

**INTER-AMERICAN COURT OF HUMAN RIGHTS**  
**CASE OF IBSEN CÁRDENAS AND IBSEN PEÑA v. BOLIVIA**  
**JUDGMENT OF SEPTEMBER 1, 2010**  
**(Merits, Reparation, and Costs)**

In the case of *Ibsen Cárdenas and Ibsen Peña*,

the Inter-American Court of Human Rights (hereinafter, the "Inter-American Court" or "the Court"), composed of the following judges:

Diego García-Sayán, President;  
Leonardo Franco, Vice-President;  
Manuel E. Ventura Robles, Judge;  
Margarette May Macaulay, Judge;  
Rhadys Abreu Blondet, Judge;  
Alberto Pérez Pérez, Judge; and  
Eduardo Vio Grossi, Judge;

also present:

Pablo Saavedra Alessandri, Secretary and  
Emilia Segares Rodríguez, Deputy Secretary,

in accordance with Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention") and Articles 30, 32, 59 and 61 of the Court's Rules of Procedure<sup>1</sup> (hereinafter, "the Rules of Procedure"), delivers this Judgment.

**I**  
**INTRODUCTION TO THE CASE AND PURPOSE OF THE DISPUTE**

1. On May 12, 2009, the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission"), pursuant to Articles 51 and 61 of the Convention, filed a petition against the Plurinational State of Bolivia (hereinafter, "the State" or "Bolivia"), which gave rise to this case. The initial petition was presented to the Commission on September 26, 2003. On October 12, 2005, the Commission adopted Report N° 46/05, declaring the petition admissible. Subsequently, on October 31, 2008, the Commission adopted its Report on the Merits N° 93/08 under the terms of Article 50 of the Convention, making certain recommendations to the State. The State was served notice of the Report on November 12, 2008. Following the granting of two extensions and

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<sup>1</sup> In accordance with Article 79(1) of the Court's Rules of Procedure in force, "contentious cases which have been submitted for the consideration to the Court before January 1, 2010, will continue to be processed, until the issuance of a judgment, in accordance to the previous Rules of Procedure." Thus, the Rules of Procedure mentioned in this Judgment are those approved by the Court during its 49th Regular Period of Sessions, held from November 16 to 25, 2000, and partially amended during its 82nd Regular Period of Sessions, held from January 19 to 31, 2009.

the presentation of information by the State, due to the “lack of significant progress made in effectively complying” with some of the recommendations set out in Report 93/08 and the expressed intention of the alleged victims’ family to have the case brought before the Court, on May 8, 2009, the Commission decided to submit the case to the jurisdiction of the Court. The Commission appointed Commissioner Luz Patricia Mejía and Executive Secretary Santiago A. Canton as delegates; it also appointed Deputy Executive Secretary Elizabeth Abi-Mershed and attorneys of the Executive Secretariat Juan Pablo Albán and Silvia Serrano as legal advisors.

2. The petition concerns the alleged “forced disappearances of [Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña] in October 1971 and February 1973, respectively, under the military dictatorship led by Hugo Banzer Suárez [in Bolivia], followed by the [alleged] impunity with respect to those events; as well as the [alleged] lack of adequate reparation to their family for the injuries suffered and their uncertainty as to the whereabouts of one of the victims.” According to the Commission, the whereabouts of Mr. Rainer Ibsen Cárdenas were determined in 2008, when his remains were found, identified, and delivered to his family, something that has not occurred in the case of Mr. José Luis Ibsen Peña.

3. The Commission requested that the Court declare the State of Bolivia responsible for the violation of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment [Personal Integrity]), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial [Judicial Guarantees]) and 25 (Right to Judicial Protection) of the American Convention, in relation to the obligation established in Article 1(1) (Obligation to Respect Rights) and with the obligations established in Articles 1 and 11 of the Inter-American Convention on Forced Disappearance of Persons (hereinafter, “Convention on Forced Disappearance”) to the detriment of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña; and for the violation of Articles 5 (Right to Humane Treatment [Personal Integrity]), 8 (Right to a Fair Trial [Judicial Guarantees]) and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of the family of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña, namely, Tito Ibsen Castro, Rebeca Ibsen Castro, Raquel Ibsen Castro, and Martha Castro Mendoza. Likewise, the Commission requested that the Court declare that the State “has failed to comply with the obligation contained in Articles 3 and 4 of the Convention [...] on Forced Disappearance of Persons, [...] as it had failed to classify the crime of forced disappearance until the 2004.” Finally, the Commission asked the Court to order specific reparations.

4. On September 25, 2009, Messrs. Mario Rellini Ordoñez, Daniel Enríquez Tordoya and Tito Ibsen Castro, representatives of the alleged victims (hereinafter, “the representatives”) presented their brief containing pleadings, motions and evidence (hereinafter, the “brief containing pleadings and motions”) under the terms of Article 24 of the Rules of Procedure. The representatives agreed with the arguments of the Commission in the petition (*supra* paras. 2 and 3) and requested that the Court declare the international responsibility of the State for the violation of Article 24 of the American Convention (Right to Equal Protection). They also asked the Court to order the State to adopt specific reparations.

5. On January 26, 2010, the State submitted its response to the petition and observations to the brief containing pleadings and motions (hereinafter, “response to the petition”). The State acknowledged its international responsibility “for the rights established in Articles 1(1), 3, 4, 5, 7, 8, and 25 of the American Convention and the obligations established in [Articles] 1, 3, 4, and 11 of the Convention on Forced

Disappearance of Persons, in relation to Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña, [as well as the rights established in] Artic[les] 5, 8, and 25 of the American Convention, in connection with Article 1(1) [thereof], in relation to Martha Castro Mendoza (stepmother and spouse [,] respectively), Tito Ibsen Castro, Rebeca Ibsen Castro, and Raquel Ibsen Castro (siblings and children,) respectively) [,] all mentioned by the Commission.” However, the State expressly indicated that “it did not accept the request for reparations submitted in the Commission’s petition and the brief containing pleadings [,] motions and evidence from the family.” The State appointed Ms. M.C. Yovanka Oliden Tapia as Agent and Mr. Victor Montecinos Villca as Deputy Agent in the case.

## II PROCEEDINGS BEFORE THE COURT

6. After the presentation of the main briefs (*supra* paras. 1, 4, and 5), the President of the Court of (hereinafter, “the President”) ordered the submission of the sworn statements (affidavits) of three alleged victims, three witnesses, and one expert witness, all to be offered opportunely by the parties. The President also summoned the parties to a public hearing in order to receive the statements of one alleged victim, one witness and two expert witnesses presented by the Commission, the State of Bolivia and the representatives, respectively, as well as the final oral arguments on the merits for any possible reparations and costs. Finally, the President ordered the parties to present their final written arguments no later than May 24, 2010.<sup>2</sup>

7. On March 22 and 29, and May 3, 2010, the Commission and the representatives submitted statements sworn before a notary public (affidavits) to the Court.

8. The public hearing took place on April 13, 2010, during the 41st Extraordinary Period of Sessions held in the city of Lima, Republic of Peru.<sup>3</sup> During the hearing, the State submitted several documents to the Court as evidence during its final oral arguments. Likewise, the Court asked the State to submit various documents as evidence to facilitate the adjudication of the case.

9. On April 16, 2010, in consultation with the full Court, the President requested that the State submit information related to the legal challenges alleged in this case (*infra* paras. 175 to 191).

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<sup>2</sup> Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Summons to a Public Hearing. Order of the President of March 10, 2010, Operative Paragraphs 1-4 and 12. Due to a request for substitution submitted by the representatives, the President required Ms. Rebeca Ibsen Castro to render a sworn statement before a notary public despite the fact that she had been summoned to testify during the abovementioned hearing. The Commission supported the representatives’ request. The State did not submit observations on this matter. This declaration was received on May 3, 2010. Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Summons to a Public Hearing. Order of the President of April 6, 2010, Operative Paragraph 3.

<sup>3</sup> The following persons appeared at this hearing: a) on behalf of the Commission, María Silvia Guillén, Delegate; Elizabeth Abi-Mershed, Deputy Executive Secretary; and Silvia Serrano, Legal Advisor; b) on behalf of the alleged victims, Tito Ibsen Castro, Jaime Daniel Enriquez Tordoya, and Mario Ressini Ordóñez; and c) on behalf of the State, Samuel Tola Larico, Vice-Minister of Justice and Fundamental Rights, Ministry of Justice; María del Rosario Basagoitia Cuba, Representative of the Supreme Court of Justice, Judicial Section; Germán Jesús Quezada González, Representative of the Prosecutor’s Office for the District of Santa Cruz de la Sierra, Public Prosecutor’s Office; Yovanka Oliden Tapia, Agent of the State of Bolivia; Patricia Mendoza García, Director General of Juridical Affairs, Ministry of Foreign Affairs; Luis Rojas Martínez, responsible for the International Legal Representation Area, Ministry of Foreign Affairs; Karina Palacios, General Office of Juridical Affairs, Ministry of Foreign Affairs; Nelson Cox, Ministry of Justice; and Ximena Fajardo, Ministry of Justice.

10. On May 24, 2010, the Commission, the representatives and the State presented their final written arguments. The representatives and the State also submitted documentary evidence along with their briefs. Additionally, the State submitted the information requested by the Court on the legal challenges (*supra* para. 9) and one of the documents requested by the Court during the public hearing as evidence to facilitate adjudication of the case (*supra* para. 8).
11. On June 18, 2010, the State submitted another document that had been requested by the Court during the hearing as evidence to facilitate adjudication of the case (*supra* para. 8).
12. On July 7, 2010, the Court asked the representatives and the State to submit copies of certain documents as evidence to facilitate adjudication of the case.
13. On July 16 and August 11, 2010, the representatives and the State, respectively, submitted the documents requested by the Court as evidence to facilitate adjudication of the case (*supra* para. 12).
14. On August 19, 2010, the State submitted to the Court a copy of a decision issued on August 16, 2010, by the Second Criminal Chamber of the Supreme Court of Justice (hereinafter, "Supreme Court") as evidence to facilitate adjudication of the case.
15. On August 20, 2010, the State submitted to the Court additional information related to the creation of a postal stamp as a "means of reparation" undertaken of its own accord.
16. On August 23, 2010, the Court requested that the Commission and the representatives provide certain information concerning the decision issued on August 16, 2010, by the Supreme Court (*supra* para. 14). Likewise, the Court requested that the State and the representatives submit a copy of the postal stamp referred to by the State (*supra* para. 15).
17. On August 26, 2010, the State submitted to the Court a "report on the progress made in fulfilling the commitments assumed by the State [...] in order to comply with its obligation to recover the historical memory of Messrs. José Luís Ibsen Peña and Rainer Ibsen Cárdenas," as well as information on the decision of August 16, 2010, issued by the Supreme Court. The State also submitted a copy of the postal stamp requested by the Court (*supra* para. 16). On that same date, the representatives submitted the information requested by the Court (*supra* para. 16), with the exception of the postal stamp, and informed the Court of two alleged "criminal acts" that occurred "after the ceremony in which the stamp was issued." They also submitted various documents concerning the alleged events.<sup>4</sup> Furthermore, since the time limit had expired, (*supra* para. 16), the Commission did not submit the information requested regarding the August 16, 2010, decision of the Supreme Court.
18. On August 31, the representatives submitted their observations on the "progress report on the fulfillment of the commitments assumed by the State" to the Court (*supra*

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<sup>4</sup> The Court finds no connection between the events reported by the representatives and the factual basis of the petition presented by the Commission in this case (*infra* para. 228). Therefore, the Court shall not rule on those events.

para. 17). Given that the time limit had expired, the Commission did not submit observations regarding the State's report.

### III JURISDICTION

19. The Court has jurisdiction over this case under Article 62(3) of the Convention, given that Bolivia has been a State Party to the Convention since July 19, 1979, and accepted the binding jurisdiction of the Court on July 27, 1993. Likewise, the State ratified the Convention on Forced Disappearance of Persons on September 19, 1996, and deposited said document on May 5, 1999.

20. As a general rule, the Court has temporal jurisdiction as of the date on which the appropriate instruments are ratified and its binding jurisdiction has been accepted, according to the terms of the instruments of ratification and recognition.

21. Moreover, on numerous occasions this Court has determined that it can exercise jurisdiction *ratione temporis* to examine permanent or continuing violations, that is, those violations that began prior to both the date of ratification of the instruments and the State's recognition of the Court's jurisdiction and that continue even after that date, without violating the principle of non-retroactivity.<sup>5</sup>

22. Although the State accepted the contentious jurisdiction of the Court on July 27, 1993, having expressly acknowledged the facts that occurred in this case in October 1971 (*infra* paras. 24 to 26), the Court considers that Bolivia has waived its right to claim a temporal limitation to the exercise of the Court's jurisdiction and, therefore, has accepted the Court's contentious jurisdiction to examine all the facts and issue a ruling on the violations established in this case and their consequences.

### IV PARTIAL ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY

23. In its response to the petition, the State made a partial acknowledgment of international responsibility (*supra* para. 5). It indicated that "[a]s to the facts, the Plurinational State of Bolivia fully agree[d] with the statements of the Commission [...]."

24. As to the legal arguments, the Bolivian State indicated that:

it acknowledge[d] its international responsibility for the rights provided for in Articles 1(1), 3, 4, 5, 7, 8, and 25 of the American Convention; [Articles] 1, 3, 4, [and] 11 of the Convention on Forced Disappearance [of Persons] in relation to Mr. Rainer Ibsen Cárdenas and Mr. José Luis Ibsen Peña; [and Articles] 5, 8, [and] 25 of the Convention in connection with Art[icle] 1(1) of that body of law in relation to Martha Castro Mendoza [...], Tito Ibsen Castro, Rebeca Ibsen Castro and Raquel Ibsen Castro [...], all mentioned by the Commission on Human Rights.

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<sup>5</sup> Cf. *Case of Blake v. Guatemala. Preliminary Objections*. Judgment of July 2, 1996. Series C No. 27, paras. 39 and 40; *Case of Heliodoro Portugal v. Panama. Preliminary Objections, Merits, Reparations and Costs*. Judgment of August 12, 2008. Series C No. 186, para. 25; and *Case of Ticona Estrada et al. v. Bolivia. Merits, Reparations, and Costs*. Judgment of November 27, 2008. Series C No. 191, para. 29.

25. During the public hearing held in this case (*supra*, para. 8), the State's representative apologized to the family of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña in the following terms:

with the firm intention of repairing the damage caused, [the State] publicly apologize[s] to all of the Ibsen family, represented [...] by [...] Tito Ibsen Castro, whom I implore to deliver this emphatic public apology to each one of the family members and I implore them to bear in mind that Rainer Ibsen and José Luis Ibsen Peña [...] will live forever in the historical memory of the Bolivian nation. The Bolivian people will remember [them] forever [...] for how they fought for democracy, giving up their lives [...].

26. In its final arguments the State also indicted that "it acknowledge[d] its international responsibility for the context in which [...] the facts [occurred], that constituted a political and historical environment that defined the years 1971 to 1982, during which time the Plurinational State of Bolivia experienced years of violence and fear imposed by dictatorial [g]overnments [...]." Furthermore, the State indicated that in its domestic jurisdiction, "the Judiciary [...] issued a Judgment of First Instance through Resolution No. 192/2008 and the Court Order issued on September 28, 2009, by the First Civil Chamber of the Superior Court of the Judicial District of the city of Santa Cruz de la Sierra [...]." It noted that, "it is aware of the fact that the judgment and the Court Order do not incorporate international human rights standards and do not punish those responsible in accordance with the crimes committed [...]." Therefore, it stated that "it [would] take the actions [...] necessary for the Supreme Court to h[ave] the necessary elements when it issues a ruling on a motion for an appeal."

27. Nevertheless, the State contested the Commission's arguments that "it took nearly thirty-seven years for the remains of Mr. Rainer Ibsen Cárdenas to be found, identified and delivered to his family by the State." It explained that "[i]n 1983, the National Commission for the Investigation of Disappeared Persons publicly announced the discovery of a mass grave containing the remains of Mr. Rainer Ibsen Cárdenas[;] from that moment, [...] the events he suffered [...] were known by the public and by his family," "who did not take any action until [the year] 2003 [...] to claim the remains found." The State also affirmed that "at no time did it hide [those] remains [but], on the contrary[,] assisted in the identification of the bodies as of 1983[,] the year in which the whereabouts of the remains were [made] known [and] and the victim's forced disappearance concluded [...]."

28. Furthermore, in its response to the petition, the State clearly indicated that "it d[id] not accept the Commission's petition and the brief containing pleadings[,] motions and evidence from the family regarding the request for reparations." It stated that "there is no dispute as to the beneficiaries;" however, it brought to the Court's attention "its objection to the extremely elevated [claims] of the [representatives]." On this last point, it asked the Court to "consider the willingness and disposition of the State regarding the measures of reparations it has been implementing," which it referred to in the answer to the petition both during the public hearing and in its final arguments (*supra* paras. 5, 8, and 10).

29. It should also be noted that during the processing of this case, and in response to this particular petition, the State did not refer to the arguments of the representatives regarding the violation of Article 24 (Right to Equal Protection) of the American Convention to the detriment of the family of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña. The Commission did not allege the violation of this right in its petition.

30. The Commission stated that it appreciated the acknowledgment of international responsibility by the Bolivian State on December 10, 2008, in the context of the processing

of this case. It reiterated this view in its response to the petition and at the public hearing, as it “constitute[d] a positive contribution to the development of the proceedings and to the observance of the principles that inspire the American Convention.” In this regard it considered that “this is a full acknowledgment of the violations of the Convention on Human Rights and the Convention on Forced Disappearance of Persons alleged by the Commission in its petition. [Thus,] it underst[ood] that the dispute in relation to those violations h[ad] ceased.” The Commission asked the Court to “accept the State’s acknowledgment and, consequently, declare the international responsibility of the Bolivian State [and], in the corresponding judgment, and to include a detailed account of the facts by virtue of their restorative effect and their contribution to the truth.”

31. Similarly, the Commission warned that the “issue raised by the State regarding the date when the forced disappearance of Mr. Rainer Ibsen Cárdenas concluded is a matter of fact that the Court must determine in its judgment; however, it has no effect on the acknowledgment of responsibility for the violations alleged, nor does it imply, in any way, a repudiation of the Court’s jurisdiction to rule on all of the facts of the present case.”

32. The representatives agreed with the Commission’s arguments in the petition and at the public hearing. However, they pointed out that “the State [,] far from assuming a clear willingness to acknowledge its international commitments, [has instead] been assuming [all] types of contradictory positions.” Furthermore, they indicated that “an apology was offered [to the alleged victims at the public hearing], but afterwards, [the latter were] accused of having [committed] an immoral act for having presented a request for reparations.”

33. In accordance with Articles 56(2) and 58 of the Rules of Procedure, and in exercise of its powers of international legal protection of human rights, the Court may determine whether an acknowledgment of international responsibility made by a respondent State offers sufficient grounds, under the American Convention, for continuing with adjudication of the merits of the case and, if applicable, awarding reparations, costs, and expenses.<sup>6</sup> Furthermore, the Court notes that the evolution of the system for the protection of human rights currently allows alleged victims or their families to independently present their brief containing pleadings, motions and evidence and to submit claims that may or may not coincide with those of the Commission. Therefore, when it submits a statement of acceptance, the State must clearly indicate whether it also accepts the claims presented by the alleged victims or their families.<sup>7</sup>

34. Given that the proceedings before this Court relate to the protection of human rights, a matter of international public order that transcends the will of the parties, the Court must ensure that acts of acquiescence are acceptable for the purposes of the Inter-American system of human rights. In doing so, the Court must not only verify the formal conditions

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<sup>6</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations, and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 105; *Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits*,<sup>6</sup> Cf. *Case of Myrna Mack Chang v. Guatemala. Merits, Reparations and Costs*. Judgment of November 25, 2003. Series C No. 101, para. 105; *Case of Chitay Nech et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs*. Judgment of May 25, 2010. Series C No. 212, para. 17; and *Case of Manuel Cepeda Vargas v. Colombia. Preliminary Objections, Merits and Reparations*. Judgment of May 26, 2010. Series C No. 213, para. 107.

<sup>7</sup> Cf. *Case of Myrna Mack Chang v. Guatemala*, *supra* note 6, para. 29; *Case of Goiburú et al. v. Paraguay. Merits, Reparations and Costs*. Judgment of September 22, 2006. Series C No. 153, para. 47; and *Case of the “Las Dos Erres” Massacre v. Guatemala. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 24, 2009. Series C No. 211, para. 29.

of those acts, but also examine them in relation to the nature and gravity of the violations alleged, the requirements and interests of justice, the specific circumstances surrounding a particular case and the attitude and position of the parties.<sup>8</sup>

35. To determine the legal effects of the State's acceptance and acknowledgment of responsibility, the Court takes into account, in particular, that the State admitted the facts presented in the Commission's petition (*supra* paras. 5 and 24 to 26), although it nevertheless: 1) denied that it had taken almost thirty-seven years to locate and identify the remains of Mr. Rainer Ibsen Cárdenas; 2) did not accept the claims for reparation presented in this case; and 3) did not refer to the alleged violation of the right to equal protection recognized in Article 24 of the American Convention to the detriment of the family of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña, or to the facts related to those allegations (*supra* paras. 27 to 29).

36. Accordingly, the Court decides to accept the State's acknowledgment of responsibility and to consider it as a partial admission of the facts and partial acceptance of the legal claims contained in both the Commission's application and the representatives' brief of pleadings and motions. The Court finds that the dispute continues regarding several factual and legal questions related to the alleged forced disappearance of Mr. Rainer Ibsen Cárdenas, the reparations requested by the representatives, and the alleged violation of Article 24 of the American Convention. Therefore, the Court shall address these issues in the corresponding chapters of this Judgment, based on its jurisprudence and the evidence in the case file.

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37. The Court appreciates the State's partial acknowledgment and acceptance of the facts, as well as its partial acceptance to some of the claims, and considers that this attitude is a positive contribution to this proceeding, to the proper functioning of the Inter-American jurisdiction on human rights, to the validity of the principles that inspire the American Convention, and to the conduct to which States are bound in this matter, by virtue of their commitments as parties to international instruments on human rights.<sup>9</sup> The Court further notes that the State has demonstrated this same willingness in similar cases before this Court.<sup>10</sup>

38. Nevertheless, having examined the State's acknowledgment of responsibility, and having considered the arguments of the Commission and the representatives, as well as the nature and gravity of the facts alleged and the violations committed, the Court finds it necessary to deliver a Judgment in which it establishes the facts and examines all of the

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<sup>8</sup> Cf. *Case of Kimel v. Argentina. Merits, Reparations and Costs*. Judgment of May 2, 2008. Series C No. 177, para. 24; *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs*. Judgment of November 23, 2009. Series C No. 209, para. 61; and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 18.

<sup>9</sup> Cf. *Case of Carpio Nicolle et al. v. Guatemala. Merits, Reparations and Costs*. Judgment of November 22, 2004. Series C No. 117, para. 84; *Case of the "Las Dos Erres" Massacre v. Guatemala*, *supra* note 7, para. 38; and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 18.

<sup>10</sup> This has occurred, for example, in the cases of *Trujillo Oroza* and *Ticona Estrada et al.*, both against Bolivia.



relevant evidence of the case, as well as the corresponding implications regarding reparations.<sup>11</sup>

## V EVIDENCE

39. Based on Articles 46 and 47 of the Rules of Procedure and on the Court's jurisprudence regarding evidence and its assessment,<sup>12</sup> the Court shall now examine and assess the documentary evidence submitted by the parties at different procedural stages, the affidavits rendered by alleged victims, witnesses and expert witnesses, the statements received at the public hearing (*supra* para. 6), and the evidence to facilitate adjudication of the case as requested by the President (*supra* paras. 10, 11, 13, 16, and 17). In doing so, the Court shall adhere to the principles of sound judgment within the appropriate legal framework.<sup>13</sup>

### **A. *Documentary, testimonial and expert evidence***

40. The Court admitted statements made by the following alleged victims, witnesses and expert witnesses:

a) *Raquel Ibsen Castro and Martha Castro Mendoza*. Alleged victims. Statement presented by the Commission and the representatives. The statement referred to the alleged forced disappearance of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña; the efforts undertaken to determine their whereabouts; the State's alleged lack of willingness to investigate the alleged disappearances; and the consequences of these situations, *inter alia*.

b) *Rebeca Ibsen Castro*. Alleged victim. Statement presented by the representatives. It refers to the alleged disappearance of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña; the efforts undertaken to determine their whereabouts; the State's alleged unwillingness to investigate the alleged disappearances; the obstacles that she allegedly faced in her search for the truth regarding the alleged disappearances and the punishment for those responsible; and the consequences of these situations, *inter alia*.

c) *Renato Estevan Díaz Matta*. Witness. Statement presented by the Commission and the representatives. The statement referred to the incident suffered by Mr. Rainer Ibsen Cárdenas when he found himself in a detention center in La Paz, Bolivia; Mr. José Luis Ibsen Peña's experiences in a detention center of Santa Cruz, Bolivia; and the conversation the witness allegedly had with both alleged victims, *inter alia*.

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<sup>11</sup> Cf. *Case of Vargas Areco v. Paraguay. Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 155, para. 66; *Case of Kawas Fernández v. Honduras. Merits, Reparations and Costs*. Judgment of April 3, 2009. Series C No. 196, para. 35; and *Case of Radilla Pacheco v. Mexico, supra* note 8, para. 66.

<sup>12</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 25, 2001. Series C No. 76, para. 50; *Case of Chitay Nech et al. v. Guatemala, supra* note 6, para. 47; and *Case of Manuel Cepeda Vargas v. Colombia, supra* note 6, para. 53.

<sup>13</sup> Cf. *Case of the "White Van" (Paniagua Morales et al.) v. Guatemala. Merits*. Judgment of March 8, 1998. Series C No. 37, para. 76; *Case of Chitay Nech et al. v. Guatemala, supra* note 6, para. 47, and *Case of Manuel Cepeda Vargas v. Colombia, supra* note 6, para. 53.

d) *Hilda Saavedra Serrano and Ledy Catoira Moreno*. Witnesses. Statement presented by the representatives. The statement referred to the supposed imprisonment of Mr. Rainer Ibsen Cárdenas in different detention centers in the city of La Paz; the alleged acts of torture committed by agents of the State; the circumstances and events surrounding Mr. Rainer Ibsen Cárdenas' alleged murder and subsequent forced disappearance; and the alleged misconduct and bad faith in the handling of public reports, *inter alia*.

e) *Juan Cristóbal Soruco Quiroga*. Expert witness. Graduate of Social Communications and Director of *Los Tiempos de Cochabamba* newspaper. Expert opinion proposed by the Commission. This referred, *inter alia*, to the context in which the case occurred and, in particular, to the human rights situation during the military dictatorship of Hugo Banzer Suárez.

41. Regarding the evidence submitted at the public hearing, the Court heard the statements and expert opinions of the following persons:

a) *Tito Ibsen Castro*. Alleged victim. Statement proposed by the Commission and the representatives. The statement referred, *inter alia*, to the alleged forced disappearance of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña; the efforts made to determine their whereabouts; the State's alleged lack of willingness to investigate the alleged disappearances; and the consequences of these situations.

b) *Delia Cortez F.* Witness. Statement proposed by the State. The statement referred, *inter alia*, to the bodily remains allegedly belonging to Mr. Rainer Ibsen Cárdenas found in 1983; the search for the remains of Mr. José Luis Ibsen; and the remains found in clandestine graves in the 1980s and buried in the ASOFAMD Mausoleum, according to information published in 1983 by the National Commission for the Investigation of Persons Forcibly Disappeared.

c) *Waldo Albarracín*. Expert witness. Former Ombudsman of Bolivia. Expert opinion proposed by the Inter-American Commission. The statement referred, *inter alia*, to the difficulties in the judicial investigation of the human rights violations committed during Hugo Banzer Suárez's military dictatorship and to the prospects for achieving justice in the present case.

d) *Claribel Ramírez Hurtado*. Expert witness. Forensic Psychiatrist. Expert opinion proposed by the representatives. The statement referred, *inter alia*, to the alleged psychological damage suffered by Rebeca Ibsen Castro, Tito Ibsen Castro, Raquel Ibsen Castro and Martha Castro Mendoza, supposedly caused by the human rights violations alleged in this case.

## **B. Assessment of the evidence**

42. In this case, as in others,<sup>14</sup> the Court admits the evidentiary value of the documents opportunely submitted by the parties that have been neither disputed nor challenged, and

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<sup>14</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, para. 140; *Case of Chitay Nech et al. v. Guatemala, supra* note 6, para. 50, and *Case of Manuel Cepeda Vargas v. Colombia, supra* note 6, para. 56.

whose authenticity has not been questioned. The Court admits into evidence those documents requested by the Court and submitted by the parties as evidence to facilitate adjudication of the case (*supra* paras. 8, 12 and 16), pursuant to the provisions of Article 47(2) of the Rules of Procedure.

43. In relation to the press documents submitted by the parties at the appropriate procedural stage, the Court considers that these may be assessed insofar as they refer to public and well known facts or statements made by State officials, which have not been amended, or when they corroborate elements related to the case. Therefore, in this case, the Court will consider those documents that are complete or in which at least the source and date of the publication can be verified.<sup>15</sup>

44. In their final written arguments, the representatives submitted several “supervening documents and photographs which, on one hand, refute the documentary evidence [...] presented by the [...] State in its final oral arguments and, moreover, demonstrate the State’s inconsistency, haste and improvisation [...] in taking compensatory measures [...].” Furthermore, the Court finds that some of the documents submitted refer to supervening events that occurred after the representatives’ submission of the brief containing pleadings and motions (*supra* para. 4).<sup>16</sup> Nevertheless, the Court also notes that some of those documents were submitted extemporaneously,<sup>17</sup> in accordance with Article 46(1) of the Court’s Rules of Procedure.

45. Furthermore, during the public hearing, and as annexes to its final written arguments, the State submitted several documents to the Court (*supra* paras. 8 and 10). In this regard, the Court notes that some of those documents had already been included in the case file,<sup>18</sup> that others were requested by the Court<sup>19</sup> (*supra* paras. 8 and 9) and

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<sup>15</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 14, para 146; *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 55, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 66.

<sup>16</sup> Certification of the Departmental Labor Office “Member of the COB”, of May 24, 2010; Order addressed to the Mayor of La Paz, on May 7, 2010; “Postal Stamp Project”; Order addressed to Foreign Secretary of the Plurinational State of Bolivia, on May 2, 2010; Order of the Director General of Health Care of the Ministry of Health and Sports, MSyD/DGSS/SACP No. 425/10, of May 13, 2010; Order addressed to Mayor of La Paz, May 20, 2010; Order of appointment of Dr. Claribel Ramírez Hurtado as expert witness in the “criminal proceeding of the Public Prosecutor’s Office against Jorge Gutiérrez Roque *et al.*”, on January 15, 2010; Certificate of Records of Dr. Claribel Ramírez Hurtado, issued by the Special Anti-Crime Force, on May 12, 2010; Criminal Records Report of Dr. Claribel Ramírez Hurtado, Judicial Registry of Criminal Records, May 5, 2010; and “Photograph book” of the “Ibsen Family Traffic Circle”.

<sup>17</sup> Order STPSC-0191-71 of the “Fiscal Oil Labor Union members of the FSTPB and of the COB”, issued on November 3, 1971; “Order of Invitation” to the “Posthumous Tribute to [student] Rainer Ibsen Cárdenas”, by the President of “Gabriel René Moreno” Autonomous University, on November 11, 2008; Order addressed to Dr. Claribel Ramírez Hurtado, issued by the Attorney General of the Republic, on October 30, 2004; Document written by Dr. Claribel Ramírez Hurtado addressed to the Attorney General of the Republic, on October 22, 2004; Certificate issued by the Chief of Personnel of the District of La Paz Attorney’s Office, Bolivia, on March 1, 2005; Service Rendering Contract signed between the Public Prosecutor’s Office of the Republic and Dr. Claribel Ramírez Hurtado, on August 31, 2006;

<sup>18</sup> These documents include: the “Report: Human Rights Violations in Bolivia,” of the Bolivian Workers’ Federation, 1976, identified as “Exhibit 12” and submitted by the State during the public hearing and as an annex to its final written arguments; copy of a “newspaper of 2000 [...] in which [Mr.] Tito Ibsen indicated in an interview that he knew the location of Mr. Rainer Ibsen Cárdenas’ remains [...] evidence well as other press articles; a copy of the plaque over the alleged tomb of Mr. Rainer Ibsen Cárdenas, which was handed over during the public hearing and attached to the final written arguments, and “Exhibit 2,” which was a brief dated December 12, 2008, of the representatives addressed to the Commission that “Grounded the submission of the case to the Court.”

that most of them refer to events which occurred after the submission of the answer to the petition<sup>20</sup> (*supra* para. 5). However, according to the provisions of Article 46(1) of the Court's Rules of Procedure, the State was also late in submitting some documents.<sup>21</sup> In this regard, the State did not allege any of the assumptions contemplated in that Article to justify its untimely submission of those documents. Finally, the State submitted a copy of the "Report on the remains found in 1983 by the National Commission of Investigation of Forced Disappearances," which was requested by the Court during the public hearing (*supra* para. 8) as evidence to facilitate adjudication of the case. However, the Court notes that the State submitted some documents as "annexes that accompany and support" the abovementioned report, which were not requested by the Court,<sup>22</sup> and that, due to their dates, are extemporaneous.

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<sup>19</sup> These documents are: copy of the document "Abstentions and Challenge produced within the Criminal Proceeding No. 000014222", and copy of the Final Report of the Argentinean Forensic Anthropology Team.

<sup>20</sup> From the documents submitted during the public hearing: "Exhibit 3," consisting of an order of the Bolivian Workers' Federation addressed to the Minister of Foreign Affairs, on April 9, 2010; "Exhibit 4," consisting of an order of the Society of Engineers of Bolivia addressed to the Vice-Minister of Foreign Affairs, on February 1, 2010; "Exhibit 5," consisting of an order of the Secretary Councilor of the City Council of La Paz, addressed to the Vice-Minister of Justice and Fundamental Rights, on April 9, 2010, y in the Municipal Ordinance "G.M.L.P." No. 085/2010 issued on April 8, 2010; "Exhibit 6," consisting of an inter-Institutional Agreement for the Provision of Medical Services to Benefit Members of Ibsen-Cárdenas Family [*sic*] of April 8, 2010; "Exhibit 7," consisting of an order of the General Manager of the Postal Company of Bolivia addressed to the Vice-Minister of Telecommunications of the Ministry of Public Works, Services and Housing, issued on April 6, 2010; "Exhibit 8," consisting of an order by the Attorney General of the Republic addressed to the Foreign Affairs Minister, on April 6, 2010; in a Summons of the Office of the Attorney General of the State presented to the Supreme Court, and in a Summons of the Office of the Attorney General of the State presented to the Supreme Court, both on "March, 2010" [*sic*]; "Exhibit 9", consisting of "Form No. 4, Coordination of Medium and Short Term Planning, Original Summary-Planning of Annual Operations - 2010," and CIEDF Report No. 03/10, issued on April 8, 2010. From the documents that were attached to the final written arguments: Report of the Institute of Forensic Investigations of the Office of the Attorney General of the Republic on the "Ibsen Case", of March 24, 2010; Note SP II-34/2010 of the Second Criminal Chamber of the Supreme Court, of May 19, 2010; Note of the Attorney for Appeals of the Office of the Attorney General of the Republic, issued on May 17, 2010; Note of the President of the "Gabriel René Moreno" Autonomous University, Order No. 222/10", issued on April 20, 2010; Note CEUB SNA 091/2010 of the National Academic Secretary and of the National Executive Secretary of the Executive Committee of the Bolivian University, issued on May 5, 2010; Certificate DNRH-RPCC-171/2010 of the Director National of Human Resources of Bolivian Fiscal Oilfields, issued on May 13, 2010; Administrative Decision No. 059 of the Ministry of Public Works, Services and Housing, issued on April 20, 2010; Invitation to the "official ceremony of nomination of the 'Ibsen Family' Traffic Circle", on May, 2010; Note CEUB SNDI 002 No. 044/2010 of the Executive Committee of the Bolivian University, issued on April 12, 2010; Note MJ-VJDF-ADF No. 197/2010 of the Vice-Minister of Justice and Fundamental Rights, issued on May 4, 2010; Note MJ-VJDF-ADF No. 205/2010 of the Vice-Minister of Justice and Fundamental Rights, issued on May 12, 2010; Note MJ-VJDF-ADF No. 204/2010 of the Vice-Minister of Justice and Fundamental Rights, issued on May 12, 2010; Note MJ-VJDF-ADF No 218/2010 of the Vice-Minister of Justice and Fundamental Rights, issued on May 18, 2010; "Announcement of Invitation to the public ceremony for the presentation and naming of the 'Ibsen Family' Traffic Circle;" "Photographs of the ceremony of presentation and naming of the 'Ibsen Family' Traffic Circle; Municipal Order G-M-L-P- No. 085/2010, issued on April 8, 2010; and Modifications to the Criminal Regulations System Act, Act No. 007, May 18, 2010.

<sup>21</sup> These documents are: the National Program on Action on Human Rights "*Bolivia para Vivir Bien* 2009-2013;" "Exhibit 1" consisting on the certification of the Attorney General attached to the Economic and Financial Division of the Office of the Attorney General of La Paz, issued on April 9, 2010; in the order CITE: I.D.IF.-094/04 of the Director National of the Forensic Investigations Institute of the Office of the Attorney General of the Republic, issued on February 7, 2004; and a letter of resignation from Dr. Claribel Ramírez Hurtado submitted to the Attorney General of the Republic, on October 22, 2004; "Exhibit 10", regarding the "New Political Constitution of the State," Official Version of October, 2008; and "Exhibit 11," consisting on the Minimum Rate for Professional Fees of the "Distinguished Bar Association of La Paz."

<sup>22</sup> Article in the newspaper *Presencia*, on February 19, 1983; "Information statement rendered by [...] Luis Gómez Casaz [*sic*]" on February 22, 1983; "Police information statement rendered by Mr. Lizandro Romero" on April 13, 1983; "Police information statement rendered by Mr. Bernardino Hernán Ibáñez Ríos" on April 13, 1983.

46. The Court admits and grants evidentiary value to those documents submitted by the State that had already been incorporated into the case file, as well as those documents submitted by the State and the representatives relating to supervening facts, in application of Article 46(3) of the Rules of Procedure. Additionally, because the Court finds them to be useful for reaching a decision in this case, it admits and shall assess as evidence to facilitate adjudication of the case, most of those documents submitted extemporaneously by the State and all of those documents submitted extemporaneously by the representatives, pursuant to Article 47(2) of the Rules of Procedure.<sup>23</sup> All of these documents will be assessed together with body of evidence and in accordance with the rules of sound judgment.

47. The Court also considers that the testimonies and expert opinions rendered are relevant inasmuch as they adhere to the purpose defined by the President in the Resolution requesting them (*supra* para. 6). These shall be assessed in the corresponding chapter together with the body of evidence, taking into account the observations made by the parties.<sup>24</sup> According to the Court's jurisprudence, statements presented by the alleged victims cannot be assessed separately, but rather, must be evaluated along with the rest of the body of evidence, as they are useful and may provide further information on the alleged violations and their consequences.<sup>25</sup>

48. The Court notes that at the public hearing held in this case, the State indicated that expert witness Dr. Claribel Ramirez Hurtado "has been criminally accused" of fraud at the domestic level, and submitted, *inter alia*, a document that allegedly "certifies" the existence of the criminal accusation. The State indicated this fact "raises doubts about her fitness to make a psychological assessment [...]." In this regard, the Court notes that the appropriate procedural moment for objecting to the submission of expert opinions, *inter alia*, was through the observations requested by the parties when they confirmed the submission of such evidence. Consequently, and given that the State did not object at that time, the President ordered Dr. Claribel Ramirez Hurtado to submit her expert opinion at the public hearing (*supra* para. 6). Moreover, the Court decides to admit and to grant evidentiary value to her expert opinion because the State did not object to it at the proper procedural moment. For this reason, the Court does not need to rule on whether the existence of an alleged accusation "raises doubts" about the expert witness' suitability to render her opinion. As with the other opinions, the Court shall assess it in due course.

## VI

### FORCED DISAPPEARANCE OF MESSRS. RAINER IBSEN CÁRDENAS AND JOSÉ LUIS IBSEN PEÑA (ARTICLES 7, 5, 4, AND 3 OF THE AMERICAN CONVENTION, IN

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<sup>23</sup> The Court shall not assess "Exhibit 1," consisting of the certification of the Attorney General attached to the Economic and Financial Division of the Public Prosecutor's Office of La Paz, dated April 9, 2010; the order CITE: I.D.IF.-094/04 of the National Director of the Institute of Forensic Investigation of the Office of the Attorney General of the Republic, dated February 7, 2002; and a letter of resignation signed by Dr. Claribel Ramirez Hurtado and submitted to the Attorney General, dated October 22, 2004.

<sup>24</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, para 43; *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 56, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 64.

<sup>25</sup> Cf. *Case of Loayza Tamayo v. Peru. Merits*, *supra* note 24, para. 43; *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 56, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 65.

## RELATION TO ARTICLE 1(1) THEREOF AND ARTICLES 1 AND 11 OF THE CONVENTION ON FORCED DISAPPEARANCE)

49. The Commission and the representatives alleged several violations of the American Convention as a result of the presumed forced disappearances of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña which, as mentioned, occurred within a particular context in Bolivia (*infra* paras. 50 to 56). Before proceeding to examine the arguments of the Commission and the representatives, the Court shall determine the proven facts concerning the alleged forced disappearances committed against the alleged victims, within the context in which they apparently occurred, taking into account the evidence and the State's partial acknowledgment of international responsibility (*supra* paras. 5 to 23 and 26).

### A. Context in which the facts of this case occurred

50. In order to analyze the arguments concerning the alleged forced disappearances of Messrs. Ibsen Cárdenas and Ibsen Peña, the Court deems it necessary to consider the context in which those events apparently occurred, as it may determine the juridical consequences in relation to the nature of the alleged human rights violations and the possible reparations.<sup>26</sup>

51. On August 21, 1971, Hugo Banzer Suárez, a colonel at the time, led a *coup d'état* in Bolivia and established a military dictatorship that lasted approximately six years and eleven months.<sup>27</sup>

52. During the dictatorship of Hugo Banzer, the Department of Political Order was created, *inter alia*, to repress his political opponents.<sup>28</sup> In addition, "constitutional guarantees" were suspended, actions were taken against left-wing political parties and the Bolivian Workers' Union (*Central Obrera Boliviana*); and in general numerous opposition groups were persecuted. In addition, several universities were closed. During this period, the

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<sup>26</sup> Cf. *Case of Goiburú et al. v. Paraguay*, *supra* note 7, paras. 53 and 63; *Case of La Rochela Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of May 11, 2007. Series C No. 163. para. 76, and *Case Radilla Pacheco v. Mexico*, *supra* note 8, para. 116.

<sup>27</sup> Cf. Statement rendered by affidavit by expert witness Juan Cristóbal Soruco (Merits file, volume III, pages 657 and 660), and Barcelona International Studies and Documentation Center (CIDOB), Biography of Hugo Banzer Suárez (File of annexes to the petition, appendix 3, pages 1554 to 1555) Available at: [http://www.cidob.org/es/documentacion/biografias\\_lideres\\_politicos/america\\_del\\_sur/bolivia/hugo\\_banzer\\_suar ez](http://www.cidob.org/es/documentacion/biografias_lideres_politicos/america_del_sur/bolivia/hugo_banzer_suar ez) (Last visit: August 2, 2010). This was also mentioned by the State of Bolivia during the public hearing (*supra* para. 8).

<sup>28</sup> The Department of Political Order (DPO) was created through Supreme Decree No. 10108 on January 25, 1972. Cf. Official Gazette of the Plurinational State of Bolivia, Edition 596, available at: <http://gacetaoficialdebolivia.gob.bo/normas/verGratis/4773> (Last visit: July 6, 2010). According to Article 3 of said Decree: "The Department for Political Order, will be responsible for keeping Political Order and public peace, preventing political and criminal activities that undermine domestic security and the stability of the Government." Also see, Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Workers' Union (COB). *Banzer: Genio y figura... Para que no se olvide. Nunca más*. Crear Impresiones Publishing House. La Paz, 2008 (File of annexes to the petition, appendix 5, pages 1603 to 1604), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (Last visit: August 2, 2010). This document can also be found at *Report: Human Rights Violations in Bolivia – Bolivian Labor Office, 1976*, presented by the State during the public hearing (*supra* para. 8) and as appendix to its final written arguments (Merits file, volume III, pages 1109 to 1110).

judiciary and the Public Prosecutor's Office were under the control of the *de facto* government.<sup>29</sup>

53. Throughout this period of time, numerous human rights violations were committed as part of a policy of repression against groups and individuals identified by the government as enemies or opponents of the regime. During the public hearing held in this case, the State indicated that the dictatorship of Hugo Banzer “marked a dark past in the history of Bolivia.” Illegal and arbitrary detentions took place, and people were deprived of their liberty in detention centers which were used to interrogate and torture political prisoners, many of whom disappeared.<sup>30</sup> Among these detention facilities were the Achocalla center, located near La Paz, and El Pari, located in the city of Santa Cruz,<sup>31</sup> where the alleged victims in this case were allegedly deprived of their liberty (*infra paras.* 74, 77, 94, 107 to 109 and 115). During the dictatorship of Hugo Banzer Suárez both detention centers were under the control of the Department of Political Order.<sup>32</sup>

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<sup>29</sup> Cf. Barcelona International Studies and Documentation Center (CIDOB), Biography of Hugo Banzer Suárez (File of annexes to the petition, appendix 3, pages 1554 to 1555), available at: [http://www.cidob.org/es/documentacion/biografias\\_lideres\\_politicos/america\\_del\\_sur/bolivia/hugo\\_banzer\\_suar ez](http://www.cidob.org/es/documentacion/biografias_lideres_politicos/america_del_sur/bolivia/hugo_banzer_suar ez) (Last visit: August 2, 2010); Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation in Bolivia (ASOFAMD) and Bolivian Workers' Union (COB), *Banzer: Genio y figura... Para que no se olvide. Nunca más*. Crear Impresiones Publishing House, La Paz, 2008 (File of annexes to the petition, appendix 5, pages 1580, 1583, 1668 and 1674 to 1675), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (Last visit: August 2, 2010), and the statement of expert witness Waldo Albarracín rendered at the public hearing (*supra* para. 8).

<sup>30</sup> Cf. Statement of expert witness Juan Cristóbal Soruco rendered before public notary (Merits file, volume III, pages 658 to 660); declaration of Mrs. Ledy Catoira Moreno rendered before public notary (Merits file, volume III, pages 669 to 671); statement of Mrs. Hilda Saavedra Serrano rendered by affidavit (Merits file, volume III, pages 665 to 666); Press article published on May 26, 1996 in *La Razón*, “There are around 240 cases of forced disappearances in Bolivia to be clarified” (Cse file of annexes to the petition, appendix 29, page 2456, and File of annexes to the brief of pleadings and motions, PD-117, page 2324); Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation in Bolivia (ASOFAMD) and Bolivian Workers' Union (COB), *Banzer: Genio y figura... Para que no se olvide. Nunca más. Crear Impresiones Publishing House, La Paz, 2008* (File of annexes to the petition, appendix 5, pages 1603, 1609 to 1610, 1622 and 1634 to 1637). Available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (Last visit: August 2, 2010), and Christian Democrat Organization of America. *Human Rights Violations in Bolivia: Report of “SELADEH”, year 4, no. 43, May, 1977* (File of annexes to the brief of pleadings and motions, PD-58, pages 1844 and 1886 to 1890).

<sup>31</sup> Cf. Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation in Bolivia (ASOFAMD) and Bolivian Workers' Union (COB), *Banzer: Genio y figura... Para que no se olvide. Nunca más*. Crear Impresiones Publishing House, La Paz, 2008 (File of annexes to the petition, appendix 5, pages 1609 to 1610, 1622, 1634 to 1637). Available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (Last visit: August 2, 2010). See also, the press article published on May 1, 2004, in “El Deber” *Witnesses identified perpetrators of disappeared persons* (File of annexes to the brief of pleadings and motions, PD-169, page 2564); statement rendered before public notary by Mr. Estevan Renato Díaz Matta (Merits file, volume III, pages 650-653); statement rendered by affidavit by Mrs. Ledy Catoira Moreno (Merits file, volume III, pages 669-671), and statement rendered by affidavit by Mrs. Hilda Saavedra Serrano (Merits file, volume III, pages 665-666).

<sup>32</sup> Cf. Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Workers' Union (COB). *Banzer: Genio y figura... Para que no se olvide. Nunca más*. Crear Impresiones Publishing House, La Paz, 2008 (File of annexes to the petition, appendix 5, pages 1603 to 1604, 1609 to 1610, 1622, 1624 to 1625 and 1628), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (last visit: August 2, 2010), and Press article published on October 15, 2000, in “El Deber” *Former police officers of the dictatorship may be prosecuted for murder* (File of annexes to the brief of pleadings and motions, PD-125, page 2403). See also, the statement rendered before public notary of Mr. Estevan Renato Díaz Matta (Merits file, volume 3, pages 650 to 651); the statement rendered by affidavit by

54. The types of torture usually inflicted were, *inter alia*, closed fist beatings of the body; cigarette burns; the placement of needles and wooden splinters under prisoners' fingernails; beatings with belts; clubbing with two inch planks; hot iron branding and electric shocks; simulated execution by firing squad; and threats of arrests of family members. Rapes were also committed; cells were flooded with water and prisoners were left in these overnight; women were disrobed; and prisoners were constantly transferred from their "prison residences" but not told where they might be taken.<sup>33</sup> Between 1971 and 1973, illegal detentions, violent searches of homes, torture as a "softening up" tool to gather information and subsequent exile if freedom was granted, were all regular practices. In addition, it was common for the families of detainees to be asked to go to the facility where the individual was confined, usually after he or she had already been seriously injured. Consequently, on many occasions, repressive practices also affected the families of detainees.<sup>34</sup>

55. There is uncertainty regarding the approximate number of victims of political violence during this period. However, according to information of the Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation [*Asociación de Familiares de Detenidos, Desaparecidos y Mártires por la Liberación Nacional*] (hereinafter ASOFAMD for its Spanish acronym), a civil society organization in Bolivia,<sup>35</sup> during the regime of Hugo Banzer, in addition to torture and the mass exile of hundreds of political and union leaders, there were at least sixty-eight forced disappearances, thirty-five of which were carried out under "Operation Condor" and seventy-eight extrajudicial executions were committed.<sup>36</sup>

56. In 1979, after the *coup d'état* that overthrew Hugo Banzer and led to the return of presidential elections, the Legislature of the National Congress initiated a trial against former President Hugo Banzer Suárez, among others.<sup>37</sup> Within the context of these

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Mrs. Hilda Saavedra Serrano (Merits file , volume 3, pages 665 to 666), and Press article published on February 18, 2000, in "La Nación", *Justo Sarmiento mente, él me torturó en El Pari (Justo Sarmiento lies, he tortured me in "El Pari"* (File of annexes to the brief of pleadings and motions, PD-120, page 2379).

<sup>33</sup> Cf. Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Workers' Union (COB), *Banzer: Genio y figura... Para que no se olvide. Nunca más*. Crear Impresiones Publishing House. La Paz, 2008 (File of annexes to the petition, appendix 5, pages 1603, 1609 to 1610, 1622, 1634 to 1637), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (Last visit: August 2, 2010).

<sup>34</sup> Cf. Statement rendered before a notary by expert witness Juan Cristóbal Soruco Quiroga (Merits file , volume III , page 658).

<sup>35</sup> Cf. Statement rendered during the public hearing (*supra* para. 8) by witness Delia Cortez.

<sup>36</sup> Cf. ASOFAMD. Newsletter of August, 2997. *35 Años después de la Dictadura de Hugo B[a]nzer Suárez 1971-2006 (35 Years After the Dictatorship of Hugo B[a]nzer Suárez 1971-2006)* (File of annexes to the petition, appendix 4, pages 1561 to 1566). Also, the State mentioned during the public hearing (*supra* para. 8) that "the *Plan Condor* event [...] consisted of systematic human right violations."

<sup>37</sup> Cf. Sections of the impeachment trial against Hugo Banzer Suárez (File of annexes to the petition, appendix 20, pages 1801 to 1806, and File of annexes to the brief of pleadings and motions, PD-24, pages 1597 to 1712); statement of expert witness Waldo Albarracín Sánchez rendered at the public hearing held on April 13, 2010, in Lima, Peru and Barcelona International Studies and Documentation Center (CIDOB), *Biography of Hugo Banzer Suárez* (File of annexes to the petition, appendix 3, pages 1536 to 1537), available at: [http://www.cidob.org/es/documentacion/biografias\\_lideres\\_politicos/america\\_del\\_sur/bolivia/hugo\\_banzer\\_suarez](http://www.cidob.org/es/documentacion/biografias_lideres_politicos/america_del_sur/bolivia/hugo_banzer_suarez) (last visit: August 2, 2010).



proceedings, on September 5, 1979, the ASOFAMD sent “a partial list of victims of General Hugo B[a]nzer Suárez who were sacrificed in prison, tortured or persecuted”; Mr. Rainer Ibsen Cárdenas’ name was among those on that list.<sup>38</sup> This list refers to eighty-nine people murdered or disappeared.<sup>39</sup> However, these proceedings were not successful<sup>40</sup> and the crimes committed during that period were never resolved.<sup>41</sup>

**B. Forced disappearance as a multiple and continuing human rights violation and the duties of respect and guarantee**

57. The phenomenon of forced disappearances of persons requires a systematic and comprehensive analysis; for this reason this Court considers it appropriate to reiterate the legal grounds which substantiate the need for a comprehensive view of forced disappearance due to the numerous behaviors which, so long as they continue, united by a single purpose, permanently violate the legal goods protected by the Convention.<sup>42</sup>

58. The Court notes that the international community’s attention to the phenomenon of forced disappearance of persons is not recent. In the 1980s the United Nations Working Group on Enforced or Involuntary Disappearances developed a functional definition of the phenomenon, emphasizing the illegal detention of persons by government agents or agencies or private organized groups acting on behalf of the State, or with its authorization, support or acquiescence.<sup>43</sup>

59. Moreover, in international law this Court’s jurisprudence has been a precursor to the consolidation of a comprehensive perspective on the gravity and the continuous or permanent and autonomous nature of the legal definition of forced disappearance of persons, in which the act of disappearance and its execution begin with a person’s deprivation of freedom and the subsequent lack of information on that person’s whereabouts and continues until the whereabouts of the disappeared person are known

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<sup>38</sup> Cf. Sections of the impeachment trial proceedings against Hugo Banzer Suárez (File of annexes to the petition, appendix XX, pages 1802 to 1803, and File of annexes to the brief of pleadings and motions, PD-24, pages 1698 to 1699).

<sup>39</sup> Cf. Sections of the impeachment trial proceedings against Hugo Banzer Suárez (File of annexes to the petition, appendix XX, pages 1802 to 1804, and File of annexes to the brief of pleadings and motions, PD-24, pages 1698 to 1700).

<sup>40</sup> Cf. Barcelona International Studies and Documentation Center (CIDOB). *Biography of Hugo Banzer Suárez* (File of annexes to the petition, appendix 3, page 1555), available at: [http://www.cidob.org/es/documentacion/biografias\\_lideres\\_politicos/america\\_del\\_sur/bolivia/hugo\\_banzer\\_suarez](http://www.cidob.org/es/documentacion/biografias_lideres_politicos/america_del_sur/bolivia/hugo_banzer_suarez) (Last visit: August 2, 2010) and declaration of expert witness Waldo Albarracín Sánchez rendered at the public hearing held on April 13, 2010 in Lima, Peru.

<sup>41</sup> Cf. Statement rendered during the public hearing (*supra* para. 8) by expert witness Waldo Albarracín Sánchez; Press article published on December 28, 2001, at BBCmundo.com, “*Banzer: Bolivia will analyze extradition*” (File of annexes to the application, appendix 29, pages 2460 to 2461) available at: [http://news.bbc.co.uk/hi/spanish/latin\\_america/newsid\\_1731000/1731160.stm](http://news.bbc.co.uk/hi/spanish/latin_america/newsid_1731000/1731160.stm) (last visit: August, 2010); Article published on January 9, 2002, at *El País*, “*Extradition: Tuto leaves Banzer in hands of the Supreme Court*” (File of annexes to the petition, appendix 29, page 2462), and article published on January 13, 2002, at *La Prensa*, “*Tyrannies in Latin America*” (File of annexes to the brief of pleadings and motions, PD-150, page 2513).

<sup>42</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 138.

<sup>43</sup> Cf. *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 82. See also, Human Rights Commission. Working Group Report on Forced or Involuntary Disappearance of Persons, Report on the visit made to Sri Lanka by three members of the Working Group, October 7 to 18, 1991. E/CN.4/1992/18/Add. 1 on January 5, 1992.

and his or her identity is established. Accordingly, the Court has reiterated that the forced disappearance of persons constitutes a multiple violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, giving rise to other related violations, and is particularly serious when it is framed within a systematic pattern or practice applied or tolerated by the State.<sup>44</sup>

60. The characterization of forced disappearance as multiple offenses that are continuous or permanent is reflected in the Court's jurisprudence<sup>45</sup> and is evident not only in the definition of Article II of the Inter-American Convention on Forced Disappearance,<sup>46</sup> to which the Bolivian state is party (*supra* para. 19), its *travaux préparatoires*,<sup>47</sup> its preamble and regulation,<sup>48</sup> but also from other definitions included in different international instruments<sup>49</sup> that similarly mention the following as concurring and constitutive elements of forced disappearance: a) the deprivation of liberty; b) the direct intervention of state agents or their acquiescence; and c) the refusal to acknowledge the detention and reveal the fate or whereabouts of the affected person.<sup>50</sup> Additionally, on previous occasions, this Court has already mentioned that the jurisprudence of the European Human Rights System,<sup>51</sup> the

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<sup>44</sup> Cf. *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of September 22, 2009. Series C No. 202, para. 59, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 139.

<sup>45</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 14, para. 155; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, paras. 23, 138, 140, 145 and 146, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, paras. 81 and 87.

<sup>46</sup> In this regard, the article 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."

<sup>47</sup> Cf. Annual Report of the Commission 1987-1988, Chapter 5(2). This crime "is permanent since it is perpetrated not instantly but permanently and it extends during the time that the person remains disappeared" (OAS/CP-CAJP, Report of the President of the Working Group in charge of analyzing the Project of IACFDP, doc. OAS/Ser.G/CP/CAJP-925/93 rev.1, of 25.01.1994, p. 10).

<sup>48</sup> Article 3 of the Inter-American Convention on Forced Disappearance of Persons states that "[t]his offense shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined." Likewise, the preamble establishes that "the forced disappearance of persons violates numerous inheritable and essential human rights enshrined in the American Convention on Human Rights, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights."

<sup>49</sup> Cf. United Nations Economic and Social Council, Report of the Working Group on Forced or Involuntary Disappearance of Persons, General Observation to Article 4 of the Declaration on the Protection of all Persons from Enforced Disappearance of January 15, 1996. (E/CN. 4/1996/38), para. 55; article 2 of the International Convention on the Protection of all Persons from Enforced Disappearance, UN Document E/CN.4/2005/WG.22/WP.1/REV.4, September 23, 2005, and article 7, number 2, subsection i) of the Rome Statute of the International Criminal Court (Rome Statue), UN Document A/CONF.183/9, July 17, 1998.

<sup>50</sup> Cf. *Case of Gómez Palomino v. Peru, Merits, Reparations and Costs*. Judgment of November 22, 2005. Series C No. 136, para. 97; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 140, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 85.

<sup>51</sup> Cf. ECHR, *Case of Kurt v. Turkey*, 15/1997/799/1002, May 25, 1998, paras. 124 to 128; *Case of Çakici v. Turkey*, Application no. 23657/94, July, 8 1999, paras. 104 to 106; *Case of Timurtas v. Turkey*, Application no. 23531/94, June, 13 2000, paras. 102 to 105; *Case of Tas v. Turkey*, Application no. 24396/94, November 14, 2000, paras. 84 to 87; *Case of Cyprus v. Turkey*, Application no. 25781/94, May 10, 2001, paras. 132 to 134 and 147 to 148.

decisions of different bodies of the United Nations<sup>52</sup> and several Constitutional Courts and high national courts of the American States<sup>53</sup> agree with this characterization.<sup>54</sup>

61. The Court has noted the international consolidation of the analysis of this crime, which constitutes a serious human rights violation, given the particular gravity of the offenses it entails and the nature of the rights infringed.<sup>55</sup> For this reason, it is a flagrant disregard of the essential principles upon which the Inter-American system on human rights is based<sup>56</sup> and the prohibition thereof has attained the status of *jus cogens*.<sup>57</sup>

62. Pursuant to Article I, subparagraphs a) and b), of the Convention on Forced Disappearance of Persons, States Parties undertake not to practice, permit or tolerate the forced disappearance of persons under any circumstance and to punish those responsible within their jurisdictions. This is consistent with the State's obligation under Article 1(1) of the American Convention, which, as established by this Court, may be accomplished in different ways, according to the specific law that the State must guarantee and the specific needs of protection.<sup>58</sup> In this regard, this obligation implies the responsibility of States Parties to organize all the structures through which it exercises public power so that they are capable of legally guaranteeing the free and full exercise of human rights.<sup>59</sup> As part of

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<sup>52</sup> Cf. United Nations Human Rights Committee, *Case of Ivan Somers v. Hungría*, Communication No. 566/1993, 57th Period of Sessions, CCPR/C/57/D/566/1993 (1996), July, 23 1996, para. 6.3; *Case of E. y A.K. v. Hungría*, Communication No. 520/1992, 50th Period of Sessions, CCPR/C/50/D/520/1992 (1994), May 5, 1994, para. 6.4, and *Case of Solórzano v. Venezuela*, Communication No. 156/1983, 27th Period of Sessions, CCPR/C/27/D/156/1983 (1986), March 26, 1986, para. 5.6.

<sup>53</sup> Cf. *Case of Marco Antonio Monasterios Pérez*, Supreme Court of Justice of the Bolivarian Republic of Venezuela, judgment of August 10, 2007 (declaring the multi-offensive and permanent nature of the crime of forced disappearance); Supreme Court of Justice of Mexico, Thesis: P./J. 87/2004, "Forced Disappearance of Persons. The term for the statute of limitations to start operating begins when the victim reappears or his or her fate is established" (stating that the forced disappearance of persons are permanent crimes and that the statute of limitations shall start to be counted from the moment when its perpetration ceases); *Case of Caravana*, Criminal Chamber of the Supreme Court of Chile, judgment of July 20, 1999; *Case of withdrawal of privileges of Pinochet*, Full Chamber of the Supreme Court of Chile, judgment August 8, 2000; *Case of Sandoval*, Court of Appeals of Santiago de Chile, judgment January 4, 2004 (all of the them stating that the crime of forced disappearance of persons is continuous, against humanity, non-applicable to statutory limitations and not subject to amnesty); *Case of Vitela et al.*, Federal Chamber of Criminal and Correctional Appeals of Argentina, judgment September 9, 1999, (stating that forced disappearances are continuous crimes and against humanity); *Case of José Carlos Trujillo*, Constitutional Court of Bolivia, judgment of November 12, 2001, (in the same way); *Case of Castillo Páez*, Constitutional Court of Peru, judgment of March 28, 2004, (declaring that due what was ordered by the Inter-American Court in that same case, that forced disappearance is a permanent crime until the whereabouts of the victim are established); *Case of Juan Carlos Blanco* and *Case of Gavasso et al.*, Supreme Court of Uruguay, judgment October 18, 2002, and judgment April 17, 2002, respectively, (in the same way).

<sup>54</sup> Cf. *Case of Goiburú et al. v. Paraguay*, *supra* note 7, para. 83; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 140, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 85.

<sup>55</sup> Cf. *Case of Goiburú et al. v. Paraguay*, *supra* note 7, para. 84; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 59, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 86.

<sup>56</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 14, para. 158; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 139, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 86.

<sup>57</sup> Cf. *Case of Goiburú et al. v. Paraguay*, *supra* note 7, para. 84; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 139, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 86.

<sup>58</sup> Cf. *Case of the "Mapiripán Massacre" v. Colombia. Merits, Reparations and Costs*. Judgment of September 15, 2005. Series C No. 134. paras. 111 and 113; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 62, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 142.

<sup>59</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 14, para. 166; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 62, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 142.

that obligation, the State has the legal responsibility to “reasonably prevent human rights violations, to seriously investigate, with the means available, the violations that have been committed within its jurisdiction in order to identify those responsible, impose appropriate punishments upon them and guarantee the victim adequate reparation.”<sup>60</sup>

63. In this sense, responsibility for prevention includes all those measures of a legal, political, administrative and cultural nature that promote the protection of human rights.<sup>61</sup> Hence, the deprivation of freedom in legally recognized centers and the existence of detainee records constitute fundamental safeguards, *inter alia*, against forced disappearances. Conversely, the operation and maintenance of clandestine detention centers constitutes *per se* a breach of the obligation if it directly affects the rights to personal liberty, personal integrity, life<sup>62</sup> and legal personality.

64. However, since one of the objectives of forced disappearance is to prevent the exercise of the appropriate legal remedies and procedural guarantees, when a person is kidnapped, detained, or otherwise deprived of his or her freedom in order to be forcibly disappeared, if the victim cannot access the recourses available, it is essential that family members or others close to him or her are able to access prompt and effective proceedings or legal recourses in order to determine the victim's whereabouts or health condition, or to identify the authority that ordered the deprivation of freedom or carried it out.<sup>63</sup>

65. Finally, where there are reasonable grounds for believing that a person has been subjected to forced disappearance, State authorities must conduct an investigation.<sup>64</sup> This obligation exists regardless of whether a complaint is filed, given that in cases of forced disappearance, international law and the general duty to guarantee rights impose the obligation to investigate the case *ex officio*, without delay, and in a serious, impartial and effective manner. This is a fundamental and determining element for the protection of the rights affected by these situations.<sup>65</sup> In any case, all State authorities, public officials or

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<sup>60</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 14, para. 174; *Case of González et al. (“Cotton Field”) v. Mexico. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 16, 2009. Series C No. 205, para. 236, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 142.

<sup>61</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 14, para. 175; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 63, *Case of González et al. (“Cotton Field”) v. Mexico*, *supra* note 60, para. 252.

<sup>62</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 63.

<sup>63</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 64 and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 141. Article 10 of the Convention on Forced Disappearance refers to this obligation.

<sup>64</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 143 and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 92. See also, Article 12.2 of the International Convention for the Protection of all Persons against Forced Disappearance and Article 13 of the Declaration on the Protection of all Persons against Forced Disappearance. Likewise, paragraph 62 of the Vienna Declaration and Action Program approved by the World Conference on Human Rights of June 25, 1993, establishes that: “[i]t is the obligation of all States, under any circumstances, to undertake an investigation whenever there are reasons to believe that a forced disappearance has occurred in a territory within its jurisdiction and, if the complaints are confirmed, to prosecute the perpetrators of such act.”

<sup>65</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia. Merits, Reparations and Costs*. Judgment of January 31, 2006. Series C No. 140. para. 145; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 143, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 92.

individuals who have received news about acts of the forced disappearance of persons must report them immediately.<sup>66</sup>

66. For an investigation to be effective, States must establish an adequate regulatory framework for the conduct of the investigation, which implies regulating the forced disappearance of persons as an autonomous crime within their domestic legislation, given that criminal prosecution is a suitable instrument for preventing future violations of human rights<sup>67</sup> of this nature (*infra* para. 193).

67. In consideration of the above, it can be concluded that acts which constitute forced disappearance have a permanent nature and lead to multiple violations of the rights recognized in the American Convention while the whereabouts of the victim are unknown or their remains have not been located; as a corollary, States have a duty to investigate such acts and punish those responsible, where applicable, in accordance with their obligations stemming from the American Convention and, in particular, from the Inter-American Convention on Forced Disappearance of Persons.<sup>68</sup>

68. Thus, in this case the analysis of forced disappearances must include all the facts presented for the Court's consideration.<sup>69</sup> This is the only way the legal analysis of this phenomenon will be consistent with the complex violations of human rights it entails,<sup>70</sup> with their continued or permanent nature and with the need to consider the context in which the facts occurred in order to analyze the effects over time and focus comprehensively on the consequences,<sup>71</sup> including both the Inter-American and international *corpus juris* of protection.

### **C. Regarding the alleged disappearance of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña**

69. The facts described by the Inter-American Commission and the representatives regarding the alleged detention and subsequent disappearance of the presumed victims have certain circumstantial connections. Therefore, the Court considers it appropriate to briefly refer, in the first place, only to the family and professional background of Messrs. José Luis Ibsen Peña and Rainer Ibsen Cárdenas that shed light on the case. Then, given that the alleged disappearances occurred at different times and have led to different consequences over the years, as will be described below, the Court deems it appropriate to consider those events and analyze the alleged human rights violations separately.

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<sup>66</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 65; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 143, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 92.

<sup>67</sup> Cf. *Case of Gómez Palomino v. Peru*, *supra* note 50, paras. 96 and 97; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 66, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 144.

<sup>68</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 145.

<sup>69</sup> Cf. *Case of Heliodoro Portugal v. Panama*, *supra* note 1, para. 112; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 146, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 87.

<sup>70</sup> Cf. *Case of Heliodoro Portugal v. Panama*, *supra* note 1, para. 150; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 146, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 87.

<sup>71</sup> Cf. *Case of Goiburú et al. v. Paraguay*, *supra* note 7, para. 85; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 146, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 87.

70. It is worth repeating that although the claimant bears the burden of proof regarding the facts on which his argument is based, in proceedings concerning human rights violations, the State's defense cannot rest upon the claimant's inability to provide certain evidence when it is the State that controls the means to clarify the events that occurred within its territory. The Court will now assess the evidence which takes this into account and which, without prejudice to the foregoing, is capable of confirming the truth of the facts alleged.<sup>72</sup> The facts described below have been determined based on the evidence provided to the Court and on assertions by the parties that were not disproved or disputed.

### **C.1. Regarding the Ibsen family**

71. Mr. José Luis Ibsen Peña was born in Chile on October 7, 1925, and became a Bolivian citizen in 1947.<sup>73</sup> The following year, he married Mrs. Asunta Isaura Cárdenas,<sup>74</sup> and together they had a son named Rainer Ibsen Cárdenas.<sup>75</sup> After the death of Mrs. Cárdenas in 1959, Mr. Ibsen Peña married Mrs. Martha Castro Mendoza,<sup>76</sup> and together they had three children, namely: Rebeca, Tito and Raquel, all with the surnames Ibsen Castro.<sup>77</sup>

72. In May 1972, Mr. José Luis Ibsen Peña was living in the city of Camiri, Santa Cruz, where he established his law office.<sup>78</sup> During those years, Mr. Ibsen Peña was linked to the Bolivian Workers' Union (*Central Obrera Boliviana*).<sup>79</sup> In this case, it has been alleged that in 1973 Mr. Ibsen Peña was arrested in Santa Cruz and that his whereabouts still remain unknown (*infra paras. 106 to 109*).

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<sup>72</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra* note 14, paras. 129 and 135; *Case of Kawas Fernández v. Honduras, supra* note 11, para. 83, and *Case of Radilla Pacheco v. Mexico, supra* note 8, para. 119.

<sup>73</sup> Cf. Copy of the birth certificate of Mr. José Luis Ibsen Peña, (File of annexes to the petition, appendix 12, page 1757, and Copy of the Ruling of the Ministry of Government, Justice and Immigration No. E-34-47 of March 26, 1947 (File of annexes to the application, appendix 12, page 1759).

<sup>74</sup> Cf. Copy of marriage certificate of José Luis Ibsen Peña and Asunta Isaura Cárdenas (File of annexes to the brief of pleadings and motions, PD-3, pages 1539 and 1540).

<sup>75</sup> Cf. Copy of the birth certificate of Rainer Ibsen Cárdenas (File of annexes to the brief of pleadings and motions, PD-4, page 1542).

<sup>76</sup> Cf. Copy of marriage certificate of José Luis Ibsen Peña and Martha Castro Mendoza (File of annexes to the brief of pleadings and motions, PD-6, page 1547), and copy of death certificate of Asunta Isaura Cárdenas (File of annexes to the brief of pleadings and motions, PD-5, page 1545).

<sup>77</sup> Cf. Copy of the birth certificates of each (File of annexes to the brief of pleadings and motions, PD-7 to PD-9, pages 1549, 1551 and 1553).

<sup>78</sup> Cf. Manuscript of José Luis Ibsen Peña of May 16, 1972 (File of annexes to the brief of pleadings and motions, PD-19, pages 1578 to 1580), and receipt of commercial registration, Local Mayor's Office of Camiri, Bolivia (File of annexes to the brief of pleadings and motions, PD-10, pages 1556 and 1557).

<sup>79</sup> Cf. Statement rendered during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro, and statement rendered before a notary public by Mrs. Martha Castro Mendoza (Merits file, volume III, page 635). See also, Minutes of the Hearing of Testimonies proposed by Elias Moreno, testimony of Susano Campos Araúz, May 3, 2007, (Case file 37/2000, Volume XXII, pages 9301 and 18099); Minutes of the public hearing, confession of the accused Elias Moreno Caballero, on September 9, 2004, (Case file 37/2000, Volume XIII, pages 6301 and 15064), and Minutes of Investigation Hearing, October 20, 2003, (Case file 37/2000, Volume X, pages 5382 to 5383 and 14143 to 14144).

73. Furthermore, the Commission and the representatives allege that Mr. Rainer Ibsen Cárdenas was a university student in 1971 when he was arrested. For many years his family had no knowledge of his whereabouts (*infra* paras. 74 to 75 and 263 to 264).

## **C.2. Arrest and subsequent disappearance of Mr. Rainer Ibsen Cárdenas**

74. In October 1971, Mr. Rainer Ibsen Cárdenas, who was approximately 22 years old, was arrested in the city of Santa Cruz, Bolivia, and taken to a facility of the Department of Political Order in the city of La Paz. He was subsequently taken to the Achocalla detention center,<sup>80</sup> where he was imprisoned for approximately nine months.<sup>81</sup> According to statements rendered by others who were confined in that center, and not disputed by the State, in June 1972, at least three people detained in that center were victims of extrajudicial executions. Among those mentioned was Mr. Rainer Ibsen Cárdenas.<sup>82</sup>

75. On June 22, 1972, the morning newspaper *Presencia* referred to his death in an article entitled, "Three NLA militants died in attempted escape." The newspaper cited the text of an official communiqué of the Public Relations Department of the Ministry of the Interior, dated June 21, 1972, which indicated that: "as the result of a shootout which occurred during an attempted escape by several detainees of the NLA [National Liberation Army], Enrique Ortega Hinojosa, (a) 'Víctor Guerra,' Rainer (*sic*) Ibsen Cárdenas[,] (a) 'Pedro'[,] and Jorge Helguero Suárez[,] (a) 'Manuel' were killed and two security guards were

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<sup>80</sup> Cf. Statement rendered before a notary public by Mrs. Ledy Catoira Moreno (Merits file, volume III, pages 669 to 671); statement rendered by affidavit by Mrs. Hilda Saavedra Serrano (Merits file, volume III, page 666); statement rendered before a notary public by Mr. Estevan Renato Díaz Matta (Merits file, volume III, pages 651 to 652); death certificate of Mr. Rainer Ibsen Cárdenas, June 21, 1972, (File of annexes to the petition, appendix 16, page 1793); Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Workers' Union (COB), *Banzer: Genio y figura... Para que no se olvide. Nunca más*. Crear Impresiones Publishing House. La Paz, 2008. (File of annexes to the petition, appendix 5, pages 1570, 1610 and 1625 to 1626), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (Last visit: August 2, 2010), and press article published on June 22, 1972, in the morning paper *Presencia*, "Three activists of the National Liberation Army (NLA) died during an attempted escape" (File of annexes to the petition, appendix 29, page 2453, and Merits file, volume III, page 1068). At the public hearing (*supra* para. 8), Tito Ibsen Castro declared that his brother "disappear[ed] while on his way to the university, carrying only his materials and a shirt. Subsequently, [in] 1972[, ...] the press articles [mentioned] that he died in an alleged attempted escape [...]".

<sup>81</sup> Cf. Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Workers' Union (COB). *Banzer: Genio y figura... Para que no se olvide. Nunca más*. La Paz, Crear Publishing House, 2008 (File of annexes to the petition, appendix 5, page 1570 and 1625).

<sup>82</sup> Cf. Statement rendered before a notary public by Mr. Estevan Renato Díaz Matta (Merits file, volume III, page 652); statement rendered before a notary public by Mrs. Hilda Saavedra Serrano (Merits file, volume III, page 666) and statement rendered before a notary public by Mrs. Ledy Catoira Moreno (Merits file, volume III, pages 670 to 671). See also, Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Workers' Union (COB). *Banzer: Genio y figura... Para que no se olvide. Nunca más*. La Paz, Crear Publishing House, 2008 (File of annexes to the application, annex 5, pages 1570, 1610 and 1625 to 1626), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (Last visit: August 2, 2010); press article published on May 26, 1996, in newspaper *La Razón*, "In Bolivia, there are about 240 cases of forced disappearance to be solved" (File of annexes to the petition, appendix 29, page 2456), and press article published on February 18, 2000, in newspaper *La Nación*, "*Justo Sarmiento lies, he tortured me in El Pari*" (File of annexes to the brief of pleadings and motions, PD-120, page 2379). The interviewee stated that: his son, Rainer Ibsen Cárdenas, was detained because at that time the young people who are now Mirista militants were known as National Liberation Army (NLA). This young man was killed in La Paz while I was imprisoned there, he was given fugitive law and then killed."

wounded.”<sup>83</sup> Another version of the events indicates that he was “shot” in La Paz.”<sup>84</sup> According to the testimony of Tito Ibsen Castro rendered at the public hearing (*supra* para. 8), Mr. José Luis Ibsen Peña was aware of the article in the *Presencia* morning newspaper, prompting him to take actions to confirm its veracity.<sup>85</sup> This particular point will be addressed subsequently in the pertinent part of this Judgment (*infra* paras. 104 and 105). However, from the foregoing, the Court accepts that from the time of his arrest and until his death, Mr. Rainer Ibsen Cárdenas was in the custody of the security forces of the Department of Political Order at the aforementioned detention center, allegedly as a member of the National Liberation Army.<sup>86</sup>

### **C.3. Rights to personal liberty, personal integrity, life and juridical personality of Mr. Rainer Ibsen Cárdenas**

76. In terms of the State's argument that Mr. Rainer Ibsen Cárdenas's whereabouts were known in 1983 (*supra* para. 27), the Commission indicated that Mr. Ibsen Cárdenas' family had no knowledge of this since “no forensic examination was conducted to establish the identity of the remains that were found [until] 25 years later.” On this point, the Commission indicated in its final written arguments that “what was presented in 1983 was a mere indication that one of the bodies found belonged to Mr. Rainer Ibsen Cárdenas.”<sup>87</sup>

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<sup>83</sup> Cf. Press article published on June 22, 1972, in the morning newspaper *Presencia*, “Three activists of the National Liberation Army (NLA) died in attempted escape” (File of annexes to the petition, appendix 29, page 2453, and Merits file, volume III, page 1068). See also, statement rendered before a notary public by Mr. Estevan Renato Díaz Matta (Merits file, volume III, page 652), and Association of Relatives of Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Workers' Union (COB). *Banzer: Genio y figura... Para que no se olvide. Nunca más*. La Paz, Crear Publishing House, 2008 (File of annexes to the petition, appendix 5, pages 1570 and 1625), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (Last visit: August 2, 2010).

<sup>84</sup> Cf. Document signed by the Association of Relatives of Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and addressed to the National Congress, on September 5, 1979, (File of annexes to the petition, appendix 20, page 1802). This document belongs to the case file of the “Impeachment trial against former President of the Republic Major General Hugo Banzer Suárez [et al.]” of the National Congress, 1979 Legislature.

<sup>85</sup> During the public hearing, Tito Ibsen Castro stated that Rainer Ibsen's family “hear[ed] the information on the radio, and [that his] father knew of the publication in the newspaper *Presencia* and [that his] mother kept it, but they were not certain whether it was really him, since [they] were not asked, nor was [his] father permitted to travel to the city of La Paz.” Additionally, he indicated that upon learning of the abovementioned communiqué, his father “communicate[d] [...] first with the Departmental Headquarters of the Police on Independence Street and trie[d] to obtain a permit and, afterward, that authority [...] order[ed] him to go into exile [...].”

<sup>86</sup> Cf. Statement rendered before a notary public by Mrs. Ledy Catoira Moreno (Merits file, volume III, pages 669 to 671); statement rendered before a notary public by Mrs. Hilda Saavedra Serrano (Merits file, volume III, pages 665 to 666); statement rendered before a notary public by Mr. Estevan Renato Díaz Matta (Merits file, volume III, page 652); death certificate of Rainer Ibsen Cárdenas, of June 21, 1972, (File of annexes to the petition, appendix 16, page 1793); Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Workers' Union (COB). *Banzer: Genio y figura... Para que no se olvide. Nunca más*. La Paz, Crear Publishing House, 2008 (File of annexes to the application, appendix 5, pages 1570 and 1625 to 1626), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (last visit: August 2, 2010), and press article published on June 22, 1972 in the morning newspaper *Presencia*, “Three activists of the National Liberation Army (NLA) died in an attempted escape” (File of annexes to the petition, appendix 29, page 2453, and Merits file, volume III, page 1068).

<sup>87</sup> The Commission stated that, “[t]he documentation submitted by the State to substantiate its interpretation of the facts is a 2008 report by [... ASOFAMD] to the Ministry of Justice and press article s.”



Moreover, the Commission alleged that State authorities had presented “a series of versions on [the] fate and whereabouts” of Mr. Rainer Ibsen that “was intended to misrepresent the truth” [...],” and that afterwards they delivered “[his] remains to a civil society organization without giving his family any official explanation.” According to the Commission, Mr. Ibsen Cárdenas’ family still have no information as to what happened and do not know the exact date or the circumstances surrounding his death. Therefore, it requested that the Court declare that the State had violated Articles 1 and 11 of the Convention on Forced Disappearance to the detriment of Mr. Rainer Ibsen Cárdenas.

77. Moreover, and in view of the foregoing, the Commission alleged the violation of Articles 7, 5, 4, and 3 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Mr. Rainer Ibsen Cárdenas, because “he was held in clandestine detention centers [...] for several months [,] in the custody of members of the Department of Political Order, incommunicado and as a political prisoner due to his alleged ties to the National Liberation Army[,] in a context of [...] unlawful and arbitrary detentions followed by torture, extrajudicial executions and/or forced disappearance of persons who had been identified as dangerous to national security or as opposing the regime of then-President Hugo Banzer Suárez.” The Commission further held that although “[t]he passage of time and the lack of diligence on the part of the authorities charged with investigating the facts and identifying the remains of Mr. Rainer Ibsen Cárdenas promptly [impeded] the availability of information regarding the specific acts to which [he] was subjected,” the fact that Mr. Ibsen Cárdenas was detained in Achocalla, a center “where the practice of torture was habitual,” and later disappeared, proves that he was placed “in a situation of vulnerability and lack of protection that affected his physical, mental and moral integrity.”

78. Additionally, the Commission asserted that “[t]he location, examination, and identification of the remains of Mr. Rainer Ibsen Cárdenas, as well as the testimonies of persons who assert that they saw him in the custody of agents of the State, demonstrate that [...] he died at the hands of State security agents, on a date and under circumstances yet to be determined, as the result of at least three gunshot wounds to the head.” It emphasized that “the fact that there is [...] evidence regarding the death of the [alleged] victim does not change the conceptualization of the acts perpetrated against him as forced disappearance.” Finally, the Commission argued that the disappearance of Mr. Rainer Ibsen Cárdenas “had the objective of depriving him of his juridical personality [and leaving] him outside the legal and institutional order,” making it impossible for him or his family to seek judicial protection, thus ensuring impunity.

79. The representatives agreed with the arguments presented by the Commission and asked the Court to declare the State of Bolivia responsible for the violation of the same rights and non-compliance with the same provisions alleged by the Commission.

80. As to the arguments of the State, this Judgment has already referred to its partial acknowledgment of responsibility in the case (*supra* paras. 5, 23 to 27 and 35 to 38). In terms of the alleged facts of what happened to Mr. Rainer Ibsen Cárdenas, in the answer

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According to the Commission, “the evidence in the case file indicates that the names of the persons allegedly found were made public without any explanation as to how they were identified over a decade after they had disappeared.” In this regard, it specified that “[t]he news articles submitted by the State referred to irregularities in the lists and names, and even publicized that some of the registries had been found in pieces.” Moreover, the Commission stated that according to the testimony of Mrs. Delia Cortez, a witness proposed by the State, “we have no knowledge of protocols to ensure that the integrity of the remains in this proceeding were being preserved in order to facilitate their subsequent identification.” Thus, “the only criterion considered in order to state that one of the persons found was Mr. Rainer Ibsen Cárdenas was the name that appeared on the supposed individual grave located next to a mass grave.”

to the petition the State acknowledged his forced disappearance and only contested the Commission's contention that his remains were not identified until 2008, indicating that the remains were found in 1983 and this fact was allegedly made known to the public then. The State concluded that, therefore, the forced disappearance ceased in that year (*supra* para. 27). However, the Court notes that in its final written arguments, the State held that in light of the evidence presented to the Court during the proceedings, "it [was] not possible to declare an international violation [for the] forced disappearance of [Mr.] Rainer Ibsen Cárdenas."<sup>88</sup>

81. In this regard, the Court notes that the State's argument claiming it is not possible to declare an "international violation" for the forced disappearance of Mr. Rainer Ibsen Cárdenas is inconsistent with its acknowledgment of responsibility in its response to the petition, which was ratified at the public hearing held for this case (*supra* paras. 5 and 8). Given that the Court must determine whether an acknowledgment of international responsibility made by a respondent State provides sufficient basis, under the American Convention, for continuing with the examination of the merits and the determination of possible reparations and legal costs (*supra* para. 33), the Court shall consider the legal effects of the relevant facts proven in this Judgment (*supra* paras. 34 to 38).

82. The Court has indicated that the constitutive elements of forced disappearance are permanent as long as the whereabouts of the victim are not known or his or her remains have not been located (*supra* paras. 59 and 67). However, with respect to the aforementioned issue, a State's obligation is not limited solely to the act of finding the remains of a particular person; logically, this act must be accompanied by evidence or analyses to corroborate that, in fact, the remains belong to that person. Therefore, in cases of alleged forced disappearance where there are indications that the alleged victim has died, the determination of whether a forced disappearance existed and has ceased, if applicable, necessarily involves establishing, irrefutably, the identity of the individual to whom the remains belong. Thus, the appropriate authorities must carry out a prompt exhumation of the mortal remains so that they may be examined by a competent professional. Exhumations must be carried out in a manner that protects the integrity of the remains collected in order to establish, if possible, the identity of the deceased, the date on which he or she died, the manner and cause of death, and the existence of possible injuries or signs of torture.<sup>89</sup>

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<sup>88</sup> In this regard, the State indicated that: a) "exact information is needed to demonstrate that State agents physically eliminated Rainer Ibsen Cárdenas and then proceeded to disappear his remains"; b) "the State [...] never hid Rainer Ibsen Cárdenas' mortal remains[.] [...] [O]n the contrary, it assisted in their identification in 1983, the year when his whereabouts were made known;" c) "no documentation has been added to demonstrate that [Mr. Ibsen Cárdenas'] mortal remains [were] sought out [by his family] after the return to a democratic State;" d) in reports presented by the State and the testimonies heard at the public hearing, "it has been unequivocally proven [...] the Ibsen family knowledge of [Mr.] Rainer Ibsen Cárdenas' death"; and e) according to the testimony of Delia Cortez Flores, representative of ASOFAMD, [in 1983,] there was information regarding the existence of 14 bodies that had disappeared and [...] of the fact that one of them corresponded [to Mr. Rainer Ibsen,] who had been identified in a grave that had a plaque with his name and date of death on it."

<sup>89</sup> Cf. *Case of La Cantuta v. Peru. Merits, Reparations and Costs*. Judgment of November 29, 2006. Serie C No. 162, para. 114; *Case of Heliodoro Portugal v. Panama*, *supra*. note 1, para. 34. The "Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions," approved by the Economic and Social Council of the United Nations in its resolution 1989/65/ of May 24, 1989, were drafted along these lines. See also, the "Model Protocol for Disinterment and Analysis of Skeletal Remains" in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/12 (1991).

83. In light of the foregoing, the Court shall determine the date on which the whereabouts of Mr. Rainer Ibsen Cárdenas were established, taking into account the facts alleged in this case and the evidence presented by the parties.

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84. The Court notes that on October 28, 1982, the National Commission for the Investigation of Citizens Forcibly Disappeared (hereinafter, the “National Commission for Investigation”) was created for the analysis, investigation, and determination of the situation of disappeared citizens in Bolivia.<sup>90</sup> On February 18, 1983, this Commission announced in a press conference that “in recent days it ha[d] established the illegal burial, with changed names, of fourteen cases considered forcibly disappeared [*sic*] during the administration of General Hugo B[a]nzer Suárez,” and that “the illegal burial of the fourteen corpses was carried out under the instructions of agents of repression of the then Ministry of the Interior and without the presence of the victims’ relatives, who until then had no knowledge of the whereabouts of their loved ones.” Finally, it indicated that “it [was] attach[ing], for the information of the national and international press, a list of the persons illegally buried, [...] the places of detention, disappearance and personal data, [as] well as the forensic medical reports.”<sup>91</sup> The next day, the national newspapers *El Diario* and *Presencia* published that the National Commission of Investigation had discovered the remains of fourteen disappeared individuals in La Paz, including those of Mr. Rainer Ibsen Cárdenas.<sup>92</sup> Likewise, the weekly publication *Aquí* on “Saturday, April 30 to May 6, 1983 [*sic*],” announced the identification of the remains of individuals who allegedly disappeared during the dictatorship of Hugo Bánzer. According to the weekly publication, the remains of Mr. Ibsen Cárdenas were among those identified.<sup>93</sup>

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<sup>90</sup> On October 28, 1982, the State approved the Supreme Decree No. 19241, creating the National Commission for Investigation. Every citizen that “felt [might] affected by the circumstances of their disappeared family, close friends or citizens” could turn to this [Commission] to “file a complaint, [which shall be] investigated in a summary manner.” Cf. Official Gazette of the Plurinational State of Bolivia, 1301 Edition, Supreme Decree No. 19241, articles 2 and 5, available at: <http://www.gacetaoficialdebolivia.gob.bo/normas/verGratis/10967> (last visit: August 2, 2010). The Inter-American Court has already made a statement on this in another occasion. In this regard, see *Case of Ticona Estrada et al. v. Bolivia*, *supra* note 1.

<sup>91</sup> Minutes of the press conference held by the National Commission for Investigation, of February 18, 1983 (File of annexes to the petition, appendix V, page 11081). See also, the statement of witness Delia Cortez rendered during the public hearing (*supra* para. 8).

<sup>92</sup> Cf. Press article published on February 19, 1983, in *El Diario*, “Corpses of fourteen ‘disappeared persons’ were found in La Paz” (File of annexes to the answer to the petition, appendix 7, page 11083), and the press article published on February 19, 1983, at *Presencia*, “Graves of fourteen ‘disappeared persons’ were identified at the La Paz General Cemetery” (File of annexes to the response to the petition, appendix 7, pages 11084 to 11085). In this regard, the press article published by *El Diario* states that: “[a] report submitted to the press by the mentioned commission, notes that the corpses identified correspond to the following persons that disappeared after the *coup d’État* on 1971 [...] Mr. Rainer Ibsen Cárdenas [*sic*] [...]”. Likewise, the press article of the newspaper *Presencia* states that the date of detention of Mr. “Ipsen Cardenas Rainer [*sic*]” was in October, 1971, in Santa Cruz, [his] disappearance date on June 18, 1972, and that [he] was killed on June 19, 1972. It also stated that he had suffered a “traumatic brain injury on June 19, 1972 and internal bleeding caused by a bullet.

<sup>93</sup> Cf. Press article published by the weekly newspaper *Aquí* of April 30 to May 6, 1983, “Identity of disappeared persons is being verified” (File of annexes to the brief of pleadings and motions, PD-114, pages 2317 and 2318).

85. On February 22, 1983, the administrator of La Paz General Cemetery at the time when these remains were first buried, presented an "Informative Statement" to the Ministry of the Interior, Migration and Justice of Bolivia, indicating that the bodies which had been discovered arrived at the cemetery "in vehicles belonging to the Clinical Hospital (*Hospital de Clínicas*) with their respective Death Certificate[s], [which were] allegedly signed by [a] forensic doctor [named] Sales." He also stated that cemetery personnel established the identity of the bodies delivered "[a]ccording to the certificates that came with" each one.<sup>94</sup> However, a press release furnished by the State indicates that the National Commission for Investigation found "irregularities in the death and registration certificates." That press release states that "[a]ccording to members of the [National] Commission [of Investigation], the edges of the certificates were deliberately cut [, and that] those were the pieces containing the names of the people who delivered the bodies to the cemetery personnel."<sup>95</sup> Furthermore, according to statements by persons who worked at the La Paz General Cemetery, also provided by the State, the bodies found by the National Commission of Investigation arrived at the Cemetery on different dates<sup>96</sup> and without "death certificate[s] issued by the Civil Registrar."<sup>97</sup> Moreover, the statements indicate that no visual inspection was carried out on the bodies before burial, given that "according to the law, the only way to accomplish this is by a judicial order."<sup>98</sup>

86. In relation to Mr. Rainer Ibsen Cárdenas, the Court notes that the case file contains a hand-written document dated June 21, 1972, and stamped with the seal of the Administration of the La Paz General Cemetery, presented as Mr. Rainer Ibsen Cárdenas' "Death Certificate," which indicates that he died on June 19, 1972, and the cause of his

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<sup>94</sup> Cf. "Information Testimony rendered by Col. Luis Gomez Casaz" on February 22, 1983, before the Ministry of the Interior, Immigration and Justice (Merits file, volume V, pages 1736 to 1737).

<sup>95</sup> Cf. Press article published on February 19, 1983, by *Presencia*, "Graves of fourteen 'disappeared persons' were identified at the La Paz General Cemetery" (File of annexes to the response to the petition, appendix VII, pages 11084 to 11085).

<sup>96</sup> Cf. "Police Information Testimony rendered by Mr. Lizandro Romero Ortiz" on April 13, 1983, to the Criminology Division of Murders (Merits file , volume V, page 1738), and "Police Information Testimony rendered by Mr. Bernardino Hernán Ibáñez Ríos" on April 13, 1983, before the Criminology Division of Murders (Merits file, volume V, page 1741). According to Mr. Romero Ortiz, the burials were likely conducted on several occasions [...]. In this same context, Mr. Ibáñez Ríos stated that, "evidently th[ese] corpses were registered on different dates in the book[,] registered just as they are in the respective book of ground burials and just as it can be deduced the death certificates [actually] are found in the file".

<sup>97</sup> "Police Information Testimony rendered by Mr. Lizandro Romero Ortiz" on April 13, 1983, before the Criminology Division of Murders (Merits file , volume V, page 1739), and "Police Information Testimony rendered by Mr. Bernardino Hernán Ibáñez Ríos" on April 13, 1983, before the Criminology Division of Murders (Merits file , volume V, page 1741). In this regard, Mr. Romero Ortiz mentioned that the records of the buried corpses "were based on to the forensic medical certificates at the time [.] No entries were made, because no death certificates were issued by the Officer of the Civil Registrar [;] [...] currently those certificates exist in the statistics section of the cemetery [*sic*]". Likewise, Mr. Ibáñez Ríos declared that "these records were kept in a normal manner, just as they are today and always have been, according to the book of existing statistics records, which, in this case, could establish that the burials carried out in this investigation did not have the corresponding authorization issued by the Officer of the Civil Registrar, and in the mentioned cases only the forensic medical certificate existed."

<sup>98</sup> "Police Information Testimony rendered by Mr. Bernardino Hernán Ibáñez Ríos" on April 13, 1983, before the Criminology Homicide Division (Merits file, volume V, page 1742), and "Police Information Testimony rendered by Mr. Lizandro Romero Ortiz" on April 13, 1983, before the Criminology Homicide Division (Merits file, volume V, page 1739). According to Mr. Romero Ortiz, "he could not see the [corpses] since the four which [...] he had to bury were [h]ermetically sealed and so they set to burying them". Likewise, Mr. Ibáñez Ríos declared "in none of the cases were verifications made".

death was “internal hemorrhage caused by a bullet.”<sup>99</sup> The supposed death certificate apparently contains two illegible signatures that do not allow for verification of the names of these persons.

87. The Court also notes that on February 28, 1983, the National Commission for Investigation requested the Public Prosecutor’s Office to exhume and perform autopsies on six people, including “Ipsen Rainer Cárdenas [*sic*].”<sup>100</sup> However, the autopsies were never conducted. In 1985, that Commission was dissolved and its files were given to ASOFAMD along with the remains found two years earlier, which were transferred to that organization’s Mausoleum at the La Paz General Cemetery,<sup>101</sup> among them the remains allegedly belonging to Mr. Ibsen Cárdenas. In relation to that delivery, at the public hearing (*supra* para. 8) Mrs. Delia Cortez stated that according to the information of ASOFAMD, the only elements used by the National Commission of Investigation to establish that some of the transferred remains belonged to Mr. Rainer Ibsen Cárdenas were the name and date of his death that appeared over one of three identified graves next to a common grave and a death certificate of unknown authorship allegedly issued by the administration of the La Paz General Cemetery (*supra* para. 86). There is no information in the record before the Court describing the manner in which the exhumation and transfer were conducted, or whether these were carried out using methods which permitted the proper handling and preservation of the bodies until their reburial. Likewise, no forensic examination was conducted then in order to corroborate whether those remains belonged to Mr. Rainer Ibsen Cárdenas. From this, the Court notes that the remains which apparently belonged to Mr. Ibsen Cárdenas were delivered to a civil institution and not to his family, and that they were exhumed and transferred to another place, where they were buried again without having been identified.

88. In view of the foregoing, the Court considers proven that several initial irregularities existed that make it difficult to conclude that the remains of Mr. Rainer Ibsen Cárdenas were found in 1983, as alleged by the State. Therefore, it is not possible to establish that the forced disappearance of Mr. Ibsen Cárdenas ceased then. In that regard, it is not appropriate for the Court to rule on the State’s claim that the publicity given to the discovery of the illegal burials and the knowledge that his family supposedly had about that discovery. However, in order to establish the date when Mr. Rainer Ibsen’s whereabouts were determined, it is necessary that the Court refer to other facts that were proven in this case.

89. On March 21, 2007, in the context of the domestic criminal proceeding (*infra* paras. 137 to 150), the skeletal remains that apparently belonged to Mr. Rainer Ibsen Cárdenas were exhumed.<sup>102</sup> It should be mentioned that during the domestic criminal proceedings,

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<sup>99</sup> Cf. Handwritten death certificate of Mr. Rainer Ibsen Cárdenas, issued on June 21, 1972 (File of annexes to the petition, appendix 16, page 1793, and Merits file, volume V, page 1734).

<sup>100</sup> Cf. Request of the National Commission for the Investigation of Disappeared Citizens to the Public Prosecutor’s Office on February 23, 1983 (File of annexes to the petition, appendix 19, page 1799).

<sup>101</sup> Cf. Statement rendered during the public hearing (*supra* para. 8) by witness Delia Cortez Flores.

<sup>102</sup> Cf. Report of the Investigative Officer addressed to the Chief of the Homicides Division, on March 27, 2007 (File of annexes to the petition, appendix XXIV, pages 2290 a 2291), and “Preliminary Report on the Exhumations and Forensic Anthropology Analysis, in relation to the search and identification of the remains of Rainer Ibsen Cárdenas,” submitted by Silvana Turner and Mariana A. Segura to the Special Prosecutor of the Office of the Attorney General of the LA Paz District on March 23, 2007 (File of annexes to the petition, appendix 25, pages 2299 to 2300).

Rebeca and Tito Ibsen Castro had requested this exhumation on at least five occasions since 2003.<sup>103</sup> On March 23, 2007, the expert witnesses in charge of the exhumation delivered a “preliminary report” to the Prosecutor with subject-matter jurisdiction of the District of La Paz, indicating that none of the skeletal remains exhumed matched the characteristics of Mr. Rainer Ibsen Cárdenas.<sup>104</sup> The report also indicated that the remains of Mr. Rainer Ibsen Cárdenas had been interred at the La Paz General Cemetery, along with other persons, in the so-called Pantheon of ASOFAMD after having been previously exhum[ed] from a grave in the same cemetery.”<sup>105</sup>

90. On May 10, 2007, the expert witnesses issued “Final Reports” confirming that “[t]he biological profile [...] of the remains [exhumed on March 21, 2007, was] not consistent with the *premortem* data corresponding to [Mr.] Rainer Ibsen Cárdenas.”<sup>106</sup> In its final written arguments, the State indicated that the reason for this was that “at that time, it was understood that the mortal remains of Mr. Rainer Ibsen Cárdenas were located in grave number 7, [but that] due to the decision of those present at the excavation, and with the consent of Mr. Tito Ibsen (who expressed no objection to the decision taken), the graves were counted backwards. Therefore, it was not possible to identify the mortal remains of [Mr. Ibsen Cárdenas] from this first excavation [;] this happen[ed] later, when the count to grave [number] 7 is inverted and the remains are exhumed [...]” The Court considers it irrelevant that Mr. Tito Ibsen Castro made no observations regarding the manner in which the remains were to be exhumed. The Court notes that the exhumation was conducted as part of the domestic criminal proceedings, and was therefore under the control of the State at all times. Furthermore, throughout the procedure on this case, the State asserted that it knew at all times where the remains of Mr. Rainer Ibsen Cárdenas were located. Therefore, an unsuccessful procedure such as this verifies the lack of certainty regarding his whereabouts up to that point (*supra* paras. 82 and 83). Moreover, the Court considers that the State cannot argue, on one hand, that the remains of Mr. Rainer Ibsen were absolutely located, with a plaque on the grave where he was supposedly buried, and, on the other hand, that the remains exhumed in March 2007 were not those of Mr. Rainer Ibsen Cárdenas because the persons in charge of the exhumation counted the graves incorrectly.

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<sup>103</sup> Cf. Brief of Rebeca Ibsen Castro addressed to the First Instance Judge of Warnes, on October 7, 2003 (Case file 37/2000, Volume X, pages 5321 to 5322 and 14080 to 14082); Brief of Rebeca Ibsen Castro addressed to the Seventh First Instance Civil and Commercial Judge of La Paz, on October 20, 2006 (Case file 37/2000, Volume XXI, pages 9094 to 9095), and brief of Tito Ibsen Castro addressed to the Special Prosecutor of the Office of the Attorney General of the District of La Paz, on January 25, 2007 (File of annexes to the petition, appendix 24, pages 2276 to 2278). See also, the briefs addressed to the Special Prosecutor of the Office of the Attorney General of the District of La Paz submitted by Tito Ibsen Castro, on December 13, 2006, and January 9, 2007 (File of annexes to the petition, appendix 24, pages 2263 to 2264). Both documents are apparently incomplete; nevertheless, the State did not challenge their authenticity.

<sup>104</sup> Cf. “Preliminary Report on the Exhumations and Forensic Anthropology Analysis, in relation to the search and identification of the remains of Rainer Ibsen Cárdenas,” submitted by Silvana Turner and Mariana A. Segura to the Special Prosecutor of the Office of the Attorney General of the District of La Paz on March 23, 2007 (File of annexes to the petition, appendix 25, pages 2299 to 2300 and 2302). See also, Report of the Investigator Officer addressed to the Chief of the Homicides Division, on March 27, 2007 (File of annexes to the petition, appendix 24, pages 2290 to 2291).

<sup>105</sup> Cf. Preliminary Report on the Exhumations and Forensic Anthropology Analysis, related to the search and identification of the remains of Rainer Ibsen Cárdenas,” submitted by Silvana Turner and Mariana A. Segura to the Special Prosecutor of the Office of the Attorney General of the District of La Paz on March 23, 2007 (File of annexes to the petition, appendix 25, page 2300).

<sup>106</sup> Cf. Final report of the Argentinean Forensic Anthropology Team, “Anthropological report on remains LP-A1,” of May 10, 2007 (File of annexes to the petition, appendix 25, pages 2303 and 2309).

91. Furthermore, on February 20, 2008, other bodies in the ASOFAMD Mausoleum were exhumed.<sup>107</sup> The case file before the Court contains a “preliminary report” on the DNA profile of the remains of one of those bodies, dated July 15, 2008, and issued by the experts in charge of the exhumation. The report established that one of the bodies exhumed had a 99.7% probability of being Mr. Rainer Ibsen Cárdenas.<sup>108</sup> On July 28, 2008, the expert witnesses presented a “Forensic Anthropology Final Report” on the exhumations of February 20, 2008, to the District Prosecutor of La Paz.<sup>109</sup> Those remains were delivered to Mr. Ibsen Cárdenas’ family on November 11, 2008.<sup>110</sup> On that same day, the Forensic Research Institute of the Attorney General’s Office issued a “Death Certificate” which indicated that Mr. Rainer Ibsen Cárdenas died on June 22, 1972, in La Paz, due to “[c]ranio-encephalic trauma and [m]ultiple [t]raumas.” Under the heading “Observations,” the document reads: “Skeletal remains that were exhumed at the ASOFAM [sic] Mausoleum in La Paz, were later identified through genetic testing [...], under the exhumation order issued by the [...] Special Prosecutor the District of La Paz.”<sup>111</sup> The Court notes that these reports were not disputed.

92. Given the lack of certainty as to whether the remains found in the year 1983 at the ASOFAMD Mausoleum belonged to Mr. Rainer Ibsen Cárdenas, the Court considers that those remains were identified by means of the DNA profile report of July 15, 2008, on the remains exhumed on February 20, 2008, within the framework of the legal proceedings (*infra* paras. 137 to 150). The issuance of this report finally established the whereabouts of Mr. Rainer Ibsen Cárdenas.

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93. The Court will analyze the Commission’s arguments regarding Mr. Ibsen Cárdenas’ alleged forced disappearance up until the date on which his remains were identified, when the alleged violation would have ceased.

94. The Court has confirmed that Mr. Rainer Ibsen Cárdenas was arrested and subsequently transferred to the detention center of Achocalla, in the city of La Paz. He was

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<sup>107</sup> Cf. “Final Report on the Exhumations and Forensic Anthropological Analysis of the Remains Buried in the ASOFAMD Cemetery, Sector B, La Paz General Cemetery” (Case file 37/2000, Volume XXV, pages 10106 y 18907).

<sup>108</sup> Cf. DNA Profil Preliminary Report, of July 15, 2008 (Case file 37/2000, Volume XXV, pages 10094, 10104, 18897 and 18905), and Delia Cortez Flores statement rendered during the public hearing.

<sup>109</sup> Cf. Note signed by Silvana Turner of the Argentinean Forensic Anthropology Team addressed to the Office of the Attorney General of the District of La Paz, on July 28, 2008 (Case file 37/2000, Volume XXV, pages 10105 to 10106 and 18906 to 18907).

<sup>110</sup> Cf. “Certificate of delivery of evidence and/or samples”, of November 11, 2008 (Case file 37/2000, Volume XXVII, pages 10626 and 19126); Brief of Rebeca Ibsen Castro addressed to the Seventh First Instance Civil and Commercial Judge of La Paz, on November 12, 2008 (Case file 37/2000, Volume XXVII, pages 10628 y 19428); note CITE: F.G.R. Stría. Nº 1433/2008 of the Attorney General of the Republic addressed to the Ministry of Foreign Affairs, November 24, 2008 (File of annexes to the answer to the application, appendix 13, pages 11309); note CITE: JENAMEF 690 /08 of the Forensic Investigations Institute addressed to the Attorney General (File of annexes to the answer to the application, appendix 13, page 11311), and press article published on November 12, 2008 in *La Razón*, “Rainer’s remains returned” [“Devuelven los restos de Rainer”] (File of annexes to the brief of pleadings and motions, PD-191, page 2621).

<sup>111</sup> Death Certificate of Rainer Ibsen Cárdenas issued by the Forensic Investigations Institute of the Office of the Attorney General, on November 11, 2008 (Case file 37/2000, Volume XXVII, pages 10627 and 19427).

detained for approximately nine months, after which he was killed by several gunshot wounds to the head,<sup>112</sup> all this while in custody of the State. From the pattern of violations committed during that time, the context of which the State expressly acknowledged, it is possible to affirm that the arrest and subsequent disappearance of Mr. Ibsen Cárdenas was not only contrary to the right to personal liberty, but also placed him in a seriously vulnerable situation of suffering irreparable damage to his personal integrity.<sup>113</sup> The determination of the specific individuals who made the arrest, of what happened to him during the time he was detained, and of the circumstances surrounding his death have still not been judicially defined (*infra* paras. 161, 174, 211, 225 and 226). The Court emphasizes that the supposed death certificate issued in 1972 indicated that Mr. Ibsen Cárdenas had died due to “internal hemorrhage caused by a bullet” (*supra* para. 86), while the certificate issued in 2008, based on the genetic and anthropological examinations, indicated that he died as a result of a “cranio-encephalic trauma” and “multiple traumas” (*supra* para. 91).

95. In this regard, the Court has established that subjecting detainees to official repressive bodies, state agents, or individuals acting with its acquiescence or tolerance that practice torture and murder with impunity is, in itself, an infringement of the duty to prevent violations of the rights to personal integrity and life, even when acts of torture or deprivation of life of the person cannot be proven in the specific case.<sup>114</sup> The State is in a special position of guarantor with respect to detainees due to the fact that State authorities exercise total control over them.<sup>115</sup> In addition, this Court has held that forced disappearance violates the right to humane treatment because “[t]he mere existence of prolonged isolation and coercive solitary confinement is cruel and inhuman treatment [...] contrary to paragraphs 1 and 2 [of Article 5 of the Convention].”<sup>116</sup>

96. Regarding the alleged violation of Article 3 of the American Convention (*supra* paras. 77 to 79) the Court has found that the right to juridical personality is the right, precisely, to recognize the person:

everywhere as subject to rights and obligations, and to enjoy the basic civil rights, [which] implies the capacity to be the holder of rights (capacity and enjoyment) and obligations; the violation of this recognition means absolutely negating the possibility of being a holder of civil and fundamental rights and obligations.<sup>117</sup>

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<sup>112</sup> Cf. “Final Report on the Exhumations and Anthropological Analysis of the Buried Remains in the ASOFAMD Cemetery, Sector B, La Paz General Cemetery” (Case file 37/2000, Volume XXV, pages 10173 to 10174 and 18974 to 18975).

<sup>113</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 152.

<sup>114</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits. supra* note 14, para. 175; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 153, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 95.

<sup>115</sup> Cf. *Case of Neira-Alegría et al. v. Peru. Merits. Judgment of January 19, 1995. Series C No. 20*, para. 60; *Case of the Miguel Castro-Castro Prison v. Peru. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160*, para. 221, and *Case of Yvon Neptune v. Haiti. Merits, Reparations and Costs. Judgment of May 6, 2008. Series C No. 180*, para. 130.

<sup>116</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits. supra* note 14, para. 187; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 153, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 94.

<sup>117</sup> Cf. *Case of Bámaca-Velásquez v. Guatemala. Merits. Judgment of November 25, 2000. Series C No. 70*, para. 179; *Case of Anzaldo Castro v. Peru*, *supra* note 44, para. 87, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 155.



97. This right represents a parameter for determining whether a person is a holder of the rights in question and whether he or she can exercise those rights;<sup>118</sup> therefore, the violation of that recognition makes the individual vulnerable before the State and individuals.<sup>119</sup> Thus, the right to juridical personality entails a general duty of the State to provide the legal means and conditions so that this right may be freely and fully exercised by individuals<sup>120</sup> or, where applicable, the obligation not to violate that right.<sup>121</sup>

98. This Court has found that in cases of forced disappearance, having regard to the multiple and complex nature of this grave human rights violation, its execution may entail the specific infringement of the right to juridical personality. Beyond the fact that a disappeared person can no longer exercise and enjoy other rights, and possibly all of the rights to which he or she is entitled, his or her disappearance becomes not only one of the most serious ways of placing a person outside the protection of the law, but also negates that person's existence, leaving him or her in a kind of limbo or uncertain legal situation before society and the State.<sup>122</sup>

99. In light of the foregoing, although in previous cases the Court had established that this definition did not expressly include the recognition of juridical personality among the elements classifying this complex crime,<sup>123</sup> it is worth noting that, pursuant to the principle of effectiveness and the need to offer protection to individuals or groups in vulnerable situations, in accordance with the evolution of the international *corpus juris* on this matter,<sup>124</sup> the Court has interpreted Article 2 of the Inter-American Convention on Forced Disappearance of Persons in broad terms, concluding that the result of the refusal to acknowledge the deprivation of liberty or the whereabouts of a disappeared person is, together with other elements of forced disappearance, what takes the person "outside the

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<sup>118</sup> Cf. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, Reparations and Costs*. Judgment of March 29, 2006. Series C No. 146, para. 188; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 88, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 156.

<sup>119</sup> Cf. *Case of the Girls Yean and Bosico v. Dominican Republic. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 8, 2005. Series C No. 130, para. 179; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 88, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 156.

<sup>120</sup> Cf. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, *supra* note 118, para. 189; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 156, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 101.

<sup>121</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 156.

<sup>122</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 90; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 157, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 98.

<sup>123</sup> Cf. *Case of Bámaca-Velásquez v. Guatemala, Merits*, *supra* note 117, para. 180; *Case of Ticona Estrada et al. v. Bolivia*, *supra* note 1, para. 69, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 99.

<sup>124</sup> Cf. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*, *supra* note 118, para. 189; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 89, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 99.

*protection of the law;*"<sup>125</sup> that is, the violation of the personal and juridical protection of the individual, directly impedes the recognition of juridical personality.<sup>126</sup>

100. Furthermore, this consequence is evident when the *modus operandi* shows a clear intention, not only to prevent the exercise of an individual's legal remedies and procedural guarantees, but also to impede the exercise of other rights, civil or political, and to take the individual away from his or her community and his or her family group,<sup>127</sup> as occurred in this case (*infra* para. 122).

101. Therefore, the State must respect and provide the legal means and conditions necessary for the right to juridical personality to be freely and fully exercised by individuals.<sup>128</sup> This recognition establishes a person's effective existence before society and the State, enabling him or her to be a holder of rights and obligations, to exercise them and to have the capacity to act, which are inherent rights of the human being that can never be annulled by the State according to the American Convention.<sup>129</sup>

102. In this specific case, Mr. Rainer Ibsen Cárdenas was placed in a situation of legal uncertainty whereby his possibilities of holding or effectively exercising his rights in general were annulled, which constitutes one of the most serious forms of non-compliance with the State's obligations to respect and guarantee human rights.<sup>130</sup> This resulted in the violation of Mr. Ibsen Cárdenas's right to juridical personality.

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103. Accordingly, the Court concludes that the State is responsible for the detention and subsequent forced disappearance of Mr. Rainer Ibsen Cárdenas and, therefore, for the violation of the rights to juridical personality, life, humane treatment [personal integrity] and personal liberty. The Court will analyze the issues related to the State's duty to investigate in Chapter VII of this Judgment.

#### **C.4. Arrest and subsequent disappearance of Mr. José Luis Ibsen Peña**

104. At the public hearing, Mr. Tito Ibsen Castro stated that after the arrest of Mr. Rainer Ibsen Cárdenas, his father, Mr. José Luis Ibsen Peña, tried unsuccessfully to gain access to the detention center of Achocalla, the place "[where] his son was allegedly confined." He also stated that once the Ibsen family learned about the press article of June 22, 1972, stating that Mr. Ibsen Cárdenas had apparently died in an escape attempt (*supra* para.

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<sup>125</sup> *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 96, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 99.

<sup>126</sup> *Cf. Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 99.

<sup>127</sup> *Cf. Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 100.

<sup>128</sup> *Cf. Case of the Sawhoyamaxa Indigenous Community v. Paraguay*, *supra* note 118, para. 189; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 88, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 101.

<sup>129</sup> *Cf. Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 101. See also, Article 27 (Suspension of Guarantees) of the American Convention.

<sup>130</sup> *Cf. Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 101; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 157, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 102.

75), Mr. Ibsen Peña contacted the representatives of the Departmental Police Headquarters in the city of Santa Cruz, without obtaining any response.<sup>131</sup> The State did not contest these points; therefore, the Court considers these events as proven.

105. Furthermore, during the public hearing (*supra* para. 8), Mr. Tito Ibsen Castro stated that in his search for the whereabouts and location of Mr. Rainer Ibsen Cárdenas, members of the Departmental Police Headquarters warned Mr. Ibsen Peña that he should “go into exile” from Bolivia “under the pretext that he would be assassinated.” On this point, Martha Castro Mendoza stated that Mr. José Luis Ibsen Peña “had gone into exile in Argentina,” but that “his concern for his children made him return to La Paz [sic].” Rebeca Ibsen Castro’s statement coincides with these assertions.<sup>132</sup> The Court has confirmed from the relevant parts of Mr. José Luis Ibsen Peña’s passport, included in the case file, that on November 10, 1971, Mr. Ibsen Peña left Bolivia and entered the Republic of Argentina, and that on the 19<sup>th</sup> of that same month and year, he left that country and returned to Bolivia.<sup>133</sup> The Commission mentioned this fact without connecting it to any particular argument. In this regard, the Court deems it appropriate to note that from Mr. Ibsen Peña’s passport, it cannot be inferred that he had been “in exile” in Argentina due to his search for his son Rainer Ibsen Cárdenas. However, given that the State did not dispute the above or present evidence to the contrary, the Court considers these events proven.

106. On February 10, 1973, Mr. José Luis Ibsen Peña, then 47 years old (*supra* para. 71), and his son Tito Ibsen Castro, approximately 8 years old<sup>134</sup> were buying school supplies in the city of Santa Cruz. While walking along Calle Independencia, Mr. Ibsen Peña was detained by State security officials, and ordered to accompany them. Mr. Ibsen Peña expressed his concern that it would be the first time his son Tito would return home alone.<sup>135</sup> That same night, Mr. Ibsen Peña returned home accompanied by the same agents to retrieve personal effects and was again taken away without being shown an arrest warrant.<sup>136</sup>

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<sup>131</sup> Cf. Statement rendered during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro.

<sup>132</sup> Cf. Statement during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro; statement rendered before a notary public by Mrs. Martha Castro Mendoza (Merits file, volume III, page 634), and statement rendered before a notary public by Mrs. Rebeca Ibsen Castro (Merits file, volume III, page 739).

<sup>133</sup> Cf. Passport of José Luis Ibsen Peña (File of annexes to the petition, appendix 14, pages 1785 and 1788 to 1789).

<sup>134</sup> Cf. Birth certificate of Tito Ibsen Castro (File of annexes to the petition, appendix 12, page 1767).

<sup>135</sup> Cf. Statement during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro; statement rendered before a notary public by Mrs. Martha Castro Mendoza (Merits file volume III, page 636), and statement rendered before a notary public by Mrs. Rebeca Ibsen Castro (Merits file, volume III, page 739).

<sup>136</sup> Cf. Statement rendered during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro, and statement rendered before a notary public by Mrs. Martha Castro Mendoza (Merits file, volume III, page 636). The Court states that from the body of evidence it follows that Mr. Ibsen Peña was arrested several times before 1973 and taken to the detention center of El Pari, although it is not possible to ascertain the dates of these detentions. Cf. Statement rendered before a notary public by Mrs. Rebeca Ibsen Castro (Merits file, volume III, page 738 to 739); statement rendered before a notary public by Mrs. Martha Castro Mendoza (Merits file, volume III, page 635 to 636), and statement rendered before a notary public by Mr. Estevan Renato Díaz Matta (Merits file, volume III, page 650 and 654). See also, Minutes of the Hearing of Testimonies proposed by Elias Moreno, statement of Susano Campos Araúz, on May 3, 2007 (Case file 37/2000, Volume XXII, pages 9301 and 18099); minutes of public hearing, statement of Juany Alcira Osinaga Ríos, April 19, 2003, and February 8, 2006 (File of annexes to the brief of pleadings and motions, Case file 37/2000, Seventh First Instance Civil and Commercial Court, Volume XII, pages 5873 to 5877, and Volume XXI, pages 8783 to 8797), minutes of public confession, hearing and minutes of investigation hearing of Elías Moreno Caballero, on September 9, 2004, and October 21, 2003, respectively (File of annexes to the petition, appendix 21, pages 1910 to 1935, and File of

107. Mr. José Luis Ibsen Peña was taken to the El Pari Detention Center,<sup>137</sup> located in the city of Santa Cruz, Bolivia. During his confinement there, only Tito Ibsen Castro was allowed to visit him to provide food and clothing; his wife, Martha Castro Mendoza, and his daughter, Rebeca Ibsen Castro, who was approximately 11 years old, were not permitted to visit him.<sup>138</sup> The Court emphasizes that, at that time, the youngest daughter of Mr. José Luis Ibsen Peña, Raquel Ibsen Castro, was approximately one year old.<sup>139</sup> During one of Tito Ibsen's visits, Mr. José Luis Ibsen Peña gave his son some personal effects, including his passport and bloody clothing.<sup>140</sup> Mr. Ibsen Peña asked his son to "take care [of] his mother and [his] sisters as if they were flowers," and told him that this might "be the last time he was going to see [his father]."<sup>141</sup> None of these facts were contested by the State.

108. There is evidence in the case file that Mr. José Luis Ibsen Peña was seen at the El Pari detention center with signs of physical abuse. In this regard, Mr. Sandalio Terceros stated before the Magistrate's Court of the Province of Warnes that he had been confined in one of the cells at the same center and had met Mr. Ibsen Peña there, indicating that the latter "had bruises all over because all of the beatings he received."<sup>142</sup> Also, in a statement rendered before the Ninth Trial Court for Criminal Matters, Mr. Elías Moreno Caballero stated that he saw an officer at El Pari beating Mr. José Luis Ibsen Peña with a stick, and that in his presence the officer struck "a hard blow" that caused him to fall to the ground. He also stated that he later heard Mr. Ibsen Peña snoring and saw him being covered with a blanket and that, according to another officer, he had been taken to a cemetery.<sup>143</sup>

109. During the public hearing (*supra* para. 8), Tito Ibsen Castro stated that on February 28, 1973, he and Martha Castro Mendoza were informed by "authorities" that Mr. José Luis Ibsen Peña had been "removed for exile" to Brazil.<sup>144</sup> Martha Castro Mendoza later went to

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annexes to the brief of pleadings and motions, Case file 37/2000, Seventh First Instance Civil and Commercial Court, Volume XIII, pages 6299 to 6324 and Volume X, pages 5380 to 5690). See also interview of Rebeca Ibsen. Cf. Press article of newspaper *El Deber*, August 17, 2003 (File of annexes to the brief of pleadings and motions, PD-159, page 2543), and press article published on February 18, 2000, in *La Nación*, "Justo Sarmiento lies, he tortured me in El Pari", (File of annexes to the petition, appendix 29, page 2457, and File of annexes to the brief of pleadings and motions, PD-120, page 2379).

<sup>137</sup> Cf. Statement rendered during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro; statement rendered before a notary public by Mrs. Martha Castro Mendoza on March 22, 2010 (Merits file, volume III, pages 634 to 640), and statement rendered before a notary public by Mrs. Rebeca Ibsen Castro on April 24, 2010 (Merits file, volume III, pages 735 to 746).

<sup>138</sup> Cf. Birth certificate of Rebeca Ibsen Castro (File of annexes to the petition, appendix 12, page 1765).

<sup>139</sup> Cf. Birth certificate of Raquel Ibsen Castro (File of annexes to the petition, appendix 12, page 1769).

<sup>140</sup> Cf. Statement rendered by Mr. Tito Ibsen Castro during the public hearing (*supra* para. 8). Although these are not proven facts, this was also mentioned by Mrs. Martha Castro Mendoza in her statement rendered before a notary public on March 22, 2010 (Merits file, volume III, pages 634 to 640), and by Mrs. Rebeca Ibsen Castro in her statement before a notary public on April 24, 2010 (Merits file, volume III, pages 735 to 746).

<sup>141</sup> Cf. Statement rendered by Mr. Tito Ibsen Castro during the public hearing (*supra* para. 8).

<sup>142</sup> Cf. "Minutes of a Hearing for judicial inspection and reconstruction of the events in the ex-Commissary at El Pari (currently offices of the GES)", of April 30, 2004 (Case file 37/2000, Cuerpo 12, pages 5935 and 5952, 14691 and 14708).

<sup>143</sup> Cf. "Minutes of the public hearing on extension of the confession of the accused, Elías Moreno Caballero," on December 28, 2004 (Case file 37/2000, Volume XVI, pages 7356 to 7357 and 16118 to 16119).

the Brazilian embassy in Bolivia, where she was informed that “no political prisoner ha[d] gone to [that country].”<sup>145</sup> Mr. Ibsen Peña’s family members have had no knowledge of his whereabouts since that date.<sup>146</sup>

110. During the time Mr. José Luis Ibsen Peña was detained and after his disappearance, his wife, Martha Castro Mendoza, always accompanied by Tito Ibsen Castro, took several steps to secure his release and subsequently to find his whereabouts. On April 15, 1973, [Ms. Martha Castro] went to the Bar Association of Santa Cruz, asking that steps be taken to secure the release of Mr. José Luis Ibsen Peña, or at least to find out where he was.<sup>147</sup> However, his family has stated that due to the threats issued against them and the situation at the time, acknowledged by the State (*supra* para. 26), the Bar Association of Santa Cruz refrained from filing formal complaints on the facts. In that respect, on April 26, 2000, upon filing a petition to support and extend a complaint due to the actions allegedly committed against her father and brother (*infra* para. 140), Ms. Rebeca Ibsen Castro stated that “[t]he repression, terror, forced absence and restrictions of State agents [denied them] their right to formulate claims [...], beco[m]ing silent accomplices to the pain of the unjust, the inhumane and the irreparable [*sic*].”<sup>148</sup>

111. In the context of the search for the remains of Mr. José Luis Ibsen Peña, on April 19, 2006, a visual inspection was conducted at the site where, according to Mr. Elías Moreno Caballero’s statement, a defendant in the criminal proceeding currently conducted in relation to the facts of this case,<sup>149</sup> (*infra* paras. 138 to 150), Mr. Ibsen Peña’s mortal remains were located. However, it was concluded that the description of the place “[was] very vague [and] unclear [making it impossible to determine its exact location,] and [that it was] practically impossible to locate the remains due to the time elapse[d] and

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<sup>144</sup> Cf. Statement rendered during the public hearing (*supra* b para. 8) by Mr. Tito Ibsen Castro.

<sup>145</sup> Cf. Statement rendered before a notary public by Mrs. Martha Castro Mendoza (Merits file, volume III, page 637), and brief of “Petition to join, appear personally in the proceeding, complaint and expansion of initial order No. 97/2000, civil matter constitution, precautionary measures” by Rebeca Ibsen Castro, April 26, 2000 (File of annexes to the petition, appendix 21, page 1809).

<sup>146</sup> In this regard, in the following documents, Mr. José Luis Ibsen Peña is included among the disappeared persons during the dictatorship of Hugo Banzer Suárez: ASOFAMD. Bulletin of August, 2007. *35 Years After the Dictatorship of Hugo B[a]nzer Suárez 1971-2006* (File of annexes to the petition, appendix 4, page 1565); press article published on February 18, 2000, in *La Nación*, “Renato Díaz Matta: Justo Sarmiento lies, he tortured me in El Pari” (File of annexes to the brief of pleadings and motions, PD-120, page 2379); public invitation of ASOFAMD, “Tribute of the People to its Martyrs”, August 21, 1979 (File of annexes to the petition, appendix 7, page 1736, and File of annexes to the brief of pleadings and motions, PD-112, page 2311), and press article published on June 4, 2000, in *Reportajes in Presencia*, “I never knew anything further about my father or my brother” (File of annexes to the brief of pleadings and motions, PD-121, page 2391).

<sup>147</sup> Cf. Letter from Martha Castro addressed to the “President and Member of the Executive Board and Deliberative Council of the Santa Cruz Bar Association”, on April 15, 1973 (File of annexes to the petition, appendix 17, page 1795; statement rendered before a notary public by Mrs. Martha Castro Mendoza (Merits file, volume III, page 637), and statement rendered during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro.

<sup>148</sup> Cf. Brief of “Petition to join, appear personally in the proceeding, complaint and expansion of initial order No. 97/2000, civil matter constitution, precautionary measures” by Rebeca Ibsen Castro, April 26, 2000 (File of annexes to the application, appendix 21, page 1809).

<sup>149</sup> On October 21, 2008, Mr. Elías Moreno Caballero’s defense lawyer informed the Seventh First Instance Civil and Commercial Judge of La Paz of the death of the prosecuted due to an acute myocardial infarction. Cf. Death Certificate of Elías Moreno Caballero and brief of October 21, 2008 (Case file 37/2000, Volume XXVII, pages 10593 to 10594 and 19394 to 19395).

[because] a flood ha[d] modified the topography of the area.”<sup>150</sup> Furthermore, on August 22, 2006, a skull, kneecap, humerus, femur bones and part of a lower jawbone with four teeth were found during a search for his remains at La Cuchilla cemetery in the city of Santa Cruz. The procedure was conducted using a backhoe.<sup>151</sup> On September 5, 2006, the Seventh Civil Court was informed that the bones in question were being studied at the Forensic Research Institute to confirm their identity.<sup>152</sup> The Court notes that there is no further information in the case file regarding the procedures carried out in the search for the whereabouts of Mr. José Luis Ibsen Peña.

**C.5. Rights to personal liberty, humane treatment [personal integrity], life and juridical personality of Mr. José Luis Ibsen Peña**

112. The Commission argued, in separate sections, that the State was responsible for the detention of Mr. José Luis Ibsen Peña “through the use of force,” that such detention was “not ordered by a competent authority” and its purpose “was not to hand him over to a judge or other legal official to decide the legality of his detention, but to interrogate him, torture him, execute him, and/or forcibly make him disappear.” Furthermore, it indicated that such detention took place “under a dictatorship, outside constitutional protections, and within a state of permanent suspension of fundamental rights and constitutional guarantees,” in which Mr. José Luis Ibsen Peña was arrested “as a political prisoner, apparently for his links to the Bolivian Workers’ Union” and “after months of public complaints and a tireless search for the whereabouts of his son [Rainer Ibsen Cárdenas].” It added that, given that “thirty-six years have elapsed without his whereabouts being determined or his remains found and identified,” there is sufficient information to conclude that he was killed. It also argued that the purpose of the forced disappearance of the alleged victim was to deprive him of his juridical personality, thus leaving him outside the legal and institutional order. In this way, “his perpetrators sought impunity for their acts, as it was guaranteed that it would be impossible for the victim and his family to seek judicial protection, in view of the constant and systematic lack of any investigation related to his whereabouts, since this information was denied and/or distorted by the authorities.”

113. The representatives agreed with the arguments submitted by the Commission. Moreover, they indicated that Mr. José Luis Ibsen Peña, from the time of the arbitrary arrest of his son Rainer, searched for his son’s whereabouts and location, “annoying the authorities and government leaders of the State, to the point of receiving threats [...that he would] suffer the same fate as [his son], that is, to be arbitrarily detained by state agents [...] and then disappeared.”

114. In turn, the State acknowledged its international responsibility for the violation of the rights embodied in Articles 3, 4, 5, and 7 of the American Convention regarding the obligations contained in Article 1(1) therein, and the violation the obligations established in Articles 1 and 11 of the Inter-American Convention on Forced Disappearance, in relation to Mr. José Luis Ibsen Peña. In addition, the State acknowledged the facts mentioned by the

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<sup>150</sup> Cf. “Minutes of the public hearing to verify the place and location where the mortal remains of José Luis Ibsen Peña were allegedly located” (Case file 37/2000, Appendix 21, pages 8956, 8960, 17752 and 17756).

<sup>151</sup> Cf. Press article published on August 23, 2006, in *La Prensa*, “They found the remains of a victim,” (File of annexes to the brief of pleadings and motions, PD-182, page 2597), and press article published on August 23, 2006, in *El Deber*, “Skeletal remains of a possible victim of the dictatorship were found,” (File of annexes to the petition, appendix 29, page 2468).

<sup>152</sup> Cf. Brief of the Public Prosecutor of Santa Cruz de la Sierra addressed to the Seventh First Instance Civil and Commercial Court of Santa Cruz, on September 1, 2006 (File of annexes to the petition, appendix 24, pages 2251 to 2252).

Commission regarding the arrest and subsequent disappearance of [Mr. José Luis Ibsen Peña] (*supra* paras. 5 and 23 to 26). The State also expressed its willingness to clarify the cases of “disappeared persons during the dictatorship of Hugo Banzer Suárez” and especially, “to give priority [...to the case of] Mr. José Luis Ibsen Peña.”

115. The Court finds there is sufficient evidence that Mr. José Luis Ibsen Peña was arrested on February 10, 1973, by state agents dressed as civilians and subsequently taken to the detention center of El Pari, located in the city of Santa Cruz, where torture was commonly practiced by the officers of the Department for Political Order (*supra* para. 53). He was held there for several days, where he was seen with signs of physical abuse, and since February 28, 1973, his family have had no knowledge of his whereabouts (*supra* para. 109). More than thirty-seven years have passed since his arrest and the State has still not provided an answer regarding his whereabouts.

116. From the information available in this case and the pattern of detentions carried out at the time of the events, it is possible to conclude that Mr. José Luis Ibsen Peña was detained for his connection with the Bolivian Workers’ Union and also for his efforts to locate his son Rainer Ibsen Cárdenas (*supra* paras. 52, 72 and 104 to 105).

117. In this respect, the Court reiterates what it has previously stated in this Judgment regarding the State’s duty to guarantee the protection of the rights of those who are detained and in the custody of the State (*supra* paras. 63 to 64 and 95).

118. Moreover, as to the alleged violation of Article 3 of the American Convention (*supra* paras. 112 and 113), the Court repeats what it previously stated in paragraphs 96 to 101 *supra* and in view of those considerations, it rules that the State violated the right to juridical personality of Mr. José Luis Ibsen Peña.

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119. Based on the foregoing, the Court concludes that the State is responsible for the arrest and subsequent forced disappearance of Mr. José Luis Ibsen Peña and, therefore, for the violation of the rights to juridical personality, life, humane treatment [personal integrity] and personal liberty. The Court shall analyze the issue related to the State’s duty to investigate in Chapter VII of this Judgment.

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120. Also, in relation to the arguments of the Commission regarding non-compliance with obligations established in several Articles of the Convention on Forced Disappearance (*supra* paras. 3 and 76), the Court notes that subparagraph a) of Article 1 provides that the States Parties undertake “[n]ot to practice, permit or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees, [...].” Moreover, Article 11 of the Convention stipulates that “[e]very 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.” According to the Court, it is clear that, based on the facts established in this Chapter and the forced disappearance to which Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña were subjected, the State failed to comply with the obligations established in these provisions.

121. Furthermore, in the petition the Commission asked the Court, *inter alia*, to declare the violation of Articles 7(1), 7(2), 7(3), 7(4), and 7(5) of the American Convention, to the detriment of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña. Regarding the rights referred to in these provisions, and based on the Court's jurisprudence, it is unnecessary to determine whether the victims were informed of the reason for their detention; whether the arrests were made outside the causes and conditions established by the Bolivian legislation in force at the time of the events; or even to establish whether the acts of the detention were unreasonable, unforeseeable or disproportionate. According to the context at the time of the events, it is evident that the detention of these individuals was an abuse of power, that the detentions were not ordered by a competent authority, and that their purpose was not to present them to a judge or other official legal authorized to determine the legality of their detention, but rather to execute them or make them disappear.<sup>153</sup> In other words, their detention was manifestly illegal.

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122. Consequently, the Court considers that in this case, the State is responsible for the violation of Articles 3 (Right to Juridical Personality), 4(1) (Right to Life), 5(1) and 5(2) (Right to Humane Treatment) [Personal Integrity], and 7(1) (Right to Personal Liberty) of the American Convention, to the detriment of Mr. Rainer Ibsen Cárdenas and Mr. José Luis Ibsen Peña, based on its non-compliance with the duty to guarantee and respect those rights, as established in Article 1(1) thereof, all in relation to the obligations stipulated in Articles 1(a) and 11 of the Inter-American Convention on Forced Disappearance. The Court emphasizes the seriousness of the facts and of the violations established in this Chapter, and also highlights the fact that this case deals with the forced disappearance of two members of the same family.

**C.6 Right to humane treatment [personal integrity] of the family of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña**

123. The Commission argued that the Bolivian State is responsible for the violation of the right to humane treatment [personal integrity] of Marta Castro Mendoza and Tito, Rebeca, and Raquel, all with the surname Ibsen Castro, given their suffering as a consequence of the facts of this case. As to Marta Castro Mendoza and Tito Ibsen Castro, the Commission emphasized that, "they visited Mr. Ibsen Peña in the *El Pari* detention center, [...] where they found he had been beaten and whose demeanor indicated that he foresaw his fate." In addition, it mentioned that after her husband's disappearance, Mrs. Marta Castro "went to the Bar Association [...] to ask for help," and that the children of Mr. Ibsen Peña carried out a "search campaign" for clues as to the whereabouts of their brother and father at several State institutions. Additionally, the Commission indicated that the family of Messrs. Ibsen Cárdenas and Ibsen Peña "have had the burden of proving [their] [...] disappearance, and of taking steps to obtain information on the location of their remains, [and...] they have had to confront the lack of willingness on the part of the judiciary to investigate such facts." In this respect, it emphasized that "Rebeca Ibsen Castro [,] in representation of her family, took personal responsibility for the investigation of the forced disappearance of José Carlos Trujillo Oroza, [...];" nevertheless, the Ibsen family "remains in a state of uncertainty regarding the events, and thus impunity continues with regard to the facts, adding to the pain already experienced for the loss of their loved ones."

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<sup>153</sup> Cf. *Case of La Cantuta v. Peru*, *supra* note 89, para. 109, and *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 68.



124. The representatives agreed with the arguments submitted by the Commission and further argued that in view of the facts of this case, Tito, Rebeca and Raquel Ibsen Castro experienced a “lack of access to health and education” and that the latter had “changes” in her life which “were a decisive factor in her becoming a frightened person.” Moreover, they alleged that both Tito and Rebeca Ibsen were subjected to “persecution, threats and [...] attacks against their [...] life and personal integrity” in their search for justice for the disappearances of their father and brother, and that the Ibsen family “need[ed] to hide within [the] country.” Finally, they argued that, “because he has had to work since he was a boy,” Tito Ibsen Castro “suffered a physical injury that caused him to lose a finger from the left hand.”

125. For its part, the State acknowledged its international responsibility for the violation of Article 5 of the Convention to the detriment of the family of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña (*supra* paras. 5 and 24).

126. The Court has considered in numerous cases that the family of the victims of human rights violations can, in turn, be victims.<sup>154</sup> Specifically, in cases involving the forced disappearance of persons, it is understandable that the violation of the right to psychological and moral integrity of the family of the victim is a direct consequence of that phenomenon, which causes family members severe suffering, which is increased, *inter alia*, by the constant failure of state authorities to provide information regarding the whereabouts of the victim or to start an effective investigation in order to clarify what occurred.<sup>155</sup>

127. In this regard, the Court considers that it can presume injury to the psychological and moral integrity of the families of victims of certain human rights violations applying a *iuris tantum* presumption regarding mothers and fathers, sons and daughters, spouses, and permanent life partners (hereinafter “direct relatives”), provided that this responds to the specific circumstances of the case. As to those direct relatives, it is up to the State to disprove the presumption.<sup>156</sup> In all other cases, the Court must consider whether the evidence in the case shows that the personal integrity of the alleged victim has been affected, regardless of whether he or she is a relative of another victim in the case or not. Regarding those persons to whom the Court does not presume injury to personal integrity because they are not direct family, the Court must assess, for example, whether there is a particularly close relationship between them and the victims in a case that would enable the Court to establish an effect on their personal integrity and, therefore, a violation of Article 5 of the Convention. The Court may also assess whether the alleged victims have been involved in seeking justice in the specific case,<sup>157</sup> or whether they have suffered as a

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<sup>154</sup> Cf. *Case of Castillo-Páez v. Peru. Merits*. Judgment of November 3, 1997. Series C No. 34. Operative Paragraph 4; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 161, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 220.

<sup>155</sup> Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 161, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 220.

<sup>156</sup> Cf. *Case of Valle Jaramillo et al. v. Colombia. Merits, Reparations and Costs*. Judgment of November 27, 2008. Series C No. 192, para. 119; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 162, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 220.

<sup>157</sup> Cf. *Case of Bámaca-Velásquez v. Guatemala, Merits*. *supra* note 117, para. 63; *Case of Valle Jaramillo et al. v. Colombia*. *supra* note 156, para. 119, and *Case of Kawas Fernández v. Honduras*, *supra* note 11, para. 129.

result of the facts of the case or of subsequent acts or omissions on the part of the State authorities in relation to the facts.<sup>158</sup>

128. Thus, the Court presumes that Mrs. Martha Castro Mendoza has suffered over the forced disappearance of her husband, José Luis Ibsen Peña, and that Tito, Rebeca and Raquel Ibsen Castro, have suffered as his children. The State did not challenge this presumption (*supra* para. 125). Furthermore, the affidavits submitted and the statements rendered at the public hearing by the family of José Luis Ibsen Peña reveal the suffering they endured as a result of the violations committed against him.<sup>159</sup> The Court shall take this into account in determining the corresponding reparations (*infra* Chapter 11).

129. Regarding Mr. Rainer Ibsen Cárdenas, the Court notes that Mrs. Martha Castro Mendoza raised him from the time he was nine years old (*supra* para. 71). Given that this familial relationship has not been questioned and that the State has broadly acknowledged its responsibility which includes the violation of Article 5 regarding all the family, without exception or limitation as to the facts alleged in the application (*supra* paras. 5 and 24), the Court presumes the suffering of Mrs. Martha Castro Mendoza for the actions that were taken against Rainer Ibsen. The foregoing is also applicable to Tito, Rebeca, and Raquel Ibsen Castro, siblings of Mr. Ibsen Cárdenas on their father's side. In this respect, the Court notes that they constitute a single family group.

130. Moreover, the Court recalls that in other cases, the continued denial of the truth regarding the fate of a disappeared person constitutes cruel, inhumane and degrading treatment of close family members.<sup>160</sup> Likewise, the Court has stated that in cases of forced disappearance of persons, the State has the obligation to ensure the right to humane treatment [personal integrity] to the family through effective investigations. Furthermore, the Court has considered the lack of effective remedies as an additional source of suffering and anguish for victims and their family members.<sup>161</sup>

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<sup>158</sup> Cf. *Case of Blake v. Guatemala. Merits. supra* note 155, para. 114; *Case of Kawas Fernández v. Honduras, supra* note 11, para. 129, and *Case of Manuel Cepeda Vargas v. Colombia, supra* note 6, para. 195.

<sup>159</sup> Mrs. Martha Castro stated that: "while [her husband] was detained, [she] was not allowed to see him[.] [O]nly the boy, Tito, entered a few times to leave him some clothing [and] food[.] [S]ometimes Tito would go alone from their house to the prison in order to try to see his father[.] [O]n one of these occasions, Tito brought back Jose Luis's bloody socks[;] that is how [she] became convinced that they tortured and beat prisoners there, as a woman had told [her]. [Her] suffering was terrible and what hurts [her] the most is that [her] children also suffered. Cf. Statement rendered before a notary public by Mrs. Martha Castro Ibsen (Merits file, volume III, pages 637 and 639). During the public hearing (*supra* para. 8), Tito Ibsen Castro indicated that he was the only one allowed to see his father while the latter was detained in El Pari. He also stated that his father was kept in solitary confinement for three days and that when he entered for the first time to bring him food, his father was suffering from "fasting and hunger." Mr. Tito Ibsen also received his father's passport, ring, dental plaques and a watch, with instructions to give them to his mother. The next day, his father told him to take care of his mother and his sisters, because this would possibly be the last time he would see him. Furthermore, Rebeca Ibsen Castro declared that at the time that her father was arrested she "was ten years old and would go to the detention center and cry because she was not allowed to get in to see [her] dad [;] [...], and] that she continuously suffered greatly because she could not understand [why] he was treated with such cruelty [...] the person she loved so much [...]". Cf. Statement rendered before a notary public by Rebeca Ibsen Castro (Merits file, volume III, page 739). Finally, Raquel Ibsen Castro stated that "[her] greatest wish in this life is to bury [her] father [.] She wants to see [him] in a tomb, and to stop thinking that his remains are lost [;] she wants to see him resting in a coffin." Cf. Statement rendered before a notary public by Raquel Ibsen Castro (Merits file, volume III, page 649).

<sup>160</sup> Cf. *Case of Trujillo-Oroza v. Bolivia. Reparations and Costs. Judgment of February 27, 2002. Series C No. 92, para. 114; Case of Radilla Pacheco v. Mexico, supra* note 8, para. 166, and *Case of Chitay Nech et al. v. Guatemala, supra* note 6, para. 221.

<sup>161</sup> Cf. *Case of Blake v. Guatemala. Merits. supra* note 155, para. 114; *Case of Radilla Pacheco v. Mexico, supra* note 8, para. 167, and *Case of Chitay Nech et al. v. Guatemala, supra* note 6, para. 221.

131. In this case, the Court finds that the link between the suffering of Marta Castro Mendoza, Tito Ibsen Castro, and Rebeca Ibsen Castro and the State's refusal to inform them of the truth regarding their family members (*infra* Chapter IX) is clear. Regarding Mrs. Marta Castro Mendoza, the Court notes that in her statement, she referred to her frustration during the search for her husband and her son, Rainer Ibsen Cárdenas, in the following terms:

"I went from here to there without accomplishing anything [...], I could do nothing in my helplessness and despair, [...]. The [State] authorities, neither in a democracy and even less so in a dictatorship, helped us to learn their fate and [what] happened to our loved ones."<sup>162</sup>

132. Similarly, this Court has already confirmed the efforts made by Rebeca and Tito Ibsen Castro with different State institutions and agencies to seek justice for the disappearance of their father and brother and to learn of their whereabouts (*supra* paras. 89 and 110 and *infra* paras. 140 to 141, 143, 146, 205, 216 and 223). They, in turn, have expressed feelings of uncertainty, anxiety and frustration due to the alleged delays and inefficiency of the State institutions in this regard.<sup>163</sup>

133. Consequently, the Court considers that the State violated the right to humane treatment [personal integrity] established in Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of that document, to the detriment of Martha Castro Mendoza, Tito Ibsen Castro, Rebeca Ibsen Castro, and Raquel Ibsen Castro, for the forced disappearances of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña.

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134. As to the representatives' allegations regarding the alleged threats and acts of harassment suffered by the Ibsen family, as well as the injury that Mr. Tito Ibsen Castro allegedly suffered during his childhood, the Court reiterates its jurisprudence, to the effect that "the alleged victim, his family or his representatives may invoke rights other than those asserted in the Commission's application on the basis of the facts presented by the latter."<sup>164</sup> The Court notes that the alleged facts are not within the factual framework presented to the Court by the Commission and are not supervening, nor do they explain,

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<sup>162</sup> Cf. Statement rendered before a notary public by Mrs. Martha Castro Mendoza (Merits file , volume III, page 637 to 639).

<sup>163</sup> In relation to these efforts, Mrs. Rebeca Ibsen Castro stated that "she tried through all possible human means to learn something of the truth and their whereabouts, and the criminal proceedings only increased the mourning, the uncertainty and the evidence that the perpetrators[,] as 'the dictatorship's pampered individuals', committed such unimaginable acts of bloodshed, humiliation and torture [...]." Statement rendered before a notary public by Mrs. Rebeca Ibsen Castro (Merits file, volume III, page 740). Also, at the public hearing held in the present case (*supra* para. 8), Mr. Tito Ibsen described the response by the state authorities to the efforts made by the Ibsen Family as a "world record in justice denial." He mentioned that, to his family, the last four decades have been "an endless search, knocking on doors that were always closed, with permanent and constant anxiety, [... which have even caused] [the] family unit to fracture [...]"

<sup>164</sup> Cf. *Case of the "Five Pensioners" v. Peru. Merits, Reparations and Costs*. Judgment of February 28, 2003. Series C No. 98. para. 155; *Case of the "Las Dos Erres" Massacre v. Guatemala*, *supra* note 7, para. 161, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 33.

clarify, or dismiss the facts that have been mentioned in the application.<sup>165</sup> Therefore, the Court shall not rule on those matters.

## VII RIGHT TO A FAIR TRIAL [JUDICIAL GUARANTEES] AND JUDICIAL PROTECTION (ARTICLES 8 AND 25 OF THE AMERICAN CONVENTION, IN RELATION TO ARTICLES 1(1) AND 2 THEREOF, AND ARTICLES 3 AND 4 OF THE CONVENTION ON FORCED DISAPPEARANCE)

135. The Commission referred to various events on which it based its argument that the right to due process was allegedly violated in this case. In general, the Commission stated that: the criminal proceeding was not conducted within a reasonable time; "the Ibsen family had the right to expect an investigation into what happened to the victims by [...] a criminal court, that would assure the proper conduct of the proceedings"; the State did not initiate an investigation *ex officio* into the detention and subsequent disappearance of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña; the Ibsen family has been responsible for expediting the proceeding; there was no due diligence in the gathering of evidence; the investigation has been obstructed by the judiciary; the criminal definition of forced disappearance has not been applied to the criminal proceeding; and no action has been taken to locate the remains of Mr. Rainer Ibsen Cárdenas or to determine the whereabouts of Mr. José Luis Ibsen Peña. The representatives basically concurred with the Commission's arguments.

136. The Court takes into account that the State has broadly acknowledged its international responsibility for the alleged violations of Articles 8 and 25 of the American Convention (*supra* paras. 5, 25 and 26). Therefore, in this chapter of the Judgment, the Court shall only consider some of the allegations presented by the Commission based on certain elements contained in the case file of the domestic criminal proceeding that the Court finds important to develop for a better understanding of the case. To that end, the Court shall refer to the main actions of the criminal proceeding conducted at the domestic level.

### **A. Criminal case file 37/2000**

137. The Court notes that in this criminal case, Rebeca Ibsen Castro appears as plaintiff in respect of the events that occurred to her father and brother, José Luis Ibsen Peña and Rainer Ibsen Cárdenas, respectively, along with Antonia Gladys Oroza, in relation to her son José Carlos Trujillo Oroza.<sup>166</sup> In this regard, the Court advises that whenever necessary, reference shall be made to some actions taken by Mrs. Oroza that had general effects on the entire criminal proceeding; however, the analysis of the violations alleged in this case shall be limited to the facts as related to Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña.

#### **A.1. Preliminary Proceedings**

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<sup>165</sup> Cf. *Case of Usón Ramírez v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*, Judgment of November 20, 2009. Series C No. 207, para. 102.

<sup>166</sup> Previously, this Court issued two judgments in the *Case Trujillo Oroza v. Bolivia. Cf. Case of Trujillo-Oroza v. Bolivia. Merits*. Judgment of January 26, 2000. Series C No. 64, and *Case of Trujillo-Oroza v. Bolivia. Reparations and Costs*. Judgment of February 27, 2002. Series C No. 92.

138. On January 9, 1999, the District Coordinating Office of Public Defense of the Ministry of Justice and Human Rights of Bolivia requested that the Prosecutor's Office of the District of Santa Cruz initiate judicial police proceedings regarding the disappearance of José Carlos Trujillo Oroza. On January 11, 1999, the Prosecutor's Office of the District of Santa Cruz referred the complaint to the Technical Judicial Police for it to proceed with "planning the judicial police proceedings."<sup>167</sup>

139. On March 27, 2000, the Fifth Criminal Trial Court of Santa Cruz (hereinafter, "the Fifth Criminal Court") issued an order for a preliminary inquiry into some individuals for the crimes of deprivation of liberty, abuse and torture committed against José Carlos Trujillo Oroza.<sup>168</sup> In this respect, on April 6, 2000, Antonia Gladys Oroza, mother of José Carlos Trujillo Oroza, filed suit before this court against the same accused persons and other individuals, and requested the extension of the preliminary proceedings to include the crime of murder.<sup>169</sup>

140. On April 26, 2000, Rebeca Ibsen Castro filed a request to adhere to and extend the complaint in that same proceeding (*supra* para. 139) for the crimes of genocide, murder and abuse allegedly committed by some of the defendants previously mentioned against Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña.<sup>170</sup> This request was rejected on May 20, 2000,<sup>171</sup> after which Rebeca Ibsen Castro filed a motion of appeal on June 2, 2000.<sup>172</sup> On October 4, 2000, the First Criminal Chamber of the Supreme Court of Santa Cruz gave the order to extend the claim as requested.<sup>173</sup>

141. On October 18, 2000, the accused invoked the statute of limitations,<sup>174</sup> which was granted by the Fifth Criminal Trial Court on November 10, 2000.<sup>175</sup> This decision was

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<sup>167</sup> Cf. Brief of the Public Defense District Coordinator of the Ministry of Justice and Human Rights of Bolivia addressed to the Attorney General of Santa Cruz, January 9, 1999 (Case file 37/2000, Volume I, pages 2883 to 2885, and 11630 to 11631 *bis*).

<sup>168</sup> Cf. Order of the Fifth Criminal Trial Court Judge of Santa Cruz (Case file 37/2000, Volume II, pages 3044 to 3045, and 11788 to 11789).

<sup>169</sup> Cf. Complaint filed by Antonia Gladys Oroza, on April 6, 2000 (Case File 37/2000, Volume II, pages 3122 to 3132 and 11865 to 11875).

<sup>170</sup> Cf. Request for extension and adhesion to criminal complaint of April 26, 2000 (Case File 37/2000, Volume II, pages 3236 to 3239 and 11975 to 11978).

<sup>171</sup> Cf. Ruling of the Fifth Criminal Trial Court Judge of Santa Cruz, May 20, 2000 (Case file 37/2000, Volume III, pages 3263 to 3264 and 11999 to 12000). This Court stated that the detention and subsequent death of Mr. Rainer Ibsen Cárdenas had occurred in La Paz, therefore it lacked jurisdiction in matters of another area. It also determined that the facts related to the detention and subsequent death of Mr. José Luis Ibsen Peña did not fall under the provisions of Article 35 of the Criminal Procedure Code because, even if some of the accused were the same, the facts had occurred in a different way, therefore the plaintiff should "file a claim separately in order to exercise his rights."

<sup>172</sup> Cf. Brief of appeal submitted by Rebeca Ibsen Castro, on June 2, 2000 (Case File 37/2000, Volume III, pages 3279 to 3283 and 12014 to 12018).

<sup>173</sup> Cf. Ruling of the First Criminal Chamber of the Supreme Court of Santa Cruz, on October 4, 2000 (Case File 37/2000, Volume III, pages 3399 to 3402 and 12136 to 12139).

<sup>174</sup> Cf. Brief submitted by Elías Moreno Caballero, Antonio Elio Rivero, Justo Sarmiento Alanes, Pedro Percy Gonzales Monasterio, Ernesto Morant Lijerón, on October 18, 2000 (Case file 37/2000, Volume III, pages 3403 to 3408 and 12140 to 12144).

<sup>175</sup> Cf. Decision of November 10, 2000 of the Fifth Criminal Trial Court of Santa Cruz (Case file 37/2000,

appealed by Rebeca Ibsen Castro on November 17, 2000.<sup>176</sup> On January 12, 2001, the First Criminal Chamber of the Superior Court of the District of Santa Cruz upheld the appeal.<sup>177</sup>

142. On November 12, 2001, the Constitutional Court handed down a decision whereby it overturned the decisions of November 10, 2000, and January 12, 2001 (*supra* para. 141), and ordered “that the proceeding continue” against some of the accused.<sup>178</sup>

143. On August 13, 2002, the Eighth Criminal Investigation Court in Criminal Matters issued a final decision closing the investigative phase and ordering the prosecution of the accused for the alleged commission of the crimes of privation of liberty, abuse and torture, excluding the crime of murder, and ordered the case file to be sent to the Criminal Court in turn to continue the oral and adversarial proceedings.<sup>179</sup> On August 23, 2002, Mrs. Rebeca Ibsen Castro filed an appeal against that order.<sup>180</sup>

144. On June 7, 2004, the Warnes Mixed Jurisdiction Court issued the final order to prosecute the accused for the crimes of deprivation of liberty, abuse and torture, criminal association, criminal organization, and murder, as well as concealment and accessory to concealment, respectively.<sup>181</sup>

## **A.2. Plenary and Appeal Stage**

145. On September 23 and 29, 2004, three of the accused requested that the Ninth Criminal Court of Santa Cruz dismiss the criminal action based on the delay in the proceeding which was “not attributable to their conduct.”<sup>182</sup> This request was also later presented by two other accused on January 13, 2005, before the Fifth Executing Judge of Criminal Investigation Court of Santa Cruz (hereinafter, “Fifth Criminal Judge of First Instance”).<sup>183</sup>

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Volume III, pages 3501 to 3506 and 12240 to 12245).

<sup>176</sup> Cf. Brief of appeal submitted by Rebeca Ibsen Castro, on November 17, 2000 (Case file 37/2000, Volume III, page 3530 and 12269).

<sup>177</sup> Cf. Ruling of the First Criminal Chamber of the Superior Court of the District of Santa Cruz on January 12, 2001 (Case file 37/2000, Volume III, pages 3547 to 3549 and 12286 to 12288).

<sup>178</sup> Cf. Constitutional Court Order of November 12, 2001 (Case file 37/2000, Volume III and IV, pages 3590 to 3601 and 12333 to 12343).

<sup>179</sup> Cf. Final Order of Prosecution issued by the Eighth Criminal Trial Court of Santa Cruz, issued on August 13, (Case file 37/2000, Volume IV, pages 3698 to 3703 and 12443 to 12448).

<sup>180</sup> Cf. Brief of appeal submitted by Rebeca Ibsen Castro, on August 23, 2002 (Case File 37/2000, Volume IV, pages 3710 to 3711 and 12455 to 12456).

<sup>181</sup> Cf. Final Order of prosecution issued by the Warnes Mixed Jurisdiction Court, on June 7, 2004 (Case File 37/2000, Volume XII, pages 6000 to 6014 and 14755 to 14769).

<sup>182</sup> Cf. Briefs submitted by Oscar Menacho Vaca, Pedro Percy Gonzales Monasterio and Juan Antonio Elio Rivero, on September 23 and 29, 2004, respectively (Case file 37/2000, Volume XIV, pages 6647 to 6649, 6663 to 6664, 15411 to 15413 and 15428 to 15429).

<sup>183</sup> Cf. Brief submitted by Pedro Percy Gonzales Monasterio and Juan Antonio Elio Rivero, on January 13, 2005, (Case file 37/2000, Volume 17, pages 7389 to 7393 and 16153 to 16157). The case file had been sent by the Ninth Criminal Court of First Instance of Santa Cruz to the Fifth Criminal Court of First Instance in compliance with “Circular no. 89/2004 of November 20, 2004” and “Circular No. 113/04, of December 20, 2004”

146. On January 19, 2005, the Fifth Criminal Judge of First Instance declared the criminal action dismissed due to the statute of limitations and closed the proceedings in favor of all the accused (*supra* para. 145) based on the fact that the delays could be attributed to government authorities and the plaintiff, not to the accused.<sup>184</sup> This decision was appealed by Rebeca Ibsen Castro and Antonia Gladys Oroza on January 25 and 27, 2005, respectively.<sup>185</sup>

147. On April 18, 2005, the First Civil Chamber of the Superior Court of Santa Cruz overturned the order dismissing the criminal action issued on January 19, 2005 (*supra* para. 146), and ordered the continuation of the case.<sup>186</sup>

148. On December 6, 2008, the Seventh Criminal and Commercial Court handed down a judgment of First Instance declaring that the statute of limitations applied in respect of the criminal action for the crimes of abuse and torture, criminal association, criminal organization, murder and concealment. Therefore, only some of the accused were convicted for illegal deprivation of liberty against Mr. José Luis Ibsen Peña, *inter alia*. One of the accused was convicted of the crime of being an accomplice in the crime of unlawful deprivation of liberty. Furthermore, in that decision the court declared the perpetration of the crime of illegal deprivation of liberty regarding Mr. Rainer Ibsen Cárdenas.<sup>187</sup>

149. On September 28, 2009, the Superior District Court of Santa Cruz partially upheld the First Instance judgment (*supra* para. 148) and ratified the sentences imposed on all the accused, except that of Mr. Juan Antonio Elio Rivero, whose sentence was reduced.<sup>188</sup>

### **A.3. Appeal: annulment of the statute of limitation and penalty**

150. Due to the submission of various appeals for review, on June 2, 2010, the Supreme Court of Bolivia issued a judgment annulling the statutes of limitation previously imposed<sup>189</sup> (*supra* para. 148). Subsequently, on August 16, 2010, the same Court issued a judgment convicting two of the defendants for the crime of forced disappearance and

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of the President of the Superior Court of the District of Santa Cruz (Case file 37/2000, Volume XVII, pages 7374 to 7375 and 16136 to 16137).

<sup>184</sup> Cf. Ruling of the Fifth Criminal Court of First Instance of Santa Cruz of January 19, 2005 (Case file 37/2000, Volume XVII, pages 7401 to 7443 and 16165 to 16207).

<sup>185</sup> Cf. Briefs of appeal submitted by Rebeca Ibsen Castro and Antonia Gladys Oroza on January 25 and 27, 2005, respectively (Case file 37/2000, Volume XVII, pages 7454 to 7455, 7465 to 7480, 16218 to 16219 and 16229 to 16244).

<sup>186</sup> Cf. Ruling of the First Civil Chamber of the Superior Court of Santa Cruz, issued on April 18, 2005 (Case File 37/2000, Volume XVII, pages 7582 to 7586 and 16344 to 16348).

<sup>187</sup> Cf. Judgment of the Seventh First Instance Civil and Commercial Court of Santa Cruz of December 6, 2008. The reading of this judgment was carried out during the public hearing held on December 13, 2008 (Case file 27/2000, Volumes XXVII and XXVIII, pages 10770 to 10832).

<sup>188</sup> Cf. Ruling of the First Civil Chamber of the Superior Court of the District of Santa Cruz, issued on September 28, 2009 (File of annexes to the response to the petition, appendix 15, pages 11328 to 11343).

<sup>189</sup> Cf. Judgment of the Supreme Court, issued on June 2, 2010 (Merits file, volume V, pages 1960 to 1968).

another defendant for complicity in the commission of this crime, and confirming the absolution of another defendant,<sup>190</sup> regarding the events that occurred only to Mr. José Luis Ibsen Peña.

**B. Regarding the lack of a diligent and effective investigation in the criminal proceeding**

151. The Court has established that States have the obligation to provide effective judicial remedies to individuals claiming to be victims of human rights violations (Article 25), remedies that must be substantiated according to the rules of due process of law (Article 8(1), in keeping with the general obligation of the States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).<sup>191</sup>

152. The right to have access to justice implies the effective investigation of the facts and, where appropriate, the determination of the corresponding criminal responsibilities within a reasonable period of time. Therefore, having regard to the need to guarantee the rights of the injured parties when dealing with a forced disappearance, a prolonged delay may constitute in itself a violation of the right to a fair trial.<sup>192</sup> Moreover, the right to have access to justice means that the investigation into the events must determine the fate or whereabouts of the victims (*supra* paras. 64 and 65).

153. Although the Court has established that the obligation to investigate is one of means and not results,<sup>193</sup> this does not imply, however, that the investigation may be carried out as “a mere formality condemned beforehand to be unsuccessful.”<sup>194</sup> In this regard, the Court has stated that “each State action in the investigation process, as well as the investigation in its totality, shall be oriented toward a specific purpose, the determination of the truth and the investigation, persecution, capture, trial, and if appropriate, the punishment of those responsible for the acts.”<sup>195</sup>

**B.1. Obligation to initiate an investigation ex officio**

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<sup>190</sup> Cf. Judgment of the Supreme Court, issued on August 16, 2010 (Merits file, volume V, pages 1997 to 2006).

<sup>191</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Preliminary Objections*. Judgment of June 26, 1987. Series C No. 1, para. 91; *Case of the “Las Dos Erres” Massacre v. Guatemala*, *supra* note 7, para. 104, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 190.

<sup>192</sup> Cf. *Case of Hilaire, Constantine and Benjamin et al. v. Trinidad and Tobago. Merits, Reparations and Costs*. Judgment of June 21, 2002. Series C No. 94. para. 145; *Case of the “Las Dos Erres” Massacre v. Guatemala*, *supra* note 7, para. 132, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 196.

<sup>193</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. *supra* note 14, para. 177; *Caso Heliodoro Portugal v. Panamá*, *supra* nota 1, para. 144, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 192.

<sup>194</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. *supra* note 14, para. 177; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 139, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 192.

<sup>195</sup> Cf. *Case of Cantoral Huamani and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations and Costs*. Judgment of July 10, 2007. Series C No. 167, para. 131, and *Case of Kawas Fernández v. Honduras*, *supra* note 11, para. 101, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 192.



154. The Commission argued that “the investigation into the [alleged] forced disappearances of Messrs. Rainer Ibsen Cárdenas and José Luís Ibsen Peña began on April 26, 2000, as the result of a request filed by Rebeca Ibsen Castro in representation of her family, joined to a criminal complaint regarding the disappearance of José Carlos Trujillo Oroza” (*supra* para. 140). According to the Commission, “this means that for approximately twenty-eight years, the State [...] did not initiate an *ex officio* investigation of the events, even though the victims’ names appeared on the lists of disappeared, persons included in the impeachment trial attempted against Hugo Banzer in 1979.”

155. The Court has already indicated and explained in this Judgment that whenever there are reasonable grounds for believing that a person has been subjected to a forced disappearance, an investigation *ex officio* shall be undertaken without delay, in a serious, impartial and effective manner (*supra* para. 65). This investigation must be conducted using all legal means available for the purpose of establishing the truth, as well as seeking the prosecution, apprehension, prosecution and punishment of all intellectual and material perpetrators, especially when state agents are or may be involved. However, the investigation and the proceeding must have a plan and be undertaken by the States as their own legal obligation and not as a simple step taken by private interests.<sup>196</sup> In cases of forced disappearance of persons, the formal denunciation of the facts does not fall exclusively upon the families of the victims.<sup>197</sup>

156. The Court considers it important to point out, prior to analyzing the State’s compliance with the obligation to initiate an investigation *ex officio*, that in the State’s response to the petition, it referred to several activities carried out by the “National Commission for Investigation of Forced Disappearances”<sup>198</sup> between 1982 y 1984, and aimed at searching for the remains of Mr. Rainer Ibsen Cárdenas, *inter alia*. Based on the foregoing, the State argued that the representatives’ statements regarding its reluctance to locate and scientifically identify the remains of Rainer Ibsen Cárdenas “were false and groundless.”

157. The Court notes that the “National Commission for Investigation of Forced Disappearance” was composed of different representatives of government institutions and of civil society. It had the power to “analyze, investigate and determine the situation of citizens who disappeared in the National Territory.” In a document presented by the State to the Commission during the processing of the case, the State asserted that this Commission “received 155 complaints of [f]orced [d]isappearances committed between 1967 and 1982, [and that] even though the remains of some of the disappeared persons were located, the cases were not conclusively investigated.” This document also indicates that the Commission “performed its duties from 1982 to 1984 without issuing a Final Report, since it was dissolved prior to concluding its investigation.”<sup>199</sup> In this Judgment, it has been mentioned that during 1983 the National Commission for Investigation of Forced

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<sup>196</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits. supra* note 14, para. 177; *Case of Radilla Pacheco v. Mexico, supra* note 8, para. 129, and *Case of Chitay Nech et al. v. Guatemala, supra* note 6, para. 192.

<sup>197</sup> Cf. *Case of Radilla Pacheco v. Mexico, supra* note 8, para. 197.

<sup>198</sup> According to the evidence in the case file, the name of this authority was “National Commission for the Investigation of Disappeared Citizens”. It was created by presidential decree on October 28, 1982, and dissolved in 1984. Cf. Supreme Decree No. 19.241 of the Constitutional President of the Republic, of October 25, 1982 (File of annexes to the petition, appendix 26, pages 2333 and 2334).

<sup>199</sup> Cf. Summary of the presentation for the hearing of the Commission, prepared by the Ministry of Justice, on July 9, 2007 (File of annexes to the application, appendix 11, page 1751).

Disappearances announced the discovery of a common grave that apparently contained the remains of Mr. Rainer Ibsen Cárdenas and fourteen other disappeared persons (*supra* para. 84).

158. In this regard, the Court considers it appropriate to reiterate, as it has done in other cases, that the “historical truth” documented in special reports, or tasks, activities and recommendations issued by special commissions, like the one in this case, neither completes nor replaces the State’s obligation to establish the truth and investigate crimes through judicial proceedings.<sup>200</sup> This Court has established that the obligation to investigate the facts, prosecute, and, if applicable, punish those responsible for a crime that constitutes a human rights violation, is an obligation that derives from the American Convention, and that criminal liability must be determined by competent judicial authorities, strictly adhering to the rules of due process set forth in Article 8 of the American Convention.<sup>201</sup>

159. Based on the foregoing, without undermining the efforts made by the Bolivian State and the procedures conducted by the National Commission for Investigation of Forced Disappearances, particularly in relation to the search for the remains of Mr. Rainer Ibsen Cárdenas, the Court considers that the analysis regarding the State’s duty to initiate investigations *ex officio* must be limited to the proceedings conducted at the judicial level.

160. In this respect, this Judgment has already established the State’s international responsibility for the human rights violations committed against Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña (*supra* para. 122), who were detained and transferred to different detention centers in Bolivia where they were allegedly subjected to torture, *inter alia*, and then to forced disappearance while in the State’s custody. As a result, it is reasonable to argue that the State was aware of these facts at all times. However, the investigation into such facts was not initiated until the year 2000, as the result of the request filed by Rebeca Ibsen Castro to join an existing criminal complaint (*supra* para. 140), in which other facts were being investigated. The Court emphasizes that the analysis of this argument does not refer to the actions that the family of Messrs. Ibsen Cárdenas and Ibsen Peña should have or should not have taken, but in view of the State’s obligation *ex officio*, the Court shall analyze the steps taken by the State in this regard.

161. Regarding the situation of Mr. Rainer Ibsen Cárdenas, the Court emphasizes that it has already been established in this Judgment that at the end of the dictatorship of Hugo Banzer Suárez in 1979, the National Congressional Legislature had initiated an impeachment trial against the former president, among others. As part of this process, on September 5, 1979, the ASOFAMD presented a list of the people who had been murdered or disappeared during that period. This process was not continued, however, although the Court notes that the name of Rainer Ibsen Cárdenas appears on that list (*supra* para. 56). In addition, since at least 1983, the State had evidence of what seemed to be the remains of Mr. Rainer Ibsen Cárdenas (*supra* para. 84), as the State itself admitted during the processing of this case. In that regard, the State was fully aware of the fact that, apparently, a person had disappeared during the dictatorship of Hugo Banzer Suárez. However, it did not initiate an investigation into what happened to Mr. Rainer Ibsen

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<sup>200</sup> Cf. *Case of Almonacid Arellano et al. v. Chile. Preliminary Objections, Merits, Reparations and Costs*. Judgment of September 26, 2006. Series C No. 154, para. 150; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 179, and *Case of the “Las Dos Erres” Massacre v. Guatemala*, *supra* note 7, para. 232.

<sup>201</sup> Cf. *Case of Hualca Tecse v. Peru. Merits, Reparations and Costs*. Judgment of March 3, 2005. Series C No. 121. para. 106, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 47.

Cárdenas, nor did it conduct the relevant tests to corroborate his identity when in 1983 his remains were said to have been found. Furthermore, the Court must point out that the State has not effectively investigated what happened to Rainer Ibsen Cárdenas, given that the domestic criminal proceeding was only conducted on the events that occurred to Mr. José Luis Ibsen Peña, despite the request to join the complaint filed by Rebeca Ibsen Castro (*infra* paras. 140 and 150).

162. Moreover, the State did not deny knowing about the disappearance of Mr. José Luis Ibsen Peña, but instead issued a broad acknowledgment of international responsibility for his detention and subsequent disappearance.

163. Based on the foregoing, it is clear to the Court that the State has failed to comply with its duty to investigate *ex officio* the human rights violations committed against Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña. Therefore, the Court rules that the State violated Article 8(1) of the American Convention on Human Rights.

### ***B.2. Effective investigation and lack of diligence in the collection of evidence***

164. The Commission indicated that “in the few months devoted to collecting evidence, only [confessions] from the accused and testimonies from other persons were taken,” and that “the [a]vailable information does not show the existence of any other initiatives to discredit the veracity of the official versions regarding the death of Mr. Rainer Ibsen in a “brawl,” nor of the alleged exile of Mr. José Luis Ibsen to Brazil.” The Commission argued that the evidence available “demonstrates that the steps taken to clarify the facts with regard to Mr. Rainer Ibsen Cárdenas were minimal.”

165. The Court considers that this point is closely related to the previous one. In that respect, the Court repeats its jurisprudence in the sense that the application of the guarantees of Article 8(1) of the American Convention is not limited to judicial activity. In particular, in relation to the investigations carried out by prosecution authorities, the Court has established that, depending on the circumstances of the case, the Court may need to analyze the related proceedings and those which constitute procedural prerequisites, particularly the investigative tasks, the results of which will be important for the initiation and development of the procedure.<sup>202</sup> In this case, given the analysis of the effectiveness of the investigations conducted, the Court takes into account the context in which the detention and subsequent disappearances of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña took place. To that end, at the public hearing (*supra* para. 8), the State indicated that “[i]t had to assume the responsibility of acknowledging the human rights violations committed by a dictatorial regime that constituted a dark past in the history of Bolivia [,] which lasted from the *coup d’etat* led by then Colonel Hugo Banzer Suárez in 1971 until 1982, when the [State of Bolivia] returned to democracy.”

166. In this regard, the Court finds that in cases like this, the authorities in charge of the investigations had the duty to guarantee that throughout investigation they would assess systematic patterns that allowed the perpetration of the serious human rights violations found in this case.<sup>203</sup> In the interest of guaranteeing its effectiveness, the investigation

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<sup>202</sup> Cf. *Case of Garibaldi v. Brazil. Preliminary Exceptions, Merits, Reparations and Costs*. Judgment of September 23, 2009. Series C No. 203, para. 120.

<sup>203</sup> Cf. *Case of La Rochela Massacre v. Colombia*, *supra* note 26, para. 156; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 154, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 206.

must be conducted taking into account the complexity of this type of event and the structure in which the people who are probably involved are located, pursuant to the context in which they occurred, thus avoiding omissions in the gathering of evidence and in the follow-up of logical lines of investigation.<sup>204</sup>

167. The Court has already stated that in cases of forced disappearance, it is essential that the judicial authorities and the Public Prosecutor's Office take prompt and immediate action through timely and necessary measures to determine the victim's whereabouts.<sup>205</sup> The Court also repeats that the passage of time bears a directly proportional relationship to the limitations and, in some cases, the impossibility of obtaining evidence and/or testimonies, hindering and even annulling or making ineffective the evidentiary procedures aimed at clarifying the central facts of investigation,<sup>206</sup> to identify possible perpetrators and participants and to determine the possible criminal liabilities. Nevertheless, the national authorities are not exempt from making all efforts necessary to comply with their obligation to investigate.<sup>207</sup> The Court has also noted that such obligation remains "whoever the agent to whom the violation may eventually be attributed is, even private persons, since, if their acts are not investigated seriously and they turn out in some way to be assisted by the public authorities, would compromise the State's international responsibility."<sup>208</sup>

168. Moreover, the Court considers it pertinent to point out that States must provide the relevant authorities with the logistical and scientific resources necessary for gathering and processing the evidence, as well as, specifically, the authority to access the appropriate documents and information for the investigation of the actions denounced and to obtain clues or evidence on the location of the victims.<sup>209</sup> In this regard, the Court considers that, in addition to the need to obtain and assess other evidence, the authorities in charge of the investigation must pay special attention to the circumstantial evidence, the clues and the presumptions,<sup>210</sup> which are particularly important when dealing with cases of forced disappearance, "since this form of repression is characterized by the effort to suppress elements which can prove the kidnapping, whereabouts and fate of the victims."<sup>211</sup>

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<sup>204</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C No. 120, paras. 88 and 105; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 154, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 206.

<sup>205</sup> Cf. *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 134, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 215.

<sup>206</sup> Cf. *Case of Heliodoro Portugal v. Panama*, *supra* note 1, para. 150; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 135, *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 215.

<sup>207</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 215.

<sup>208</sup> Cf. *Case of Velásquez Rodríguez. Merits. supra* note 14, para. 174; *Case of Kawas Fernandez v. Honduras*, *supra* note 11, para. 78 and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 216.

<sup>209</sup> Cf. *Case of Tiu Tojin v. Guatemala. Merits, Reparations and Costs*. Judgment of November 26, 2008. Series C No. 190, para. 77; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 135, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 222.

<sup>210</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra* note 14, para. 130; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 38, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 222.

<sup>211</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits. supra* note 14, para. 131; *Caso of Anzualdo Castro v. Peru*, *supra* note 44, para. 38, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 222.

169. In this case, the Court notes that the prosecuting authorities took minimal action in the investigation of the detention and subsequent forced disappearance of Mr. José Luis Ibsen Peña. In this respect, the case file demonstrates that only some investigative activities were carried out within the preliminary inquiry, after which the Public Prosecutor's Office filed an accusation *ex officio* in 1999 (*supra* para. 138). However, the Court emphasizes that, by that time, Rebeca Ibsen Castro had still not filed the request to join the complaint (*supra* para. 140), and consequently, the limited investigation conducted by that time refers to other facts.

170. As a result, the evidence-gathering actions conducted by the Public Prosecutor's Office have neither been relevant nor decisive during most of the criminal proceeding. This has led to the burden of proof having been wrongfully placed on the plaintiffs, and this can be confirmed in the entire domestic case file. Most of the evidence presented, especially testimonial and documentary evidence and depositions, has been submitted by the accused and the plaintiffs.<sup>212</sup> This can be corroborated, specifically, from the conclusions presented by the Public Prosecutor's Office before the Seventh First Instance Civil Court at the end of the evidentiary stage of the proceeding, for which the prosecuting authority exclusively based the proceeding on evidence furnished by the other parties.<sup>213</sup>

171. Furthermore, the Public Prosecutor's Office has not taken into account the context of the facts, their complexity, or the special position of those people who could have been responsible within the state structure during that time. Therefore, the criminal case file does not show that the prosecuting authority had followed clear and logical lines of investigation that would have taken into account those elements. In this respect, as already mentioned in this Judgment (*supra* para. 166), with regard to acts like the ones argued in this case and given the context and their complexity, it is reasonable to consider that there are different degrees of responsibility at different levels of criminal liability. The investigation does not reflect any of the above levels. In this sense, the Court finds that the State has not complied with its obligation in a diligent manner.

172. Furthermore, the Court considers that another consequence of the lack of diligence in this case is that, as time passes, the possibility of collecting and presenting evidence in order to clarify the facts and determine the corresponding responsibilities is unduly limited, with the State having contributed to its impunity. The Court has defined [impunity] as an overall lack of investigation, persecution, arrest, prosecution and conviction of those responsible for violations of the rights protected by the American Convention.<sup>214</sup>

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<sup>212</sup> In volumes XXI to XXVIII of the case file 37/2000 in this Court, there are several declarations of the accused Justo Sarmiento Alanes, Pedro Percy Gonzales Monasterios, Elías Moreno Caballero, Juan Antonio Elio Rivero, Ernesto Morant Lijerón and Oscar Menacho Vaca; the statement of plaintiff Antonia Gladys Oroza, and declarations of several witnesses proposed by her, the accused and Rebeca Ibsen Castro; Giselle Bruun Sciaroni, Adhemar Rider Suárez Salas, Luis Sandoval Morón, Yalile Facusse Chain, Estevan Renato Díaz Matta, Adid Curi Herrera, Hugo Jaime Otero Arrien, Freddy Méndez Rojas, Armindo Campos Justiniano, Walter Weber Camacho, Rosmery Weber Camacho, Carmen Raquel Ruiz Pizarro, Dardo Suárez Justiniano, Víctor Fernández Pereira, Ledy Catoira Moreno, Buenaventura Carrillo Caisedo, Jorge Rodríguez Rueda, Pedro Rojas Pachi, Carlos Melquiades Valverde Barbery, Manuel Jesús Eguez Ruiz, Luciano Alberto Velasco Araoz, Walter Pérez Ribera, Emilio Peña Paz, Freddy Méndez Rojas, Susano Campos Arauz, Betty Spinatto Pérez, Carlos Fernández Gonzáles, Esperanza Solís de Aguilar and Ciro Nery Sandoval.

<sup>213</sup> Cf. Report on the merits of the Public Prosecutor's Office of Santa Cruz, November 23, 2007 (Case file 37/2000, volumes XXII and XXIII, pages 9474 to 9500 and 18282 to 18308).

<sup>214</sup> Cf. *Case of the "White Van" (Paniagua-Morales et al.) v. Guatemala. Preliminary Objections.* Judgment of January 25, 1996. Series C No. 23. para. 173; *Case of the "Las Dos Erres" Massacre v.*

173. In this regard, it is appropriate to point out that the investigation into the facts of this case cannot be considered a mere process of private interests, which depends on the procedural initiative of the victims, of their families or of the private provision of evidence.<sup>215</sup> Furthermore, the Court considers the State bodies responsible for an investigation into the forced disappearance of persons, the purpose of which is to determine their whereabouts and clarify what happened, must identify those responsible and their possible punishment and should perform their task diligently and exhaustively. The juridical rights to which the investigation relates oblige [the State] to redouble efforts to ensure that all necessary measures are undertaken in order to comply with this objective. The negligent action or failure to act of State bodies is not compatible with the obligations arising from the American Convention, especially when an essential human right is involved.<sup>216</sup>

174. In view of the above, the Court considers that the State has not conducted a serious investigation into the facts related to the arrests and subsequent forced disappearances of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña, and that the State unduly placed the evidentiary burden on the plaintiff, in this case, Rebeca Ibsen Cárdenas as plaintiff and relative of the victims. Therefore, the Court rules that the State violated Article 8(1) of the American Convention.

### ***B.3. Undue delay and adverse effects of the conduct of the proceeding***

175. The Commission argued that, “another aspect that hindered the course of the investigation was the fact that no less than thirty-four judges and two prosecutors excused themselves from examining the case.” Specifically, it stated that “[w]ithout raising the issue of whether these recusals were appropriate or out of order, the Commission ask[ed] the Court to examine the dilatory and obstructionist effects that they had on the domestic proceedings.” The Commission further indicated that the recusals, in and of themselves, brought about delays in the proceedings. For its part, the State, in its final written arguments, noted that there had been “thirty-seven abstentions and one challenge” in the domestic criminal proceedings.

176. It is important to point out that the Commission made no specific reference to the claimed abstentions and that, in a general manner, indicated that “at least thirty-four judges and two prosecutors” excused themselves from hearing the criminal proceeding. Moreover, in general terms, the Commission also asked the Court to analyze “the dilatory and obstructionist effects” caused by such recusals. Accordingly, the Court considers that a serious examination of this issue implies assessing the effect that each of the abstentions had on the criminal proceedings in order to conclude whether or not they hindered or delayed the proceedings. Given the dimension of the possible implications, the Court shall now refer only to the judicial recusals.

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*Guatemala*, supra note 7, para. 234, and *Case of Manuel Cepeda Vargas v. Colombia*, supra note 6, para. 130, note 184.

<sup>215</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, supra note 14, para. 177; *Case of Radilla Pacheco v. Mexico*, supra note 8, para. 139, and *Case of Chitay Nech et al. v. Guatemala*, supra note 6, para. 192.

<sup>216</sup> This has been established by the Court, for example, when dealing with another kind of human rights violation. Cf. *Case of Garibaldi v. Brazil*, supra note 202, para. 130.

177. The effective exercise of due process is one of the main principles of justice, and it carries with it the presupposition that the judge who intervenes in a particular dispute approaches the facts of the case in an impartial manner. This means the judge must have no personal prejudice and offer sufficient objective guarantees to allow for the elimination of all doubt that the persons demanding justice or the community may hold with regard to the lack of impartiality.<sup>217</sup> In this respect, one way of guaranteeing the impartial conduct of a proceeding is by means of the procedural precept of the recusal or abstention, which a judge may exercise whenever he considers that he will be prevented from hearing certain matter due to the appearance of some ground stipulated by the law, because his impartiality could be compromised.

178. This Court has already noted that Article 8 of the American Convention recognizes the concept of "due process of law," which includes the prerequisites necessary to ensure the adequate protection of persons whose rights or obligations are pending judicial determination.<sup>218</sup> In this regard, paragraph 1 of the provision establishes that "[e]very person has the right to a hearing, [...] by a [...] impartial Court,[...] in the conduct 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." Therefore, the right to judicial disqualification is an issue that necessarily has a bearing on the criminal due process under the terms of the American Convention.

179. In view of the above, before entering into the analysis of the issue raised by the Court in this separate section, the Court points out that it is not appropriate to rule on the admissibility or inadmissibility of the judicial recusals mentioned by the Commission and that the analysis is limited to the alleged dilatory and obstructionist effects that the Commission alleges these had on the domestic criminal proceeding.

180. It is a matter of record in the case file before the Court that, during nine years of the procedures of the domestic criminal case,<sup>219</sup> there were approximately 111 self-disqualifications made by various judges of different ranks and jurisdictions. In that regard, the Court notes that several groups of recusals have, indeed, delayed the processing of the case. Out of that total, fifty-nine abstentions suspended the preliminary stage, the deliberation and the processing of the case.<sup>220</sup> However, the Court

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<sup>217</sup> Cf. *Case of Apitz Barbera et al. ("First Court of Administrative Disputes") v. Venezuela. Preliminary Objection, Merits, Reparations and Costs*. Judgment of August 5, 2008 Series C No. 182, para. 56, and *Article 55 of the American Convention on Human Rights*. Advisory Opinion OC-20 of September 29, 2009. Series A No. 20. para. 77.

<sup>218</sup> Cf. *Judicial Guarantees in States of Emergency (Arts. 27(2), 25 and 8 American Convention on Human Rights)*. Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9. para. 28.

<sup>219</sup> Last action in the case file held by the Court is from December, 2009.

<sup>220</sup> The following footnotes correspond to Case file 37/2000. a) From August 13 to 17, 2001, seven abstentions were filed by: two Members of the First Criminal Chamber, two Members of the Second Criminal Chamber, and three Members of the First Civil Chamber (Volume V, pages 3864 to 3865, 3867 to 3868, 3873 to 3874). These abstentions were filed in relation to the constitutional appeal for legal protection filed by Antonia Gladys Oroza on July 27, 2001, in order to annul the decision of January 12, 2001, of the First Criminal Chamber of the Superior Court of the District of Santa Cruz that confirmed a ruling declaring the application of the statute of limitations to the criminal action. These abstentions caused the delay in the proceedings, because the Members of the District Superior Court were called upon to hear the matter on the discontinuance of the proceeding due to the declaration on the applicability of the statute of limitations. b) From March 15 to 25, 2002, two abstentions were filed by the Fifth and the Seventh First Instance Criminal Judges of Santa Cruz (volume IV, pages 3616 and 3634). They abstained from hearing the principal case once the Constitutional Court annulled the petition of the statute of limitations declared previously and ordered a continuation of the proceeding. These abstentions caused the delay in the proceedings since the investigative phase was suspended. c) From April 9 to

also notes that there is another group of abstentions that did not delay the processing of the case given that they did not prevent the preliminary stage or the trial from continuing.<sup>221</sup> Though not all the recusals had “dilatatory and obstructionist” effects, the

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August 30, 2003, twenty abstentions were filed by the following judges: Eighth, Ninth and Tenth First Instance Criminal Judges of Santa Cruz; judges of the First to Fourth of First Instance of Santa Cruz; judges of the Second to Tenth of First Instance Civil and Commercial Courts of Santa Cruz; judges of the First to Third First Instance on Family Matters of Santa Cruz, and First Instance Judge of Cotoca Province Andrés Ibáñez of the Department of Santa Cruz (volume VIII, page 4896, and volume IX, pages 4941, 4945, 4952, 4963, 4970, 4976, 4986, 4996, 4998, 5000, 5005, 5010, 5018, 5024, 5028, 5034, 5042, 5057 and 5060). These abstentions caused delay in the proceedings since the investigative phase was paralyzed. d) From February 19 to March 1, 2005, five abstentions were filed by three and two Members, respectively, of the First and Second Criminal Chambers of the Superior Court of the District of Santa Cruz (volume XVII, pages 7536 to 7537 and 7546). These abstentions caused a delay in the proceedings since the members of the criminal chambers were called upon to hear an appeal submitted against a decision that ordered the application of the statute of limitations to the criminal action and the case file. e) From June 6 to August 16, 2006, six abstentions were filed by the judges of the First to Sixth First Instance Civil and Commercial Courts (volume XXI, pages 9049, 9063, 9068, 9071, 9075, 9078). These abstentions delayed the proceedings given that the latter was in the debate phase. f) From September 29 to October 14, 2006, six abstentions were filed by three Members of the First Criminal Chamber and three Members of the Second Criminal Chamber, both at the Superior District Court (volume XXI, pages 9158 and 9173). These abstentions caused delay in the proceedings since the Members of the Criminal Chambers had the obligation to rule on the legality of the abstentions filed by the First Instance Civil and Commercial judges (*supra* subsection c). In this regard, the debates of the proceedings were cancelled. g) From June 10 to August 1, 2009, thirteen abstentions were filed by three Members of the First Criminal Chamber, three Members of the Second Criminal Chamber, two Members of the First Civil Chamber, two Members of the Second Civil Chamber and three Members of the Social and Administrative Chamber (appendixes to the brief of pleadings and motions, volume XXVIII, pages 10965, 10968, 10984, and appendixes to the response to the petition, volume XXVIII, pages 19844 to 19845, 19848 and 19850). These abstentions were presented in relation to the appeals filed by Mrs. Rebeca Ibsen Castro, Mrs. Antonia Gladys Oroza, Mr. Oscar Menacho Vaca and Mr. Juan Antonio Elio Rivero against the First Instance judgment of December 6, 2008. The abstentions caused delay to the proceedings since they had suspensive effects.

<sup>221</sup> These footnotes correspond to Case file 37/2000. a) On January 2, 2001, a member of the First Criminal Chamber of the Superior Court of the District of Santa Cruz abstained from hearing an appeal filed by Antonia Gladys Oroza on November 16, 2001, against the ruling of November 10, 2000, in which the Fifth First Instance Court declared the application of the statute of limitations to the criminal action (volume I, page 2819). b) On January 10, 2001, a member of the First Criminal Chamber of the Superior Court of the District of Santa Cruz abstained from hearing an appeal filed by Rebeca Ibsen Castro to deny the extension of first investigation order (volume III, page 3560). c) From April 18 to July 17, 2002, three abstentions were filed by two Members of the Second Criminal Chamber and one member of the First Criminal Chamber of the Superior Court of District of Santa Cruz (volume VIII, pages 4783, 4785 and 4796). These abstentions referred to the presentation of an appeal against an order that rejected a request for extension of the initial order of investigation of June 1, 2002. d) From October 19 to 30, 2004, three Members of the First Criminal Chamber and three Members of the Second Criminal Chamber of the Superior Court of the District of Santa Cruz abstained from resolving three appeal motions filed by Rebeca Ibsen Castro, *inter alia*, on September 9, 2004, against an order of the Ninth First Instance Criminal Judge of Santa Cruz of September 8, 2004, that annulled a formal arrest warrant ordered by the Judge of the Province of Warnes against one of the accused and, instead, [the Ninth First Instance Criminal Judge of Santa Cruz] ordered the precautionary measures previously ordered by another judge to be upheld with some modifications (volume XV, pages 7023, 7029, 7124 and 7125). e) From October 19 to 30, 2004, three Members of the First Criminal Chamber and three Members of the Second Criminal Chamber of the Superior Court of District of Santa Cruz abstained. These abstentions were filed regarding a motion of appeal filed by Rebeca Ibsen Castro on September 9, 2004, against an order of Ninth First Instance Criminal Judge of Santa Cruz issued on September 7, 2004, that upheld the decreed alternatives to pre-trial detention and the amount of the bail imposed to each of the accused (volume XV, pages 7124 to 7125 and 7239, 7243). f) From October 19 to 30, 2004, three Members of the First Criminal Chamber and three Members of the Second Criminal Chamber of the Superior Court of District of Santa Cruz abstained from hearing the motions of appeal filed by the accused and Rebeca Ibsen Castro against the order of prosecution issued on June 7, 2004, by the First Instance Judge of Warnes (volume XX, pages 8461, 8467, 8473 to 8474). g) From 4 October 21 to November, 2004, six abstentions were filed in total by three Members of the First Criminal Chamber and three Members of the Second Criminal Chamber of the Superior Court of District of Santa Cruz (volume XV, pages 7014, 7015, 7023 and 7029). These abstentions were filed regarding two motions of appeal filed by Rebeca Ibsen Castro, *inter alia*, on September 4, 2004, against the order of the Ninth First Instance Criminal Judge of the Capital Santa Cruz issued on September 1, 2004, that annulled an order of formal detention issued by the Judge of the Province of Warnes against one of the accused, instead [the Ninth First Instance Criminal Judge of the Capital Santa Cruz] ruled to maintain the order of precautionary measures



fifty-nine abstentions mentioned above did cause a delay of approximately 310 days, almost eleven months, which according to the Court is a considerable period of time given that the proceeding was brought to a halt.

181. Apart from the foregoing, the Court considers that it should also analyze the overall situation created by filing approximately 111 abstentions or recusals in a single criminal proceeding. Specifically, to facilitate adjudication of the case, the Court requested the State to present any general information related to the internal processing of the recusals filed by the judges as well as the legal provisions applicable to this issue. In its final written arguments, the State referred to the provisions applicable to the criminal proceeding, which correspond to an old Criminal Code, and explained that the Code of Criminal Procedure of 1972, together with the Law To Shorten Periods in Civil Proceedings and Family Assistance (Law 1760) of February 28, 1997, were applicable.

182. In that regard, the Code of Criminal Procedure of 1972, in Article 40, provides that “[n]o judge can be disqualified from hearing a case without legal grounds” and that “the abstentions and challenges shall be processed and resolved according to the provisions of the Civil Procedure and the Judicial Organization Law.” Furthermore, Article 41 of that Code establishes that “[i]f an application for abstention is filed before a judge who considers such abstention to be illegal, that judge shall be obliged to hear the case and forward testimony of the necessary requirements in consultation before the Superior District Court.”

183. Moreover, Article 3 of the Code of Civil Procedure amended by Act 1760 refers to the grounds for abstention. The next article, Article 4 [of that Code], related to the “obligation to abstain,” provides that “[t]he judge or the magistrate who is covered by any of grounds for abstention shall have to abstain himself *ex officio*, in the first legal act [...], and that [o]nce the abstention is ordered, the judge or magistrate shall definitely not be permitted to participate in the proceedings and shall forward the case to the next judge who was assigned by law to replace him, even when the causes that originated it have disappeared.” The Court calls attention to the following two provisions. Article 5 provides that “[i]f the judge, who is assigned to hear the proceeding considers that the question of abstention is illegal, he shall refer it, on that day, to the next superior authority for a opinion [...] without prejudice to the hearing and the processing of the case.” Furthermore, Article 6 establishes that “[i]f the abstention were to be declared illegal, a penalty shall be imposed on the judge or magistrate who filed the request, and the consulting judge shall

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previously issued. h) From November 12 to 22, 2004, three Members of the First Criminal Chamber and three Members of the Second Criminal Chamber of the Superior Court of District of Santa Cruz abstained from hearing a motion for appeal filed by one of the accused against a decision of the Ninth First Instance Criminal Judge issued on October 25, 2004, that rejected a request of cessation of a preventive detention previously declared (volume XIX, pages 8072, 8078 and 8089). i) On February 25, 2005, three Members of the First Criminal Chamber of the Superior Court of District of Santa Cruz abstained from hearing a consultation on the legality of some of the abstentions, which was filed by the First Instance Civil Judge of the Capital before the Superior Court of District of Santa Cruz (volume XVIII, page 7800). j) From August 17 to October 28, 2005, eight abstentions were filed by three Members of the Second Criminal Chamber, two Members of the Social Administrative Chamber and three co-judges of the Superior District Court, respectively (appendixes to the response to the petition, volume XXVIII, pages 19823, 19832, 19835, 19837 and 19841). These abstentions were filed regarding a motion of appeal for legal protection filed by the accused against the ruling of April 18, 2005, of the First Civil Chamber of the Superior Court of Justice of Santa Cruz that reversed an order of extinction of criminal action on January 19, 2005. k) From July 4 to 28, 2007, three abstentions were filed by Members of the First Criminal Chamber and three Members of the Second Criminal Chamber of the Superior Court of District of Santa Cruz (volume XXIV, pages 9807 and 9809). These abstentions were filed regarding a motion of appeal filed by Mrs. Rebeca Ibsen Castro, *inter alia*, on June 18, 2007, against the ruling of the Seventh First Instance Civil and Commercial Judge on June 15, 2007, which ordered the dismissal of the preventive detention of one of the accused.

proceed with the processing of the case until its conclusion;" in addition, "[i]f the abstention were to be declared legal, a penalty shall be imposed on the consulting judge or magistrate."

184. It is possible to conclude from the previous paragraphs that the legislation established *a posteriori* and immediate control over the abstentions presented by the judges, meaning that only when the judge who later received the case file due to an abstention, considered that abstention to be illegal, the issue shall be referred to a superior authority in order to determine its legality; it is also possible to conclude that, the mere fact of a possible sanction for the judge who consulted on the legality of an abstention could have inhibited greater control over abstentions and their admissibility.

185. In this case, the Court shall not analyze whether the abstentions were declared illegal or not, given that it is not the main point being analyzed. However, the Court points out that the State forwarded information regarding different disciplinary proceedings against several judges, in which some of the abstentions were declared illegal. Nevertheless, in relation to what was mentioned in the previous paragraph, from the case file the Court observed that, from the 111 recusals in total, only on three occasions did the judges refer the recusals for consultation.<sup>222</sup>

186. The Court's attention is drawn to the following series of facts. Previously, the Court has referred to a variety of abstentions presented by the judges of the First, Second, Third, Fourth, Fifth, and Sixth Civil and Commercial First Instance Courts of Santa Cruz, between June 6 and August 16, 2006 (*supra* para. 180, note 220). In this regard, the judge of the Seventh Civil and Commercial First Instance Court referred these abstentions for consultation to the Superior District Court of Santa Cruz. Based on the work assignments, it corresponded to the First Civil Chamber to hear the inquiry; however, its members disqualified themselves given that "[i]t was a criminal case, it corresponded to the superior court with *ratione materiae* jurisdiction to hear the question of abstention."<sup>223</sup> Subsequently, all the members of the First and Second Criminal Chambers of the Superior District Court abstained from hearing the question on the legality of the abstentions presented by the First Instance judges (*supra* para. 189 note 220). Therefore, the question was again referred to the First Civil Chamber, which finally declared the illegality of the abstentions presented by the First Instance judges of the First to Sixth Courts.<sup>224</sup>

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<sup>222</sup> The First Instance Judge of Warnes filed a consultation on all the existing abstentions in the case file, following instructions of the Superior Court of the District of Santa Cruz, decree of September 10, 2003 (Case file 37/2000, Volume IX, pages 5067 and 13825); the Fifth First Instance Criminal Judge of Santa Cruz accepted a challenge filed by Antonia Gladys Oroza and Rebeca Ibsen Castro; subsequently he sent the case file to the First Instance Civil Judge of the Capital, who sent the consultation to the Superior Court of District of Santa Cruz, where it was sent to the First Criminal Chamber (Case file 37/2000, Volume XVIII, pages 7799 and 16559), and the Seventh First Instance Civil and Commercial Judge of Santa Cruz raised the consultation of the abstentions presented by the First, Second, Third, Fourth, Fifth and Sixth First Instance Civil and Commercial Judges of Santa Cruz (Case file 37/2000, Volume 21, pages 9080 and 17880).

<sup>223</sup> *Cf.* Order of the Seventh First Instance Civil and Commercial Judge of Santa Cruz of August 24, 2006; decree of the First Civil Chamber of the Superior Court of District of Santa Cruz of August 24, 2006, and order of the latter, sending the case file to the First Criminal Chamber, of September 4, 2006 (Case file 37/2000, Volume XXI, pages 9152 to 9156, and 17950 to 17955).

<sup>224</sup> *Cf.* Order of the First Civil Chamber of the Superior Court of District of Santa Cruz, of October 30, 2006 (Case file 37/2000, Volume XXI, pages 9176 to 9177, and 17974 to 17975). The abstention of the First Instance Civil and Commercial Judge was caused by a challenge filed by Rebeca Ibsen Castro.

187. The case file was returned to the judge of the Seventh Civil First Instance Court in order to continue with the processing; however, he forwarded the case file to the judge of the Second Civil and Commercial First Instance Court,<sup>225</sup> upon considering that the case file should be remitted to the judge who had abstained himself. Then, the judge of the Second First Instance Court remitted the case file to the judge of the Seventh Civil First Instance Court so that such judge “could comply with the provisions established in article 6 of Act 1760,” that is, to continue with the processing of the case.<sup>226</sup> This caused, before undertaking the processing of the case again, the judge of the Seventh Civil First Instance Court to invoke the advisory jurisdiction regarding a dispute over jurisdiction “between two trial civil courts with the same hierarchy” before the Superior District Court of Santa Cruz.<sup>227</sup> The Full Chamber of the Superior District Court of Santa Cruz declared the judge of the Seventh Civil and Commercial First Instance Court to have jurisdiction based on the provisions of the Law To Shorten Periods in Civil Proceedings and Family Assistance, as it is applicable to the “criminal proceeding that began the dispute over jurisdiction,” if in the consultation the abstention is found to be illegal, a penalty shall be imposed on the judge who presented such abstention, “and the consulting judge must proceed with the processing of the case until its conclusion.”<sup>228</sup> The case file was remitted to the judge of the Seventh First Instance Court.<sup>229</sup>

188. The total delay amounts to approximately seven and a half months, due to the judge of the Second Civil and Commercial First Instance Court disqualifying himself, which gave rise to the series of abstentions previously mentioned, presented by other judges and members of the criminal chambers, as well as the referral for consultation of the recusals, the decision of the First Civil Chamber, the wrongful remittance of the case file to another judge, followed by the dispute over jurisdiction, until, finally, the processing of the case was assigned to the judge of the Seventh Civil and Commercial Court of First Instance.

189. The Court takes into account that in its final written arguments, the State indicated that the law applicable to the recusal procedure has been amended and that “it established a regime of abstentions and challenges for judges and criminal courts, which provided more specific grounds for abstentions and challenges. It also defined who could present abstentions and challenges to avoid the wrongful practice by which anyone (even witnesses) could request recusals or abstentions, and adds another procedure to what was intended to be expeditious.” The State transcribed the relevant provisions, which are not the subject matter of the analysis in this case, given that they were not applied.

190. Thus, the Court concludes that the constant abstentions compromised the serious conduct of the domestic criminal proceedings, and that those abstentions affected the processing of this case due to the delays caused by the judicial system’s minimal control,

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<sup>225</sup> Cf. Decree of the Seventh First Instance Civil Judge of Santa Cruz of December 13, 2006, and order of this same Judge who sent the case file to the Second First Instance Civil and Commercial Judge (Case file 37/2000, Volume XXI, pages 9187 to 9188 and 17985 to 17986).

<sup>226</sup> Cf. Decree of the Second First Instance Civil and Commercial Judge of Santa Cruz of December 16, 2006 (Case file 37/2000, Volume XXI, pages 9190 and 17988).

<sup>227</sup> Cf. Order of the Seventh First Instance Civil Judge of Santa Cruz of December 19, 2006 (Case file 37/2000, Volume XXII, pages 9196 to 9197 and 17991 to 17992).

<sup>228</sup> Cf. Order of the Full Chamber of the Superior Court of District of Santa Cruz of January 15, 2007 (Case file 37/2000, Volume XXII, pages 9224 to 9227 and 18019 to 18022).

<sup>229</sup> Cf. Order of the Superior Court of Justice of Santa Cruz of February 12, 2007 (Case file 37/2000, Volume XXII, pages 9234 to 9235 and 18029 to 18030).

leaving it up to the discretion and will of the judges to refer abstentions to superior authorities for consultation as to their legality and, moreover, while threatened with a penalty if the abstentions were declared legal, all this as a consequence of the legislation applied.

191. Therefore, the Court considers that, with respect to this point, there was not only a violation of Article 8(1) of the Convention but also of Article 2 thereof, since the corresponding legislation hindered the correct conduct of the proceeding.

#### ***B.4. Regarding the definition of forced disappearance***

192. The Commission argued that at the time of the events of this case, the crime of forced disappearance was not defined under Bolivian law. [The Commission] mentioned that the State ratified the Convention on Forced Disappearance on May 5, 1999, but that it only recently defined this crime, on January 18, 2006. Therefore, it considered that between May 5, 1999, and January 18, 2006, the State failed to comply with the obligation established in Article 3 of the Convention on Forced Disappearance, in relation to Article 4 therein.

193. The Court has already referred to the general obligation of the States to adapt their domestic law to the rules of the American Convention. This is also applicable when dealing with the enactment of the Convention on Forced Disappearance, since it is based on rules of customary law according to which a State that has entered into an international agreement must incorporate the necessary changes within its domestic law to ensure its compliance with the obligations assumed.

194. In its judgment in the case of *Ticona Estrada v. Bolivia*, the Court already declared the State's non-compliance with the obligations established in Articles 1(d) and 3 of the Convention on Forced Disappearance, and in Article 2 of the American Convention, since it was not until January 18, 2006, that Bolivia incorporated the crime of forced disappearance into its legislation. In this regard, the Court considers that a new statement on Bolivia's non-compliance with these obligations is unnecessary because the previous statement has general effects which go beyond this specific case.

195. Furthermore, given that the Commission did not present arguments regarding non-compliance with the obligation established in Article 4 of the Convention on Forced Disappearance, nor did it refer to any relating to that provision to this case, the Court shall not rule on that aspect.

#### ***B.5. Regarding the non-applicability of statutory limitations to serious human rights violations***

196. The Commission argued that, "the legal context applicable to the accused constituted an obstacle to the punishment of those responsible for what happened to the victims." It mentioned that "domestic authorities found that prosecution for the crimes of murder and torture were barred by the statute of limitations because by nature they are of immediate commission;" consequently the only crime that should be maintained was the deprivation of liberty, since this crime is ongoing until the time in which the affected person recovers his or her freedom. The Commission specifically indicated that, in the case of Mr. Rainer Ibsen Cárdenas, the crime of unlawful deprivation of liberty was also considered barred by the statute of limitations, since his remains appeared in 1983, when his deprivation of liberty allegedly ended. The Commission concluded that, "the prospects for obtaining justice through domestic criminal proceedings are minimal."

197. This Court has held that that the prohibition of forced disappearance of persons and the related duty to investigate and punish those responsible for such acts are regulations that “have acquired the character of *jus cogens*.”<sup>230</sup> Similarly, the case-law of this Court, the orders of other international bodies and organizations, as well as other international instruments and treaties, such as the Declaration on the Protection of All Persons from Forced Disappearance of 1992, the Inter-American Convention on Forced Disappearance of Persons of 1994 and the International Convention for the Protection of All Persons against Forced Disappearance of 2006 provide for certain standards applicable to the investigation and prosecution of this type of crime.<sup>231</sup>

198. Given the urgent need to prevent forced disappearance cases from going unpunished, the Court recalls that it is imperative to use all legal remedies available to continue protecting the fundamental rights that might have been infringed in those cases.<sup>232</sup> In light of the above, the Court considers it appropriate to stress that in its first rulings,<sup>233</sup> it has identified the forced disappearance of persons as an illegal act of a continuous and enduring nature, consisting of multiple human rights violations.

199. The Court recalls that the purpose of its mandate is the application of the American Convention and other treaties that grant it jurisdiction. It is not for the Court to establish individual responsibilities,<sup>234</sup> which must be determined by the domestic criminal courts or other international criminal courts; rather its mandate is to examine the facts presented and assess them in the exercise of its obligatory jurisdiction based on the evidence provided by the parties.<sup>235</sup>

200. However, the Court considers that an incorrect assessment at the domestic level regarding the juridical contents of the forced disappearance of persons impedes the effective conduct of criminal proceedings to the detriment of the State’s obligation to investigate and the right to access to justice in favor of the victims. In this respect, crimes such as unlawful deprivation of liberty do not satisfy the State’s obligation to punish conduct that infringes numerous rights, such as the forced disappearance of persons.<sup>236</sup>

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<sup>230</sup> Cf. *Case of Goiburú et al. v. Paraguay*, *supra* note 7, para. 84; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 139, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 86.

<sup>231</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Monitoring Compliance with Judgment*. Order of the Court of January 27, 2009. Considering Clause 27, and *Case of Trujillo-Oroza v. Bolivia. Monitoring Compliance with Judgment*. Order of the Court of November 16, 2009, Considering Clause 36.

<sup>232</sup> Cf. *Heliodoro Portugal v. Panama*, *supra* note 1, para. 182, and *Case of Trujillo-Oroza v. Bolivia. Monitoring Compliance with Judgment*, *supra* note 231, Considering Clause 36.

<sup>233</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 14, paras. 149 and 150; *Case of Godínez Cruz v. Honduras. Merits*. Judgment of January 20, 1989. Series C No. 5, paras. 157 and 158, and *Case of Fairén Garbí and Solís Corrales v. Honduras. Merits*. Judgment of March 15, 1989. Series C No. 6, para. 147.

<sup>234</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*, *supra* note 14, para. 134; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 36, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 41.

<sup>235</sup> Cf. *Case of Cantoral Huamaní and García Santa Cruz v. Peru*, *supra* note 195, para. 87, and *Case of Kawas Fernández v. Honduras*, *supra* note 11, para. 79, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 41.

<sup>236</sup> Cf. *Case of Heliodoro Portugal v. Panama*, *supra* note 1, para. 181, and *Case of Trujillo Oroza v. Bolivia. Monitoring Compliance with Judgment*, *supra* note 231, Considering Clause 39.

201. Furthermore, the Court has already established in another case against the State of Bolivia that because this is a crime of an ongoing nature, in other words, its execution is prolonged over time, when the definition of forced disappearance of persons enters into effect, because the criminal conduct continues, the new law is applicable without representing its retroactive application.<sup>237</sup> Similar rulings have been issued by several of the highest courts of the States of the American continent, such as the Supreme Court of Justice of Peru, the Constitutional Court of Peru, the Supreme Court of Justice of Mexico, the Supreme Court of Justice of Venezuela and the Constitutional Court of Colombia,<sup>238</sup> States which, like Bolivia, have ratified the Convention on Forced Disappearance.

202. Moreover, the Court considers it appropriate to reiterate that with regard to judicial practices, this Court has established in its jurisprudence that it is aware that domestic judges and courts are subject to the rule of law and that, therefore, they are compelled to apply the regulations in force within the legal system.<sup>239</sup> But once a State has ratified an international treaty such as the American Convention, its judges, as part of the State's apparatus, are also required to ensure that the effects of the provisions of the Convention are not diminished by the application of laws contrary to its object and purpose and that lack legal effects. In other words, the Judiciary shall exercise "conventionality control" *ex officio* between domestic regulations and the American Convention, clearly in the context of its respective competences and the corresponding procedural regulations. To this end, the Judiciary shall consider not only the treaty but also the interpretation thereof made by the Court, the final arbiter of the American Convention.<sup>240</sup>

203. In this case, the Court notes that by decision of First Instance Court delivered by the Seventh Civil and Commercial Court of Santa Cruz on December 6, 2008 (*supra* para. 148), some of the accused were sentenced to two years and eight months in prison and a fine equivalent to 100 days for the crime of aggravated unlawful deprivation of liberty against Mr. José Luis Ibsen Peña, *inter alia*; one of the accused was sentenced to imprisonment as an accomplice in the crime of unlawful deprivation of liberty of Mr. José Luis Ibsen Peña; one accused was acquitted of the crime of unlawful deprivation of liberty on the grounds of incomplete evidence, and all the accused were acquitted of the crimes of degrading treatment and torture, criminal association, criminal organization, murder and obstruction, because "the attributable act d[id] not constitute a crime pursuant to the statute of limitations on the action, provided for by Article 29 of Law 1970, and because of the principle of non-retroactivity of the law." Regarding Mr. Rainer Ibsen Cárdenas, the judgment indicates that "on the night of June 19, 1972, the commission of the crime of

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<sup>237</sup> Cf. *Case of Trujillo Oroza v. Bolivia. Monitoring Compliance with Judgment*, *supra* note 231, Considering Clause 38. This was previously mentioned by the Court in the *Case of Tiu Tojin v. Guatemala*, *supra* note 209, para. 87.

<sup>238</sup> Cf. Supreme Court of Justice of Peru, judgment of March 20, 2006, Case file: 111-04, D.D Cayo Rivera Schreiber. Constitutional Court of Peru, judgment of March 18, 2004, case file N.º 2488-2002-HC/TC, para. 26 (At <http://www.tc.gob.pe/jurisprudencia/2004/02488-2002-HC.html>) and judgment of December 9, 2004, case file N.º 2798-04-HC/TC, para. 22 (At: <http://www.tc.gob.pe/jurisprudencia/2005/02798-2004-HC.html>). Supreme Court of Justice of Mexico, Thesis: P./J. 49/2004, Weekly Publication of the Federal Judiciary and its Gazette, Ninth Period, Full Chamber. Constitutional Chamber of the Supreme Court of Justice of the Bolivarian Republic of Venezuela, judgment of August 10, 2007. Constitutional Court of Colombia, Judgment C-580/02 of July 31, 2002.

<sup>239</sup> Cf. *Case of Almonacid Arellano et al. v. Chile*, *supra* note 200, para. 124, and *Case of La Cantuta v. Peru*, *supra* note 89, para. 173, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 339.

<sup>240</sup> Cf. *Case of Almonacid Arellano et al. v. Chile*, *supra* note 200, para. 124; *Case of Boyce et al v. Barbados. Preliminary Objection, Merits, Reparations and Costs*. Judgment of November 20, 2007. Series C No. 169, para. 78, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 339.

deprivation of liberty in relation to this citizen ceased, [...] or when the place where his mortal remains were located was announced, namely, on February 19, 1983; therefore, there is no doubt about the application of the statute of limitations in relation to the time elapsed since the public identification of the place where his remains were located, in the city of La Paz on February 19, 1983, and the filing of the first accusation or legal action on January 11, 1999, more than fifteen years later.”<sup>241</sup>

204. Additionally, the Court emphasizes that in the appeal judgment on the previous ruling, of September 28, 2009, the First Civil Chamber of the Superior District Court of Santa Cruz considered that given that the proceeding was initiated in 1999, it was not appropriate to classify the crime as forced disappearance of persons, “since the law [is] not retroactive,” and the crime was classified by means of its incorporation into the “Criminal Code in force by Law 3326 of [...] January 18, 2006, thereby complying with the requirements of the Judgment delivered by the Court [...].” In that decision of the Civil Chamber, it was also mentioned that the proceedings “deal with complaints about crimes of deprivation of liberty, degrading treatment and torture, criminal organization, murder and concealment [,] and complicity [...].”<sup>242</sup> Consequently, the Chamber confirmed the statute of limitations on the criminal action related to the crimes of degrading treatment and torture, criminal association, criminal organization, murder and concealment, as well as the conviction of some of the persons accused for the crimes of unlawful deprivation of liberty and complicity in that crime.

### ***B.5.1. Ruling by the Supreme Court of Justice***

205. On June 2, 2010, the Second Criminal Chamber of the Supreme Court of Justice of the Nation (hereinafter, “Second Criminal Chamber”) issued a preliminary ruling, in the context of the substantiation of several appeals for judicial review filed, *inter alia*, by Ms. Rebeca Ibsen Castro, whereby the court annulled the previous decisions decreed (*supra* paras. 203 and 204). In its ruling it is clear that the Second Criminal Chamber ordered the processing of the action “until the corresponding final resolution was issued,” and that, among other considerations, it established that “[t]he judgment issued expressly regarding that case, [...] on February 2, 2000 by the Inter-America Court, [states] that the State has the obligation to eliminate the obstacle of the statute of limitations on criminal actions for the purpose of punishing those responsible for the crime of forced disappearance of persons.”<sup>243</sup>

206. Likewise, on August 16, 2010, the Second Criminal Chamber issued a judgment condemning two of those accused of the crime of forced disappearance, and another of complicity in the perpetration of the crime. From the Judgment it is clear that the Chamber confirmed the acquittal of another of the defendants due to lack of “full proof beyond any reasonable doubt.” Nevertheless, this Court observes that this Judgment establishes that “in relation to the murder of Mr. Rainer Ibsen Cárdenas, due to the violent

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<sup>241</sup> Cf. Judgment of the Seventh First Instance Civil and Commercial Court of Santa Cruz of December 6, 2008 (Case file 37/2000, Volume XXVII, pages 10695 to 10755 and 19507 to 19567).

<sup>242</sup> Cf. Decision of the First Civil Chamber of the Superior Court of District of Santa Cruz of 28 September 2009 (File of annexes to the response to the petition, Annex 15, page 11338).

<sup>243</sup> Cf. Judgment of the Second Chamber of the Supreme Court of Justice of June 2, 2010 (Merits file, volume 5, pages 1967 to 1968). On reading this decision one finds it makes reference to the Judgment of the Court in the case of *Trujillo Oroza v. Bolivia. Reparations and Costs*. Judgment of February 27, 2002. Series C No. 92.

manner in which it occurred and the circumstances under which he was detained, as well as the charges of inhumane treatment and torture of Mr. José Luis Ibsen Peña [...], it is not feasible to apply the statute of limitations given that such acts are classified as crimes against humanity within [...] the Statute of Rome [...] because of the form and circumstances under which they occurred, the perpetrators of the crimes and the ruling government at that time, characterized by the judicial disrespect for rights and liberties [...], it is not possible to apply the [Statute of Rome] because the *ratione temporis* jurisdiction to prosecute applies only to crimes committed after July 17, 1998, [and Bolivia] ratified that instrument [...] on June 27, 2002 [, ...]. Hence, the provisions of the Statute of Rome" cannot be applied to the murder of Mr. Rainer Ibsen Cárdenas and to the degrading treatment and tortures "suffered by Mr. José Luis Ibsen Peña."<sup>244</sup>

207. This Court emphasizes that the recent ruling by the Second Criminal Chamber regarding the application of the crime of forced disappearance for the acts suffered by Mr. José Luis Ibsen Peña is in accordance with the jurisprudence of this Court. Nevertheless, as regards the acts related to the torture and inhumane treatment of Mr. José Luis Ibsen Peña, and the murder of Mr. Rainer Ibsen Cárdenas, this Court considers it appropriate to recall that it has already indicated that in criminal matters, the statute of limitations determines the termination of punitive claims due to the time elapsed, and that, generally, it limits the punitive power of the State to prosecute illegal conduct and to sanction its perpetrators.<sup>245</sup> However, in certain circumstances, international law considers statutes of limitations to be inadmissible and inapplicable,<sup>246</sup> along with amnesty laws and exemptions from liability,<sup>247</sup> so as to maintain the State's punitive power in effect for actions which, because of their seriousness, must be stopped and also to avoid their repetition.

208. In the present case, this Court finds that, regardless of whether an action is considered a crime against humanity by a domestic court, in order to analyze the application of the statute of limitations to acts such as torture or murder committed within a political and social context of massive and systematic human rights violations, as has already been established in this Judgment and acknowledged by the State, the special obligation of the State regarding such conduct is to carry out the necessary investigations and find those responsible so that these crimes do not go unpunished.

209. In this regard, the Court appreciates the decision of the Second Criminal Chamber regarding the application of the crime of forced disappearance. However, faced with the continuing impunity of others responsible for the murder of Mr. Rainer Ibsen Cárdenas and the torture of Mr. José Luis Ibsen Peña, this Court considers that the State violated Article 8(1) of the American Convention.

210. The Court also reiterates that, as previously mentioned in this Judgment, given the facts and context in which the facts occurred, it is reasonable to assume that there are

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<sup>244</sup> Cf. Judgment of the Second Criminal Chamber of the Supreme Court of Justice on August 16, 2010 (Merits file, volume 5, pages 2000 to 2001 and 2005 to 2006).

<sup>245</sup> Cf. *Case of Albán Cornejo et al. v. Ecuador. Merits, Reparations and Costs*. Judgment of November 22, 2007. Series C No. 171, para. 111.

<sup>246</sup> Cf. *Case of Albán Cornejo et al. v. Ecuador.*, *supra* note 245, para. 111.

<sup>247</sup> Cf. *Case of Barrios Altos v. Peru. Merits*. Judgment of March 14, 2001. Series C No. 75. paras. 41; *Case of Anzualdo Castro v. Peru*, *supra* note 44, para. 182, and *Case of "Las Dos Erres" Massacre v. Guatemala*, *supra* note 7, para. 129.



other perpetrators in the case. In this sense, the State has the obligation to continue the investigation and determine the corresponding criminal responsibilities." In the investigations and the criminal proceedings that might be initiated in this respect, if appropriate, in addition to other crimes that may be applicable, the crime of forced disappearance of persons should also be considered, according to Bolivian legislation and the jurisprudence of this Court.

211. Moreover, mindful of what has been established in this Judgment, the forced disappearance of Mr. Rainer Ibsen Cárdenas is deemed to have formally ceased in 2008 (*supra* para. 92), and therefore the aforementioned criminal definition is applicable, from a criminal law perspective, since it was implemented from 2006, the year when this crime was classified under Bolivian legislation, and until 2008. The Court notes, as it has already done in this Judgment (*supra* paras. 161, 203, 204 and 206) that the events which happened to Mr. Ibsen Cárdenas had not been formally investigated, and that the domestic criminal proceeding only determine some responsibilities regarding Mr. José Luis Ibsen Peña, but not regarding his son Rainer Ibsen Cárdenas. In this sense, the State has the obligation to promote the relevant criminal investigation into the forced disappearance of Mr. Rainer Ibsen Cárdenas, without prejudice to other crimes that may be appropriate [to investigate], according to Bolivian legislation and mentioned by the Court in this Judgment, and it must ensure that, in any criminal proceedings that may be initiated, the crime of forced disappearance of persons and the consequences established by domestic law are applied. The Court recalls that the obligation to investigate, prosecute and, if applicable, punish those responsible for the forced disappearance of a person is an obligation that the States must fulfill *ex officio*.

212. Accordingly, this Court rules that, given the evidence considered in this chapter regarding the forced disappearance of Mr. Rainer Ibsen Cárdenas, the State also violated Article 8(1) of the American Convention.

#### ***B.6. Lack of due diligence in discovering the whereabouts of Rainer Ibsen Cárdenas and José Luis Ibsen Peña***

213. In terms of the procedures put in place to locate the victims' whereabouts, the Commission noted that the available evidence indicates that it was only in 2007, and as a result of repeated requests by the plaintiff, that the State ordered the exhumation of the bodies, which probably included Mr. Rainer Ibsen Cárdenas, despite the fact that from 1983 the State had evidence regarding the location of what were supposedly his remains. Likewise, the Commission stated that the identification of the remains of Mr. Ibsen Cárdenas has had no effect on the criminal proceeding and that no additional tests were ordered to verify the complaints of torture against him. It also stated that, although the discovery of the body demonstrated the falsity of the official version that he was killed in an attempted escape, given that at least three shot wounds were found in the skeletal remains which corresponded to the victim's head, the individuals responsible for security in the Achocalla detention center at the time Mr. Rainer Ibsen was detained were not summoned to testify. Regarding the search for the whereabouts of Mr. José Luis Ibsen Peña, the Commission alleged that, based on the testimony of one of the accused, only one inquiry was conducted during which no steps were taken to ensure the adequate safeguard of the evidence given that the inquiry was carried out using a backhoe, a method that jeopardized the integrity of the material collected. Finally, it indicated that there had been no progress in the identification of what could be his remains, which implies that Mr. Ibsen Peña continues disappeared.

214. In this regard, the Court has established that as part of the obligation to investigate, the State must carry out a reliable search, making all possible efforts to find the whereabouts of the victim, because the family's right to know the fate or whereabouts of the disappeared victim<sup>248</sup> constitutes a measure of reparation and, therefore, is an expectation that the State must satisfy.<sup>249</sup> Clarification of the whereabouts or fate of the disappeared victim is extremely important for the family, because it alleviates the anguish and suffering caused by the uncertainty regarding the whereabouts and fate of their disappeared loved one.<sup>250</sup>

215. The obligation to investigate the whereabouts continues until the person detained is found, until his or her remains appear<sup>251</sup> or, in any case, until there is certainty about his or her fate. In this regard, the Court emphasizes that the obligation of States to investigate cases of forced disappearance is not only limited to the mere determination of the whereabouts or the fate of the disappeared persons or the clarification of what happened, or solely to the investigation leading to determination of the corresponding responsibilities and the eventual punishment of those responsible. Both aspects are correlated and must be present at any investigation of acts such as those of this case.

216. Beyond the information given in the preceding paragraph, the Court notes with concern that, in the domestic sphere, neither the scope nor the content of the general obligation to investigate the forced disappearance of persons is taken into account. The Court emphasizes that, at the public hearing held during the criminal proceeding, Rebeca Ibsen asked the corresponding judge to "require the office of the Public Prosecutor to hand over the evidence found in [La Cuchilla cemetery], [because] it was in the hands of the Prosecutor's Office [and not] in the case file, so that the Judiciary could examine it. Mrs. Rebeca Ibsen referred to remains that probably belonged to the body of Mr. José Luis Ibsen Peña. Regarding this, the representative of the Public Prosecutor's Office stated that "in [the] proceeding [they] w[ere] trying to determine the identity of those who were allegedly guilty of the murder of the persons who were the object of the investigation and [that] the purpose of the excavations [carried out] in La Cuchilla was to discover if they [were] actually these persons, [and that] this became part of the proceedings because [...], according to doctrine and law, [this was necessary] so that, after DNA testing, the remains could be returned to the family to be given Christian burial, because the Public Prosecutor's Office was interested in finding the causal link between the accused and the events that occurred[ and therefore] it was investigating the situation."<sup>252</sup>

217. In this respect, this Court has established that, in the context of the obligation to investigate a death, effective efforts to determine the truth must be demonstrated from

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<sup>248</sup> Cf. *Case of Castillo Páez v. Peru, Reparations and Costs*. Judgment of November 27, 1998. Series C No. 43, para. 90; *Case of La Cantuta v. Peru*, *supra* note 89, para. 231, and *Case of Ticona Estrada v. Bolivia*, *supra* note 1, para. 155.

<sup>249</sup> Cf. *Case of Neira Alegría et al. v. Peru. Reparations and Costs*. Judgment of September 19, 1996. Series C No. 29, para. 69; *Case of La Cantuta v. Peru*, *supra* note 89, para. 231, and *Case of Ticona Estrada v. Bolivia*, *supra* note 1, para. 155.

<sup>250</sup> Cf. *Case of Ticona Estrada v. Bolivia*, *supra* note 1, para. 155.

<sup>251</sup> Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 143.

<sup>252</sup> Cf. Minutes of the hearing to receive evidence from the parties, on June 17, 2007 (Case file 37/2000, Volume XXII, pages 9469 to 9470 and 18277 to 18278).

the outset of the inquiry.<sup>253</sup> Accordingly, the Court has outlined the guiding principles to be observed in the investigation of a violent death. At the very least, the State authorities who conduct an investigation of this type must try, *inter alia*: (i) to identify the victim; (ii) to recover and preserve the body of evidence related to the death in order to assist any possible criminal investigation of the perpetrators; (iii) to identify possible witnesses and obtain their testimony concerning the death under investigation; (iv) to determine the cause, manner, place and time of death, as well as any pattern or practice that could have caused the death; (v) to distinguish between natural death, accidental death, suicide and murder. In addition, the scene of the crime must be examined thoroughly, and any human remains must undergo meticulous autopsies and analyses by competent professionals using the most appropriate procedures.<sup>254</sup>

218. In relation to the search for the whereabouts of Mr. José Luis Ibsen Peña, it has already been established (*supra* para. 111) that, on August 22, 2006, in the La Cuchilla cemetery in Santa Cruz, following an extraction conducted by a backhoe, the skeletal remains of a cranium, kneecaps, arm bones, a femur, and a lower jawbone with four teeth were found. On September 5, 2006, the Seventh Civil Court was informed that the skeletal remains were being examined in the Forensic Investigations Institute to confirm identity. To date, four years later, the Court has not received any information from the parties as to whether the remains have finally been identified.

219. In another case against Bolivia, the Court has already indicated the crucial importance of the manner in which the actions taken in the search for the remains presumed to be human are conducted. Furthermore, the proper collection and preservation of such remains are essential conditions for determining what happened to the victims and, consequently, for the investigation, prosecution and eventual punishment of those responsible, as the passage of time can have irreversible effects on the remains when they are not conserved properly. In this regard, the States should conduct the necessary forensic tests to identify the remains as soon as possible.<sup>255</sup>

220. In this case, it is evident that the State did not conduct the search to locate Mr. José Luis Ibsen Peña immediately. Likewise, without prejudging the possible identity of the person to whom the remains found in La Cuchilla correspond (*supra* para. 218), it is also clear that the State did not promptly perform the pertinent analysis to determine or rule out that they belong to Mr. Ibsen Peña. Moreover, search procedures to locate his whereabouts have not continued. All this constitutes a clear violation of Article 8(1) of the American Convention.

221. In this regard, the Court takes into account that during the processing of this case, the State reported that the Council for the Clarification of Forced Disappearances is currently implementing a project aimed at resolving the cases of forced disappearance over the period of 1964-1982. This project began on February 20, 2008, and is divided into

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<sup>253</sup> Cf. Case of Servellón García et al. v. Honduras. Merits, Reparations and Costs. Judgment of September 21, 2006. Series C No. 152, para. 120; Case of Zambrano Vélez et al. v. Ecuador. Merits, Reparations and Costs. Judgment of July 4, 2007. Series C No. 166, para. 121, and Case of González et al. ("Cotton Field") v. Mexico, *supra* note 60, para. 300.

<sup>254</sup> Cf. Case of Juan Humberto Sánchez v. Honduras. Preliminary Exceptions, Merits, Reparations and Costs. Judgment of June 7, 2003. Series C No. 99, para. 127; Case of Kawas Fernández v. Honduras, *supra* note 11, para. 102, and Case of González et al. ("Cotton Field") v. Mexico, *supra* note 60, para. 300.

<sup>255</sup> Cf. Case of Trujillo Oroza v. Bolivia. Monitoring Compliance with Judgment, *supra* note 231, Considering clauses 15 and 16.

three phases, the second of which includes the search for those who disappeared during the government of Hugo Banzer Suárez. The State also specified that this project has been approved by authorities of the Council for the Clarification of Disappearances and that its funding is guaranteed, *inter alia*, by virtue of international cooperation.

222. As previously indicated in relation to another case against the Bolivian State, the Court appreciates the general measures adopted by the State regarding the whereabouts of the remains of the victims of the forced disappearances that occurred in Bolivia during the 1970s.<sup>256</sup> Nevertheless, in this case, the effective search for the remains of Mr. José Luis Ibsen Peña cannot depend solely on the actions of the Inter-Institutional Council, because the State's obligation exists during the entire procedure. This means that the State must continue the search for Mr. José Luis Ibsen Peña in the most expedient and effective manner.

223. Moreover, this Judgment has already stated that the case file reveals that since February 28, 1983, the National Commission for Investigation requested the Public Prosecutor's Office to exhume and perform autopsies on six corpses, among them Mr. Rainer Ibsen Cárdenas (*supra* para. 87). However, the requested examinations were never performed. Likewise, the Court notes that, several years later, the remains of Mr. Rainer Ibsen Cárdenas were exhumed, thanks in great part to the insistence of his family, and Ms. Rebeca Ibsen Castro in particular. In fact, the case file shows that, on October 9, 2003, April 1, 2004, and October 20, 2006, Ms. Rebeca Ibsen Castro requested the First Instance Court of Warnes and the Seventh Civil Court, respectively, to order and proceed with the autopsy of the remains allegedly corresponding to Mr. Rainer Ibsen Cárdenas which, at that time, were in the ASOFAMD mausoleum in the La Paz General Cemetery (*supra* para. 89). In addition, she requested that paleontological, forensic, and genetic testing be carried out on these remains.<sup>257</sup> Furthermore, from documents dated December 13, 2006, and January 9, 2007, it appears that Mr. Tito Ibsen Castro requested the Special Prosecutor of the District of La Paz to set a date for the exhumation and verification of the remains that presumably corresponded to Mr. Rainer Ibsen Cárdenas.<sup>258</sup> Finally, as already indicated in this Judgment, after a 2007 excavation of remains which were not those of Mr. Ibsen Cárdenas (*supra* paras. 89 to 92), another exhumation was performed on February 20, 2008, of the remains of other bodies located in the ASOFAMD mausoleum<sup>259</sup> and, through genetic testing, one of these was found to be that of Mr. Ibsen Cárdenas.

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<sup>256</sup> *Case of Trujillo Oroza v. Bolivia. Monitoring Compliance with Judgment, supra* note 231, Considering clause 19.

<sup>257</sup> *Cf.* Brief submitted by Rebeca Ibsen Castro addressed to the First Instance Judge of Warnes province, on October 9, 2003 (Case File 37/2000, Volume X, pages 5321 to 5322 and 14080 to 14081); brief submitted by Rebeca Ibsen Castro addressed to the First Instance Judge of Warnes province, on April, 2004 (Case File 37/2000, Volume XII, page 5856), and brief submitted by Rebeca Ibsen Castro addressed to the Seventh Civil and Commercial First Instance Judge, on October 20, 2006 (Case File 37/2000, Volume XXI, pages 9094 to 9095 and 17894 to 17895).

<sup>258</sup> *Cf.* Brief addressed to the "representative of the Office of the Public Prosecutor" by Tito Ibsen Castro, on December 13, 2006, and January 9, 2007 (File of annexes to the petition, appendix 24, pages 2263 to 2264). Although both documents are apparently incomplete, the State did not challenge their authenticity.

<sup>259</sup> *Cf.* Final Report on the Exhumations and Forensic Anthropological Analysis of the Remains buried at the ASOFAMD Cemetery, B Sector, La Paz General Cemetery (File of annexes to the final written arguments of the State, volume II, pages 20221 to 20421, and Case file 37/2000, Volume XXV, pages 10106 to 10036 and 18897 to 19108).

224. From the foregoing, the Court observes that despite the request in 1983 for an “autopsy” to be performed on the remains that apparently belonged to Mr. Rainer Ibsen Cárdenas, it was not until 2007 that the State carried out the first exhumation.

225. In this regard, the Court emphasizes that it is essential, when conducting the investigation and for the prosecution and eventual punishment of those responsible, to have proved irrefutably that the remains excavated in 2008 belong to Mr. Rainer Ibsen Cárdenas. However, the Court notes that, even though genetic and anthropological tests were performed, the location and subsequent identification of the remains of Mr. Ibsen Cárdenas were primarily aimed at their being returned to the family and not to performing other tests whose results would provide elements to clarify what happened. As already mentioned in this Judgment, the remains were handed over to Tito Ibsen Castro on November 11, 2008 (*supra* para. 91). Consequently, although there is evidence concerning the manner and circumstances in which Mr. Rainer Ibsen Cárdenas could have died, so far it has not been possible to establish this unequivocally, which has adversely affected the determination of the corresponding criminal responsibilities and the right to know the truth. Indeed, the criminal investigation should be channeled in this direction and this obligation exists until the circumstances of Mr. Ibsen Cárdenas’ death are judicially established. This should also result in an investigation to determine the corresponding responsibilities, taking into account the specific context in which the events occurred. The Court has already referred to this extensively in this Judgment (*supra* para. 171). Given that no investigation has been conducted into what happened to Mr. Rainer Ibsen Cárdenas based on the analysis of his remains or of those possibly responsible, the Court finds that the State violated Article 8(1) of the American Convention.

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226. Based on the foregoing, the Court finds that the domestic criminal proceedings have not constituted an effective recourse to guarantee: a) access to justice, the investigation and eventual punishment of those responsible for the events related to the forced disappearances of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña within a reasonable time; b) the investigation of the latter’s whereabouts and the investigation of what happened to Mr. Rainer Ibsen Cárdenas and c) comprehensive reparation for the consequences of these violations. Therefore, based on the foregoing and the broad acceptance of the State, the Court concludes that Bolivia is responsible for violating the judicial guarantees and judicial protection embodied in Articles 8(1) and 25(1) of the American Convention, in relation to Articles 1(1) and 2 thereof, to the detriment of Martha Castro Mendoza and of Rebeca, Tito and Raquel, all with the surname Ibsen Castro, as well as the failure to comply with the obligation embodied in Article 1(b) of the Convention on Forced Disappearance.

## **VIII**

### **RIGHT TO EQUAL PROTECTION (ARTICLE 24 OF THE AMERICAN CONVENTION)**

227. The representatives alleged that they had not received any support or advice from the Bolivian Ombudsman and stressed that it had sponsored another case before the Inter-American system. They also indicated that the Senate of the Republic had granted a pension for life to the widows of the Mirista leaders who were murdered on January 15, 1981. Finally, they alleged that, in *Trujillo Oroza v. Bolivia*, the State “from the outset” acknowledged its international responsibility, while in this case, it withdrew from the

amicable settlement procedure and continued opposing the processing of the case, causing greater pain, anguish and desperation to the victims' family.

228. The Court has already indicated that the presumed victim, his family, or his representatives, can invoke rights other than those included in the Commission's petition based on the facts submitted by the latter.<sup>260</sup> Applying this jurisprudence to the specific case, it can be noted that the facts referred to by the representatives relating to the State's withdrawal from the amicable settlement procedure and to the supposed pension for life for the widows of the Mirista leaders do not form part of the factual basis of the petition. Consequently, the Court will not examine them or rule on them.

229. Nevertheless, regarding the argument concerning the lack of support and advice from the Ombudsman, the Court notes that in the petition, the Commission indicated in general that on December 20, 2002, "Mr. Tito Ibsen Castro contacted the Ombudsman's Office in order to report the lack of response from the different authorities that he had approached in his search for justice for what happened to his brother and his father." However, the Commission did not make any plea in this regard.

230. The Court considers that the representatives' argument is too general and lacks sufficient foundation to permit the Court to rule on the alleged violation. Consequently, the Court will not rule on this issue.

## **IX REPARATIONS (Application of Article 63(1) of the Convention)**

231. Based on the provisions established in Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has produced damage entails the obligation to repair this adequately,<sup>261</sup> and that this provision "embodies a customary norm that constitutes one of the fundamental principles of contemporary international law on State responsibility."<sup>262</sup> In this chapter, the Court will examine the relevant claims presented by the Commission and the representatives, as well as the arguments submitted by the State in this regard, in order to rule on measures intended to repair the damage caused to the victims.

### **A. Injured party**

232. Under Article 63(1) of the American Convention, the injured party is considered to be the person who has been declared a victim of the violation of any right embodied therein. As established in the preceding chapters, in this case the victims are: Messrs. Rainer Ibsen Cárdenas, José Luis Ibsen Peña, Martha Castro Mendoza, Rebeca Ibsen

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<sup>260</sup> Cf. *Case of the "Five Pensioners" v. Peru*, *supra* note 164, *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 33, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 49.

<sup>261</sup> Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and Costs*. Judgment of July 21, 1989. Series C No. 7. para. 25; *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 227, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 211.

<sup>262</sup> Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*. Judgment of May 26, 2001. Series C No. 77, para. 62; *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 227, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 211.

Castro, Tito Ibsen Castro and Raquel Ibsen Castro (*supra* paras. 122, 133 and 226); therefore they will be considered beneficiaries of the reparations ordered by this Court.

**B. *Obligation to investigate the facts and to identify, prosecute and, if applicable, punish those responsible***

233. The Commission argued that the State should “investigate with due diligence, seriously, impartially and thoroughly, the forced disappearances of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña, in order to clarify the historic truth of the facts and to prosecute and punish all those responsible,” including both the instigators and the perpetrators. It stressed that the internal proceedings should be held “based on the crime of forced disappearance,” which is not subject to the statute of limitations. Likewise, it indicated that the State should “provide information on the results” of their investigations, and that “the family of the victims should have full access and capacity to act at all stages [of the proceedings] [...], pursuant to domestic law and the provisions of the American Convention.” Finally, the Commission asked the Court to order the results of the proceedings be disclosed publicly.

234. The representatives asked the Court to order the State to investigate what happened to Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña, as well as to punish “the instigators and the perpetrators” and “those responsible for the delay in and obstruction of justice that occurred in the case [...].” In addition, they asked the Court to order the State “to publish and to disseminate” in “different media the results of the internal proceedings.”

235. For its part, the State pointed out that the Ministry of Foreign Affairs “made an observation to the Supreme Court concerning the international parameters of International Human Rights Law that should be taken into account” while deciding motions to dismiss appeals and annulment filed against the decision in Court Order No. 466/2009, which in part confirmed the conviction of the Seventh First Instance Civil and Commercial Court of Santa Cruz of December 6, 2008. In addition, the State indicated that, in the criminal proceedings underway in the city of Sucre, “it has been ordered [,] by means of a procedural decision of April 6, 2010, that the criminal proceedings [...] be given priority [...]” because of the violations to the rights of the victims; and that on May 18, 2010, the Appeals Prosecutor asked the Second Criminal Chamber to give priority to the these criminal proceedings.

236. In Chapter VII of this Judgment, the Court established, *inter alia*, the State’s delay in opening the investigation into the facts of this case; the absence of an investigation into what happened to Mr. Rainer Ibsen Cárdenas; the transfer of the burden of proof to the plaintiffs in the criminal proceeding for the acts perpetrated against Mr. José Luis Ibsen Peña; the impunity of the acts of torture and inhumane treatment committed against the latter; and the murder of Mr. Rainer Ibsen Cárdenas (*supra* paras. 160 to 163, 169 to 174 and 208 to 212). This has resulted in the ineffectiveness of the investigations and of the proceedings to clarify the facts in this case, prosecute, and, where applicable, punish all those responsible within a reasonable time and so as to examine completely and thoroughly the multitude of damages caused to the victims.<sup>263</sup>

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<sup>263</sup> Cf. *Case of the “Las Dos Erres” Massacre v. Guatemala*, *supra* note 7, para. 231, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 232.

237. Taking into account the above, as well as this Court's jurisprudence,<sup>264</sup> the Court orders the State to continue searching for the whereabouts of Mr. José Luis Ibsen Peña; this entails the prompt performance of the necessary analysis to determine or rule out that the remains found in La Cuchilla (*supra* para. 111) are his. In addition, the State must remove all factual or legal obstacles that allow impunity in this case,<sup>265</sup> and initiate the necessary investigations to identify all those responsible for the detention and disappearance of Mr. Ibsen Peña. Furthermore, the State must open the pertinent investigation to determine what happened to Mr. Rainer Ibsen Cárdenas, and to effectively apply the penalties and consequences established by law. The State must direct and conclude the pertinent investigations and proceedings within a reasonable time in order to establish the entire truth about the events. In particular, the State must:

a) initiate the pertinent investigations related to the events that occurred to Messrs. Ibsen Cárdenas and Ibsen Peña, taking into account the systematic pattern of human rights violations at the time, in order to ensure that the relevant proceedings and investigations are conducted in consideration of the complexity of these events and the context in which they occurred, avoiding omissions in gathering evidence and in following up on logical lines of investigation;

b) determine the identities of both the instigators and the perpetrators of the detention and subsequent forced disappearances of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña. In addition, since this case involves serious human rights violations and considering the nature of the events, the State may not apply amnesty laws or argue statute of limitations, non-retroactivity of the criminal law, *res judicata*, or the *non bis in idem* principle or any other similar mechanism that excludes responsibility, in order to exempt itself from this obligation; and

c) ensure that the competent authorities conduct the corresponding investigations *ex officio* and, to this end, that they have and use all necessary logistical and scientific resources for gathering and processing evidence and, in particular, have the authority to access the pertinent documentation and information to investigate the facts denounced and to conduct promptly all essential actions and inquiries to clarify what happened to Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña; that those who take part in the investigation, including the victims' family, witnesses and judicial authorities, have appropriate guarantees for their safety and abstain from acts that obstruct the progress of the investigative proceedings.

238. Finally, based on its case law,<sup>266</sup> the Court rules that the State must ensure the victims' family full access and capacity to act at all stages of the investigation and prosecution of those responsible, in accordance with domestic law and the provisions of the

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<sup>264</sup> Cf. *Case of Baldeón-García v. Peru. Merits, Reparations and Costs*. Judgment of April 6, 2006. Series C No. 147, para. 199; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 336, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 240.

<sup>265</sup> Cf. *Case of Myrna Mack Chang v. Guatemala*, *supra* note 6, para. 277; *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 235, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 216.

<sup>266</sup> Cf. *Case of the Caracazo v. Venezuela. Reparations and Costs*. Judgment of August 29, 2002. Series C No. 95, para. 118; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, paras. 247 and 334, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 237.



American Convention. In addition, the results of the corresponding proceedings must be publicized so that Bolivian society may know the facts of this case, as well as those responsible for it.<sup>267</sup>

### **C. Measures of satisfaction, rehabilitation and guarantees of non-repetition**

#### **C.1 Determination of the whereabouts of José Luis Ibsen Peña**

239. The Commission indicated that the State “should initiate an exhaustive search to discover the whereabouts of Mr. José Luis Ibsen Peña, followed by the identification of his remains and their return to his family, if applicable.”

240. On this point, the representatives asked the Court to order the State to implement the necessary measures culminating with the return of the remains of Mr. José Luis Ibsen Peña to his family.

241. In this regard, the State indicated that the Inter-Institutional Council for the Clarification of Forced Disappearances (hereinafter, “CIEDEF”) “is completing the second phase” of the project entitled “Contribution to the Full Exercise of Human Rights and Enhancement of Democracy: Clarification of the cases of forced disappearances during the period 1964-1982.” According to the State, one of the objectives of this project “in 2010 is to locate the remains of Mr. José Luis Ibsen Peña”; nevertheless, “in its 2010 Annual Plan of Operations, separate from the project of locating the whereabouts of those who were forcibly disappeared, CIEDEF has proposed [...] a short-term plan to search for and identify the remains of victims whose cases are being examined by international organizations,” including Mr. José Luis Ibsen Peña. Therefore, the State asked the Court “to recognize its willingness to find the remains [of Mr. José Luis Ibsen Peña].”

242. On this point, the Court has taken a positive view on the State’s decision to give priority to the search for Mr. José Luis Ibsen Peña. In this regard, it is necessary for the State to conduct a serious search, displaying its best effort to clarify his whereabouts as soon as possible. The Court emphasizes that Mr. Ibsen Peña disappeared almost thirty-seven years ago, so that it is a reasonable expectation of his family that the State undertake effective measures to discover his whereabouts. If the measures carried out by the State should determine that Mr. Peña is deceased, the previously identified remains must be delivered to his family as soon as possible and without any cost. In addition, the State must cover the cost of the funeral, if applicable, as agreed with the family.<sup>268</sup>

#### **C.2 Publication of the relevant parts of this Judgment and public dissemination**

243. The Commission requested that the Court order the publication of the Judgment in a newspaper with national circulation. Likewise, the representatives asked the Court to order the State to “publish and disseminate” this Judgment “in different media.” For its part, the State “indicate[d] that [it] will publish the Judgment delivered by [this] Court in a newspaper with national circulation.”

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<sup>267</sup> Cf. *Case of the Caracazo v. Venezuela. Reparations and Costs.* supra note 266, para. 118; *Case of Chitay Nech et al. v. Guatemala*, supra note 6, para. 237, and *Case of Manuel Cepeda Vargas v. Colombia*, supra note 6, para. 217.

<sup>268</sup> Cf. *Case of Anzualdo Castro v. Peru*, supra note 44, para. 185, and *Case of Radilla Pacheco v. Mexico*, supra note 8, para. 241.

244. The Court appreciates the State's offer regarding this form of reparation. However, as it has ordered on other occasions,<sup>269</sup> the Court considers that the State must publish, once only, in the Official Gazette, paragraphs 1 to 5, 23 to 29, 33, 34, 36 to 38, 50 to 57, 67, 68, 71 to 75, 80 to 82, 84 to 92, 94, 102 to 111, 115, 116, 118, 119, 122, 126, 128 to 133, 155 to 163, 165 to 174, 177, 178, 180 to 184, 189 to 191, 193 to 195, 197 to 202, 205 to 212, 214 to 226, 231 and 232; all these including the titles of each chapter and the respective section, without the footnotes, together with the operative paragraphs of this Judgment. Furthermore, it must publish in another newspaper with widespread national circulation, the official summary of the Judgment issued by this Court.<sup>270</sup> In addition, as the Court has ordered on previous occasions,<sup>271</sup> this Judgment must be published in its entirety on an appropriate official web site where it must remain available for one year, taking into account the characteristics of the publication the State is ordered to make. The publications in the newspapers and on the Internet must be made within a period of six and two months, respectively, as of the date when this Judgment is issued.

### **C.3 Measures in memory of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña**

245. The Commission requested that the Court order the State "to undertake a project to recover the historical memory" of Messrs. Ibsen Cárdenas and Ibsen Peña.

246. The representatives asked the Court to order the State to "carry out major projects, of sufficient magnitude to recover the historical memory" of the victims. Also, regarding the act of compensation and the State's designation of a traffic circle in which a plaque was placed in commemoration of the Ibsen Family (*infra* paras. 247 and 249), the representatives indicated that the State named the traffic circle without consulting the family, and that "the name [...] 'Ibsen Family' distorts the essence of the act of recognition and redress, because it includes the family's living members." They also alleged that the traffic circle is "marginal" and will never be visited, because it is "at the bottom of a hill," just a short distance from a rubbish dump, and "only permits vehicular traffic." Thus, they requested that the State name "a significant urban [structure]," such as "an avenue, a monument [or] a square," after the two disappeared victims, and install "a plaque explaining" the historical context in which the events of the case occurred. Regarding the commemorative postal stamp offered by the State (*infra* paras. 247 to 248), the representatives expressed their disagreement based on the absence of references to the complete names of the disappeared victims and the dates when they disappeared.

247. The State asked the Court to take a positive view of the public act of acknowledgement of partial international responsibility carried out while the case was being processed before the Commission (*supra* para. 30); the public apology made by the Vice Minister of Justice and Fundamental Rights at the hearing held on April 13, 2010 (*supra* para. 8); the public act of reparation held on May 21, 2010, to officially name the "Ibsen Family" traffic circle; and also the naming of "30<sup>th</sup> Street in Alto Calacoto Huayña

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<sup>269</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and Costs*. Judgment of November 30, 2001. Series C No. 87, Operative Paragraph 5 d); *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 244, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 220.

<sup>270</sup> Cf. *Case of Chitay Nech*, *supra* note 6, para. 244.

<sup>271</sup> Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Merits, Reparations and Costs*. Judgment of March 1, 2005. Series C No. 120, para. 195; *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 244, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 220.

Jahaira [... as] 'Rainer Ibsen' Street and [of] E2<sup>nd</sup> Street in the same area [... as] 'José Luis Ibsen' Street" in the city of La Paz, as requested by the representatives. The State indicated that although Mr. Tito Ibsen Castro was invited to the "dedication" of the traffic circle, he "did not attend this act of redress [...]." Likewise, it underscored the issuance of a "commemorative postal stamp" of Messrs. Ibsen Cárdenas and Ibsen Peña, which had been submitted to Tito Ibsen Castro on May 18, 2010, for him to choose the design. In this regard, the State indicated that on August 20, 2010, it held a public act that was attended by Messrs. Tito Ibsen Castro, Martha Castro Mendoza and Raquel Ibsen Castro, *inter alia*, where the presentation of postal stamp took place. The State submitted to the Court, *inter alia*, a copy of the postal stamp as well as photographs taken at the public act. Finally, and based on all the above, the State considered that the representatives' claim for a memorial to be erected in memory of the disappeared victims was excessive.

248. On previous occasions, the Court has taken a positive view of acts carried out by States resulting in the recovery on the victims' memory, recognition of their dignity, and comfort for the bereaved family.<sup>272</sup> In this case, the Court assesses positively and accepts the State's acts of acknowledgement of international responsibility and the naming of two streets in the city of La Paz after Messrs. Ibsen Cárdenas and Ibsen Peña. Furthermore, from the information in the files it is inferred that the State and the representatives, in particular, Mr. Tito Ibsen Castro, had already taken some steps with respect to the issuance of a postal stamp to commemorate Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña.<sup>273</sup> Likewise, the information submitted to the Court shows that the State has already delivered the postal stamp to Mr. Tito Ibsen Castro and Mrs. Martha Castro Mendoza. In that regard, the Court takes note of this action and finds that the issuance of this postal stamp contributes to establishing the historical memory in a democratic society and to the satisfaction of the victims.

249. As previously mentioned (*supra* paras. 246 to 247) the State reported that it has already conducted a public act of reparation to officially name a traffic circle as the "Ibsen Family" circle. The Court appreciates the efforts made by the State in this matter. Nevertheless, as it has ordered in other cases,<sup>274</sup> this Court finds that, with such measures of satisfaction, initiatives designed to preserve the memory of victims of human rights violations must be implemented in coordination with their families. In that regard, the Court takes into account that the representatives stated that this act took place without consulting the family members and without their consent. Thus, according to the Court's jurisprudence, in order to raise public awareness and to avoid the repetition of acts such as those that occurred in this case and to preserve the memory of Messrs. Ibsen Cárdenas and Ibsen Peña, the Court considers that the State must reach an agreement with their family on the designation of a public place named after them in which a commemorative

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<sup>272</sup> Cf. *Case of the Pueblo Bello Massacre v. Colombia*, *supra* note 65, para. 254; *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 352, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 223.

<sup>273</sup> The State mentioned that "on Tuesday, May 18, [2001], at offices of the General Directorate of Legal Affairs of the Ministry of Foreign Affairs [,] in the presence of [Mr.] Tito Ibsen Castro, three color designs were shown for one to be selected, [Mr. Tito Ibsen Castro] chose the stamp located at the center of the design sheet, attached to this brief of final arguments." For their part, the representatives mentioned that "after returning from [hearing in] Lima [...] they contacted the Vice Minister [...] and sen[t] a complaint to the Ministry of Foreign Affairs on May 10, 2010, informing them of their opinions, after which they were allowed to make some changes to the postal stamp [,] such as the photograph of José Luis [Ibsen Peña] and the exact dates of the forced disappearances."

<sup>274</sup> Cf. *Case of Benavides Cevallos v. Ecuador. Merits, Reparations and Costs*. Judgment of June 19, 1998. Series C No. 38. para. 48.5; *Case of the "Las Dos Erres" Massacre v. Guatemala*, *supra* note 7, para. 265, and *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 251.

plaque that references this Judgment, the facts of the case, and the circumstances under which they occurred. This must be done within one year of notification of this Judgment.

#### **C.4 Measures of rehabilitation**

250. The Commission asked the Court to order the State “to adopt measures of rehabilitation for the family of the victims[, including] measures of psychological rehabilitation.”

251. The representatives asked that, in general, the Court order the State “[t]o adopt measures of rehabilitation in favor of the victims’ family.” They also pointed out that the Ministry of Health and Sports and the Petroleum Company Health Fund had signed an agreement to provide medical services to the Ibsen family “without the knowledge of [their] legal representative” (*infra* para. 252). Furthermore, they indicated that this contract contained errors and inconsistencies in relation to the personal information of the beneficiary family, which could result in non-compliance.

252. On this point, the State indicated that, on April 8, 2010, the Ministry of Health and Sports had signed an Agreement with the Petroleum Company Health Fund entitled “Inter-Institutional agreement for the Provision of Medical Services to the Members of the Ibsen-Cárdenas [*sic*] Family,” in order to: a) provide medical health services to the Ibsen family; b) provide medicines and supplies required for the medical treatment and care of the beneficiaries; and c) establish mechanisms to allow the beneficiaries full access to medical treatment and care.

253. The Court considers it appropriate to order the State to provide free, immediate, adequate and effective medical, psychological or psychiatric care, through its specialized public health institutions to the victims requesting it. To this end, the specific needs of the beneficiaries must be taken into consideration through a prior physical and psychological assessment. Furthermore, the respective treatments must be provided in Bolivia for the time necessary and must include the free provision of any medicines that may be required.<sup>275</sup>

254. The Court considers positive the steps taken by the State to provide medical care to the victims in this case (*supra* para. 252). In relation to the “Inter-Institutional Agreement,” the Court has confirmed that this is a document in which the Ministry of Health and Sports agreed with the Petroleum Company Health Fund to provide medical services to members of the Ibsen family. In this regard, referring to the representatives’ arguments (*supra* para. 251), the Court considers that any possible errors in the “Agreement” must be rectified to avoid problems in its implementation that could entail an unnecessary burden for the beneficiaries of the respective medical services. Furthermore, despite the State’s willingness, expressed in its signing of the “Agreement,” the Court considers that said agreement cannot limit or modify the measures ordered in this Judgment, and cannot impose a disproportionate burden on the beneficiaries. In any case, the State’s obligation to comply with this measure of reparation under the terms ordered remains, regardless of the above “Agreement.”

#### **C.5 Training for justice officials and education on human rights**

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<sup>275</sup> Cf. *Case of Barrios Altos v. Peru. Reparations and Costs. supra* note 269, para. 45; *Case of Chitay Nech et al. v. Guatemala, supra* note 6, para. 255, and *Case of Manuel Cepeda Vargas v. Colombia, supra* note 6, para. 235.

255. The Commission and the representatives asked the Court to order the State “to implement legal, administrative and any other measures necessary to avoid repetition of similar acts, particularly, measures to avoid any lack of diligence in the investigations and to eliminate the legal or other obstacles that have prevented the clarification, identification and punishment of those responsible for the serious human rights violations that occurred during the military dictatorship.” Furthermore, in their final written arguments, the representatives asked the Court to order training on “human rights principles for public officials, members of the Armed Forces and the National Police,” and that the courses offered should “make references to [this] case, *inter alia*.”

256. Meanwhile, the State indicated that it had made “significant progress” regarding the guarantees of non-repetition. In particular, it pointed out that the State’s new Constitution, enacted February 7, 2009, establishes “an extensive list of fundamental rights that reflect the main universal and regional human rights instruments [...]”.<sup>276</sup> It also emphasized that, on September 26, 2008, it ratified the International Convention for the Protection of All Persons from Enforced Disappearance. In addition, during the public hearing held in this case (*supra* para. 8), the State indicated that it would “hold a seminar explaining the State’s international responsibility in this case and others of enforced disappearance.”

257. The Court regards positively the progress made to date by the State regarding the guarantees of non-repetition, as well as the proposal to hold a seminar on forced disappearance (*supra* para. 256). However, the Court notes that in its offer, the State did not specify the scope of the seminar or the persons who would benefit from it. Given the particular circumstances of this case, this Court stresses the importance of strengthening the State’s institutional capacities by training public officials and avoiding repetition of acts such as those examined in this Judgment. Regarding the training on human rights protection, in its case-law the Court has found that this is a way of providing public officials with new areas of knowledge, developing their abilities, allowing them to specialize in selected new areas, preparing them to take on different positions and developing their skills to improve the performance of their assigned tasks.<sup>277</sup>

258. Consequently, notwithstanding the human rights training programs for public officials that already exist in Bolivia, the Court orders the State to implement, within a reasonable time and with the corresponding budget, a training program on the proper investigation and prosecution of acts that constitute forced disappearance of persons, targeted at agents of the Public Prosecutor’s Office and judges of the Bolivian Judiciary with jurisdiction over such events, so that these officials have the required legal, technical and scientific expertise to comprehensively assess the phenomenon of forced disappearance. In particular, in this type of case, the authorities responsible for the investigation must be trained in the use of circumstantial evidence, evidence and presumptions, the assessment of systematic patterns that give rise to the actions

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<sup>276</sup> In this regard, the State indicated that: a) Article 256 of this Constitution has established that international human rights treaties and agreements are part of the constitutional body and that these treaties and agreements are applied in preference to contrary provisions of the Constitution; b) Article 13 of the Constitution has established “the direct application” of the Court’s jurisprudence; c) Article 111 of the Constitution forbids the application of the statute of limitations to the crimes of genocide, crimes against humanity and war crimes; and d) Article 114 forbids all forms of torture and forced disappearance.

<sup>277</sup> Cf. *Case of Claude Reyes et al. v. Chile. Monitoring Compliance with Judgment*. Order of the Court on November 24, 2008, Considering Clause 19; *Case of Escher et al. v. Brazil Preliminary Objections, Merits, Reparations and Costs*. Judgment on July 6, 2009. Series C No. 200. para. 251, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 346.

investigated and the discovery of the whereabouts of those who have suffered forced disappearance (supra paras. 82, 166 to 168, 217 and 219).

258. In the aforementioned programs, special mention should be made of this Judgment and of the international human rights instruments to which Bolivia is a Party.

#### **D. Reparations, compensation, costs and expenses**

##### **D.1 Pecuniary damages**

260. The Court has developed the concept of pecuniary damages in its case-law and the assumptions related to compensation. The Court has established that pecuniary damages suppose "the loss of or detriment to the income of the victims, the expenses incurred due to the events and the pecuniary consequences that have a causal relationship with the facts of the case."<sup>278</sup>

261. The Commission asked the Court to establish in equity the amount of compensation corresponding to consequential damage and loss of earnings. The representatives made specific requests concerning pecuniary damages, which include a claim for loss of earnings and consequential damage. For its part, the State contested the claims of the representatives, indicating that they "contradict the evidence" provided by the representatives and the Commission in the case and represent the "enrichment [of the victims] rather than a reparation."

262. As the Court has previously indicated, reparations must have a causal relationship between the facts of the case, the violations declared, the damages proved and the measures requested to repair the respective damage. Therefore, the Court must consider the concurrence of these elements in order to issue a ruling according to the law.<sup>279</sup>

##### **a) Rainer Ibsen Cárdenas**

263. With regard to a compensation for the sum that Mr. Rainer Ibsen Cárdenas would have earned during his professional life, the representatives indicated that he was in the third year of engineering studies at the time of his forced disappearance. Consequently, they indicated that the State should pay the sum of US\$ 263,250 (two hundred and sixty-three thousand two hundred and fifty United States dollars), calculated on the basis of "the [approximately] thirty-five and a half years [that he would have worked...] as a professional," receiving an "average monthly salary" of US\$ 900 (nine hundred United States dollars) as a probable engineer, and subtracting from this sum "25% for his personal expenses."

264. In response to these claims, the State indicated during an initial procedural opportunity that the representatives had never "demonstrated that Rainer Ibsen Cárdenas had been a third-year engineering student" at the time of his forced disappearance and that it was unaware of the source used by the representatives to establish the amount

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<sup>278</sup> Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and Costs*. Judgment on February 22, 2002. Series C No. 91. para. 43; *Case of Chitay Nech et al. v. Guatemala*, supra note 6, para. 261, and *Case of Manuel Cepeda Vargas v. Colombia*, supra note 6, para. 242.

<sup>279</sup> Cf. *Case of Ticona Estrada et al. v. Bolivia*, supra note 1, para. 110; *Case of the "Las Dos Erres" Massacre v. Guatemala*, supra note 7, para. 227, and *Case of Radilla Pacheco v. Mexico*, supra note 8, para. 362.

indicated as an average monthly salary. However, in its answer to the lawsuit, the State projected the amount that Mr. Ibsen Cárdenas would have earned as a probable engineer during thirty-six years of work, based on a salary of US\$ 450 (four hundred and fifty United States dollars); in other words, 50% of the amount claimed by the representatives. According to the State, this reduced sum is closer to the reality, because a recently graduated engineer would not earn the same as one with great experience. On this basis, the State proposed a payment of US\$ 157,950 (one hundred and fifty-seven thousand nine hundred and fifty United States dollars) for loss of earnings.

265. By contrast, in its final written argument the State held that Mr. Rainer Ibsen was “a first-year law student” at the time of his forced disappearance. Thus, “since it was not possible to establish how much he would have earned as a lawyer,” the State indicated that the national minimum wage would be used to determine the amount that Mr. Ibsen Cárdenas would have earned during a working life of thirty-five and a half years, “deducting 25% for personal expenses.” Thus it proposed the payment of the sum of US\$ 29,057 (twenty-nine thousand and fifty-seven United States dollars) for the loss of earnings in favor of Mr. Rainer Ibsen Cárdenas.

266. The Court notes that the representatives in this case did not provide evidence to establish the profession or the level of studies that Mr. Rainer Ibsen was undertaking at the time of his forced disappearance. Moreover, they did not provide information that would allow the Court to verify his life expectancy or the probable monthly salary of the victim, either as a lawyer or an engineer, in order to make a reasonable calculation of what he would have earned during his professional career. Furthermore, the file before the Court contains a report from the Admissions and Registration Department of the Gabriel René Moreno Autonomous University dated April 14, 2010, provided by the State, which indicates that Mr. Ibsen Cárdenas “was registered in the final examinations for the subjects of the first year of the Law Faculty for 1971 [...]” Attached to this report are photocopies of this record in which the name of Mr. Rainer Ibsen Cárdenas appears.<sup>280</sup> From this information, the Court finds it possible to surmise that Mr. Rainer Ibsen Cárdenas was a first-year law student at Gabriel René Moreno Autonomous University at the time of his detention and prior to his forced disappearance. Therefore, if he had graduated from Law School, Mr. Rainer Ibsen Cárdenas would have earned a salary in accordance with his profession during his working life; namely a salary that exceeded the minimum wage in force in Bolivia.

267. Therefore, and taking into account that Mr. Rainer Ibsen Cárdenas was twenty-two years of age at the time of his forced disappearance (*supra* para. 74), this Court decides to establish, in equity, the sum of US\$ 130,000 (one hundred and thirty thousand dollars of the United States of America) or the equivalent in bolivianos, for pecuniary damages, which should be distributed in equal parts to his beneficiaries. This amount shall be paid within the term established by the Court (*infra* para. 292).

#### **b) José Luis Ibsen Peña**

268. Regarding Mr. José Luis Ibsen Peña’s loss of earnings, the representatives argued that this corresponds to a payment of US\$ 300,150 (three hundred thousand one hundred

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<sup>280</sup> Cf. Report N° 040/10 of the Department of Admissions and Registries of the “Gabriel René Moreno” Autonomous University, of April 14, 2010 (File of annexes to the final arguments, volume 2, pages 20456, 20464 and 20474). See also, Humanities graduate certificate of Rainer Ibsen Cárdenas issued by “Gabriel René Moreno” Autonomous University, on February 18, 1970 (File of annexes to the application, appendix 13, page 1783, and File of annexes to the brief of pleadings and motions, PD-17, page 1572).

and fifty United States dollars), calculated on the basis of the approximately fourteen and a half years “remaining of his professional life,” and deducting 25% of his income for personal expenses. Thus, they indicated that Mr. Ibsen Peña was a lawyer with a monthly income of US\$ 1,300 (one thousand three hundred United States dollars) from the company Bolivian Fiscal Oilfields [*Yacimientos Petrolíferos Fiscales Bolivianos*] (hereinafter, “YPFB”), the company where he allegedly worked at the time of his detention, and US\$ 1,000 (one thousand United States dollars) from the “legal advisory services” that he provided to the Bolivian Workers’ Union [*Central Obrera Boliviana*] (hereinafter, “COB”).

269. The State contested the representatives’ affirmation that Mr. José Luis Ibsen worked as a lawyer for YPFB and COB at the time of his forced disappearance, because in May 1972, the victim “was in Camiri, Santa Cruz, where he had registered his lawyer’s office; namely, he worked as an independent lawyer.” In this regard, in its final written arguments, the State alleged that Mr. Ibsen Peña had never received a salary from COB, because all the legal advisers of this organization “provide their services *ad honorem*.” Also, it indicated that in YPFB Mr. Ibsen Peña occupied the post of “Auxiliary, Responsible for Benefits and Responsible for Medical Benefits” and was remunerated in Bolivian pesos, not in United States dollars. Consequently, the State alleged in an initial procedural opportunity that the sum corresponding to Mr. Ibsen Peña for loss of earnings was US\$ 12,865.12 (twelve thousand eight hundred and sixty five United States dollars and twelve cents), calculated on the basis of the minimum national wage of Bs. 647 (six hundred and forty-seven bolivianos) and the fourteen and a half years remaining of his working life, taking into account his personal expenses by deducting 25% of the total amount. Subsequently, the State modified this sum, and offered the amount of US\$ 13,572 (thirteen thousand five hundred and seventy-two United States dollars) owing to the increase of the national minimum wage in force, established at Bs. 679 (six hundred and seventy-nine bolivianos) on the date of the submission of its final written arguments.

270. This Court has established that in May 1972, Mr. Ibsen Peña registered his lawyer’s office<sup>281</sup> in Camiri, Santa Cruz, and that he was 47 years of age at the time of his unlawful detention on February 1973 (*supra* para. 106). However, the Court notes that the representatives have not provided documentary evidence that would allow the Court to verify the salary or fees that Mr. José Luis Ibsen was earning then. Regarding the monthly salary allegedly received from the *Bolivian Workers’ Union*, the case file contains a certification issued by the Executive Committee of the “*Departmental Labor Headquarters*” which reveals that the victim “provided his services as a legal adviser [to the organization] from the end of the 1960s to the beginning of the 1970s.” However, “the specific dates and terms [...] of his advisory services” are not available, owing to the “numerous occasions [...] on which the] offices [of the organization] were raided and searched by the current totalitarian governments.”<sup>282</sup> Likewise, the case file contains an order of April 9, 2010, from the National Executive Committee of the *Bolivian Workers’ Union* stating that the organization “has never paid its legal advisers, [...] because they

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<sup>281</sup> On September 10, 1970, José Luis Ibsen Peña received the Law, Political and Social Sciences Degree from the Gabriel René Moreno Autonomous University, in Bolivia. Cf. Copy of the Law, Political and Social Sciences Degree of José Luis Ibsen Peña, issued by the Gabriel René Moreno Autonomous University, on September 10, 1970 (File of annexes to the petition, appendix 13, page 1782, and File of annexes to the brief of pleadings and motions, PD-16, page 1570).

<sup>282</sup> Cf. Certification of the Department of Labor Headquarters Attached to the COB, on May 24, 2010 (Merits file, volume IV, page 1503).



have all worked *ad honorem*.”<sup>283</sup> Furthermore, the Court does not have sufficient elements to establish the salary that Mr. Ibsen Peña would have received from YPFB for his legal advice services. The evidence provided to the Court merely reveals that he occupied different posts in this company from 1964 to 1968, as well as in 1971, none of a legal nature.<sup>284</sup>

271. Consequently, this Court decides to establish, in equity, the sum of US\$ 75,000 (seventy-five thousand dollars of the United States of America) or its equivalent in bolivianos, for pecuniary damages corresponding to the income that Mr. José Luis Ibsen Peña would have earned during his probable working life, which must be distributed in equal parts among the beneficiaries. This amount must be paid within the term established by the Court (*infra* para. 292).

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272. Regarding the disbursements made by the Ibsen family during the search for the disappeared victims in this case, the representatives requested a sum of US\$ 70,000 (seventy thousand United States dollars), to cover four decades of procedures undertaken with different authorities and public entities, accommodation, food, travel, payments for telephone calls and other items. It would also cover the loss of the “family home, which had to be sold.” Furthermore, the representatives requested the sum of US\$ 40,000 (forty thousand United States dollars) for the expenses incurred owing to the damage caused by the events of this case to the physical and mental health of the Ibsen family members. The representatives also requested various amounts as compensation for alleged damage caused to the “life projects” of the direct victims and their families.

273. Regarding this item, the State asked the Court to take into account that in the *Case of Trujillo Oroza v. Bolivia* the Court “ordered the State [...] to pay slightly less than 50% of the family’s claim.” As to the expenses arising from the deterioration in the health of the Ibsen family, the State asked the Court to rule in equity. Lastly, in relation to the representatives’ claims concerning the life projects of the victims, it considered that they are not in keeping with the parameters established by the Court’s case-law, and therefore asked the Court to assess them based on the equity principle.

274. The Court acknowledges that the steps taken by the family of Messrs. Ibsen Cárdenas and Ibsen Peña to obtain information on their whereabouts resulted in expenses that must be compensated. However, regarding the alleged loss of a family home, the Court finds that the evidence provided by the representatives does not provide sufficient elements to establish the alleged damage and its relationship to the facts of forced disappearance of Messrs. Ibsen Cárdenas and Ibsen Peña, and therefore it will not set a specific amount in this regard.

275. Regarding the alleged expenses for medical and psychological care incurred by the victims in this case, the Court notes that the representatives did not provide evidence such as vouchers, medical records or certifications, *inter alia*, from which it could be established that the members of the Ibsen family did in fact receive this care for ailments related to

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<sup>283</sup> Cf. Order of the National Executive Committee of the Bolivian Workers’ Union addressed to the Foreign Relations Minister (Merits file , volume III, page 915).

<sup>284</sup> Cf. Monthly payrolls of salaries and day wages from 1964 to 1968 and 1971 of the Staff Division of Bolivian Oilfields (appendixes to the final arguments of the State, volume III, page 20870 *bis*).

the events of the case and that expenses were incurred in this regard. Although the Court has established that, owing to the nature and seriousness of the facts that constitute forced disappearance, the victims in this case have suffered serious psychological effects (*supra* paras. 128, 129, 131 to 133), for the Court to be able to order the reimbursement of expenses under this item, these must be proved. Considering the foregoing, in this case it is not appropriate to set a sum in this regard.

276. Consequently, the Court establishes, in equity, a compensation of US\$ 5,000 (five thousand dollars of the United States of America) for the expenses incurred due to the violations declared in this case. This amount must be delivered in equal parts to Rebeca, Tito and Raquel Ibsen Castro and must be paid within the term established by the Court (*infra* para. 292).

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277. In previous cases, the Court has recognized that the life project of a victim of human rights violations may have been harmed. Nevertheless, this Court has established that the complex and comprehensive nature of the damage to the “life project” requires measures of satisfaction and guarantees of non-repetition, which go beyond the financial sphere. In this regard, the sentence contained in other sections of this Judgment contributes to compensating the victims in the case for the pecuniary and non-pecuniary damage suffered.<sup>285</sup>

## **D.2 Non-pecuniary damages**

278. In its case-law, the Court has developed the concept of non-pecuniary damages and has established those cases in which compensation must be paid. The Court has established that non-pecuniary damage “may include both the suffering and anguish caused to the direct victim and his family, the undermining of values that are very important to these persons, as well as changes of a non-pecuniary nature in the living conditions of the victim or his family.”<sup>286</sup>

279. The Commission asked the Court to establish a fair amount of compensation for non-pecuniary damages, if it considered this pertinent.

280. The representatives referred to the anguish, pain, despair and uncertainty suffered by the Ibsen family as a result of the arbitrary detention and forced disappearance of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña. They also mentioned that the threats and persecution that forced the family to flee within their own country and the lack of information about the whereabouts of Messrs. Ibsen Cárdenas and Ibsen Peña caused irreparable and traumatic non-pecuniary damage to the victims. Consequently, based on the forced disappearance of Mr. Rainer Ibsen Cárdenas, they requested the Court to order

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<sup>285</sup> Cf. *Case of Loayza Tamayo v. Peru. Reparations and Costs*. Judgment of November 27, 1998. Series C No. 42, para. 153; *Case of Cantoral Benavides v. Peru. Reparations and Costs*. Judgment of December 3, 2001. Series C No. 88, para. 80, and *Case of Gutiérrez Soler v. Colombia. Merits, Reparations and Costs*. Judgment on September 12, 2005. Series C No. 132, para. 89.

<sup>286</sup> *Case of the “Street Children” (Villagrán Morales et al.) v. Guatemala. Reparations and Costs*. Judgment on May 26, 2001. Series C No. 77, para. 84; *Case of Chitay Nech et al. v. Guatemala, supra* note 6, para. 273, and *Case of Manuel Cepeda Vargas v. Colombia, supra* note 6, para. 242.

the payment of symbolic compensation of US\$ 700,000 (seven hundred thousand United States dollars) to Mrs. Martha Castro Mendoza. For the forced disappearance of Mr. José Luis Ibsen Peña, they requested compensation for the family with a “symbolic value” of US\$ 900,000 (nine hundred thousand United States dollars). In addition, with regard to the suffering and pain caused to the Ibsen family during the “process suffered” by Rainer Ibsen Cárdenas, they called for compensation of US\$ 250,000 (two hundred and fifty thousand United States dollars) for his stepmother, Martha Castro Mendoza, and of US\$ 100,000 (one hundred thousand United States dollars) for each of his paternal siblings, Rebeca, Tito and Raquel Ibsen Castro. Finally, for the pain suffered by the family because of what happened to Mr. José Luis Ibsen Peña, they requested a payment of US\$ 500,000 (five hundred thousand United States dollars) for Martha Castro Mendoza, and payments of US\$ 300,000 (three hundred thousand United States dollars) for each of his children, Rebeca, Tito y Raquel Ibsen Castro.

281. The State contested the claims of the representatives, arguing that they exceed the possibilities of a developing country such as Bolivia. Consequently, the State asked the Court to evaluate “based on principles of fairness and the conciliatory attitude” of the State, the actions taken as compensatory measures, which “offer the injured party a satisfaction that transcends the financial sphere [...].”

282. International case-law has repeatedly established that a Judgment can constitute *per se* a form of reparation.<sup>287</sup> Nevertheless, considering the circumstances of the case *sub judice*, the suffering that the violations perpetrated caused to the victims, as well as the changes in their living conditions and other consequences of a non-material or non-pecuniary nature that the latter suffered, the Court deems it appropriate to set an amount, in equity, as compensation for non-pecuniary damages.<sup>288</sup>

283. Considering the compensation ordered by the Court in other cases of forced disappearance of persons, and the circumstances of this case, the significance, nature and seriousness of the violations committed, which relate to the forced disappearance of two members of the same family, the suffering caused to the victims and the treatment they have received, the time that has elapsed since the disappearance began, the denial of justice, as well as the change in living conditions and other non-pecuniary consequences they suffered, the Court finds it pertinent to establish, in equity, the sum of US\$ 80,000 (eighty thousand dollars of the United States of America) each for Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña, as compensation for non-pecuniary damages. In turn, for the same concept, the Court establishes in equity compensation of US\$ 50,000 (fifty thousand dollars of the United States of America) for Martha Castro Mendoza, as well as compensation of US\$ 40,000 (forty thousand dollars of the United States of America) each for Rebeca Ibsen Castro, Tito Ibsen Castro and Raquel Ibsen Castro, because the damage they suffered is related to the violations committed against two members of their family. When establishing these sums, the Court is not considering the alleged threats against the Ibsen family, because these are not included in the factual framework of this case (*supra* para. 228).

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<sup>287</sup> Cf. *Case of Neira Alegría et al. v. Peru. Reparations and Costs. supra* note 249, para. 56; *Case of the “Las Dos Erres” Massacre v. Guatemala, supra* note 7, para. 290, and *Case of Chitay Nech et al. v. Guatemala, supra* note 6, para. 275.

<sup>288</sup> Cf. *Case of Neira Alegría et al. v. Peru. Reparations and Costs. supra* note 249, para. 56; *Case of Radilla Pacheco v. Mexico, supra* note 8, para. 374, and *Case of Chitay Nech et al. v. Guatemala, supra* note 6, para. 275.

### **D.3 Costs and expenses**

284. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparation established in Article 63(1) of the American Convention.<sup>289</sup>

285. The Commission asked the Court to order the State to pay reasonable and necessary costs and expenses that are duly proven, already incurred, and to be incurred in the future, in processing this case not only in the domestic sphere, but also before Inter-American System of Human Rights.

286. For their part, the representatives indicated that the domestic proceeding, which has taken place over approximately nine years, was sponsored by Rebeca Ibsen Castro joining with the Trujillo Oroza case (*supra* para. 140) up to this date. Thus, they requested an amount of US\$ 70,000 (seventy thousand United States dollars) for costs in her favor. Furthermore, they indicated that the expenses corresponding to the international proceedings before the Inter-American System were paid for by the "Ressini Enriquez & Asociados" law firm and include the transfer of three people, two lawyers and one of the victims, to the Commission's seat in Washington, D.C., "the continuing work of the proceedings, logistical expenses such as travel, accommodation and food of the parties between La Paz and Santa Cruz, the costs of expert reports [and] copies, messenger services and others." Therefore, they requested the sum of US\$ 90,000 (ninety thousand United States dollars) for this item.

287. The State contested the claim of the injured party, indicating that it is not in line with the tariffs of the Bar Association of La Paz. In this regard, in its final written arguments, the State indicated that the Bar Association rates "for the years 2005 and 2009 [...] establish as [professional fees] a maximum of 12,000 bolivianos," equivalent to US\$ 1,697 (one thousand six hundred and ninety-seven United States dollars) for a criminal proceeding. Furthermore, it argued that the analysis of all the case files reveals that "the expenses incurred by the family within the domestic justice system arise from the approximately 200 petitions submitted by Mrs. Rebeca Ibsen during the criminal proceedings held in Santa Cruz de la Sierra," and amount to approximately US\$ 3,000 (three thousand United States dollars).

288. Regarding the reimbursement of costs and expenses, it is the Court's responsibility to prudently assess their scope, including the expenses generated before the authorities of the domestic jurisdiction, as well as those generated during the proceedings 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 may be carried out based on the equity principle and taking into account the expenses indicated by the parties, provided that the sum is reasonable.<sup>290</sup>

289. The Court notes that the representatives have not provided evidence to support their claims concerning the supposed expenses incurred by them and the Ibsen family

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<sup>289</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*. Judgment on August 27, 1998. Series C No. 39. para. 79; *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 279, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 254.

<sup>290</sup> Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and Costs*, *supra* note 289, para. 82; *Case of Chitay Nech et al. v. Guatemala*, *supra* note 6, para. 285, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 258.

during the processing of this case. Nevertheless, this Court has indicated previously that “[t]he sum for this item can be established [...] based on the principle of equity, even in the absence of probative elements regarding the precise amount of the expenses that have been incurred by the parties, provided that the amounts respond to criteria of reasonableness and proportionality.”<sup>291</sup>

290. The Court considers it evident that the Ibsen family and their representatives incurred expenses during the domestic and international proceedings in this case. In particular, the Court notes that Mrs. Rebeca Ibsen Castro took responsibility for pursuing the case at the domestic level for more than ten years. Thus, with regard to the objections presented by the State, the Court notes that the tariffs of the Bar Association of La Paz mentioned by the State (*supra* para. 287) established for 2005, included the minimum but not the maximum professional fees that lawyers working on different matters, including criminal matters, should have charged.<sup>292</sup> Consequently, this document is of no use to inform the Court on the amount that should be established for this item. Moreover, the Court has no information to confirm how the State calculated the sum of US\$ 3,000 (three thousand United States dollars) in expenses allegedly incurred by Mrs. Rebeca Ibsen during the domestic criminal proceedings.

291. In consideration of all of the above, the Court determines, in equity and given the particular circumstances of this case, that the State must award the sum of US\$ 15,000 (fifteen thousand dollars of the United States of America) to Rebeca Ibsen Castro for costs and expenses incurred during the domestic criminal proceedings (*infra* para. 292). Furthermore, the State must pay the sum of US\$ 10,000 (ten thousand dollars of the United States of America) to Tito Ibsen Castro for costs and expenses; he in turn must provide the amount he considers appropriate to those who represented the Ibsen family in the proceeding before the Inter-American System, based on the assistance they provided. These amounts shall be paid within one year from the notification of this Judgment (*infra* para. 292). During the monitoring of compliance with this Judgment, the Court may order the State to reimburse the victims or their representatives for reasonable and properly proven expenditures.

#### ***E. Method of compliance with the payments ordered***

292. The State must pay the compensation for pecuniary and non-pecuniary damages directly to the beneficiaries, and the payment for costs and expenses directly to Rebeca Ibsen Castro and Tito Ibsen Castro within one year from the notification of this Judgment, under the terms of the following paragraphs.

293. The payments corresponding to compensation for pecuniary and non-pecuniary damages suffered directly by Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña (*supra* paras. 267 and 271) shall be distributed in equal parts between their rightful beneficiaries.

294. Should any of the beneficiaries pass away before receiving their respective

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<sup>291</sup> Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Reparations and Costs*, *supra* note 12, para. 213; *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua. Merits, Reparations and Costs*. Judgment on August 31, 2001. Series C No. 79. para. 169; and *Case of Trujillo Oroza v. Bolivia. Reparations and Costs*. *supra* note 160, para. 128.

<sup>292</sup> Cf. “Minimum Tariff of Professional Fees” - Distinguished Bar Association of La Paz (Merits file, volume 3, pages 1054 to 1063).

compensation, this compensation shall be delivered directly to their rightful beneficiaries, in accordance with the applicable domestic laws.

295. The State must comply with its pecuniary obligations through payment in United States dollars or the equivalent amount in the Bolivian currency, based on the exchange rate in force on the New York currency exchange market the day before the payment.

296. If, for reasons that can be attributed to the beneficiaries of the compensation or to their heirs, it is not possible for them to receive the amounts established within the indicated term, the State shall deposit said amounts in their favor in an account or a certificate of deposit in a solvent Bolivian financial institution in United States dollars and on the most favorable financial terms permitted by law and banking practice. If, after ten years, said sums have not been claimed, they shall revert to the State with the accrued interest.

297. The amounts allocated in this Judgment as compensation and as reimbursement of costs and expenses shall be paid in full to the persons mentioned, as established in this Judgment, without any deductions arising from possible taxes or charges.

298. If the State should fall into arrears, it shall pay interest on the amount owed, corresponding to the banking interest on arrears in Bolivia.

## **X**

### **OPERATIVE PARAGRAPHS**

Therefore,

#### **THE COURT**

#### **DECIDES,**

unanimously,

1. To accept the State's partial acknowledgement of international responsibility, under the terms of paragraphs 5 and 24 to 26 of this Judgment.
2. To accept the measures of reparation implemented by the State, under the terms of paragraphs 247, 248, 252 and 254 of this Judgment.

#### **DECLARES,**

unanimously that:

3. The State is responsible for the violation of the rights to personal liberty, humane treatment [personal integrity], right to juridical personality and right to life, enshrined in Articles 7(1), 5(1), 5(2), 3 and 4(1) of the American Convention on Human Rights, in relation to Article 1(1) thereof and with Articles 1(a) and 11 of the Inter-American

Convention on Forced Disappearance of Persons, to the detriment of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña, under the terms of paragraphs 49 to 122 of this Judgment.

4. The State is responsible for the violation of the right to humane treatment [personal integrity] enshrined in Articles 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) thereof, to the detriment of Mrs. Martha Castro Mendoza and Messrs. Rebeca, Tito and Raquel, all with the surname Ibsen Castro, under the terms of paragraphs 123 to 133 of this Judgment.

5. The State is responsible for the violation of the rights to a fair trial and to judicial protection, enshrined in Articles 8(1) and 25(1) of the American Convention on Human Rights, in relation to Articles 1(1) and 2 thereof and Article 1(b) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mrs. Martha Castro Mendoza and Messrs. Rebeca, Tito and Raquel, all with the surname Ibsen Castro, under the terms of paragraphs 135 to 226 of this Judgment.

#### **AND ORDERS,**

unanimously that:

6. This Judgment constitutes *per se* a form of reparation.

7. In compliance with its obligation to remove all *de facto* and *de jure* obstacles that maintain impunity in respect of the torture and inhumane treatment suffered by Mr. José Luis Ibsen Peña, the State shall undertake the necessary investigations to determine, within a reasonable period of time, all the corresponding responsibilities for his detention and subsequent disappearance, under the terms of paragraphs 237 to 238 of this Judgment.

8. In compliance with its obligation to remove all *de facto* and *de jure* obstacles that maintain impunity in respect of the murder and forced disappearance of Mr. Rainer Ibsen Cárdenas, the State shall undertake all necessary investigations to determine what happened and to effectively apply the appropriate sanctions and consequences, within a reasonable period of time, under terms of paragraphs 237 to 238 of this Judgment.

9. The State shall continue with an effective search for the whereabouts of Mr. José Luis Ibsen Peña, under the terms of paragraph 242 of this Judgment.

10. The State shall publish, once only, in the Official Gazette: paragraphs 1 to 5, 23 to 29, 33, 34, 36 to 38, 50 to 57, 67, 68, 71 to 75, 80 to 82, 84 to 92, 94, 102 to 111, 115, 116, 118, 119, 122, 126, 128 to 133, 155 to 163, 165 to 174, 177, 178, 180 to 184, 189 to 191, 193 to 195, 197 to 202, 205 to 212, 214 to 226, 231 and 232 of this Judgment, including the headings of each chapter and the corresponding section, without the footnotes, and the operative paragraphs thereof; the official summary of this Judgment in a newspaper with wide national circulation; and the complete Judgment on an appropriate web site, under the terms of paragraph 244.

11. The State shall agree with the family of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña on the designation of a public place with the names of both victims, where a plaque shall be placed with reference to this Judgment, the facts of the case and the circumstances under which they occurred, under terms of paragraph 249 of this Judgment.

12. The State shall provide free medical and psychological or psychiatric care, immediately, appropriately and effectively, through its specialized public health institutions, to the persons declared as victims in this Judgment that so request it, under the terms of paragraphs 253 and 254.

13. The State shall implement, within a reasonable term and with the necessary budgetary resources, a training program for the proper investigation and prosecution of acts involving the forced disappearance of persons, directed at agents of the Public Prosecutor's Office and judges of the Judiciary of Bolivia who have jurisdiction over the investigation and prosecution of facts such as those of this case, in order to give these officers legal, technical and scientific elements to comprehensively evaluate the practice of forced disappearance, under terms of paragraphs 257 to 259 of this Judgment

14. The State shall pay the amounts ordered in paragraphs 267, 271, 276, 283 and 291 of this Judgment, as compensation for pecuniary and non-pecuniary damages, and the reimbursement of costs and expenses, as appropriate, within one year, from the notification of this Judgment, under the terms of paragraphs 266, 270, 274, 275, 282 and 288 to 290.

15. The Court shall monitor full compliance with this Judgment, in exercise of its authority and in compliance with its obligations under the American Convention, and shall consider this case closed when the State has fully complied with all the measures ordered herein. Within one year from the notification of this Judgment, the State shall provide the Court with a report on the measures adopted in compliance.

Done in Spanish and English, the Spanish text being authentic, in San Jose, Costa Rica, on September 1, 2010.

Diego García-Sayán  
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet



Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri  
Secretary

So ordered,

Diego García-Sayán  
President

Pablo Saavedra Alessandri  
Secretary