subjection of an individual to prolonged isolation and deprivation of communication is in itself cruel and inhuman treatment [...] incompatible with paragraphs 1 and 2 of said Article.” [FN38] It is clear that in the case of a forced disappearance, the victim’s personal integrity is affected in all its dimensions.

[FN38] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 16, para. 156 and 187; Case of Miguel Castro Castro Prison v. Perú. Merits, reparations, and costs. Judgment of November 25, 2006. Series C Nº 160, para. 323; and Case of Chaparro Alvarez and Lapo Iñiguez v. Ecuador. Preliminary Objections, Merits, reparations, and costs. Judgment of November 21, 2007. Series C Nº. 170, para. 171.

59. Furthermore, the Court has considered that the practice of forced disappearance has often involved secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. [FN39] Furthermore, the Tribunal has held that subjecting a person to official, repressive bodies that practice torture and assassination with impunity is itself a breach of the duty to prevent violations of the rights to life and physical integrity of the person, even if that particular person is not tortured or assassinated, or if those facts cannot be proven in a concrete case. [FN40]

[FN39] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 16, para. 157; Case of the 19 Tradesmen v. Colombia. Merits, reparations, and costs. Judgment of July 5, 2004. Series C Nº. 109, para. 154; and Case of Gómez Palomino v. Perú, supra note 35, para. 103.
[FN40] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 16, para. 175.

60. Moreover, the Court observes that because of the same nature of the forced disappearance, the victim is seriously vulnerable and in that condition, the risk of having other rights violated appears, for example, the right to life as enshrined in Article 4 of the Convention. This situation is emphasized when dealing with a systematic pattern of human rights violations. In addition, the Court has established that the failure to investigate the facts is a violation of the legal duty under Article 1(1) of the Convention to ensure the rights recognized by Article 4(1) therein, which is the duty is to ensure every person subject to its jurisdiction the inviolability of the right to life and the right not to have one's life taken arbitrarily, which comprises the reasonable prevention of situations that could result in the violation of that right. [FN41]

[FN41] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 16, para. 188 and Case of Godínez Cruz v. Honduras. Merits. Judgment of January 20, 1989. Series C Nº. 5, para. 198.

61. In the instant case, Renato Ticona was illegally detained by state agents, and until now, there is no information regarding his fate and whereabouts. In this sense, the Court finds that the

State is responsible for the violation of the right to personal liberty enshrined in Article 7 of the American Convention, in conjunction with Article 1(1) therein, to the detriment of Renato Ticona Estrada, which constitutes an ongoing violation with legal consequences that extend until the present date.

62. Furthermore, taking into account the acceptance of the facts and the acquiescence of the State, the context of the instant case, the nature of the elements of forced disappearance and the impairment to the physical, mental and moral integrity of Renato Ticona (supra para. 23, 51 and 58) the Court considers that the State is responsible for the violation of the right to humane treatment enshrined in Article 5(1) and 5(2) of the American Convention, in conjunction with Article 1(1) therein, to the detriment of Renato Ticona Estrada.

63. Likewise, this Court deems that the forced disappearance of Renato Ticona Estrada has represented a risk in his life, situation that became more serious due to the systematic pattern of human rights violations that existed in Bolivia at the time of the events, which has been acknowledged by the State in the instant case. As a result, this Tribunal considers that the State is responsible for the violation of such right as enshrined in Article 4(1) of the Convention, in relation to Article 1(1) therein, to the detriment of Renato Ticona Estrada.

64. In addition, the Commission as well as the representative alleged the non-compliance of Articles I and XI of the IACFDP and the State acknowledged its international responsibility for that fact.

65. Article I.a) of the IACFDP provides that State Parties undertake not to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees. In this sense and in view of the acquiescence made by the State, as well as the permanent nature of the forced disappearance, the Court finds that the State has failed to comply with the obligation established in said Article of the IACFDP, which entered into force on June 5, 1999, since the forced disappearance of Renato Ticona persists until now.

66. Article XI of the IACFDP establishes the obligation of State Parties to held every person deprived of liberty in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law. Furthermore, it declares that States Parties shall establish and maintain official up-to-date registries of their detainees and, in accordance with their domestic law, shall make them available to relatives, judges, attorneys, any other person having a legitimate interest, and other authorities.

67. The forced disappearance of people is made up of certain elements (supra para. 55) which form part of an ongoing violation. When analyzing Article XI of the IACFDP, this Court deems that the State's duty to held detainees in an officially recognized place of detention does not constitute an element of forced disappearance, but a guarantee for such person deprived of liberty to have his human rights respected under such circumstances. By virtue of said distinction, this Court considers that the guarantee established in said Article, inasmuch as it is not an element of forced disappearance of persons, does not share the characteristic of being a continuous violation and therefore, it must be understood that said obligation, according to the

IACFDP, exists since that treaty entered into force on June 5, 1999. As a consequence, this Tribunal concludes that the State did not fail to comply with Article XI of the IACFDP.

Recognition of Juridical Personality

68. In relation to Article 3 (Recognition of Juridical Personality) of the Convention, the Commission requested the Court to declare the violation of such right upon considering that the purpose of those who carried out the forced disappearance of Renato Ticona was to act outside the law, hiding all the evidence related to the crimes and escaping from being punished. Moreover, it pointed out that as a result of the disappearance of Renato Ticona, a legal limbo occurred that was formalized through the state refusal to acknowledge that Mr. Ticona Estrada was in their power and the contradictory information regarding his fate. The foregoing prevented Mr. Ticona Estrada or his relatives from exercising their rights, apart from keeping the latter uninformed regarding his fate or whereabouts. The Commission emphasized that “for Renato Ticona Estrada, the disappearance resulted in the denial of the exercise of the rights every human being has by suppressing the due protection and denying the recognition as a person before the law”. The representative agreed with the argument of the Commission and the State acquiesced to such claims.

69. As the Court has observed, the Inter-American Convention on Forced Disappearance of Persons does not expressly refer to the juridical personality among the elements that typify the complex crime of forced disappearance of persons. [FN42] Furthermore, the Tribunal has indicated that said right has its own juridical content, that is, the right every person has to be recognized everywhere as a person having rights and obligations, [FN43] in this regard, the violation of this recognition presumes an absolute disavowal of the possibility of being a holder of such rights and obligations. [FN44] Based on the foregoing, in exercise of the power vested in it by Article 53(2) of the Rules of Procedure, the Court considers that in the instant case, there is no fact leading to conclude that the State has violated Article 3 of the American Convention.

[FN42] Cf. Case of *Bámaca Velásquez v. Guatemala*. Merits. Judgment of November 25, 2000. Series C N° 70, para. 180.

[FN43] Cf. Case of *Bámaca Velásquez v. Guatemala*. Merits, supra note 42, para. 12 and 179; Case of the *Girls Yean and Bosico*. Judgment of September 8, 2005. Series C N° 130, para. 176; and Case of *La Cantuta v. Perú*. Merits, reparations, and costs. . Judgment of November 29, 2006. Series C N° 173, para. 120.

[FN44] Cf. Case of *Bámaca Velásquez*, supra note 42, para. 179; Case of *La Cantuta*, supra note 43, para. 120; and Case of *Sawhoyamaxa Indigenous Community v. Paraguay*. Merits, reparations, and costs. Judgment of March 29, 2006. Series C N° 146, para. 188.

70. For the reasons exposed and based on the confession of facts and acquiescence made by the State, the Court considers that Bolivia is responsible for the violation of the rights enshrined in Articles 4(1), 5(1) and 5(2) and 7 of the American Convention, in conjunction with Article

1(1) therein, to the detriment of Renato Ticona Estrada. Moreover, this Tribunal concludes that the State is responsible for the non-compliance of Article I(a)) of the IACFDP.

71. In addition, the Court does not find the State responsible for the violation of Article 3 of the American Convention neither for the non-compliance of Article XI of the IACFDP.

VII. ARTICLES 8 (RIGHT TO A FAIR TRIAL), [FN45] 25 (RIGHT TO JUDICIAL PROTECTION) [FN46] AND 5 (RIGHT TO HUMANE TREATMENT) [FN47] OF THE AMERICAN CONVENTION, IN CONJUNCTION WITH ARTICLE 1(1) THEREIN, AS WELL AS ARTICLE I [FN48] OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PEOPLE

[FN45] Article 8

Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

[FN46] Article 25

Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.

[FN47] Article 5, supra note 23.

[FN48] Article I.

The State Parties to this Convention undertake:

[...]

To punish within their jurisdiction, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories.

[...]

72. Following, it should be mentioned some of the facts already established and proven related to the criminal procedure initiated to investigate the forced disappearance of Renato Ticona that the Court considers it is appropriate to highlight.

73. The relatives of Renato Ticona took several steps during the criminal procedure (supra para. 52), for example, Honoria Estrada de Ticona, César Ticona Olivares and Hugo Ticona rendered statements before the National Commission of Investigation of Disappeared Citizens [FN49] on March 21 and 25, 1983 and April 5, 1983, respectively. [FN50]

[FN49] On October 28, 1982, the State passed the Supreme Decree N° 19.441, by means of which the National Commission of Investigation of Disappeared Citizens was created (appendices to the response of the petition, Appendix 3, V. I, p. 1958 to 1960). Said Commission was created to analyze, investigate and determine the situation of disappeared citizens in Bolivia.

Furthermore, every citizen who felt compromised by the disappearance of relatives, acquaintances or citizens, could turn to such commission in order to file a complaint, which would be summarily investigated.

[FN50] Cf. Statement of Honoria Ticona de Estrada and César Ticona Olivares rendered on March 21 and 25, 1983 before the National Commission of Investigation of Disappeared Citizens (appendices to the response of the petition, Appendix 3, V. I, p. 1901 to 1902 and 1910 to 1913) and Statement rendered by Hugo Ticona Estrada on April 5, 1983 before the National Commission of Investigation of Disappeared Citizens (appendices to the response of the petition, Appendix 3, V.I, p. 1901 to 1902).

74. On April 7, 1983, the National Commission of Investigation of Disappeared Citizens filed a complaint regarding the forced disappearance of Renato Ticona, and requested the investigation of the offenses defined in Articles 252 (murder), 292 (deprivation of liberty), 293 (threats), 334 (abduction) of the Criminal Code in force at that moment, since the crime of forced disappearance was not established by law. The criminal procedure was initiated on April 7, 1983 and on June 4, 1983, the Third Magistrate's Court on criminal matters in and for La Paz ordered the summary criminal investigation of the four alleged responsible for the crimes before mentioned. On February 28, 1985, Honoria Estrada de Ticona and Hugo Ticona brought charges with the District Prosecutor in Criminal Matters against the accused for the crimes committed against Renato Ticona; in said complaint, they narrated the situation experienced by Renato and Hugo Ticona. Said complaint was forwarded to the Third Magistrate's Court on Criminal Matters. On September 2, 1985, said Court ordered, by means of resolution No. 089/85, [FN51] the filing of the case in favor of one of the accused. [FN52] In the year 1986, the case file was closed for all the accused but the stage of preliminary proceedings remained pending.

[FN51] Cf. Resolution N° 089/85 of the Third Magistrate's Court on Criminal Matters of September 2, 1985 (Appendices to the response of the petition, Appendix 3, Volume I, p. 2071 to 2073).

[FN52] On July 12, 1985, the Magistrate's Court on Criminal Matters declared the defense of lack of legal definition alleged by one of the accused proven. (Appendices to the response of the petition, appendix 3, volume I, p. 2064 and 2065).

75. Afterwards, on March 8, 2005, the Public Prosecutor's Office requested the Supreme Court of Justice of La Paz to reopen the case file, which was done on March 9, 2005 before the Third Magistrate's Court on Criminal Matters. [FN53] As of the reopening of the criminal procedure, a series of legal acts were carried out, [FN54] and the proceedings were forwarded to full trial. Finally, on January 8, 2008, the Third Magistrate's Court on Criminal Matters of the Judicial District of La Paz delivered a condemnatory judgment [FN55], after having ruled a judgment in default against the then members of the army (a colonel, a lieutenant and a sergeant) for the crimes of : Murder, punishable with thirty (30) years of imprisonment, without the right to pardon; deprivation of liberty, punishable with two (2) years and a fine of a hundred (100) days; threats, punishable with eighteen (18) months and abduction, punishable with thirty (30) years without the right to pardon. Furthermore, by means of the judgment, two agents of the

former Special Service of Security, also known as DOP, were convicted for being accomplices to the crime of murder, imposing the sentence of three (3) years and six (6) months of imprisonment. [FN56]

[FN53] Cf. Ruling of March 9, 2005 issued by the Supreme Court of Justice of the District (Appendices to the response of the petition, Appendix 3, v. I, p. 2086).

[FN54] Some of the main legal acts carried out were: a) On May 18, 2005, the Prosecutor informed that, by virtue of the testimony rendered by Hugo Ticona, it was established that, apart from the already accused people, two more persons participated in the disappearance and torture of Renato and Hugo Ticona. Based on the foregoing, the Prosecutor requested the issuance of a reasoned ruling of expansion against the above mentioned people; b) ruling issued on September 11, 2006 by the Magistrate's Court on Criminal Matters in and for La Paz, by means of which it was declared the inapplicability of the Constitutional Judgment N° 101/04 and it was ordered the continuance of the criminal action, upon considering that: "it is evident that the accused is absolutely responsible for the delay in the processing of the case, inasmuch as they were declared in default [and] the instant case deals with crimes against humanity"; c) hearings for the declaration of judgment in default held on November 8, 2006 and July 31, 2007, by which five defendants were declared in default. Said records were notified to the accused; d) on August 21, 2007, the Magistrate's Court on Criminal Matters dismissed the preliminary proceedings; e) on August 31, 2007, the Prosecutor's Office requested an injunction based on the conclusions; and f) on September 21, 2007, the Magistrate's Court on Criminal Matters in and for La Paz issued a writ of indictment. (Record of Appendices to the complaint, Appendix 2, p. 173, 435 and 436; and record of appendices to the response of the petition, Appendix 3, V. III, p. 2519 and 2534 to 2538).

[FN55] Cf. Judgment of January 8, 2008. supra note 32.

[FN56] On January 10, 2008, the attorney of Ticona Estrada's family requested the Third Magistrate's Court on Criminal Matters of the Judicial District of La Paz an amendment of the judgment, so that the persons were sentenced for the crime of forced disappearance of people, which is an illicit act established in Article 292 bis of the Criminal Code (Appendices to the response to the petition, Appendix 3, Volume 12, p. 4745 to 4747). On January 11, 2008, said Court, by means of resolution No. 004/2008 rejected the request (Appendices to the response of the petition, Appendix 3, Volume 12, p. 4751).

76. One of the convicts and the defense counsel appointed by the Court respectively filed an appeal against said judgment. [FN57] On August 1, 2008, the Superior Court of the Judicial District of La Paz upheld the Judgment of January 8, 2008. [FN58] On August 14 and 29, 2008, the defense counsel appointed by the Court of the convicted and one of the convicts, [FN59] respectively, filed a writ of cassation against the last judgment, which resolution is still pending to the date of this Judgment.

[FN57] Cf. Report of the Judiciary of Bolivia before the Court regarding the case: "Office of the Public Prosecutor and National Commission of Forced Disappeared against Roberto Melean,

René Veizaga Vargas for the crimes of murder and others” (record of documents presented by the State during the public hearing of August 13, 2008, Appendix 1, p. 4952 to 4956).

[FN58] Cf. Judgment delivered by the Superior Court of the Judicial District of La Paz, on August 1, 2008 (record of documents presented by the State during the public hearing held on August 13, 2008, Appendix 5, 5007 to 5015).

[FN59] Cf. Writ of cassation filed by the defense attorney of Ticona Estrada’s family on August 14, 2008 and by one of the convicts on August 29, 2008 (Appendices to the final written arguments of the State, page. 5358 to 5386 and 5310 to 5350).

77. Based on the facts previously established and proven, the Court shall now proceed to analyze the following considerations of law.

A) Regarding the relatives of Renato Ticona

a) Clarifications regarding Articles 8(1) and 25(1) of the Convention

78. This Tribunal has pointed out that Articles 8(1) and 25(1) of the Convention determine, with regard to the actions and omissions of internal judicial authorities, the scope of the principle of State responsibility for the actions of any State organ [FN60]. Furthermore, the Court has pointed out that as a consequence of the general obligation to guarantee established in Article 1(1) of the Convention, there are certain obligations of States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction [FN61]. This Tribunal has asserted that, in order to comply with the general duty to guarantee rights, the States Parties are required not only to prevent, but also to investigate the human rights violations recognized in the Convention, as the ones alleged in the instant case, and also, to seek the restoration of the violated right, if possible, and the reparation of any damage caused. [FN62]

[FN60] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 16, para. 164, 169 and 170; Case of Albán Cornejo et al. v. Ecuador, supra note 10, para 60; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 140.

[FN61] Cf. Case of Velásquez Rodríguez v. Honduras. Preliminary Objections. Judgment of June 26, 1987, Series C N° 1 para. 91; Case of Castañeda Gutman v. Mexico, supra note 17 para. 34; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 141.

[FN62] Cf. Case of Velásquez Rodríguez v. Honduras, supra note 16, para. 166; Case of Albán Cornejo et al. v. Ecuador, supra note 10, para. 61; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 142.

79. Furthermore, the Court has noted that the “reasonable time” referred to in Article 8(1) of the Convention must be analyzed in relation to the total duration of the proceeding until the final judgment. [FN63] Lastly, the Court has pointed out that the right to access to justice implies that the controversy be solved within a reasonable time; [FN64] an extended delay may constitute, in

itself, a violation of the judicial guarantees. [FN65] In this sense, for the Court, the lack of state response is a determinative element when evaluating whether a breach of Articles 8(1) and 25(1) of the American Convention has occurred, because it is directly related to the principle of effectiveness that should permeate the development of such an investigation. [FN66]

[FN63] Cf. Case of Suárez Rosero v. Ecuador. Merits, Judgment of November 12, 1997, Series N°. 35, para. 71; Case of Heliodoro Portugal v. Panamá, supra note 13, para 148; and Case of Bayarri v. Argentina, supra note 16, para. 105.

[FN64] Cf. Case of Bulacio v. Argentina. Merits, reparations, and costs. Judgment of September 18, 2003. Series C N° 100, para. 114; Case of Salvador Chiriboga v. Ecuador. Preliminary Objection and Merits. Judgment of May 6, 2008; para. 59 and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 148.

[FN65] Cf. Case of Hilaire, Constantine and Benjamín et al. v. Trinidad and Tobago. Merits, reparations, and costs. Judgment of June 21, 2002. Series C N° 94, para. 145; Case of Salvador Chiriboga v. Ecuador, supra note 64, para. 59; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 148.

[FN66] Cf. Case of García Prieto et al. v. El Salvador. Preliminary Objections, Merits, reparations, and costs. Judgment of November 20, 2007. Series N° 168, para. 115; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 157.

80. The duty to investigate the cases of forced disappearance necessarily involves carrying out all actions necessary to determine the fate and whereabouts of the disappeared person. As this Court has held, only if all the circumstances relating to the violation are clarified, will the State have provided the victim and his next-of-kin with an effective remedy and complied with its general obligation to investigate and punish, allowing the victims' next-of-kin to learn the truth about the whereabouts of the mortal remains and also what happened to the victim. [FN67]

[FN67] Cf. Case of Caballero Delgado and Santana v. Colombia, Merits. Judgment of December 8, 1995. Series C N° 22, para. 58; Case of Trujillo Oroza v. Bolivia. Reparations and Costs. Judgment of February 27, 2002. Series C N° 92, para. 109; Case of the 19 Tradesmen v. Colombia, supra note 39, para. 176.

81. In addition, this Tribunal Court has also referred to the right of the next-of- kin of the alleged victims to know what happened and who was responsible for the respective events. [FN68] The next of kin of the alleged victims have the right to expect, and the States the obligation to ensure, that what befell the alleged victims will be investigated effectively by the State authorities; that proceedings will be filed against those allegedly responsible for the unlawful acts; and, if applicable, the pertinent penalties will be imposed, and the losses suffered by the next of kin repaired. [FN69]

[FN68] Cf. Case of Velásquez Rodríguez v. Honduras. Merits, supra note 16, para. 181; Case of García Prieto et al. v. El Salvador, supra note 66. para 102; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 146.

[FN69] Cf. Case of Durand and Ugarte v. Perú. Merits. Judgment of August 16, 2000. Series C N° 68, para. 130; Case of García Prieto et al. v. El Salvador, supra note 66. para 103; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 146.

82. In the instant case, the Tribunal considers that the time that passed excessively exceeds the term that may be considered as reasonable in order to conclude the criminal procedure; said procedure was initiated more than 25 years ago and remained closed for more than eleven years as of the recognition of the contentious jurisdiction of the Tribunal (supra para. 28, 74 and 75). Furthermore, considering that the criminal procedure has still no final judgment (supra para. 76), to the time already passed, it must be added the time that goes on until that judgment is delivered. This delay has created a clear denial of justice, which constitutes a breach of the right to access to justice of Renato Ticona's relatives. [FN70]

[FN70] Cf. Case of Miguel Castro Castro Prison v. Perú, supra note 38, para. 387; Case of Zambrano Vélez et al. v. Ecuador. Merits, reparations, and costs. Judgment of July 4, 2007. Series C N°. 166, para. 126; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 156.

83. Furthermore, the Court deems that in the investigation and criminal procedure conducted, the State has not carried out the necessary steps to locate Renato Ticona and if applicable, establish the fate and whereabouts of his mortal remains. The foregoing has not allowed Ticona Estrada's relatives to know the truth of what happened. In turn, the Court observes that it does not spring from the information furnished by the parties that other state authorities have ordered a serious investigation exclusively addressed to locate the fate or whereabouts of the mortal remains of Renato Ticona. [FN71]

[FN71] The State mentioned in the final arguments that it has recently taken steps to shed light on the forced disappearances that occurred in the period of 1964-1982, and such steps shall be implemented in a period of three years (2008 to 2010); the case of Renato Ticona is among such disappearances (Brief of final arguments of the State, records of merits, reparations, and costs, volume IV; p. 718).

84. Besides, the State has argued the inactivity on the part of the relatives of Mr. Ticona Estrada during the criminal procedure. Even though said allegations are not relevant considering the State's acquiescence, this Tribunal deems it is necessary to remind that the human rights violations as the ones alleged in the instant case are offenses that can be prosecuted ex officio, according to the provisions established in the Code of Criminal Procedure of Bolivia. [FN72] In this regard, given the situation, the Court deems that an investigation of the facts of the present

case must not be assumed as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof. [FN73]

[FN72] Sections 5 and 46 of the Criminal Procedure Code in force at the moment of the incidents (*infra* notes 75 and 76).

[FN73] Cf. Case of Velásquez Rodríguez v. Honduras. *supra* note 16, para. 177; Case of Albán Cornejo et al. v. Ecuador, *supra* note 10, para. 62; and Case of Heliodoro Portugal v. Panamá, *supra* note 13, para. 145.

85. Based on the foregoing, the Tribunal points out that the criminal procedure has not been an effective recourse to guarantee the access to justice, the investigation and the possible punishment of the responsible for the facts related to the forced disappearance of Renato Ticona and the total reparation of the consequences of the violations. Moreover, in order to comply with Article I.b) of the IACFDP, the State must effectively punish, within a reasonable time, the responsible for the forced disappearances occurring within its jurisdiction, ensuring in this way the compliance with the same nature of the punishment and avoiding impunity. The Court notes that in the time that passed since the disappearance of Renato Ticona to the present day, the State has not complied with the provision established in Article I.b) of the IACFDP". As a result, the Court concludes, based on the foregoing and on the acquiescence made by the State, that Bolivia is responsible for the violation of the right to a fair trial and judicial protection enshrined in Articles 8(1) and 25(1) of the American Convention, in conjunction with Article 1(1) therein, to the detriment of Honoria Estrada de Ticona, César Ticona Olivares, Hugo Ticona Estrada, Betzy Ticona Estrada and Rodo Ticona Estrada, as well as for the non-compliance of the obligation established in Article I(b)) of the IACFDP.

b) Clarifications regarding Article 5(1) of the Convention

86. As to the relatives of Renato Ticona, the Court notes that it has been proven that the next-of-kin have taken several steps before different authorities, in order to learn about the fate and whereabouts of Renato Ticona, without finding any favorable answer (*supra* para. 52, 74, 75 and 83) Furthermore, in the testimonies presented by each one of the relatives, they coincided in asserting that they have been through physical, mental and moral distress. Specifically, they pointed out that they have been emotionally disturbed and that they have suffered from a permanent anguish; mainly, because they do not know what happened to Renato Ticona and were unable to bury his mortal remains (*supra* para 33). Moreover, it springs from the expert opinion rendered before this Court by the expert witnesses, Andrés Guatire Hirsh and Zulema Callejas Guzmán, the damage caused to the relatives as a result of the forced disappearance of Renato Ticona, the steps taken to locate him and the family situation after such disappearance (*supra* para. 32(e)).

87. The Court recalls that in cases involving the forced disappearance of persons, it can be understood that the violation of the right to mental and moral integrity of the victims' next of kin is a direct result, precisely, of this phenomenon, which causes them severe anguish owing to the act itself, which is increased, among other factors, by the constant refusal of the State authorities

to provide information on the whereabouts of the victim or to open an effective investigation to clarify what occurred. [FN74]

[FN74] Cf. Case of Blake v. Guatemala. Merits. Judgment of January 24, 1998. Series C N° 36 para. 114; Case of Goiburú et al. v. Paraguay. Merits, reparations, and costs. Judgment of September 22, 2006. Series C N° 153, para. 97; and Case of La Cantuta v. Perú, supra note 43, para. 123.

88. In this sense, this Tribunal considers that the existence of a closed family bond, plus the efforts made searching justice in order to know the fate and whereabouts of Renato Ticona, as well as the inactivity of the state authorities or the lack of effectiveness in the measures adopted to shed light on the facts and eventually, punish the responsible (supra para. 85 and infra para. 145) have violated the mental and moral integrity of the relatives of Renato Ticona. As a result, the Court concludes, taking into account the acquiescence made by the State, that Bolivia is responsible for the violation of the right to humane treatment enshrined in Article 5(1) of the American Convention, in relation to Article 1(1) therein, to the detriment of Honoria Estrada de Ticona, César Ticona Olivares, Hugo Ticona Estrada, Betzy Ticona Estrada and Rodo Ticona Estrada.

B) Regarding Hugo Ticona Estrada

a) Clarifications regarding Articles 8(1) and 25(1) of the Convention

89. In the Report on Merits N° 112/06 (Case N° 12.527), the Commission concluded, in general terms, that the State is responsible for the violation of Articles 8 and 25 of the Convention, to the detriment of the relatives of Renato Ticona; however, it did not specifically decide on the alleged violation of said Articles to the detriment of Hugo Ticona. Afterwards, in the petition filed with the Court, the Commission stated that since "the Court has no jurisdiction *ratione temporis* to examine the illegal and arbitrary detention and tortures suffered by Hugo Ticona Estrada in 1980, [...] it d[id] not include in the purpose of the [...] application, the allegation of these violations. Nevertheless, it [did] include in the purpose of such application, the subsequent denial of justice of which Hugo Ticona Estrada has been a victim as of July 27, 1993, date on which the State accepted the contentious jurisdiction of the Court, not only with respect to his brother but to himself, since it is an ongoing violation of his rights". Besides, in the legal arguments the Commission recalled that there has been a denial of justice "which has been continuous in relation to the violations committed against Hugo Ticona, [...] these crimes were brought to the attention of the state authorities when Hugo Ticona and his relatives rendered an statement in the corresponding investigation and, despite all, such crimes have not been investigated *ex officio*, as it should have happened". Nevertheless, in the conclusions of the petition, the Commission requested the Court to declare the violation of Articles 5, 8, and 25 of the Convention, to the detriment of the relatives of Renato Ticona and made no clarification regarding the alleged violation of Articles 8 and 25 to the detriment of Hugo Ticona based on the reasons stated in the purpose of the petition and the legal arguments.

90. During the public hearing and in the closing arguments, the Commission recalled that the denial of justice of the instant case also involves the absence of an investigation and procedure regarding the alleged deprivation of liberty and torture suffered by Hugo Ticona. Moreover, it stated that “it springs from the facts it that occurred before July 27, 1993, date on which the State [...] accepted the contentious jurisdiction of the Court that the State had the obligation to investigate the tortures denounced by Hugo Ticona. It is worth mentioning that such obligation was pending compliance the date on which the State recognized the adversary jurisdiction of the Court”.

91. The representative argued in the brief of requests and motions that under sections 5 [FN75] and 46 [FN76] of the Code of Criminal Procedure of Bolivia, in force at the time of the facts, it was established that the criminal action arises out of public law and prosecutable ex officio and that criminal prosecutors are responsible for promoting and request the preliminary investigation, after learning about the commission of a crime prosecutable on an ex officio basis. Furthermore, it reasserted that “notwithstanding the above mentioned, neither the Ministerio Público nor a court initiated a criminal investigation ex officio for the human rights violations committed to Hugo Ticona Estrada, despite the fact that in the case file named Comisión Nacional C/ René Veizaga et al., being heard since 1983 by a Bolivian court, there are plenty history case and evidence of the arbitrary detention, torture and confinement that Hugo Ticona suffered”.

[FN75] Article 5 established that “[C]riminal action arises out of public law [...] for crimes prosecuted by the Ministerio Público [Office of Public Prosecutor], without prejudice to private complaints or accusations;”

[FN76] Section 46 established that "It is the responsibility of prosecutors in criminal matters: i) to promote and bring criminal action in crimes under public law, without relying on a complaint on the part of the victim. 2) Immediately request the preliminary investigation, after learning about the commission of a crime prosecutable on an ex officio basis [...]".

92. The State, in its acquiescence, expressed, among other things, that it acknowledged its international responsibility, in general, for the violation of the rights embodied in Articles 8 and 25 of the Convention and it expressly made no consideration regarding the alleged denial of justice to the detriment of Hugo Ticona (supra para. 12). Nevertheless, afterwards, it challenged the affidavits rendered by the relatives, in relation to “the investigations on the torture suffered by Hugo Ticona, since it is irrelevant for the case at hand”, and in the brief of final arguments, it specified that “it considers that it is not part of the acknowledgement of international responsibility [...] the human rights violation for the alleged torture that Hugo Ticona [...] would have suffered” (supra para. 15).

93. Based on the foregoing, in consideration of the arguments of the parties, this Tribunal deems that the Court has no jurisdiction *ratione temporis* to examine the alleged facts related to the alleged torture that Hugo Ticona would have suffered, as well as the legal consequences resulting from said facts, inasmuch as these issues have no bearing in this case and therefore, they have been excluded from the purpose of the Commission’s petition (supra para. 2), which is

not the case of the alleged denial of justice committed against Hugo Ticona. As to the alleged violation of Articles 8 and 25 of the Convention, the Tribunal shall now make a relevant analysis on view of the fact that the denial of justice committed against Hugo Ticona was alleged in the purpose and legal arguments of the petition and the representative referred to such issue in the brief of requests and motions.

94. The Court has established that in light of the obligation to guarantee contained in Article 1(1) of the Convention (*supra* para. 78), once the authorities have knowledge of the event, they must initiate a serious, impartial and effective investigation, *ex officio* and without delay. [FN77] Especially, in serious cases against humane treatment as happens with torture, the State has the duty to immediately and on an *ex officio* basis, begin an effective investigation to identify, try, and punish those responsible, when there is a complaint or there are grounds to believe that an act of torture has been committed. [FN78]

[FN77] Cf. Case of Maritza Urrutia v. Guatemala. Merits, reparations, and costs. Judgment of November 27, 2003. Series C. N° 103, para. 119; Case of Heliodoro Portugal v. Panamá, *supra* note 13, para. 115; and Case of Bayarri v. Argentina, *supra* note 16, para. 92.

[FN78] Cf. Case of Tibi v. Ecuador. Preliminary Objections, Merits, reparations, and costs. Judgment of September 7, 2004. Series C N° 114, para. 159; Case of Escué Zapata v. Colombia. Merits, reparations, and costs. Judgment of July 4, 2007. Series C N°. 165, para. 74; and Case of Bayarri v. Argentina, *supra* note 16, para. 88. Besides, the Inter-American Convention to Prevent and Punish Torture, establishes in Article 8 that:

The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case.

Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process.

[...]"

95. For the Court, the lack of state response is a determinative element when evaluating whether a breach of Articles 8(1) and 25(1) of the American Convention has occurred, because it is directly related to the principle of effectiveness that should permeate the development of such an investigation. [FN79] It is worth mentioning that the obligation to investigate does not derive solely from the treaty norms of International Law binding upon the States Parties, but also from the domestic legislation that makes reference to the duty to investigate certain unlawful conducts. The Court notes that the State authorities were bound to investigate on its own initiative the facts as the ones that occurred in the instant case, in accordance with the domestic law. [FN80]

[FN79] Cf. Case of García Prieto et al. v. El Salvador, *supra* note 66. para 115; and Case of Heliodoro Portugal V. Panamá, *supra* note 13, para. 157.

[FN80] Cf. Case of García Prieto et al. v. El Salvador, *supra* note 66. para 104; and Case of Heliodoro Portugal v. Panamá, *supra* note 13, para. 143.

96. The Court verified that the State learned about the alleged acts of torture committed against Hugo Ticona on several occasions, for example, by means of the complaint filed with the National Commission of Disappeared on April 7, 1983 and the criminal charges brought on February 28, 1985 (supra para. 74). After the recognition of the contentious jurisdiction of the Court, that is, on July 27, 1993, there are several official letters and legal acts conducted in the criminal proceedings initiated for the forced disappearance of Renato Ticona, from which it is deduced that the State knew the alleged acts of torture, namely: The request for a “reasoned ruling” for expansion made by the District Prosecutor to the Magistrate’s Court on criminal matters, of May 18, 2005; [FN81] the final injunction made by the District Prosecutor to the Magistrate’s Court on criminal matters, of January 31, 2006; [FN82] Order N° 15/2006 issued by the Magistrate’s Court on criminal matters, on March 8, 2006; [FN83] the communication of Ticona Estrada’s family, addressed to the Ministry of Foreign Affairs and Worship, of March 9, 2007; [FN84] and the informative statement of Hugo Ticona Estrada rendered before the Third Circuit Criminal Court, on November 28, 2007. [FN85] Despite all, the State did not initiate a specific investigation for said events neither it included the possible violations to the rights of Hugo Ticona within the existing investigations of the forced disappearance of Renato Ticona. Moreover, the Court notes that it was not until the decision of the Third Circuit Criminal Court of January 8, 2008 that such court considered that “in light of the fact that there are other criminal complaints, against other people who are not involved in the instant proceeding, the preliminary investigation [is] then forward[ed] to the Office of Public Prosecutors in order to comply with the law” (supra para. 75).

[FN81] Cf. Reasoned ruling for expansion of May 18, 2005, issued by the District Prosecutor (Appendices to the response of the petition, Appendix 3, volume 1, p. 2131).

[FN82] Cf. Final injunction of January 31, 2006 issued by the District Prosecutor (Appendices to the response of the petition, appendix 3, volume 2, p. 2313 to 2316).

[FN83] Cf. Order issued by the Magistrate’s Court on Criminal Matters, in the case file N° 15/2006 of March 8, 2006 (Appendices to the response of the petition, appendix 3, volume 2, p. 2322 to 2325).

[FN84] Cf. Letter of Ticona’s family to the Ministry of Foreign Affairs and Worship of March 9, 2007 (Appendices to the response of the petition, appendix 3, volume 5, p. 3058).

[FN85] Cf. Minutes of the debate hearing of November 28, 2007, issued by the Third Circuit Criminal Court (Appendices to the response of the petition, appendix 3, volume 12, p. 4554 to 4559).

97. Based on the foregoing, upon learning about the alleged facts, it came up an obligation for the State in order to investigate the alleged violation of the right to humane treatment to the detriment of Hugo Ticona that occurred in the context described in paragraphs 45 to 49 of this Judgment. Said obligation was pending compliance on July 27, 1993, date on which the State recognized the Court’s jurisdiction. Therefore, as of that date, this Tribunal is competent to hear the non-compliance with said obligation.

98. In this regard, the Tribunal finds that the State did not guarantee access to justice, based on the lack of investigation, possible punishment of the responsible and full reparation derived from the consequences of the alleged acts of torture committed to Hugo Ticona. Bearing in mind the above mentioned considerations, the Court concludes that the State is responsible for the violation of the right to a fair trial and judicial protection embodied in Articles 8(1) and 25(1) of the American Convention, in relation to Article 1(1) therein, to the detriment of Hugo Ticona Estrada.

VIII. ARTICLE (DOMESTIC LEGAL EFFECTS) [FN86] OF THE AMERICAN CONVENTION AND I AND III [FN87] OF THE INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS

[FN86] Article 2 of the Convention establishes that:

[W]here the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

[FN87] Article I(d) of the IACFDP, in its pertinent parts, establishes: The State Parties to this Convention undertake:

d) To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.

Furthermore, Article III of the IACFDP, in its pertinent parts, provides:

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

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

99. The Commission alleged that at the moment of the facts of the case, the crime of forced disappearance of people was not established in the Bolivian law. Said legal definition was made on January 18, 2006, by means of Law N° 3326 that incorporated the legal precept of forced disappearance in the Criminal Code. The Commission further alleges that even when the legal definition means a progress in the development of laws related to the principles established in human rights international treaties ratified by the State, the facts of this case occurred before the efforts made by the State and therefore, the State failed to comply with the obligation undertaken under Article 2 of the American Convention and Articles I and III of the IACFDP. The representative fully agreed with the argument put forward by the Commission.

100. Moreover, the State acknowledged its international responsibility for the non-compliance of Articles I and III of the IACFDP. However, in the brief of response to the petition, it failed to mention the acquiescence to Article 2 of the American Convention. Afterwards, in the final

written arguments, the State expressed that “important legislative progress has been made in relation to forced disappearance of persons, therefore, it did not include Article 2 in the context of that acquiescence (supra para. 17).

101. The Court has stipulated, regarding the general obligation of every State Party to adapt its domestic laws to the provisions of that Convention, that “[u]nder the law of nations, a customary law prescribes that a State that has concluded an international agreement must introduce into its domestic laws whatever changes are needed to ensure execution of the obligations it has undertaken.” [FN88]

[FN88] Cf. Case of Garrido and Baigorria v. Argentina. Reparations and Costs. Judgment of August 27, 1998. Series C N° 39, para. 68; Case of Castañeda Gutman v. Mexico, supra note 17, para. 132 and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 179.

102. In this regard, in the case of Trujillo Oroza v. Bolivia, the Court expressed in the Judgment on Reparations of February 27, 2002, that Bolivia had to define the crime of forced disappearance in its Criminal Code.

103. Within the framework of the procedure to monitor compliance with the Judgment in the case of Trujillo Oroza, the State informed that it had defined the crime of forced disappearance of persons as an offense, in accordance with Operative Paragraph Two of said Judgment. The Court verified that the State had effectively classified the crime of forced disappearance of people in Chapter X of the Criminal Code, [FN89] by means of the enactment of National Act N° 3326 of January 18, 2006. Pursuant to the foregoing, by means of the Order to Monitor Compliance with Judgment of November 21, 2007, this Tribunal declared that the State complied with that obligation. [FN90]

[FN89] “Section 292 bis (Forced Disappearance of Persons). He who, with authorization, support or acquiescence from some state agency, deprives the liberty of one or more persons and deliberately, hides and denies information on the recognition of the deprivation of liberty or whereabouts of the person, preventing in this way the exercise of recourses and procedural guarantees, shall be punished to five to ten years of imprisonment.

If, as a consequence of that act, the victim suffers from serious physical or mental damage, the punishment shall be fifteen to twenty years of imprisonment.

If the perpetrator were a public official, the maximum of the penalty shall be increased to one - third-

If, as a consequence of the events, the victim dies, the punishment shall be thirty years of imprisonment.”

[FN90] Cf. Case of Trujillo Oroza v. Bolivia. Monitor Compliance with Judgment. Order of the Inter-American Court of Human Rights of November 21, 2007, considering clauses 8 and 9

104. In the instant case, even though there was no legal definition of forced disappearance in the Bolivian law at the moment the proceedings were initiated in the year 1983, the Court notes that there was specific obligation to legally define the crime of forced disappearance at that time, in accordance with the State obligations undertaken on the basis of having ratified the American Convention. In light of Article 2 of the Convention, this Tribunal considers that from the moment the proceedings were initiated, the Bolivian legislation provided criminal rules leading to the effective observance of the guarantees established in the Convention with respect to the individual rights to life, humane treatment and personal liberty, according to the provisions of the Criminal Code in force in the year 1983. [FN91] Therefore, the Court considers that, in the instant case, it has not been proved that the lack of legal definition of the autonomous crime of forced disappearance has hindered the effective development of the criminal procedure.

[FN91] Cf. Criminal Code of Bolivia, Title VIII "Rights against life and physical integrity", sections 251 to 281 and Title X "Crimes against liberty", sections 291 to 307.

105. Moreover, this Tribunal observes that the State ratified the Convention on Forced Disappearance of Persons on May 5, 1999, which entered into force on June 5, 1999, in Bolivia. It is as of this moment onwards that the State had the obligation to define the crime of forced disappearance of persons as an offense. Considering the nature of such obligation, the State should have implemented it within a reasonable time. [FN92] In this regard, it was not until January 18, 2006, that Bolivia incorporated such crime into its legislation. It is worth mentioning that, at the time the case was brought before the Inter-American system, that is, on August 9, 2004, the non-compliance was still being observed, therefore this Court asserts that it is competent to rule over such matter. Nevertheless, at the moment the case was brought to this Court's attention, the State had already corrected said non-compliance by establishing the crime of forced disappearance in its legislation. As a consequence, although the State failed to comply with Articles I(d) and III of the IACFDP, in relation to Article 2 of the American Convention, such non-compliance was corrected by the State.

[FN92] Cf. Case of Heliodoro Portugal v. Panamá, supra note 13, para. 187.

IX. REPARATIONS (APPLICATION OF ARTICLE 63(1) OF THE AMERICAN CONVENTION)

106. It is a principle of International Law that any violation of an international obligation that has caused damage entails the duty to provide adequate reparation. [FN93] The Court has based its decisions on this particular subject pursuant to the provisions of Article 63(1) of the American Convention. [FN94]

[FN93] Cf. Case of Velásquez Rodríguez v. Honduras. Reparations and Costs. Judgment of July 21, 1989. Series C N°. 7, para. 25; Case of Heliodoro Portugal v. Panamá, supra note 13, para. 217; and Case of Bayarri v. Argentina, supra note 16, para. 119.

[FN94] Article 63(1) of the Convention provides that:

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

107. Within the framework of the acknowledgment made by the State (supra para. 11 to 15), in accordance with the above considerations on the merits and the violations of the Convention declared to be such in the preceding chapters, as well as in the light of the criteria embodied in the Court's case-law in connection with the nature and scope of the obligation to make reparations, [FN95] the Court shall now address the requests for reparations made by the Commission and the representatives, as well as the State's observations thereof, in order to adopt the measures required to reparation the damage.

[FN95] Cf. Case of Velásquez Rodríguez, supra note 93, para. 25 to 27; Case of Castañeda Gutman v. Mexico, supra note 17 para. 215; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 218.

A) Injured Party

108. The Tribunal recalls that an injured party is considered to be the victim of a violation of some of the rights enshrined in the Convention. In this sense, the Court considers that Renato Ticona Estrada, Honoria Estrada de Ticona, César Ticona Olivares, Hugo Ticona, Rodo Ticona and Betzy Ticona are the "injured parties", in their capacity of victims of the violations declared in the previous chapters, and therefore, they shall be entitled to the reparations ordered by the Tribunal as pecuniary and non-pecuniary damage.

B) Compensation

109. The Court notes that in the cases of forced disappearance of people, it is evident the pecuniary and non-pecuniary damage caused to the disappeared victim, as well as his relatives. In this sense, before a serious and multiple violations such as this, it is incidental that the disappeared person suffers from different physical, moral and mental damages, as well as pecuniary damage. Moreover, the relatives of the victim may experiment suffering, anguish and pecuniary damage, within the family environment, as well as other kind of affections.

110. The reparations must have a causal link with the facts of the case, the alleged violations, the proven damages, as well as with the measures requested to repair the resulting damages.

Therefore, the Court must observe such coincidence in order to adjudge and declare according to law.

a) Pecuniary damage

111. The Court's case law has developed the concept of pecuniary damage and the cases in which compensation therefore is due. [FN96] In this section, the Tribunal shall refer to the possible pecuniary damages (consequential damages and loss of income) suffered by Renato Ticona and his relatives, so that it is possible to determine the corresponding reparations.

[FN96] Cf. Case of *Bámaca Velásquez V. Guatemala. Reparations and Costs*. Judgment of February 22, 2002. Series C N° 91, para. 43; Case of *Heliodoro Portugal v. Panamá*, supra note 13, para. 221; and Case of *Bayarri v. Argentina*, supra note 16, para. 127.

Regarding Renato Ticona

112. The Commission requested the Court to equitably determine the amount of compensation for consequential damages and "loss of income" of Renato Ticona and his relatives. Moreover, the representative requested the Court to consider the following information when determining the loss of income of Renato Ticona during his remaining and probable life expectancy:

i) Renato Ticona as a music teacher. [FN97] The income he would have received from July, 1980 to December, 1982 amounts to US\$2.004, 75 (two thousand and four dollars of the United States of America and seventy-five cents) [FN98] and considering the fact that there is no supporting documentation on the salary that Renato Ticona received, the representative requested the Court to equitably determine a sum; and

ii) Renato Ticona as future agricultural engineer Mr. Ticona Estrada would have started working as agricultural engineer in the year 1983, at the age of 28 years old, who, in accordance with the life- expectancy of 64 years, would have worked until the year 2019, that is, 36 more years. The probable income, based on a monthly average of US\$1.027.00 (one thousand and twenty-seven dollars of the United States of America), that Renato Ticona would have received, as agricultural engineer, amounts to US\$360.477.00 (three hundred and sixty thousand four hundred seventy-seven dollars of the Unites States of America). [FN99]

[FN97] In accordance with the information provided by the relatives, Renato Ticona would stop working as a music teacher once he would have obtained his professional degree. The foregoing means that he would have continued working as a music teacher for two years and a half more, until December, 1982.

[FN98] The representative stated that the salary of Renato Ticona as music teacher in the years 1977 and 1978 amounted to Bs. 866.71 (eight hundred and sixty-six Bolivian pesos with seventy-one cents). Nevertheless, it was impossible to determine the salary he received between 1979 and June, 1980 and the salary he would have received from July 1980 to December 1982. As a consequence, in order to estimate the salary of a music teacher, it was considered the

minimum salary in force on September 19, 2008, which amounted to Bs. 575.00 (five hundred and seventy-five Bolivian pesos) which is equal to US\$ 81.00 (eighty-one dollars of the United States of America).

[FN99] According to the representative, in order to do the corresponding estimation, it requested information to the Society of Engineers of Bolivia ("SIB") and the Professional Association of Agricultural Engineers of Bolivia- District of La Paz ("CIAB-LP"). The SIB pointed out that the average salary, per month, would be US\$ 950.00 (nine hundred and fifty dollars of the United States of America) and the CIAB-LP pointed out that said salary would amount to 7.830.00 Bs. (seven thousand eight hundred and thirty Bolivian pesos) which, according to the exchange rate as of September 17, 2008, equals US\$1(1)04.00 (one thousand one hundred and four dollars of the United States of America). The representative, based on the foregoing, made a new estimation of the salary of an agricultural engineer, with more than 20 years of experience, that would amount to US\$ 1.027.00 (one thousand twenty seven dollars of the United States of America), which was used as the basis for the estimation.

113. Furthermore, the State did not agree with the amount requested as reparation by the representative. It requested the Court to calculate the probable loss of income of Renato Ticona, bearing in mind the salary he received as a music teacher, based on the salary of Bs. 550.00 (five hundred and fifty Bolivian pesos) for 38 years and a half of work and the corresponding deduction of 25% as personal expenses, and not the probable and uncertain exercise of the profession of agricultural engineer. The State expressed that, maybe, if the Court decides to consider the compensation of an agricultural engineer, the calculation should be made since the year 1985, when he would start receiving the salary of a professional. [FN100] In this sense, it requested the Court to apply the same parameter used in the case of Trujillo Oroza, that is, to calculate the reparations of Renato Ticona as probable agricultural engineer in the amount of US\$488.00 (four hundred and eighty-eight dollars of the United States of America) that corresponds to 50% of the salary proposed by the representatives, less 25% of the total for personal expenses.

[FN100] According to the State, the Technical University of Oruro was closed due to the coup d'etat carried out by General Luis García Meza from July 17, 1980 to May 21, 1982. As a consequence, Renato Ticona could have continued studying as from the middle of 1982, and he would have obtained his degree in the year 1984; therefore, any calculation as an alleged agricultural engineer should be considered as from the year 1985. The State objected to the estimation made by the representative since it cannot consider the 20 years of seniority of Renato Ticona for the professional income of all his professional life. It was a lineal calculation of the income received. The State forwarded to the Court a report from the School of Agricultural and Livestock Sciences of August 18, 2008, which evidences that those students, who entered to the university on the second semester of 1974, obtained their degree between 1985 and 1995.

114. This Court finds that the award for lost income includes income that the victim would have received during his or her remaining life expectancy. That amount, therefore, is considered the property of the deceased victim, which shall be delivered to his or her next of kin. [FN101]

[FN101] Cf. Case of Velásquez Rodríguez V. Honduras. supra note 93, para. 49; and Case of Cantoral Huamani and García Santa Cruz, Preliminary Objection, Merits, reparations, and costs. Judgment of July 10, 2007. Series C, N° 41, para. 166; and Case of Escué Zapata v. Colombia, supra note 78, para. 141.

115. As has been proven in this Judgment, Renato Ticona was a victim of forced disappearance, and therefore he had suffered damages inherent to such practice. As has been certified by the parties, Renato Ticona was 25 years old and eight months at the moment of his disappearance and he worked as a music teacher at the school “Mariano Baptista”, he was also attending the seventh semester of the career of agricultural engineering (supra para. 50) and, as demonstrated by the several testimonies, was the economic support of his family, composed by his parents, two brothers and one sister (supra para. 32(a), 32(b), 32(c) and 33). In this sense, Renato Ticona suffered pecuniary damages consisting in the loss of income.

116. This Tribunal observes that Renato Ticona was, at the moment of the events, attending the seventh semester, out of ten, of the course of study of agricultural engineering, therefore, there were only three more semesters left to conclude the university studies. Based on the foregoing, this Tribunal considers that such circumstance allows establishing, with sufficient certainty, the activity or profession that Renato Ticona would do in the future and therefore to establish the income corresponding to such profession. Based on the foregoing, the Court sets the amount of US\$170.000.00 (one hundred seventy thousand dollars of the United States of America), on equitable grounds, as it has established in other cases. [FN102] In order to do so, the Court has considered his job as a teacher as from the year 1980, his possible role as agricultural engineer as from the year 1985 [FN103] until the year 2019, his age and life expectancy. [FN104]

[FN102] Cf. Case of Trujillo Oroza v. Bolivia, supra note 67, para. 73, Case of Ituango Massacres, supra note 9, para. 373; Case of La Rochela Massacre v. Colombia. Merits, reparations, and costs. Judgment of May 11, 2007. Series C N°. 163, para. 248.

[FN103] The Court took into account the information provided by the State and the representative regarding the graduation date of Renato Ticona, since the University Ticona Estrada was studying at, remained closed during some time. As a consequence, the Tribunal considers pertinent to establish the year 1985 as the year from which the victim initiated his profession as agricultural engineer.

[FN104] Cf. Case of the “White Van” (Paniagua Morales et al.) v. Guatemala, supra note 15, para. 94; Case of Molina Theissen v. Guatemala. Reparations and Costs. Judgment of July 3, 2004. Series C N°. 108, para. 57, and Case of La Rochela Massacre v. Colombia, supra note 102, para. 248.

117. Said compensation for pecuniary damage corresponding to Renato Ticona shall be distributed among his relatives, as follows: Fifty percent (50%) shall be delivered to his parents,

Honoría Estrada de Ticona and César Ticona Olivares, in equal portions. The remaining fifty percent (50%) shall be equally distributed among his brothers and sister, Hugo Ticona, Rodo Ticona and Betzy Ticona. Said amount shall be delivered to each beneficiary within the term of one year as from notice of this Judgment.

Regarding Renato Ticona's relatives

118. The Commission requested the Court the payment of pecuniary damages in favor of the relatives of Renato Ticona. Moreover, the representatives stated that the different members of Ticona Estrada's family took several steps in order to search for the victim and access to justice. According to the representative, César Ticona Olivares set aside all his income, as well as the earnings of Hugo, Rodo and Betzy and the savings of the family to pay for the expenses related to the search and whereabouts of the victim. These expenses include expenses for travels that, in approximately 28 years, the parents of Renato and his brother Hugo would have done from the city of Oruro to the city of La Paz and from the city of Cochabamba to the city of La Paz, as well as the accommodation, food, correspondence, telegrams, telefax, telephone calls, photocopies of documentation that was sent to different public authorities; therefore, the representative set in equity the amount of US\$6.720.00 (six thousand seven hundred and twenty dollars of the United States of America).

119. Furthermore, the representative expressed that as a consequence of the facts, César Ticona Olivares, Honoría Estrada de Ticona and Hugo Ticona suffered from physical and mental distress and have incurred in a series of expenses; but, considering the time spent, it is not possible to present the corresponding receipts and therefore the representative requested the Court to determine in equity the amount of US\$10.000.00 (ten thousand dollars of the United States of America) as medical expenses.

120. Moreover, the State requested the Court to consider the compensation for travels and national and international telephone calls, following the criterion established in the case of Trujillo Oroza. As to the expenses derived from the health impairment experienced by the members of Ticona Estrada's family, the State requested the Court to set them in equity.

121. As to the alleged consequential damage caused to Honoría Estrada de Ticona, César Estrada Olivares and their children, Hugo, Betzy and Rodo, all of them Ticona Estrada, for the expenses incurred in searching for Renato Ticona, the Court observes that in the affidavits rendered by them and by Hugo Ticona before this Tribunal, they stated that, based on what happened to the victim, the members of the family have been involved in the search, of which the parents and Hugo Ticona have been in charge and have counted with the support of all. To such effect, they have taken several steps and made numerous travels to look for him and learn about his fate or whereabouts. Moreover, the representative pointed out that Honoría Estrada de Ticona, César Estrada Olivares and Hugo Ticona have suffered distress as a consequence of the disappearance of their son, which has made them incurred in several medical expenses, [FN105] which was equally stated by them in the affidavits.

[FN105] Honoria Estrada de Ticona stated in the affidavit that: As derived from the disappearance and search of her son, her eyesight was damaged and she also had headaches; besides, for so much walking looking for her son, she suffers today from arthritis which makes her difficult to walk, as well as pneumonia. The above mentioned derived in expenses for her psychological treatment, as well as medicines (supra para. 32(a)). César Ticona Olivares stated that his loss of hearing of his left ear was a consequence of all the suffering, but mainly, his heartaches, derived from the preoccupations in his head (supra para. 32(b)). The psychological expert opinion indicated that the mental tension of César Ticona Olivares finally resulted in a cardiac arrest (supra para. 32.e).

122. As to the expenses incurred in the search of Renato Ticona, the Court observes that, despite the fact that the receipts of such expenses were not furnished, in the documents and information presented by the parties as evidence to the case at hand, there is evidence of proceedings conducted by Honoria Estrada de Ticona, César Estrada Olivares, and Hugo Ticona before state institutions and authorities. [FN106] The foregoing indicates that such people effectively incurred in several extra-judicial expenses due to the forced disappearance of a loved one, among other, the expenses derived from travels made by the relatives in order to search the victim, the accommodation and food. Lastly, as to the medical expenses, bearing in mind the arguments alleged by the representative, as well as the allegations of the State as to the expenses derived from medical treatments of César Estrada Olivares and Honoria Estrada de Ticona, the Court establishes that, despite the fact that the parties failed to furnish the receipts that would allow determining the exact amount of such expenses, the Court shall set an amount in equity for such expenses.

[FN106] Cf. supra note 31, subsections a), b), d) , e), f), g), h), i), j), k), l), m), o) and p).

123. As to the distress Hugo Ticona suffered as a consequence of the alleged torture to which he was subjected, the Court is not competent to analyze them; therefore this Tribunal shall not determine reparations in his favor.

124. Regarding the other expenses incurred in the search for justice, this Tribunal considers that these expenses are related to the outlays made to have access to justice, and therefore they are considered as “reimbursement of costs and expenses” and not as “compensation”. In the instant case, the expenses related to the correspondence, telegrams, telefax, telephone calls, photocopies of documentation that was sent to different state authorities, derived from the access to justice and therefore, shall be analyzed in section D) of this Chapter.

125. By virtue of the foregoing, the Court deems pertinent to set, in equity, the amount of US\$ 4.500.00 (four thousand and five hundred dollars of the United States of America) as compensation for consequential damage in favor of each one of the parents, Honoria Estrada de Ticona and César Ticona Olivares. Furthermore, the Tribunal deems appropriate to set, in equity, the amount of US\$1.500.00 (one thousand five hundred dollars of the United States of America) as compensation for consequential damage in favor of Hugo Ticona and, following the same line,

the amount of US\$500.00 (five hundred dollars of the United States of America) as compensation for consequential damage in favor of the brother and sister, Rodo Ticona Estrada and Betzy Ticona Estrada. Said amount shall be delivered to each beneficiary within the term of one year as from notice of this Judgment.

b) Non-pecuniary damage

126. The Court shall determine the non-pecuniary damage according to the guidelines established in its case-law. [FN107]

[FN107] Cf. Case of Aloeboetoe et al.. Reparations and Costs. Judgment of September 10, 1993. Series C No. 15, para. 52; Case of Heliodoro Portugal v. Panamá, supra note 13, para. 234; and Case of Bayarri v. Argentina, supra note 16, para. 164.

127. The Commission requested the Court to order the payment, in fairness, of a compensation for non-pecuniary damage.

128. In consideration of the suffering of Renato Ticona, the representation requested the Court to equitable determine the sum of US\$100.000.00 (a hundred thousand dollars of the United States of America) for non-pecuniary damage. As to the suffering of the relatives of Mr. Ticona Estrada, the representative requested the sum of US\$60.000.00 (sixty thousand dollars of the United States of America) as compensation for non-pecuniary damage in favor of the parents, César Ticona Olivares and Honoria Estrada de Ticona and the brother, Hugo Ticona; and the sum of US\$25.000.00 (twenty-five thousand dollars of the United States of America) in favor of Betzy Ticona and Rodo Ticona.

129. The State objected to the considerations made by the representative for each one of the beneficiaries of the reparations regarding the non-pecuniary damage, inasmuch as the State has adopted a series of positive measures in order to repair the moral damage.

130. The international case-law has repeatedly established that a judgment constitutes per se a form of reparation. [FN108] However, in view of the circumstances of the instant case, the sufferings that the violations have caused to the victim and his next of kin, the changes in the standards of living, and in light of the other non-pecuniary consequences they bore, the Court deems it appropriate to award compensation for non-pecuniary damage, assessed on equitable grounds. [FN109]

[FN108] Cf. Case of Neira Alegría v. Perú. Reparations and Costs. Judgment of September 19, 1996. Series C N° 29, para.; Case of Heliodoro Portugal v. Panamá. Supra note 13, para. 239; and Case of Bayarri v. Argentina, supra note 16, para. 164.

[FN109] Cf. Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs. Judgment of May 26, 2001. Series C N° 77, para. 84; Case of Aritz Barbera et al. ("First Court of Administrative Disputes" v. Venezuela. Preliminary Objection, Merits,

reparations, and costs. Judgment of August 5, 2008; Series C N° 182, para. 242; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 239.

131. Moreover, the Court notes that the State as well as the representative has referred to the piece of property delivered to Ticona Estrada's family,[FN110] which is located in the residential area of Río Seco, La Libertad, Parcel No. 207, block D19, with a surface of 240 mts., and awarded in César Ticona Estrada's name. Said piece of property, according to the representative, has an approximate commercial value of US\$ 1.500.00 (one thousand five hundred dollars of the United States of America) to US\$2.000.00 (two thousand dollars of the United States of America) Pursuant to the State, said piece of property has an approximate commercial value of US\$ 2.400.00 (two thousand four hundred dollars of the United States). The State requested the Court to take such piece of property as part of the reparations. In such regard, the representative, during the public hearing held on August 13, 2008 as well as in the closing arguments, and also Hugo Ticona, in the statement rendered in said public hearing, mentioned that should the Court consider the adjudication of the property as part of the reparations granted by the State to Ticona Estrada's family, the amount equal to the value of the property will be deducted from the total amount determined by the Court. Based on the foregoing, the Tribunal observes that there is no controversy between the parties as to the fact that the piece of property forms part of the reparation ordered in this Judgment. As a consequence, the Court considers that the value of said parcel shall be taken into account as part of the compensation for non-pecuniary damage in favor of César Ticona Estrada.

[FN110] According to the State, on April 3, 1984 Supreme Decree N. 20127, through which the municipal order N.42/84 of March 19, 1984 issued by the Mayor of Ciudad de La Paz, was ratified. Said order specified the giving of lots of land in the region of Rio Seco, of Ciudad del Alto, to the next of kin of the deceased and disappeared persons in the period of the dictatorship.

132. Furthermore, the State expressed its desire to build a house for Renato Ticona's parents. In this sense, it informed that the Ministry of Public Works, Utilities and Housing certified that it will compensate such persons with a house in the Department of Cruz or in the city of El Alto de la Paz. [FN110] The Commission and the representative made no statement regarding this issue. In consideration of the arguments of the State, the Court deems that the State must build an adequate house, [FN111] and therefore, it shall assume all the expenses related to such construction, which must be planned in common agreement with the victim's parents. In view of the above, this Tribunal notes that the value of said property shall be taken into account as part of the compensation for non-pecuniary damage in favor of Honoria Estrada de Ticona and César Ticona Estrada. Besides, the State shall adopt the necessary measures to initiate the construction, within one year, as of notice of this Judgment.

[FN110] Cf. Official letter MOPSV-VMVU-PVS N° 192-2008 of August 12, 2008 of the general coordinator, of the Vice-Minister of Housing and Town Planning, Ministry of Public Works, Utilities and Housing. The value of the property has a referential sum of UFV (Bolivian unit of

measurement of market value) 33,251 to UFV 53.190 (appendices to the final written arguments of the State, Appendix 11, p. 5).

[FN111] Cf. U.N. Doc. E/1991/23. International Covenant on Economic, Social and Cultural Rights. General Observation 4, the right to an adequate house, paragraph 1 of Article 11 of the Covenant, Sixth period of sessions, 1991.

Regarding Renato Ticona

133. As the Court has held in similar cases, [FN112] the non-pecuniary damage sustained by Mr. Ticona Estrada is evident, since it is human nature that a person subjected to forced disappearance suffers from deep pain, anguish, terror, impotence and insecurity. As a result, this damage need not be proven.

[FN112] Cf. Case of Castillo Páez v. Perú. Reparations and Costs. Judgment of November 27, 1998. Series C No. 43, para. 86; Case of Heliodoro Portugal v. Panamá, supra note 13, para. 238; and Case of Bayarri v. Argentina, supra note 16, para. 169.

134. Hence, the Court deems it is necessary to order the payment of US\$ 80.000 (eighty thousand dollars of the United States of America) as compensation for non-pecuniary damage, on the grounds of equity, [FN113] in favor of Renato Ticona. This amount shall be distributed among the victim's next- of -kin in the following manner: Fifty percent (50%) shall be delivered to his parents, Honoria Estrada de Ticona and César Ticona Olivares, in equal portions. The remaining fifty percent (50%) shall be equally distributed among his brothers and sister, Hugo Ticona, Rodo Ticona and Betzy Ticona. The amount shall be delivered to each of the beneficiaries pursuant to the terms above mentioned within the term of one year as of notice of this Judgment.

[FN113] Cf. Case of "Street Children" (Villagrán Morales et al.) v. Guatemala; supra note 109, para. 84; Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela, supra note 109, para. 242; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 239.

135. Moreover, the State and the representative have stated that on June 12, 2007, the National Commission for the Compensation to Victims of Political Violence (hereinafter, "CONREVIP"), [FN114] issued the Administrative Order N° 01/2007, [FN115] which declared, among other things, that Renato Ticona was a victim of political violence due to forced disappearance and included the name of the victim's father in the official list of beneficiaries of compensation. The State pointed out that in order to proceed to compensate each individual it is necessary the issuance of a supreme decree determining the amount in compensation of every beneficiary, but the State is still classifying the case files and has not yet determined the total resources available to see this through. The representative stated that no member of Ticona Estrada's family has received an amount in compensation or any other sum by the State.

[FN114] The CONREVIP is in charge of learning, classifying and deciding on the applications of victims of political violence, as an inter-institutional body of public law, with its own juridical personality, administrative autonomy and economy, formed by representatives of the public and private sector.

[FN115] The representative, in the brief of final written arguments, indicated that on March 11, 2004, the State enacted Act N° 2440 which provided for the compensation of victims of political violence during periods of unconstitutional governments and within the framework of that law, on June 12, 2007, the CONREVIP issued the Administrative Order N° 01/2007 which established:

First. It is hereby declared that Renato Enrique Ticona Estrada is a victim of political violence due to "Forced Disappearance" as established in section 4. I, subsection f) of Act N° 2640 of March 11, 2004, Exceptional Compensation to Victims of Political Violence During Periods of Unconstitutional Governments, as a consequence of the violation of human and constitutional rights enshrined in the Political Constitution of the State and the International Covenant on Civil and Political Rights, ratified by the State by means of Act N° 2119 of September 11, 2000; rights that were violated by the dictatorship exercised by General Luis García Meza.

Second. According to Section 12, subsection k) of the Supreme Decree N° 28015, it is hereby included the name of César Ticona Olivares in the official list of beneficiaries that determines the amount of exceptional and final compensation, to be published in the respective Supreme Decree, to the exclusion of the rights of Maria Honoria Estrada Figueroa and third parties who could alleged equal or better rights.

Third. It is declared that the name of the victim of political violence: Renato Enrique Ticona Estrada is included in the official list to be forwarded to the National Congress for public grant of authority, in accordance with the terms of Section 4, paragraph II of Act N° 2640 and Section 5, paragraph II, subsection c) of Supreme Decree N° 28015.

136. In such regard, this Tribunal values the existence of the CONREVIP, as an instance that allows the direct compensation to relatives of disappeared persons. Without prejudice to the foregoing, in consideration that such determination and the payment of the compensation is pending before the domestic authorities, this Court deems that when the State pays the compensation that has been established, it should inform the CONREVIP or the courts that are hearing said proceedings so they can take the appropriate decisions. [FN116] Said Administrative resolution N° 01/2007 shall, in no way, turn into an obstacle for the payment of the non-pecuniary compensation determined by this Tribunal in this Judgment.

[FN116] Cf. Case of the Pueblo Bello Massacre v. Colombia. Merits, reparations, and costs. Judgment of January 31, 2006. Series C N°. 140, para. 251.

Regarding Renato Ticona's relatives

137. The Court notes that, the relatives in their statements (supra para. 32 and 33) agreed on mentioning that they have been victims of pain, suffering, anguish and uncertainty due to the disappearance of Renato Ticona. Specially, Betzy Ticona, in the statement rendered before the Tribunal, expressed that “the fact of being unable to put a flower in this grave, makes they live [...] in a situation of constant sadness” and Hugo Ticona repeated that same feeling in the affidavit rendered before the Court. Moreover, it springs from the conclusions of the psychological expert opinion that the relatives suffered from chronical traumatic stress syndrome, [FN117] depression, [FN118] and anxiety [FN119] characterized by several symptoms (supra para. 32(e)). As to the parents, the disorder was greater. The expert opinion determined that there is causal relationship between the traumatic facts and the mental aftereffects, and therefore concluded that the aggression suffered and the disappearance of Renato Ticona was responsible for the mental findings. Besides, it identified other stressing factors as the non-compliance of the State as a representative of justice, which hinders the mental recovery of the relatives (supra para. 32(e)).

[FN117] It was found as expression of re-experimentation: Stimulus with uneasiness that recalls behavior flash-backs; unpleasant memories that keep coming back and unpleasant and repetitive dreams. It was determined as expressions of avoidance: Abandonment of life projects; avoid activities that remind what they live; emotional incapacity; remember things they do not want to remember. As to the expressions of activation, they were more irritable; have problems to sleep; always alert hipervigilance. It was also found other symptoms as being afraid of going crazy; life sensations stopped in time and uncertain future; somatic symptoms. Headaches and backaches; fury; anger and impotence.

[FN118] It was found as symptoms of depression: Loss of interest, mental anguish; anhedonia, indifference, hopeless, sexual dysfunction, tiredness, suffering, sadness, impotence, somatic symptoms. Headaches and backaches; fury; anger and painful feelings.

[FN119] It was found as symptoms of anxiety: Gasping for breath; mental anguish; tension; somatic symptoms: Headaches and backaches; insomnia; depressive condition.

138. Based on the foregoing and taking into account that the Court declared the violations of Articles 5(1), 8(1) and 25(1) of the American Convention to the detriment of Honoria Estrada de Ticona, César Estrada Olivares, Hugo Ticona, Betzy Ticona and Rodo Ticona, this Tribunal finds that said persons suffered non-pecuniary damages, recognized by the State, derived from the lack of justice, unawareness of the truth of what happened to the victim and uncertainty about the victim’s fate. In consideration of the above mentioned, the Court shall determine, apart from the compensations, other suitable measures for reparation (infra para. 142).

139. Therefore, the Court deems pertinent to set, in equity, the amount of US\$52.000 (fifty-two thousand dollars of the United States of America) in favor of Honoria Estrada de Ticona and US\$ 50.000 (fifty thousand dollars of the United States of America) in favor of César Estrada Olivares In this regard, the Court took into account, regarding both parents, the values pertaining to the house offered by the State [FN120] and the piece of property granted by the State in favor of César Ticona Olivares (supra párr. 131).

[FN120] According to the State, the value of the house has a referential sum of UFV, supra note 111.

140. In the case of Hugo Ticona, the Court deems appropriate to determine, on the grounds of equity, a sum of US\$ 60.000 (sixty thousand dollars of the United States of America) considering that: a) he was declared to be the victim of the violation of Articles 5(1), 8(1) and 25(1) of the Convention, from which it derives the anguish caused for the disappearance of his brother; and d) he as declared to be the victim of the violation of Articles 8(1) and 25(1) for denial of justice in his own detriment as a consequence of lack of investigation of the alleged tortures he presumably suffered from. Said amount shall be delivered to Hugo Ticona within the term of one year as from notice of this Judgment.

141. Lastly, as to Betzy Ticona and Rodo Ticona, this Tribunal deems appropriate to equitable determine the sum of US\$ 15.000 (fifteen thousand dollars of the United States of America) in favor of each one of them. The State should pay such compensations directly to the each beneficiary within the term of one year as of notice of this Judgment.

c) Other measures of reparation:

142. In this chapter, the Tribunal shall determine the measures for satisfaction aimed at reparationing the non-pecuniary damage and shall order the measures of public import or impact. [FN121]

[FN121] Cf. Case of “Street Children” (Villagrán Morales et al.) v. Guatemala; supra note 109, para. 84; Case of Heliodoro Portugal v. Panamá, supra note 13, para. 240; and Case of Bayarri v. Argentina, supra note 16, para. 177.

a) Duty to investigate

i) Obligation to investigate the facts that amounted to the violations of the case at hand, and to identify, prosecute and punish those responsible

143. The Commission considered as an essential measure of reparation in this case “to conduct a serious, complete and effective investigation in order to determine the perpetrators and instigators responsible for the detention and subsequent forced disappearance of Renato Ticona”. In such regard, the representative requested the Court to order the State to guarantee that the criminal proceedings Comisión Nacional c/ René Veizaga et al. "have the appropriate effects; be processed without delay; not resort to precepts such as amnesty, statute of limitation, extinguishment of the criminal action or others; identify the perpetrators and instigators responsible for the forced disappearance of Renato Ticona; and if applicable, those who are convicted, serve the sentence imposed by the Bolivian justice”. The State considered that “it has complied with the punishment of the perpetrators of the innumerable human rights violations,

among them, it can be mentioned the forced disappearance of Mr. Ticona”, based on the penalties imposed to Luis García meza and Luis Arce Gómez. Furthermore, it mentioned that by means of Resolution N° 002/2008 of January 8, 2008, it was delivered a condemnatory judgment against the alleged perpetrators of facts related to the forced disappearance of Renato Ticona.

144. The Court observes that the condemnatory judgment delivered by the Supreme Court of Justice of the State in the proceedings against Luis García Meza, sentenced the accused as well as Luis Arce Gómez to a penalty of thirty years of imprisonment without right to pardon, for the several crimes committed by them. Furthermore, there is a list that mentions Renato Ticona as one of the disappeared persons. Moreover, on January 8, 2008, a court delivered a condemnatory judgment against the alleged responsible for the forced disappearance of Mr. Ticona Estrada. Nevertheless, the writs of cassation filed by the convicted are still pending resolution; therefore, such decision has no authority of a final judgment. Nevertheless, the Court truly values the recent progress made in the criminal proceedings and considers that the State should continue with the processing of that case, so that, as soon as possible, there is a final judgment that can be effectively executed, in order to prevent conditions of impunity for this type of acts from being repeated. [FN122]

[FN122] Cf. Case of Myrna Mack Chang v. Guatemala, supra note 9, para. 156; Case of Zambrano Vélez et al. v. Ecuador, supra note 70, para. 124; and Case of Heliodoro Portugal v. Panamá, supra note 13, para. 116.

145. The Court notes that within the criminal procedure, the judicial authority has ordered, on several occasions, personal precautionary measures, among which, arrest warrants of the convicted people in the criminal judgments of the trial and appellate courts, which have not been executed. Said judicial orders have been complied with, so that should said judgments be uphold, those who are responsible for the facts, cannot escape from justice. Besides, this Court observes that it does not spring from the case file of this case that the State has taken effective steps to apprehend said people, that according to witnesses live and freely circulate in Oruro, which have not been objected by the State.

146. Based on the foregoing, as well as the case- law of this Tribunal, [FN123] the Court orders the State to effectively carry out the criminal proceedings in process and any future proceedings in order to determine the corresponding responsibilities for the facts of the case and, if applicable, to apply the appropriate legal provisions and in this way, prevent the repetition of facts like the ones of the instant case.

[FN123] Cf. Case of Baldeón García v. Perú. Merits, reparations, and costs. Judgment of April 6, 2006; Series C No. 147, para. 199; Case of Heliodoro Portugal v. Panamá, supra note 13, para. 245; and Case of Bayarri v. Argentina, supra note 16, para. 175.

147. In addition, it is worth mentioning that the Constitucional Tribunal of Bolivia has been sound to declare that the international treaties on human rights are part of a constitutional bloc, [FN124] as well as the case-law derived from the Inter-American system for the Protection of Human Rights that is binding on the domestic courts of Bolivia. [FN125] In this sense, said Constitucional Tribunal has considered that “the illegal deprivation of liberty [...] is an ongoing crime [and] accordingly, the counting of such crimes should be done from the definite ending date of the commission of such crime.” [FN126] This Court considers that the State may not invoke any domestic law or provision to exonerate itself from the obligation to investigate and, if applicable, punish those responsible for the facts committed against Mr. Ticona Estrada. Additionally, considering that this case deals with serious human rights violations, the State may not invoke the statute of limitations or any other principle that excuses it from taking responsibility, to decline its duty to investigate and punish those responsible. [FN127]

[FN124] Cf. Constitutional Judgments 1494/2003-R of October 22, 2003 0102/2003 of November 4, 2003, 1662/2003-R of November 17, 2003, 1494/2004-R of September 16, 2004 and 0095/01 of December 21, 2001 (documents presented by the State during the public hearing, p. 5068, 5076, 5111, 5125 and 5137).

[FN125] Cf. Constitutional Judgment 0664/2004-R of May 6, 2004 (documents presented by the State during the public hearing, p.5096).

[FN126] Cf. Constitutional Judgment 1190/2001-R (documentation presented by the State during the public hearing, p. 5215 to 5216).

[FN127] Cf. Case of Barrios Altos v. Perú. Merits. Judgment of March 14, 2001. Series C N° 75, para. 41; Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, reparations, and costs. Judgment of September 26, 2006. Series C N° 154, para. 151; and Case of La Cantuta v. Perú, supra note 43, para. 226.

ii) Regarding Hugo Ticona Estrada

148. The Commission stated that “as has been established by the Bolivian courts - though almost 28 years after the incidents- the State has the duty to investigate the torture alleged by Hugo Ticona so that it does not go unpunished”. The representative requested the Court to “order the Bolivian State to conduct the corresponding criminal investigation to determine the responsibility of the perpetrators of such serious crime against humanity [...] and that, if applicable, those [who are] convicted, serve the sentences imposed by the Bolivian Justice”.

149. As has been proven in this Judgment, the State did not guarantee the access to justice of Hugo Ticona, by not investigating the facts alleged by him (supra para. 98).

150. As has been previously established, the State has the duty to immediately and ex officio open an effective investigation to identify, try, and punish those responsible, when there is a complaint or there are grounds to believe that an act of torture has been committed (supra para. 94). Therefore, this Tribunal observes that the judgment delivered on January 8, 2008 by the Third Circuit Criminal Court orders the forwarding of the case history to the Office of the Public

Prosecutor, by virtue of the fact that “other criminal acts have been denounced, and against other people who are not involved in this procedure”.

151. The Court positively values this fact; however, it recalls that the State must initiate a serious and impartial investigation, in order to determine, within a reasonable time, the merits of the circumstances alleged herein. Therefore, the State may not invoke any domestic law or provision to exonerate itself from the Order of the Court to investigate and, if applicable, punish those responsible for the alleged facts.

iii) Search of Renato Ticona

152. The Commission considered that, “the Bolivian State must locate and deliver to the family the mortal remains of Renato Ticona Estrada”. In addition, the representative requested the Court to order the State to “immediately initiate a search and location of the mortal remains of this disappeared person and, if found, without further delay, deliver them to his relatives, paying for all burial expenses that may correspond”.

153. The State has informed that the Inter-Institutional Council for the Clarification of Forced Disappearances (CIEDEF) is actually developing a project which will shed light on the cases of forced disappearances that occurred between 1964- 1982, in a term of three years; said project was initiated on February 20, 2008 and is divided in three phases, the last one of them involves the search of disappeared people during the government of Luis García Meza. It also informed that said Project has been approved by instances within CIEDEF and its financing is guaranteed thanks to international cooperation.

154. The Court notes that, the relatives, by means of their statements agreed on mentioning the uncertainty about not knowing the fate of Renato Ticona. Furthermore, in the conclusions of the psychological expert opinion, it was determined that as long as there is uncertainty about whether Renato lives or is dead, the process of grief is impossible (*supra* para. 32(e)).

155. As has been established in this Judgment as part of the duty to investigate, the State must carry out an effective search of the victim’s whereabouts (*supra* para. 80) since the right of the victim's family to know the fate or whereabouts of the disappeared victim [FN128] constitutes a measure of reparation and therefore, an expectation that the State must satisfy to them. [FN129] It is of utmost importance for the relatives of the disappeared victim, the clarification of the whereabouts or fate of the victim, since by doing so, the relatives would be relieved from the anguish and suffering caused by the uncertainty about the whereabouts and fate of the disappeared loved one.

[FN128] Cf. Case of Castillo Páez v. Perú, *supra* note 113, para. 90; and Case of Goiburú et al. v. Paraguay, *supra* note 74, para. 171; and Case of La Cantuta v. Perú, *supra* note 43, para. 231.

[FN129] Cf. Case of Neira Alegría et al. v. Perú. *Supra* note 108 para. 69; and Case of Goiburú et al. V. Paraguay, *supra* note 74, para. 171; and Case of La Cantuta v. Perú, *supra* note 43, para. 231.

156. The Court positively values that the State is making efforts by means of the project that CIEDEF is developing, to shed light on the cases involving forced disappearances that occurred between 1964 and 1982, including the search of Renato Ticona.

157. Based on the foregoing, this Tribunal deems that for the purposes of the case at hand, the State shall promptly and effectively carry out a search of Renato Ticona.

b) Satisfaction

i) Publication of the Judgment

158. The representative requested as a measure of reparation, the publication of this Judgment in the Official Gazette of Bolivia and in a newspaper of national circulation, as well as the broadcasting of a summary of the Judgment by means of state means of communication.

159. To such regard, it should be mentioned that César Ticona Olivares, in his affidavit, declared that as a measure of a symbolic reparations he requested the Court “the publication of the judgment in a national newspaper” (supra para. 32(b)).

160. The Court deems appropriate, as ordered in other cases, [FN130] that the State should publish at least once, in the Official Gazette and in another newspaper of wide national circulation, of chapter I, its heading and paragraphs 1 to 5; of chapter III; its heading and paragraph 12, 14, 22 to 27; chapter VI; of chapter VII, its heading and the corresponding subheadings and paragraphs 73 to 76, 82 to 85, 87 to 88, and 95 to 98 and of chapter VIII, its heading and paragraphs 104 and 105 of this Judgment, without the corresponding footnotes and the operative paragraphs. Said publications shall be made within six months following notice of this Judgment.

[FN130] Cf. Case of Cantoral Benavidez v. Perú. Reparations and Costs. Judgment of December 3, 2001. Series C. N° 88, para. 79; Case of Heliodoro Portugal v. Panamá, supra note 13, para. 248; and Case of Bayarri v. Argentina, supra note 16, para. 179.

ii) Public act of acknowledgement of international responsibility

161. The Commission and the representative requested as measure of reparation the performance of a public act in which the State repeats its acknowledgment of international responsibility.

162. Moreover, the State expressed that the acquiescence was honest and that it has been accompanied by the acknowledgment of international responsibility carried out on August 13, 2008 at the public hearing held in Montevideo, Uruguay. In addition, it expressed that said acknowledgment was also made in an act held in the country on September 10, 2008, and that some members of Ticona Estrada’s family as well as high- ranking state authorities were present.

163. This Court positively values the acknowledgment on international responsibility of the State and the apology offered on August 13, 2008 during the public hearing held in the instant case, as well as the repetition of the act of acknowledgment on international responsibility for the human rights violations made on September 10, 2008, in the city of La Paz, Bolivia. Therefore, this Tribunal considers that the State has adequately and timely adopted this measure in order to repair the non-pecuniary damage caused to Renato Ticona's relatives.

iii) Homage and commemoration

164. The State informed on other measures adopted as measures for satisfaction, as the act performed on June 5, 2007, by which a square of the city of Oruro was named "Plaza del Universitario Renato Ticona Estrada" [Square of the university student, Renato Ticona Estrada]. Furthermore, the State communicated that during the act of acknowledgement of international responsibility performed on September 10, 2008, the State presented the publication of the Ministry of Foreign Affairs and Worship called "Historia y Vida de Renato Ticona Estrada" [History and Life of Renato Ticona Estrada], which was distributed to organizations for the defense of human rights and libraries opened to the general public.

165. To such respect, the Court positively values the implementation of said measures for satisfaction and considers them appropriate to repair the damage caused to the relatives of Renato Ticona.

c) Rehabilitation

i) Medical and psychological care to the next-of- kin of the victim

166. The Commission requested the Court to order the State to provide medical care to Honoria Estrada de Ticona, César Ticona Olivares, Hugo Ticona, Betzy Ticona and Rodo Ticona. Likewise, the representative requested the Court to order the State to provide medical and psychological care to the above mentioned persons and free medicine, according to their needs.

167. The State asserted that it has been arranging the provision of medical and psychological care for the parents and brothers and sister of Renato Ticona, according to the agreements entered into between the Ministry of Health and Sports and the two national public hospitals. [FN131] Moreover, the State informed that in the act of acknowledgment of international responsibility performed on September 10, 2008, the State delivered the credentials [FN132] for the provision, free of charge, of medical care to the relatives of Renato Ticona, in compliance with the agreements entered into.

[FN131] Cf. Inter-Institutional Agreement for the Provision of Medical Care N° 001 of 2008, entered into by the Ministry of Health and Sports and General San Juan de Dios Hospital in the city of Oruro, on June 26, 2008, whose beneficiary is Hugo Ticona Estrada; Inter-Institutional Agreement for the Provision of Medical Care N° 002 of 2008 entered into by the Ministry of

Health and Sports and VIEDMA, Hospital Complex of the city of Cochabamba on June 26, 2008, whose beneficiaries are César Ticona Olivares, Honoria Estrada de Ticona and Rodo Ticona Estrada; and Inter-Institutional Agreement for the Provision of Medical Care N° 003 of 2008, entered into by the Ministry of Health and Sports and Municipal University Hospital, San Juan de Dios, on June 26, 2008, whose beneficiary is Betzy Ticona Estrada.

[FN132] Cf. Credentials of July 14, 2008 that certify that beneficiaries Honoria Estrada de Ticona, César Ticona Olivares, Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada “are allowed to receive medical and psychological care and treatment in the [respective health centers] according to” the Inter-Institutional Agreements entered into by the Ministry of Health and Sports on June 26, 2008 (Documentation presented by the State during the public hearing, evidence 4. p. 4985-5005).

168. The Court considers, as in other cases, [FN133] that it is necessary to order a measure of reparation aiming at reducing the suffering that the facts of this case has caused to the victims, since as has been established in this chapter, all the relatives of Renato Ticona have suffered from mental and moral distress due to the disappearance of a loved one. In this sense, the expert opinion suggested that even though the psychiatric care that the parents received was important, all the relatives of Renato Ticona should receive therapy. Besides, they consider it is appropriate, taking into account the ailments of each member of Ticona Estrada’s family, to carry out a medical examination of the somatic consequences caused (supra para. 32(e)).

[FN133] Cf. Case of Cantoral Benavides v. Perú. Reparations and Costs. Supra note 131, para. 51; Case of Heliodoro Portugal v. Panamá, supra note 13, para. 256; and Case of Bayarri v. Argentina, supra note 16, para. 143.

169. The Court positively values the progress made by the State when providing, free of charge, medical and psychological treatment to the next-of-kin of Renato Ticona's. Based on the foregoing, this Tribunal considers that the State should effectively provide, previous a signed informed consent, the medical and psychological so requested to Honoria Estrda de Ticona, César Ticona Olivares, Hugo Ticona, Betzy Ticona and Rodo Ticona; such treatment should be provided by personnel specializing in the treatment of physical and mental health care problems that such people suffers from to ensure they are provided with the most appropriate and effective treatments. This medical and psychological treatment must be provided for the necessary time, free of charge and it must include the provision of the necessary medications, taking into consideration the ailments of each of them, following an individual evaluation.

d) Guarantees of Non-Repetition.

i) Improvement of the operation of the Inter-Institutional Council for the Clarification of Forced Disappearance (CIEDEF) [FN134]

[FN134] The Inter-Institutional Council for the Clarification of Forced Disappearances (CIEDEF) was created by means of Supreme Decree N° 27089 of June 28, 2003. It is within its authority to: “Coordinate measures with the Ministry of Foreign Affairs so that Bolivia promotes the approval of an International Covenant on Forced Disappearances [based] on the project presented to the United States; to carry out the follow-up of the decisions made by the Inter-American Court of Human rights, of the Organization of American States [...] or of other international bodies related to Bolivia; to process the information for the discovery of the remains of the persons who were victims of forced disappearance and to take steps to cooperate, at a technical, domestic and international level, in order to exercise its authority”.

170. The representative requested the Court to order the State the improvement of the operation of the Inter-Institutional Council for the Clarification of Forced Disappearance by means of a compulsory annual budget that would allow this body to count on sufficient human, permanent and qualified resources; material resources and financial resources that ensure a suitable and effective work.

171. The State informed on the powers granted to CIEDEF, the rules that govern the operation of such institution, as well as the recent measures adopted to clarify the forced disappearances.

172. The Court considers that it is of utmost importance for the non-repetition of the facts of the instant case that the State takes measures aimed at clarifying the acts of forced disappearance that occurred in the past in Bolivia. In this sense, the Court positively values the creation of CIEDEF by means of the Supreme Decree N° 27089 of June 18, 2003, as well as the measures it recently adopted.

173. Based on the foregoing, this Tribunal considers it is appropriate as guarantee of non-repetition, that the State provides the Inter-Institutional Council for the Clarification of Forced Disappearance, within a reasonable time, with the human and material resources necessary so that such council may effectively exercise the power granted to it. To such effects, the State must present, within one year, a specific proposal together with a program of action and planning related to the compliance with this order.

ii) Ratification of the international Convention for the Protection of all Persons against Enforced Disappearances.

174. The representative requested as a guarantee of non-repetition that the State, following the corresponding legislative procedure, ratifies the International Convention for the Protection of all persons against Enforced Disappearances.

175. The State informed that such Convention was “passed” by the Nacional Congress on September 10, 2008. Afterwards, on November 18, 2008, the State informed that on October 10, that same year, the Official Gazette N° 3130 published Act N° 3935 of September 26, 2008, by which the International Convention for the Protection of all Persons against Enforced Disappearance, signed within the framework of the United States, was approved.

176. The Court positively values the State's ratification of the International Convention for the Protection of All Persons against Enforced Disappearances and it positively values it, since it contributes to the non-repetition of the facts of the instant case.

D) Costs and Expenses

177. The costs and expenses are included within the concept of reparation as enshrined in Article 63(1) of the American Convention. [FN135]

[FN135] Cf. Case of Garrido and Baigorria v. Argentina, *supra* note 88, para. 79; Case of Heliodoro Portugal v. Panamá, *supra* note 13, para. 264; and Case of Bayarri v. Argentina, *supra* note 16, para. 188.

178. The Commission requested the Court that, once the representative is heard, orders the payment of the costs and expenses duly proven by the representative, in consideration of the special characteristic of the case. The representative stated that Ticona Estrada's family has incurred and keeps incurring in a series of expenses for the processing of the criminal proceedings Comisión Nacional de Desaparecidos c/ René Veisaga et al., related to attorney's fees, photocopies of the judicial case file, travels and accommodation in the city of La Paz and therefore, requested the reimbursement of US\$ 1.500.00 (one thousand five hundred dollars of the United States of America). As to the expenses of Ticona Estrada's family in the international processing, related to transportation and accommodation in the city of La Paz, as well as searching for documentation, the representative requested the Court to determine an amount in equity. Lastly, the representative expressed that any other expense related to his participation as Ombudsman of Bolivia before the Commission and the Court is hereby excluded and rejects any other qualification that the Court may do. The services rendered as Ombudsman are free of charge, in accordance with Ombudsman Law 1818 of December 22, 1997. Moreover, the State made a detailed description of the expenses requested by the representative at the domestic and international level and, specifically, indicated that the services of the Ombudsman are free of charge; for that reason, the State should not be punished for the expenses incurred by Ticona Estrada's family in order to access the Inter-American system of Human Rights. Finally, it pointed out that is necessary to exactly determine the expenses incurred by Ticona Estrada's family, regardless of the service and expenses presented by the Ombudsman and, it requested the Court to assess such expenses on the grounds of equity.

179. The Court has pointed out that the actions carried out by the victims in order to obtain justice, at the domestic and international level, imply expenses that must be compensated when a condemnatory judgment declares the international responsibility of the State. Regarding the reimbursement of the costs and expenses, the Tribunal has pointed out that it has to wisely assess its scope, which comprises the expenses incurred at the domestic jurisdiction as well as those incurred in the processing of the case before the Inter-American system, taking into account the circumstances of the specific case and the nature of the international jurisdiction for the protection of human rights. This assessment must be made on an equitable basis and taking into account the expenses incurred by the parties, as long as the quantum is reasonable. [FN136]

[FN136] Cf. Case of Garrido and Baigorria v. Argentina, supra note 88, para. 82; Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) v. Venezuela, supra note 109, para. 257; and Case of Bayarri v. Argentina, supra note 16, para. 161.

180. In the instant case, at the moment of forwarding the brief of requests and motions (supra para. 4) the representative did not present the respective vouchers of the costs and expenses that the relatives of Renato Ticona would have allegedly incurred into. In such regard, the Tribunal considers that the claims of the victims or their representatives as to costs and expenses and the supporting evidence must be offered to the Court at the first occasion granted to them, [FN137] that is, in the brief of requests and motions, without prejudice to the fact that such claim may belater on updated, according to new costs and expenses incurred during the processing of the case before this Court.

[FN137] Cf. Case of the “White Van” (Paniagua Morales et al.) v. Guatemala, supra note 15, para. 50; Case of Apitz Barbera et al. (“First Court of Administrative Disputes”) V. Venezuela, supra note 109, para. 258; and Case of Castañeda Gutman v. Mexico, supra note 17, para. 75.

181. Based on the foregoing and on the fact that there is no documentary evidence proving the expenses incurred by the victims and the representative during the proceeding at the domestic level, the Court determines, in fairness, that the State must grant the amount of US\$ 1.500.00 (one thousand fifty hundred dollars of the United States of America) to Hugo Ticona Estrada, for costs and expenses. It is worth mentioning that this Tribunal, when determining the expenses and costs, has excluded the expenses incurred at the international level, since in the procedure before the Inter-American system, the Ombudsman was the representative of the victim and as has been mentioned by him and the State, his services are rendered free of charge. The amount shall be delivered to the beneficiary within the term of one year as from notice of this Judgment. Hugo Ticona shall deliver, in turn, the amount he thinks is appropriate to whom was his representative at the domestic level. At last, this Court positively values the participation of the Ombudsman in this international proceeding, since it strengthens the general protection of human rights and, consequently, the Inter-American system for the protection of Human Rights.

E) Method of Compliance with the Payments Ordered

182. The payment of the compensations shall be done directly to the beneficiaries and the reimbursement of costs and expenses to Hugo Ticona. Should this person die before the pertinent above compensatory amounts are paid thereto, such amounts shall inure to the benefit of their heirs, pursuant to the provisions of the applicable domestic legislation. [FN138]

[FN138] Cf. Case of Myrna Mack Chang v. Guatemala, supra note 9, para. 25; Case of Heliodoro Portugal v. Panamá, supra note 13, para. 268; and Case of Bayarri v. Argentina, supra note 16, para. 195.

183. The State must discharge its pecuniary obligations by tendering dollars of the United States of America or an equivalent amount in the Bolivian legal currency, at the New York, USA exchange rate between both currencies prevailing on the day prior to the day payment is made.

184. If, due to reasons attributable to the beneficiary of the above compensatory amounts, he were not able to collect them within the period set for that purpose, the State shall deposit said amounts in an account held in the beneficiary's name or draw a certificate of deposit from a reputable Bolivian financial institution, in US dollars and under the most favorable financial terms allowed by the legislation in force and the customary banking practice. If after ten years compensation set herein were still unclaimed, said amounts plus accrued interests shall be returned to the State.

185. The amounts allocated in this Judgment as compensation and reimbursement of costs and expenses shall be delivered to the beneficiaries in their entirety in accordance with the provisions hereof, and may not be affected, reduced, or conditioned on account of current or future tax purposes.

186. Should the State fall into arrears with its payments, Bolivian banking default interest rates shall be paid on the amounts due.

187. In accordance with its consistent practice, the Court retains the authority deriving from its jurisdiction and the provisions of Article 65 of the American Convention, to monitor full compliance with this Judgment. The instant case will be closed once the State has complied in full with all the provisions herein. Within a term of one year as from the date notice the Judgment is served, the State shall submit to the Court a report on the measures adopted in order to comply with the Judgment.

X. OPERATIVE PARAGRAPHS

188. Therefore:

THE COURT,

DECLARES,

Unanimously that:

1. It accepts the partial acknowledgment of international responsibility made by the State, pursuant to the terms of paragraphs 20 to 27 of this Judgment.

2. The State violated the rights to personal liberty, humane integrity and life enshrined in Articles 7, 5(1), 5(2) and 4(1) of the American Convention on Human Rights in conjunction with

Article 1(1) therein, and also it failed to comply with the obligations established in Article I(a) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Renato Ticona Estrada, under the terms of paragraphs 61 to 63, 65 to 70 of this Judgment.

3. The State did not violate the right to recognition of juridical personality enshrined in Article 3 of the American Convention on Human Rights, in accordance with paragraphs 69 and 71 of this Judgment.

4. The State did not fail to comply with its obligations under Article XI of the Inter-American Convention on Forced Disappearance of Persons, according to the terms of paragraphs 67 to 71 of this Judgment.

5. The State violated the rights to a fair trial and judicial protection embodied in Articles 8(1) and 25(1) of the American Convention on Human Rights in relation to Article 1(1) therein, as well as the obligation undertaken under Article I(b) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Honoria Estrada de Ticona, César Ticona Olivares, Hugo Ticona Estrada, Betzy Ticona Estrada and Rodo Ticona Estrada, to the detriment of paragraphs 82 to 85 of this Judgment.

6. The State violated the right to humane treatment enshrined in Article 5(1) of the American Convention on Human Rights in relation to Article 1(1) therein, to the detriment of Honoria Estrada de Ticona, César Ticona Olivares, Hugo Ticona Estrada, Betzy Ticona Estrada and Rodo Ticona Estrada, under the terms of paragraphs 87 and 88 of this Judgment.

7. The State violated the rights to a fair trial and judicial protection embodied in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Article 1(1) therein, to the detriment of Hugo Ticona Estrada, under the terms of paragraphs 95 to 98 of this Judgment.

8. The State failed to comply with the obligations established in Articles I(d) and III of the Inter-American Convention on Forced Disappearance of People, in relation to Article 2 of the American Convention on Human Rights, under the terms of paragraphs 104 and 105 of this Judgment.

AND DECIDES:

Unanimously that:

9. This Judgment is per se a form of reparation.

10. The State must continue processing the criminal proceeding initiated for the forced disappearance of Renato Ticona Estrada, in order to conclude this proceeding as soon as possible, as from notice of this Judgment under the terms of paragraphs 144 to 147 of this Judgment.

11. The State must investigate the acts committed against Hugo Ticona Estrada and identify, prosecute and, if applicable, punish the responsible, within a reasonable time, according to the provisions of paragraphs 150 and 151 of this Judgment.

12. The State must proceed with the search of Renato Ticona Estrada promptly and effectively, under the terms of paragraphs 155 to 157 of this Judgment.

13. The State must publish at least once, in the Official Gazette and in another newspaper of wide national circulation, of chapter I, its heading and paragraphs 1 to 5; of chapter III; its heading and paragraph 12, 14, 22 to 27; chapter VI; of chapter VII, its heading and the corresponding subheadings and paragraphs 73 to 76, 82 to 85, 87 to 88, and 95 to 98 and of

chapter VIII, its heading and paragraphs 104 and 105 of this Judgment, without the corresponding footnotes and the operative paragraphs, within the term of six months, as from notice of this Judgment, under the terms of paragraph 160 herein.

14. The State must effectively implement the agreements for the provision of medical and psychological care requested by Honoria Estrada de Ticona, César Ticona Olivares, Hugo Ticona Estrada, Betzy Ticona Estrada and Rodo Ticona Estrada, under the terms of paragraphs 168 and 169 of this Judgment.

15. The State must provide the Inter-Institutional Council for the Clarification of Forced Disappearance, within a reasonable time, with the necessary human and material resources. To such effects, the State must present, within one year, a specific proposal together with a program of action and planning related to the compliance with this provision, under the terms of paragraphs 172 and 173 of this Judgment.

16. The State must pay Honoria Estrada de Ticona, César Ticona Olivares, Hugo Ticona Estrada, Betzy Ticona Estrada and Rodo Ticona Estrada the amounts determined in paragraphs 116, 125, 134, 139 to 141, and 181 as compensation for pecuniary and non-pecuniary damage and as reimbursement of costs and expenses, within the term of one year, as of notice of this Judgment, in accordance with paragraphs 115 to 117; 121 to 125; 131, 132; 134 to 141 and 179 to 181 of this Judgment.

Judges García- Sayán and García Ramirez advised the Court of their Concurring Opinions, which accompany this Judgment.

Done in Spanish and English, the Spanish text being authentic, in San José, Costa Rica, on November 27, 2008.

Cecilia Medina Quiroga
President

Diego García-Sayán
Sergio García Ramírez
Manuel E. Ventura Robles
Leonardo A. Franco
Margarette May Macaulay
Rhadys Abreu Blondet

Pablo Saavedra Alessandri
Secretary

So ordered,

Cecilia Medina Quiroga
President

Pablo Saavedra Alessandri
Secretary

CONCURRING VOTE OF JUDGES DIEGO GARCÍA-SAYÁN AND SERGIO GARCÍA RAMÍREZ, IN THE CASE OF TICONA ESTRADA ET AL. (BOLIVIA)

1. The Judges who deliver this opinion wish to express, first, our total agreement with the opinions of the other members of the Inter-American Court as to the main statements contained in the judgment of the case of Ticona Estrada (Bolivia) of November 27, 2008: The State violated the principles of the American Convention on Human Rights to which this Judgment refers. In this sense, there is no discrepancy among the members of the Tribunal or objection or difference. The judgment reveals the unanimous opinion of the seven Judges that heard and solved this case.

2. We would like to put on record our appreciation for the fact that the Ombudsman of the Bolivia has acted in representation of the victims before the Inter-American Court [FN139] to protect "... the promotion, enforcement, punishment and defense of human rights". We consider – according to the statements made in the hearing on merits held in Montevideo, Uruguay, on August 13, 2008 --, that this represents a step ahead for the Inter-American system for the protection of human rights. In this system, there are actors who are traditionally committed to preserve the fundamental rights: the State in itself, the Organization of American States, the civil society and the institutions that the society constitutes to such end.

[FN139] Act N° 1818, passed on December 22, 1997.

3. It is also worth taking into account, today, the presence of new agents for the protection of the rights, who are called “emerging actors”. Among them, we can find the institution of the Ombudsman, which forms part of the State but who may and must act to insure and defend these rights -- duty that reveals its institutional orientation and it is what it lives for --, as it happened in the instant case. In this sense, the ombudsman constitutes – like the public defenders – an “emerging actor” of great importance whose performance within the international level, which must become more frequent and intense, will significantly contribute to improve the conditions for the effective access to justice of those people who could hardly resort to the Inter-American Commission and Court. The fact that in the last ten years it has been asserted the decision to constitute institutions of that kind, which already work in approximate 15 members states of the system, constitutes a fact of special importance for the protection of human rights, not only at the domestic but also at the international level.

4. The forced disappearance of Renato Ticona Estrada is among the facts that were considered to be violations in this case. It is not necessary to repeat now the characteristics of the forced disappearance as a violation of several rules of the Convention, since it is a continuous or permanent violation inasmuch as the deprivation of liberty does not cease and the luck of the victim is established. In turn, we deem it is appropriate to emphasize that there is forced disappearance – meaning, a violation of very serious human rights—regardless of the fact that it may committed within the context of systematic violations or if it occurs only one time, in isolation.

5. International human rights Law does not establish a distinction regarding the last concept – which could be relevant for other purposes- and considers any type of forced disappearance to be a violation. Regarding this issue, it seems clear and obvious the description contained in Article II of the Inter-American Convention on this regard, of June 9, 1994. In that description, which has intended to expand -- and not reduce-- the protection of human rights, the existence of disappearance is not conditional upon the context in which the unlawful act occurs.

6. The foregoing has been the constant characterization expressed by different bodies that protect human rights, at the international and the Inter-American level. As a result of that, it has been possible to process cases of forced disappearances in circumstances of very different and several contexts allowing, in this way, a broader and more strict sphere of protection. Hence, the definition created in the `80 by the Working Group on Enforced or Involuntary Disappearances, the first mechanism developed for the international system for the protection of human rights to face this phenomenon (1980), [FN140] was oriented to inform, in detail, on the different elements of the institution of forced disappearance, without including the motive of the perpetrators, the context or whether the violation was systematic or massive. It is similar the definition expressed by the Declaration on the Protection of All Persons from Enforced Disappearances of the United Nations, 1992 [FN141] and the definition of the Internacional Convention for the Protection of All Persons from Enforced Disappearance adopted by the United Nations General Assembly in 2006. [FN142]

[FN140] Resolution N° 20 (XXXVI) of February 29, 1980, of the United Nations Human Rights Commission.

[FN141] United Nations Assembly General, Resolution 47/133 of December 18, 1992. In the declaration, forced disappearance"... occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the law".

[FN142] The Convention provides that forced disappearance is "...the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law".

7. If we consider that there is only one form of forced disappearance, in the sense we are now discussing about, when the disappearance occurs in a context of systematic and massive violations of human rights, the consequence would be a concerning decrease in the level of international protection of a person, with the resulting lack of protection for the current or possible victims of such unlawful act. Any element included in the constitution of such disappearance would not be in line with the Inter-American Convention and the concepts created in the last three decades, at the Inter-American level as well as the international level;

furthermore, it would leave millions of victims and possible victims unprotected. This is out reading of the judgment as the forced disappearance and the relation there is or could be between this and other facts of the past.

8. In light of the fact that the operative paragraphs of the judgment, with which we agree, refer to several paragraphs of the resolution, we deem it is appropriate to express our own point of view regarding the jurisdiction *ratione temporis* of the Court to hear certain aspects of this case, in view of the date on which the incidents occurred, as well as the moment in which the State, party to the American Convention, acknowledged the contentious jurisdiction of the Court and the way it expressed such acknowledgment, under the protection of Article 62 of that treaty.

9. The exercise of the contentious jurisdiction of the Court implies an important issue for the legal certainty in the Inter-American system of protection of human rights, for the benefit of the people that participates in that system and, more importantly, for the good performance of the justice administration. The exercise of such jurisdiction is associated with several legal acts, that may or may not coincide in time: on the one hand, the ratification of the American Convention (or the respective adherence); on the other hand, the declaration of acknowledgment to which it refers, precisely, Article 62(1) of the American Convention. The question regarding whether it is appropriate to keep in this treaty the empowering clause or adopt a regime of automatic acknowledgment is an issue *lege ferenda* which we shall not examine now.

10. Obviously, the Court may not take on, following its own decision, jurisdiction that has not been conferred upon it. This is about a legal issue that must receive a legal answer, regardless of any particular opinion on the convenience or inconvenience of taking on jurisdiction to hear facts that has no knowledge of, in an act of "judicial authority" that may not have legal grounds and may be, as a result, arbitrary. The Court cannot replace, at will – beyond the boundaries of admissible interpretation -- the act of the State in matters that correspond to the decision of the State and not to the powers of the Court.

11. We accept, without any doubt, the authority of the principle *pro homine* or *pro persona* in the creation of laws and judicial interpretation within the sphere of human rights which is an essential element for the proper protection of human rights and the progress of case-law in the application of such rules. Hence, the application of this crucial principle has nothing to do in the issue of the case at hand, due to the fact that we are trying to establish here the powers of the jurisdictional body which was created and developed by an international treaty, and not exercise the powers already vested in it by said treaty.

12. Apart from the personal considerations, which are truly respectable, the truth is that the American Convention has created a precise system of recognition of jurisdiction. Certainly, a State may acknowledge the contentious jurisdiction of the Court during the process of a proceeding, expressing such acknowledgment by means of a sufficient and unequivocal action. The Vienna Convention on the Law of Treaties provides that a treaty shall be interpreted "... in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" (Art. 31(1)), criterion that if applied to this case refers to the rule of the American Convention in which the parties agree to the requirement of an express declaration in order to recognize the competence of the Court. The Court may not

assume the existence of such recognition, deducing it from isolated, ambiguous or equivocal expressions, to which the State does not clearly ascribe the nature and efficacy of recognition.

13. It spring from the foregoing our difference with some of the colleagues, members of the Court, only and exclusively as to the hearing of facts committed outside the temporal scope that comprises the recognition of competence on the part of the State. This does not mean, of course, the exclusion from the judgment of the description of the incidents related to situations that ended in a violation, which is the Court's duty to hear.

Diego García-Sayán
Judge

Sergio García Ramírez
Judge

Pablo Saavedra Alessandri
Secretary