

INTER-AMERICAN COURT OF HUMAN RIGHTS

CASE OF VALENCIA CAMPOS *ET AL.* V. BOLIVIA

JUDGMENT OF OCTOBER 18, 2022

(Preliminary objection, merits, reparations and costs)

In the case of *Valencia Campos et al. v. Bolivia*,

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

Ricardo C. Pérez Manrique, President,
Humberto Antonio Sierra Porto, Vice President,
Eduardo Ferrer Mac-Gregor Poisot,
Nancy Hernández López,
Verónica Gómez,
Patricia Pérez Goldberg, and
Rodrigo Mudrovitsch;

also present,

Pablo Saavedra Alessandri, Registrar, and
Romina I. Sijniensky, Deputy Registrar,

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”) and Articles 31, 32, 42, 65 and 67 of the Rules of Procedure of the Court (hereinafter “the Rules of Procedure” or “the Court’s Rules of Procedure”), delivers this judgment structured as follows:

TABLE OF CONTENTS

I INTRODUCTION OF THE CASE AND CAUSE OF ACTION	4
II PROCEEDINGS BEFORE THE COURT	5
III JURISDICTION	7
IV PRELIMINARY OBJECTION	7
A. <i>Arguments of the State and observations of the Commission and of the representatives</i>	7
B. <i>Considerations of the Court</i>	8
V PRELIMINARY CONSIDERATIONS	8
A. <i>Inclusion of absent alleged victims</i>	8
B. <i>Inclusion of A.A.D.P. as an alleged victim</i>	10
VI EVIDENCE	11
A. <i>Admissibility of the documentary evidence</i>	11
B. <i>Admissibility of the testimonial and expert evidence</i>	12
VII FACTS	14
A. <i>Relevant legal framework</i>	14
B. <i>The attack on the Prosegur truck, the subsequent raids, and the arrest of the suspects</i>	15
B.1. <i>The attack on the Prosegur truck</i>	16
B.2. <i>The raids</i>	16
B.3. <i>The detentions and the presentation to the media</i>	20
B.4. <i>The death of María Fernanda Peña Gallardo</i>	25
C. <i>The criminal proceedings against the alleged victims, convictions, and execution of sentence</i>	26
C.1. <i>The criminal proceedings against the alleged victims</i>	26
C.2. <i>Execution of the sentences</i>	30
D. <i>The investigation into the complaints of ill-treatment and torture</i>	31
VIII MERITS	34
VIII-1 RIGHTS TO PERSONAL LIBERTY, PRIVACY, INVIOABILITY OF THE HOME, PROTECTION OF THE FAMILY, and PROPERTY	35
A. <i>Arguments of the parties and of the Commission</i>	35
B. <i>Considerations of the Court</i>	36
B.1. <i>Right to personal liberty</i>	36
B.2. <i>Rights to privacy, inviolability of the home, and family life</i>	43
B.3. <i>Right to property</i>	47
VIII-2	48
RIGHTS TO PERSONAL INTEGRITY and OF WOMEN TO LIVE WITHOUT VIOLENCE 48	
A. <i>Arguments of the parties and of the Commission</i>	48
B. <i>Considerations of the Court</i>	50
B.1. <i>General guidelines on the right to personal integrity and the prohibition of torture and ill-treatment, and the means of evidence</i>	50
B.2. <i>The acts of torture and ill-treatment during the raids and the detentions</i>	51
B.3. <i>The particular sexual violence and torture suffered by the women</i>	54
B.4. <i>The measures of solitary confinement</i>	57
B.5. <i>The conditions of the detention centers</i>	57
B.6. <i>The alleged violation of the personal integrity of María Fernanda Peña Gallardo</i>	58
B.7. <i>Conclusions</i>	58
VIII-3	59
VIOLATION OF PERSONAL LIBERTY, PERSONAL INTEGRITY, and THE RIGHTS OF THE CHILD IN THE CASE of the child ALLEGED VICTIMS	59
A. <i>Arguments of the parties and of the Commission</i>	59
B. <i>Considerations of the Court</i>	60
VIII-4	62
RIGHT TO LIFE OF GENARO AHUACHO LUNA	62

A. Arguments of the parties and of the Commission.....	62
B. Considerations of the Court.....	63
VIII-5 64	
RIGHT TO HEALTH	64
A. Arguments of the parties and of the Commission	64
B. Considerations of the Court.....	64
VIII-6 68	
JUDICIAL GUARANTEES, JUDICIAL PROTECTION, RIGHTS TO HONOR AND DIGNITY, Duty to investigate and punish acts of torture, and Duty to investigate and punish VIOLENCE AGAINST WOMEN.....	
68	
A. Arguments of the parties and of the Commission	68
B. Considerations of the Court	70
B.1. Alleged violation of the rights to the presumption of innocence and to the protection of honor and dignity	70
B.2. Alleged violation of the right of defense	72
B.3. The investigation of the acts of torture	74
IX REPARATIONS.....	77
A. Injured party.....	77
B. Measures of restitution	78
C. Obligation to investigate.....	78
D. Measures of rehabilitation	80
E. Measures of satisfaction	82
F. Guarantees of non-repetition.....	83
F.1. Training programs and action protocols	84
F.3. Mechanism for reopening judicial proceedings	85
G. Compensation	85
H. Costs and expenses	88
I. Reimbursement of expenses to the Victims' Legal Assistance Fund	89
J. Method of complying with the payments ordered	90
X OPERATIVE PARAGRAPHS.....	90

I INTRODUCTION OF THE CASE AND CAUSE OF ACTION

1. *The case submitted to the Court.* On February 22, 2021, the Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission” or “the Commission”) submitted to the jurisdiction of the Court the case of *Blas Valencia Campos et al. with regard to the Plurinational State of Bolivia* (hereinafter also “the State” or “Bolivia”). The Commission indicated that the case related to the alleged international responsibility of the State for the unlawful raid of the homes of the alleged victims and excessive acts of violence by state agents – including torture, sexual violence, and solitary confinement – during their arrest and subsequent detention.

2. *Procedure before the Commission.* The procedure before the Commission was as follows:

- a) *Petition.* On January 8, 2003, the Commission received a petition lodged by Blas Valencia Campos and another 25 persons¹ against the State of Bolivia.
- b) *Admissibility Report.* On October 30, 2008, the Commission adopted Admissibility Report No. 84/08, and this was notified to the parties on November 11, 2008.
- c) *Merits Report.* On May 4, 2019, the Commission adopted Merits Report No. 54/19 in which it reached a series of conclusions² and made several recommendations to the State.
- d) *Notification to the State.* The Merits Report was notified to the State on July 22, 2019.

3. *Submission to the Court.* On February 22, 2021, after having granted the State six extensions of the time limit for complying with its recommendations, the Commission³ decided to submit all the facts and human rights violations described in Merits Report No. 54/19 to the jurisdiction of the Inter-American Court taking into account that some of the alleged victims were deprived of liberty and “the need to obtain justice and reparation for the [alleged] victims.” The Court notes with concern that more than 18 years elapsed between the lodging of the original petition before the Commission and the submission of the case to the Court.

4. *The Commission’s requests.* Based on the foregoing, the Commission asked the Court to declare the international responsibility of the State for the violations indicated in its Merits Report (*supra* para. 2(c) and footnote 2). The Commission also asked the Court to order the State, as measures of reparation, to comply with the measures included in the said report.

¹ Norma Lupe Alarcón de Valencia; Mercedes Valencia Chuquimia; Mauricio Valenzuela Valencia; Álvaro Taboada Valencia; Claudia Valencia Alarcón; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; María Fernanda Peña Gallardo; Freddy Cáceres Castro; Oswaldo Lulleman Antezana; Raúl Oswaldo Lulleman Gutiérrez; Victoria Gutiérrez de Lulleman; Paola Lulleman de Zaconeta; Luis Fernando Lulleman Gutiérrez; Julia Mamanu Mamani; Genaro Ahuacho Luna (also known as Walter Herrera Flores); Carlos Enrique Castro Ramírez; Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz); Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega); Elacio Peña Córdova (also known as Elacio Peña Córdoba); Edwin Rodríguez Alarcón; Gabriel Valencia Alarcón; Alexis Valencia Alarcón; Claudio Valencia, and F.E.P.M.

² The Commission concluded that the State was responsible for the violation of the rights to personal liberty, private and family life, life, and personal integrity, rights of the child, and to judicial guarantees and judicial protection established in Articles 4, 5, 7, 8, 11, 19 and 25 of the American Convention in relation to the obligations established in Article 1(1) of this instrument, as well as the duty to prevent violence against women established in Article 7 of the Convention of Belém do Pará and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, in light of the failure to investigate and punish the complaints of torture.

³ The Commission appointed then Commissioner Flavia Piovesan and then Deputy Executive Secretary, Marisol Blanchard Vera, as its delegates before the Court, together with Jorge Humberto Meza Flores and Analía Banfi Vique, experts of the Commission’s Executive Secretariat at the time.

II PROCEEDINGS BEFORE THE COURT

5. *Notification to the State and to the representatives.* The submission of the case was notified to the State and to the representatives of the alleged victims⁴ on June 17, 2021.

6. *Briefs with pleadings, motions and evidence.* The inter-American public defenders presented their brief with pleadings, motions and evidence (hereinafter “pleadings and motions brief”) on August 14, 2021. In this brief, they agreed with the contents of the Merits Report, adding a request that the State be declared responsible for violating the right to the presumption of innocence and the right of defense of their clients and asking for additional measures of reparation to those requested by the Commission. Representative Carlos Eduardo Gómez Rojas presented his pleadings and motions brief on August 15, 2021. He was also in substantial agreement with the contents of the Merits Report and asked for additional measures of reparation to those requested by the Commission. Nevertheless, he did not ask the Court to declare the violation of either the Convention of Belém do Pará or the Inter-American Convention to Prevent and Punish Torture. He added the alleged violation of the right to protection of the family recognized in Article 17(1) of the American Convention. Representatives Jemio Mendoza and Machicao Hidalgo⁵ presented their pleadings and motions brief on August 16, 2021. As in the case of the other representatives, they agreed with the contents of the Merits Report and requested specific measures of reparation for their clients. They added the alleged violation of the right to health established in Article 26 of the American Convention.

7. *Answering brief with preliminary objections.*⁶ On December 16, 2021, the State submitted to the Court its brief answering the submission of the case by the Commission, and with its observations on the pleadings and motions briefs (hereinafter “answering brief”). In this brief, the State filed two preliminary objections. In addition, it rejected the alleged violations and the admissibility of the measures of reparations requested.

8. *Observations on the preliminary objections.* On February 23, 2022, the inter-American public defenders presented their observations on the preliminary objections. On February 24 and 28, 2022, representative Jemio Mendoza and the Commission, respectively, presented their observations on the preliminary objections. Representative Gómez Rojas did not present observations.

⁴ In the instant case, the alleged victims are represented by three different representatives:

- Carlos Eduardo Gómez Rojas represents Norma Lupe Alarcón de Valencia, Carlos Álvaro Taboada Valencia, Claudio Tito Centeno Valencia, Claudia Mariela Valencia Alarcón de Centeno, Gabriel Blas Valencia Alarcón, Alexis Eduardo Valencia Alarcón, Blas Valencia Campos and Mauricio Marcelo Valenzuela Valencia.
- Hugo Efraín Jemio Mendoza and Fabiola Machicao Hidalgo represent Patricia Catalina Gallardo Ardúz and María Fernanda Peña Gallardo.
- Inter-American public defenders who, originally represented Víctor Manuel Boggiano Bruzzón, Victoria Gutiérrez Aguilar de Lulleman, Oswaldo Lulleman Antezana, Jenny Paola Lulleman Gutiérrez de Zaconeta, Raúl Oswaldo Lulleman Gutiérrez, and Luis Fernando Lulleman Gutiérrez. Subsequently, in a communication of June 9, 2021, on the instructions of the then President of the Court, the defenders were asked to assume the defense of the alleged victims who it had not been possible to contact at that time, namely: Edwin Rodríguez Alarcón, Genaro Ahuacho Luna, Alfredo Bazán y Rosas, Freddy Cáceres Castro, Carlos Enrique Castro Ramírez; Carlos Eladio Cruz Añez; Julia Mamanu Mamani; Elacio Peña Córdoba; F.E.P.M.; Edwin Rodríguez Alarcón and Mercedes Valencia Chuquimia.

⁵ Although a joint representation had originally been announced, the subsequent briefs were only presented and signed by Hugo Efraín Jemio Mendoza.

⁶ The State appointed Wilfredo David Chávez Serrano, Attorney General; Patricia Guzmán Meneses, Deputy Attorney General for the State’s Legal Defense and its Legal Representative; Jhanneth del Rosio Bustillos Bustillos, Director General for the Defense of Human Rights and the Environment, and Ximena Miriam Fajardo Navarro, Head of the Unit for Cases at the Merits Stage and the Human Rights Committee, as its agents

9. *Legal Assistance Fund.* In a note of the Inter-American Court's Secretariat dated October 19, 2019, sent on the instructions of the Court's President, the requests of the inter-American public defenders and of representative Jemio Mendoza for the victims to access the Legal Assistance Fund were declared admissible.

10. *Public hearing.* In an order of May 25, 2022, the President of the Court called the parties and the Commission to a public hearing on the preliminary objections and possible merits, reparations and costs.⁷ The public hearing was held on June 21, 2022, during the Court's 149th regular session.⁸ During the hearing the Court received the statements of two alleged victims⁹ and one expert witness proposed by the inter-American public defenders, and the judges requested specific information and explanations from the parties and the Commission.

11. *Final written arguments and observations.* On July 21, 2022, the inter-American public defenders and representative Jemio Mendoza each presented their final written arguments. On July 22, 2022, representative Gómez Rojas, the State, and the Commission forwarded their respective final written arguments and final written observations. Representatives Jemio Mendoza and Gómez Rojas and the State attached annexes to their briefs.

12. *Observations on the annexes to the final written arguments.* On August 8, 2022, the inter-American public defenders indicated that they had no observations to make on the annexes presented by representatives Jemio Mendoza and Gómez Rojas, and the State with their final written arguments. On August 9, 2022, the Commission also indicated that it had no observations to make on the said annexes. On the same date, representative Jemio Mendoza and the State presented their observations on the annexes attached to the final written arguments. No observations were received from representative Gómez Rojas.

13. *Request to maintain one name confidential.* In a brief of September 16, 2022, the inter-American public defenders asked that the name of one alleged victim be maintained confidential to prevent her revictimization. The Court admitted this request and the judgment will therefore use the initials F.E.P.M. to refer to this alleged victim.

14. *Disbursements from the Legal Assistance Fund.* On October 6, 2022, on the instructions of the Court's President, the Secretariat forwarded information on the disbursements made from the Victims' Legal Assistance Fund in this case to the State and, as established in article 5 of the Court's Rules for the Operation of the said Fund, granted it a time frame for presenting any observations it deemed pertinent. The State indicated that it had no observations to make.

15. *Deliberation of the case.* The Court deliberated on this judgment on October 17 and 18, 2022, in Maldonado, Uruguay, during its 163rd regular session.

⁷ Cf. *Case of Valencia Campos et al. v. Bolivia*. Order of the President of the Inter-American Court of Human Rights. May 25, 2022. Available at: https://www.corteidh.or.cr/docs/asuntos/valencia_campos_y_otros_25_05_22.pdf.

⁸ There appeared at this hearing: (a) for the Inter-American Commission: Erick Acuña Pereda and Paula Rangel, legal advisers; (b) for the representatives of the alleged victims: Silvia Edith Martínez, Jacob Alonso Orribarra, Hugo Jemio Mendoza and Carlos Eduardo Gómez, and (c) for the Plurinational State of Bolivia: Patricia Guzmán Meneses, Jhanneth del Rosio Bustillos Bustillos, and Jaime Mauricio Quiroga Carvajal.

⁹ At the request of her representatives, alleged victim F.E.P.M. provided her statement in private.

III JURISDICTION

16. The Inter-American Court has jurisdiction to hear this case pursuant to Article 62(3) of the American Convention because Bolivia has been a State Party to this instrument since July 19, 1979, and accepted the contentious jurisdiction of the Court on July 27, 1993. In addition, Bolivia deposited the instrument ratifying the Inter-American Convention to Prevent and Punish Torture on November 21, 2006, and the instrument ratifying the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belem do Pará) on December 5, 1994.

IV PRELIMINARY OBJECTION

17. The State filed two preliminary objections. First, it filed the objection of lack of jurisdiction *ratione temporis* to apply the Inter-American Convention to Prevent and Punish Torture (hereinafter also "ICPPT"). Second, it filed the objection of lack of jurisdiction *ratione personae* owing to the inclusion in the Merits Report of the names of six individuals who did not appear in the proceedings as alleged victims. However, the arguments submitted under the second objection do not correspond to a preliminary objection and will therefore be examined in the section on preliminary considerations (*infra* paras. 24 to 31).

A. Arguments of the State and observations of the Commission and of the representatives

18. The **State** alleged that Bolivia had ratified the ICPPT on June 27, 2006,¹⁰ and it was not in force at the time of the facts of this case; nevertheless, the Convention came into effect immediately on ratification. It added that the guarantees of due process were not violated during the investigations into the facts of the case; therefore, it had not violated its obligation to investigate. Consequently, it considered that the Court did not have jurisdiction to rule on the State's obligations in relation to the ICPPT.

19. The **inter-American public defenders** underlined that, as indicated by the State, the ICPPT, just as any other international treaty, was not applicable retroactively. However, they considered that violations of the ICPPT existed that were subsequent to its entry into force, particularly related to the fact that the State had not exercised due diligence when investigating the complaints of torture. They added that the Court had jurisdiction to examine possible violations of the duty of due diligence during the domestic investigation of the complaints of torture, even if the alleged torture had occurred before the entry into force of the treaty. They stressed that the compatibility of the investigation conducted by the State with the standards arising from the ICPPT was a matter that related to the merits of the case and, due to its nature, was not a preliminary matter. Lastly, they asked the Court to reject the preliminary objection *ratione temporis*.

20. The **representatives Jemio Mendoza and Machicao Hidalgo** indicated that the investigation into the acts of torture that occurred starting on December 21, 2001, began in 2010, four years after the ICPPT entered into force for Bolivia; therefore, they considered that the Convention was not being applied retroactively. They emphasized that the State had acknowledged that, more than 11 years after the investigation had begun, no judgment had been

¹⁰ According to the OAS Secretariat, Bolivia ratified the ICCPT on August 26, 2006, and deposited the instrument of ratification on November 21, 2006.

handed down in the criminal proceedings. Consequently, they asked the Court to reject the objection.

21. The **Commission** clarified that, in this case, the Court was not being asked to declare the international responsibility of the State based on the ICPPT in relation to instantaneous acts that had occurred before Bolivia was a party to that treaty. The Commission stressed that it considered that the State had violated Articles 1,6 and 8 of the ICPPT only after this instrument had come into force for the State, exclusively in relation to the obligation to investigate and to punish the reported acts of torture. Therefore, it considered that the preliminary objection filed by the State was inadmissible and that the State's argument that it had investigated the complaints of torture satisfactorily corresponded to the merits of the case and, therefore, were not of a preliminary nature.

B. Considerations of the Court

22. The State ratified the Inter-American Convention to Prevent and Punish Torture on August 26, 2006, and deposited the instrument of ratification on November 21, 2006. The treaty entered into force for Bolivia, pursuant to the terms of its article 22, on December 21, 2006. Based on this and on the principle of non-retroactivity, codified in Article 28 of the 1969 Vienna Convention on the Law of Treaties,¹¹ the Court is unable to exercise its contentious jurisdiction with regard to acts or facts that took place before the date on which a treaty whose violation is alleged entered into force for the State.¹²

23. On this basis, the Court finds that it does not have jurisdiction to rule on the torture to which the alleged victims were allegedly subjected based on the ICPPT, but rather as a possible violation of Article 5 of the American Convention on Human Rights. In addition, as it has in other cases,¹³ the Court determines that it does have temporal jurisdiction to examine the alleged violation of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture in relation to the alleged failure to investigate the facts after December 21, 2006, which has been argued by both the Commission and the representatives in this case. Based on the foregoing, the Court rejects the preliminary objection filed by the State.

V

PRELIMINARY CONSIDERATIONS

A. Inclusion of absent alleged victims

24. The **State** argued that the inclusion of six of the alleged victims¹⁴ on the list presented in the Commission's Merits Report was contrary to the principles of equality of arms and adversariality. It indicated that the initial petition lodged before the Commission had been submitted on behalf of 26 individuals, but had only been signed by 12 of them. It also alleged that

¹¹ Article 28: "Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party."

¹² Cf. *Case of the Serrano Cruz Sisters v. El Salvador. Preliminary objections*. Judgment of November 23, 2004. Series C No. 118, para. 66, and *Case of the Julien Grisonas Family v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of September 23, 2021. Series C No. 437, para. 22.

¹³ Cf. *Case of the Gómez Paquiyaury Brothers v. Peru. Merits, reparations and costs*. Judgment of July 8, 2004. Series C No. 110, para. 196, and *Case of the Julien Grisonas Family v. Argentina, supra*, para. 27.

¹⁴ In its brief filing preliminary objections, the State indicated that this referred to seven alleged victims; however, when listing them, it only mentioned six names: Edwin Rodríguez Alarcón, Elacio Peña Córdoba, Alfredo Bazán y Rosas (or José Miguel Abildo Díaz), Julia Mamanu Mamani, Carlos Enrique Castro Ramírez and Freddy Cáceres Castro.

the representatives of only four alleged victims had participated directly in the procedure before the Commission. It added that, based on the pleadings and motions briefs, the State had been able to obtain information on the position and criteria of most of the alleged victims, with the exception of six of them who could not be contacted. It also argued that there was some uncertainty regarding the identity of two of those alleged victims.¹⁵ Furthermore, it considered that an inter-American public defender may assume the representation of alleged victims who do not have duly accredited legal representation, but not of those who are not present in the proceedings. On this basis, it asked the Court to declare that it lacked jurisdiction *ratione personae* in relation to the six persons identified as being absent from the international proceedings.

25. The **inter-American public defenders** indicated that all the alleged victims were duly identified in the Merits Report and that, during the proceedings before the Court, the inter-American public defenders represented the interests of the absent alleged victims. They added that the State had not filed this objection at the corresponding procedural stage. They also argued that the State's efforts to locate the alleged victims had been ineffectual, especially taking into account that several of them were deprived of liberty and would have been in the State's custody. Lastly, they clarified that they did have information identifying Alfredo Bazán y Rosas. Therefore, they asked the Court to reject the objection filed by the State.

26. The **Commission** argued that matters relating to the exercise of the procedural rights of the alleged victims in the procedure before the Commission or clarifications regarding their identification and representation did not call into question the Court's jurisdiction; therefore, it considered that the State's arguments should be rejected. It also underlined that the 26 alleged victims had been duly identified in the Merits Report, adding that the State had not provided any evidence of why it could not exercise its procedural rights in relation to the six alleged victims who were allegedly absent from the proceedings.

27. The **Court** deemed it pertinent to indicate that Article 35(1) of its Rules of Procedure establishes that, "in order for the case to be examined, the report to which Article 50 of the Convention refers must identify the alleged victims." In this regard, the Court notes that, in the instant case, the Commission clearly identified all the alleged victims in the Merits Report.¹⁶

28. The State argued that the obligation of identification had not been met in the case of two of the alleged victims: Julia Mamanu Mamani and Alfredo Bazán y Rosas. Regarding the former, it indicated that, during the proceedings, she had also been referred to as Julia Mamani Mamani and that her identification number had not been noted. Regarding the latter, the State argued that he had also been referred to with the alternate name of José Miguel Abildo Díaz.

29. In the first case, this Court considers that the existence of two spellings of the name of Julia Mamanu Mamani does not constitute a reason for considering that she was not duly identified. The Court also underlines that Julia Mamanu Mamani underwent a medical examination at the request of a public prosecutor in the context of the events of this case, as the State itself

¹⁵ The State indicated that the alleged victim Julia Mamanu Mamani was also referred to as Julia Mamani Mamani, and that Alfredo Bazán y Rosas also appeared with the alternate name of José Miguel Abildo Díaz.

¹⁶ According to the Merits Report, the alleged victims in this case are: 1) Blas Valencia Campos; 2) Norma Lupe Alarcón de Valencia; 3) Edwin Rodríguez Alarcón; 4) Claudia Valencia Alarcón; 5) Gabriel Valencia Alarcón; 6) Alexis Valencia Alarcón; 7) Claudia Valencia Alarcón; 8) Elacio Peña Córdoba; 9) Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega); 10) Genaro Ahuacho Luna (also known as Walter Herrera Flores); 11) Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz); 12) Mercedes Valencia Chuquimia; 13) Mauricio Valenzuela Valencia; 14) Oswaldo Lulleman Antezana; 15) Raúl Oswaldo Lulleman Gutiérrez; 16) Victoria Gutiérrez de Lulleman; 17) Paola Lulleman de Zaconeta; 18) Luis F. Lulleman Gutiérrez; 19) Julia Mamanu Mamani; 20) F.E.P.M.; 21) Carlos Eladio Cruz Añez; 22) Carlos Enrique Castro Ramírez; 23) Álvaro Taboada Valencia; 24) Patricia Catalina Gallardo Ardúz; 25) María Fernanda Peña Gallardo, and 26) Freddy Cáceres Castro.

established in its answering brief. Indeed, the evidence file contains a forensic medical certificate of the alleged victim's examination; consequently, the State cannot argue that she has not been identified.¹⁷

30. Similarly, the alternate name of Alfredo Bazán y Rosas is an alias that he uses, and could contribute to his identification; accordingly, it should not be considered an obstacle to the alleged victim's identification. In addition, Alfredo Bazán y Rosas was tried and convicted by the El Alto Second Sentencing Court and that judgment clearly established his date of birth, domicile, parentage, and Electoral Document number.¹⁸ Consequently, the State cannot argue that it had no evidence identifying this alleged victim.

31. Regarding the representation of the alleged victims who are absent from the proceedings, the Court notes that, effectively, when submitting the case to the Court, the Commission did not accredit the representation of all the alleged victims. Despite the efforts made by both the Court and the inter-American public defenders, it was not possible to contact alleged victims Edwin Rodríguez Alarcón, Elacio Peña Córdoba, Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz), Julia Mamanu Mamani, Carlos Enrique Castro Ramírez and Freddy Cáceres Castro. However, these six individuals have been named as alleged victims since the initial petition was lodged before the Commission and appear on the list of alleged victims identified by the Commission in its Merits Report. As it was not possible to contact them, in a Secretariat communication of June 9, 2021, sent on the instructions of the President, a request was made to the AIDEF for them to be represented by the inter-American public defenders who are intervening in this case. The Court considers that, in light of the particularities of the case, the interests of these absent alleged victims have been represented by the inter-American public defenders.

B. Inclusion of A.A.D.P. as an alleged victim

32. The **Commission**, in its Merits Report, identified 26 individuals as victims (*supra* footnote 16).

33. **Representative Jemio Mendoza**, in his pleadings and motions brief, included arguments relating to the violation of Articles 19 and 17 of the Convention in the case of A.A.D.P., son of alleged victim María Fernanda Peña Gallardo.¹⁹ Moreover, he indicated that "María Fernanda Peña Gallardo's son was also a victim of the violation of the right protected by Art[icle] 5 of the [Convention], in relation to Art[icles] 19 and 1(1) of this treaty," and asked that "he should also be declared a beneficiary of the reparations that the Bolivian State is ordered to comply with." Likewise, among the requests included in his final arguments he expressly asked that "the judgment declare the international responsibility of the Bolivian State for the violation to the detriment of A.A.D.P., son [of] María Fernanda Peña Gallardo, of the rights recognized in Articles 17(1) and 19 of the American Convention, all in relation to the obligations established in Article 1(1) of this instrument."

34. As previously indicated (*supra* para. 27), Article 35(1) of the Rules of Procedure stipulates that the case is presented to the Court through the submission of the Commission's Merits Report,

¹⁷ Cf. Forensic medical certificate drawn up by Dr. Eduardo Morales Valda on December 18, 2001 (evidence file, folio 11561).

¹⁸ Cf. Judgment delivered by the Second Sentencing Court of El Alto, Bolivia, on May 16, 2003, operative paragraphs (evidence file, folio 600).

¹⁹ The representative indicated that "A.A.D.P." corresponded to the initials of María Fernanda Peña Gallardo's son and, in his final written arguments, he asked that "to prevent possible repercussions on him," the Court urge the State and anyone who could become aware of the identity of A.D.D.P., or have access to the documentation in the instant case, to maintain the confidentiality of the identity and name of A.A.D.P.

which must “identify the alleged victims.” According to this article, it is for the Commission and not this Court to identify the alleged victims in a case before the Court precisely and at the appropriate procedural moment. Legal certainty requires, as a general rule, that all the alleged victims are duly identified in the Merits Report, and new alleged victims may not be added subsequently, subject to the exceptional circumstances established in Article 35(2) of the Court’s Rules of Procedure relating to massive or collective violations.

35. Article 35(2) is not applicable in this case, which does not refer to massive or collective acts. Consequently, the Court will not consider A.A.D.P., María Fernanda Peña Gallardo’s son, as an alleged victim or, if applicable, a beneficiary of measures of reparation because the Commission did not mention him as an alleged victim in its Merits Report.

VI EVIDENCE

A. Admissibility of the documentary evidence

36. The Court received diverse documents presented as evidence by the Commission and the parties together with their principal briefs (*supra* paras. 1, 6 and 7) and, as in other cases, these are admitted in the understanding that they were presented at the proper procedural moment (Article 57 of the Rules of Procedure)²⁰ and that their admissibility was not disputed or contested.

37. The Court also received documents attached to the final written arguments of the State and of representatives Jemio Mendoza and Gómez Rojas.²¹ In briefs of August 8 and 9, 2022,

²⁰ In general, and pursuant to Article 57(2) of the Rules of Procedure, documentary evidence should be presented together with the briefs submitting the case or with pleadings and motions, or with the answering brief, as applicable, and evidence forwarded outside these procedural opportunities is not admissible, subject to the exceptions established in the said Article 57(2) (namely, *force majeure*, grave impediment or in the case of a supervening fact – that is, one that occurred after the said procedural moments). *Cf. Case of the Barrios Family v. Venezuela. Merits, reparations and costs.* Judgment of November 24, 2011. Series C No. 237, paras. 17 and 18, and *Case of Deras García et al. v. Honduras. Merits, reparations and costs.* Judgment of August 25, 2022. Series C No. 462, para. 31.

²¹ During the public hearing, the Court’s judges asked the parties to include in their final arguments information on: (a) the actual situation of the alleged victims who were sentenced to imprisonment; (b) details of the actions taken by the State to investigate the alleged acts of torture from 2003 to date; (c) information on the training courses provided for members of the police and the prosecution service; (d) information identifying the alleged victims who were presented before the media during the press conference held following the raids. With his final written arguments, representative Jemio Mendoza presented a medical report on the health of alleged victim Patricia Gallardo; certification from the Judicial Registration System concerning the calculation of the sentence served by Patricia Gallardo; incidental plea for parole presented by Patricia Gallardo; request for indication of date and time of hearing to consider the incidental plea for parole; certification of prison stay and conduct of Patricia Gallardo; resolution No. 063/2022 of the La Paz Departmental Court of Justice, Second Court for Execution of Sentence ordering a warrant for the arrest of Patricia Gallardo; resolution No. 194/2022 of the Departmental Court of Justice, Second Criminal Chamber, confirming resolution No. 063/2022; resolution No. 19/2022 of the Criminal Chamber deciding the application for release filed by Catalina Gallardo. He also asked the Court to admit, as documentary evidence, the Ombudsman’s Report “*Límites en la Implementación del Sistema Único de Salud*,” available at <https://www.defensoria.gob.bo/uploads/files/informe-defensorial-limites-en-la-implementacion-del-sistema-unico-de-salud.pdf>. In addition, with his brief with final arguments, representative Gómez Rojas submitted copies of newspaper articles mentioning and identifying several of the alleged victims during the press conference held after the raids. Lastly, with its final arguments, the State presented the file on Investigation LPZ 1006147 concerning the complaint of abuse and torture; record of the statement made by J.V.V. on February 17, 2020, in the investigation into abuse and torture; note PGE-SPDRLE-DGDDHMA No. 101/2022 sent to the Vice Minister for Health Insurances and Management of the Integrated Health System requesting the inclusion of alleged victim Víctor Manuel Boggiano in the Integrated Health System; note PGE-SPDRLE-DGDDHMA No. 100/2022 sent to the Director General for Migration requesting his collaboration to provide alleged victim Víctor Manuel Boggiano with an identity document; letter from Patricia Gallardo Ardúz to the PGE [Attorney General] of May 17, 2021; Order MINGOP/DESP. Ref. No. 034/2021 on implementation of human rights and gender perspective training programs; Report PGE-UC-INF-

the inter-American public defenders and the Commission, respectively, indicated that they had no observations to make on the documents presented. In briefs of August 9, 2022, representative Jemio Mendoza and the State each forwarded their observations on the annexes.

38. Among the documents attached to its final arguments, the State included a letter of May 17, 2021, from alleged victim Patricia Gallardo Ardúz to the Attorney General in which she accepted the State's proposal to provide her with medical care through the Universal Health Insurance scheme, indicating that this did not mean that she relinquished her petition before the Inter-American Court for better health services. **Representative Jemio Mendoza** contested the incorporation into the file of this document, arguing that it was time-barred.

39. Regarding the procedural moment for the presentation of documentary evidence, **the Court** recalls that, pursuant to Article 57(1) of the Rules of Procedure, this should generally be presented together with the briefs submitting the case or with pleadings and motions, or with the answering brief, as applicable. Nevertheless, during the public hearing, the judges questioned the parties about conversations and possible agreements that had taken place between the State and some of the alleged victims. Therefore, the document could help respond to the questions raised by the Court; it is therefore considered admissible.

40. Among other documents attached to his final arguments, **representative Jemio Mendoza** included a medical report on Patricia Gallardo from the Institute for Therapy and Research into the Aftereffects of Torture and State Violence (ITEI) dated February 14, 2022. The **State** contested the incorporation of this evidence, indicating that the report did not comply with the necessary formalities, and was not issued by a health center with the necessary equipment to be able to issue this type of report.

41. On this point, the **Court** finds that the State's arguments do not refer to the admissibility of the evidence, but rather to its probative value. The document was presented in response to a request by the judges during the public hearing; therefore its admissibility is supported by Article 58(b) of the Rules of Procedure. The State's observations on its content and probative value will be taken into account, together with the remainder of the evidence, when examining the merits of the case.

42. The Court notes that the other documents attached to the final arguments of the State and of the representatives were forwarded in response to requests made by the judges during the public hearing based on Article 58(b) of the Rules of Procedure, and their admissibility was not contested or disputed; they are therefore admitted. In addition, with regard to the Ombudsman's Report "*Límites en la Implementación del Sistema Único de Salud*" [Limits to the Implementation of the Integrated Health System] forwarded by representative Jemio Mendoza, this Court considers that this document was issued after the presentation of the pleadings and motions brief; accordingly, based on Article 57(2) of the Rules of Procedure, it is admitted.

B. Admissibility of the testimonial and expert evidence

0171/2022 of the EAE [School for State Lawyers] and Specific Agreement on training courses; Report No. 25/2022 of the School for State Prosecutors on the implementation of training programs and investigations concerning forced disappearances; Report of the School for State Prosecutors; CITE Report DG-EJE-130/2022 on progress in training programs.

43. The Court deems it pertinent to admit the statements made during the hearing,²² and also the affidavits²³ insofar as they are in keeping with the purpose defined by the President in the order requiring them.²⁴

44. In communications sent on June 13 and 14, 2022, representative Jemio Mendoza and the inter-American public defenders advised the Court of difficulties to find notaries public who would agree to notarize the statements of several of the proposed declarants, particularly those who were serving prison sentences. A Secretariat note of June 15, 2022, advised that "if the representatives found it impossible to arrange for the statements of the alleged victims and the witnesses to be provided before a notary public or other attesting officer, they may forward simple sworn statements signed by the declarant and accompanied by a copy of the respective identity document, explaining why it was not possible to obtain the affidavits."

45. Consequently, the respective representatives presented the statements of alleged victims Víctor Manuel Boggiano Bruzzón, Eladio Cruz Añez and Blas Valencia Campos that had merely been signed, accompanied by the declarant's identity document. The statement of Luis Fernando Lulleman Gutiérrez was originally sent with just his signature; however, the representatives subsequently forwarded a notarized version of the same statement. Taking into account the reasonable nature of the justifications provided by the representatives regarding the difficulties to find notaries willing to notarize the statements and the obstacles to access the declarants who were in prison, the Court admits those statements.

46. In the case of the joint statement by the witnesses Pablo García Nava and Marcelo Flores Torrico, the purpose defined by the President's order was "the physical and psychological assessment of alleged victims Víctor Manuel Boggiano Bruzzón, F.E.P.M., Victoria Gutiérrez de Lulleman, Luis Fernando Lulleman Gutiérrez, Raúl Oswaldo Lulleman Gutiérrez and Jenny Paola Lulleman owing to the alleged torture and cruel, inhuman or degrading treatment of which they were victims, as well as the consequences of this on their personal and work lives." However, the Court notes that the witness statements were presented individually and that they only refer to alleged victims F.E.P.M. and Víctor Boggiano Bruzzón. The inter-American public defenders indicated that the notary public who agreed to notarize the statements required them to be made individually. Also, the declarants were only able to interview alleged victims F.E.P.M. and Víctor Boggiano Bruzzón and, therefore, their statements could only refer to those two cases.

47. The Court considers that the statements presented correspond to the purpose determined in the President's order of May 25, 2022, even though only partially, as they do not cover all the alleged victims mentioned. Also, the reason for their individual presentation responded to factors beyond the control of the public defenders. The Court also notes that the admissibility of these statements was not contested or disputed. Consequently, the Court finds these statements admissible.

²² The Court received the statement of alleged victim F.E.P.M. in a private hearing. Subsequently, during the public hearing, it received the statements of alleged victim Mauricio Marcelo Valenzuela Valencia and expert witness María Luisa Piqué.

²³ The Court received the affidavits of alleged victims Raul Oswaldo Lulleman Gutiérrez, Luis Fernando Lulleman Gutiérrez, Patricia Catalina Gallardo Ardúz, Claudia Mariela Valencia Alarcón, Norma Lupe Alarcón de Valencia, Alexis Eduardo Valencia Alarcón, Gabriel Blas Valencia Alarcón, Claudio Tito Centeno Valencia and Carlos Álvaro Taboada Valencia, and of witnesses Marcelo Flores Torrico, André Gautier and Rose Mary Blanco and, finally, of expert witnesses Barbara Barnath and Diana Esther Guzmán Rodríguez.

²⁴ The purposes of all these statements were established in the order of the President of the Inter-American Court of May 25, 2022. Available at: https://www.corteidh.or.cr/docs/asuntos/valencia_campos_y_otros_25_05_22.pdf.

VII FACTS

48. In this chapter, based on the factual framework submitted by the Inter-American Commission, the evidence in the case file, and the arguments of the parties, the Court will establish the facts of the case in relation to the following aspects: (A) the relevant legal framework; (B) the attack on the Prosegur truck, the subsequent raids and the arrest of the suspects; (C) the criminal proceedings against the alleged victims, convictions, and execution of the sentences, and (D) the investigation into the complaints of ill-treatment and torture.

A. Relevant legal framework

49. At the date of the facts, the possibility of conducting police raids and arrests based on *flagrante delicto* were regulated by both the Constitution of the State of Bolivia, and by the Code of Criminal Procedure. The principal articles of the laws in force at the time of the events are transcribed below. The Constitution established:

Article 9. I. No one may be arrested, detained or imprisoned except in the cases and according to the forms established by law; the necessary warrant must be issued by a competent authority and served in writing.

II. Solitary confinement cannot be imposed except in cases of extreme gravity and never for more than twenty-four hours.

Article 10. Any offender caught *in flagrante delicto* may be apprehended by any person, even without a warrant, for the sole purpose of being brought before a competent authority or judge, who must take his or her statement within twenty-four hours at the most.

Article 21. Every house is an inviolable asylum; at night it shall not be entered without the consent of the occupant and, in the daytime, entry thereto is only allowed by reasoned order of a competent authority issued in writing, except in cases of *flagrante delicto*.²⁵

50. Meanwhile, the Code of Criminal Procedure in force in Bolivia at the time of the events²⁶ established:

Article 118 (Permitted days and hours). Procedural acts shall be carried out during business days and hours, without prejudice to authorizations issued by the judge or court, *ex officio* or at the request of a party, when necessary. At the substantiated request of the prosecutor, the investigating judge may issue warrants on public holidays and during overtime hours.

Article 180 (House raids). House raids require a reasoned decision by a judge and the mandatory participation of the prosecutor. Raids of private houses or residences are prohibited during night hours; they may only be conducted during daytime working hours, except in cases of *flagrante delicto*. Night hours shall be understood to refer to the time between 7:00 p.m. and 7:00 a.m. the following day.

Article 181 (Coercive powers). To conduct a search, the authority may order the persons found on site not to leave during the procedure or another person to appear immediately. Anyone disobeying shall be constrained by the law enforcement authorities, without prejudice to the corresponding liability. The restriction of liberty shall not last more than eight hours; after this, an order must be obtained from the investigating judge.

²⁵ 1995 Constitution of the State of Bolivia, Law No. 1615 of February 6, 1995 (evidence file, folios 2056 and 2058).

²⁶ Code of Criminal Procedure, Law No. 1970 of March 25, 1999 (evidence file, folios 2092 to 2165).

Article 182 (The warrant and its contents). The warrant shall include the following: 1. The name and office of the judge or court ordering the raid and a brief description of the procedure; 2. The precise address of the place or places to be raided; 3. The authority appointed to conduct the raid; 4. The specific reason for the raid, the respective legal grounds, the procedures to be conducted and, insofar as possible, the identification of the individuals or objects sought, and 5. The date and the signature of the judge. The warrant shall be valid for a maximum of ninety-six hours after which it expires. The prosecutor attending the search shall direct the procedure.

Article 183 (Procedure and formalities). The individual, of at least 14 years of age, living in or owning or guarding the place shall be informed of the decision ordering the raid so that he may witness the search, and he shall be handed a copy of the warrant. If no one is present, a copy of the warrant shall be fixed to the door of the building raided. Once the search has been completed, the results shall be recorded, taking care to ensure that the place is closed and secured from other individuals, if there are reasons that justify this. The record shall be signed by all those who intervened in the act and the person who witnessed the search; if this is not done, the reason shall be recorded.

Article 227 (Arrest by the police). The National Police may arrest anyone in the following cases: 1. When they have been surprised *in flagrante delicto*; 2. In compliance with an arrest warrant issued by a competent judge or court; 3. In compliance with an order issued by the prosecutor, and 4. When an individual has escaped after having been legally detained. The police authority that has arrested anyone must inform and make them available to the Prosecution Service within eight hours at most.

Article 230 (*Flagrante delicto*). The perpetrator shall be considered to be *in flagrante delicto* when surprised while attempting to commit an offense, committing it, or immediately afterwards while pursued by law enforcement agents, the injured party or eyewitnesses.

Article 296 (Arrest). In the cases in which this Code authorizes the arrest of suspects, the members of the Police shall respect the following basic principles:

- 1) Use force only when strictly necessary;
- 2) Do not use firearms, except when:
 - a. There is resistance that endangers life or physical integrity, and
 - b. In the case of an escape, when less extreme measures are insufficient to achieve the arrest of the suspect, after warning that a weapon will be used.
- 3) Do not inflict, instigate or tolerate any act of harassment, torture or other cruel, inhuman or degrading treatment or punishment, both at the time of the arrest and during the detention.
- 4) Do not permit detainees to be presented to any social communication medium, without their express consent, which shall be given in the presence of their defense counsel and shall be recorded in the respective record;
- 5) Identify oneself, by a credential, as a police officer at the time of the arrest, indicating first and last names, and ascertain the identity of the person or person to be arrested;
- 6) Inform the person, at the time of the arrest, of the reason for this, and that they have the right to remain silent without this prejudicing them, and to appoint a defense lawyer;
- 7) Inform the next of kin or other persons related to the suspect of his or her arrest and the place to which they will be taken, and
- 8) Make an unalterable record of the place, date and time of the arrest.

Failure to observe the rules contained in this article shall result in the corresponding administrative and criminal liability.²⁷

B. The attack on the Prosegur truck, the subsequent raids, and the arrest of the suspects

²⁷ Code of Criminal Procedure, Law No. 1970 of March 25, 1999 (evidence file, folios 2109, 2110, 2118, 2124, 2125, 2137 and 2138).

B.1. The attack on the Prosegur truck

51. On December 14, 2001, at around 8:15 a.m., an organized group attacked a white Combi van, license plate 916-YEP belonging to the private security company, Prosegur, in Avenue Kantutani in La Paz. Seven people were traveling in the van: a driver, three police officers, and three bank tellers. During the robbery, as a result of a shoot-out with high-caliber weapons, three people died: the driver, a police officer and a bank teller.

52. During the attack, one of the assailants, Elacio Peña Córdova, was wounded in the left arm, while Genaro Ahuacho Luna and Patricia Gallardo Ardúz were responsible for blocking the traffic with a white truck. The action was supervised by Blas Valencia Campos, former police coronel, Norma Lupe Alarcón de Valencia, Mercedes Valencia Chuquimia, Freddy Cáceres Castro, former police officer, and Raúl Oswaldo Lulleman Antezana, who were nearby.²⁸

B.2. The raids

53. On the same day as the robbery, the Eight Criminal Investigation Court issued resolution No. 180/2001 ordering the search, with confiscation powers, of the properties located at No. 55 Virgen de Rosario Street and No. 120 11th Street, in order to “find the perpetrators and proceed to the arrest of the suspects, seize weapons, military or police clothing, documentation related to the events, and also objects or instruments related to the said crimes.”²⁹ The resolution was expanded on December 17, 2001, to include another six properties,³⁰ expressly authorizing the authorities to conduct the raids during night hours, overtime hours and public holidays, based on article 118 of the Code of Criminal Procedure.³¹

54. In the early morning hours of December 18, 2001 – four days after the attack – numerous armed state agents raided six properties as part of the operation relating to the robbery involving the Prosegur truck.³² The raids of each of the properties are described below. According to the statements of the alleged victims, no court order was shown in any of the raids.³³

B.2.1. Search of the house located at No. 2319 Las Rosas Street

²⁸ Cf. Resolution No. 12/2003 issued by the El Alto Second Sentencing Court on May 16, 2003 (evidence file, folios 10510 to 10512).

²⁹ Cf. Resolution No. 180/2001 issued by the Eight Criminal Investigation Court on December 14, 2001 (evidence file, folio 1602).

³⁰ These properties were located in: No. 75 Cívica Avenue, Nos. 2523 and 2525 Presbítero Medina Street, No. 2319 Las Rosas Street, No. 6568-B Plaza Liberal, and No. 600 Zarzuela Street.

³¹ Cf. Resolution No. 186/2001 issued by the Eight Criminal Investigation Court on December 17, 2001 (evidence file, folios 1604 and 1605).

³² There is no information in the case file regarding how many police officers took part in the operation. According to the statement made by Eladio Cruz Añez, “between fifty and seventy police officers” took part in the search of his home (evidence file, folio 12589); in his statement, Víctor Manuel Boggiano Bruzzón indicated that “a large number of police officers” entered his home (evidence file, folio 12604); Alexis Eduardo Valencia testified that “the house was full of police officers dressed in green and others in black; there were a lot of them” (evidence file, folio 12619); Claudia Valencia testified that, during the search, “there were many police officers (countless) who went in and out of all the rooms” (evidence file, folio 12627); Patricia Gallardo indicated that “they entered my home, forcing open the door to the house, many police officers, more than 30, wearing hoods” (evidence file, folio 12719).

³³ Cf. Statement by Eladio Cruz Añez, undated (evidence file, folio 12589) and Statement by Blas Valencia Campos, undated (evidence file, folio 12756). In addition, during the oral proceedings, a police officer who took part in the raids indicated: “[o]n Monday [December 18, 2001], we had already located five houses in the early morning hours; I have not seen the warrants; the prosecutor did not inform me personally about the warrants” (statement by A.S. in the oral proceedings before the El Alto Second Sentencing Court, March 11, 2003, evidence file, folio 199).

55. At approximately 2:45 a.m. on December 18, 2001, dozens of heavily armed police officers burst into the house located at No. 2319 Las Rosas Street. This is where Blas Valencia Campos lived with his wife, Norma Alarcón de Valencia, his children, Edwin, Claudia, Gabriel and Alexis, and his grandson, Claudio, the last two aged 11 years and 3 years respectively at the time of the events. Elacio Peña Córdova was also in the house at the time. According to the statements made by the alleged victims, all those present in the house were beaten by the police officers, tied up and placed face down with their faces covered.³⁴

56. The declarants also reported that the police officers struck the women in their private parts and threatened the children in front of their parents to force the latter to confess.³⁵ Gabriel Blas Valencia Alarcón suffered an epileptic seizure while he was being beaten by the officers. The police failed to help him or provide him with medical attention; rather, they continued to beat him.³⁶

57. During the raids, the police took money, jewelry and household appliances. Subsequently, it was alleged that the jewelry was never returned, even though it was unrelated to the case investigated;³⁷ as a result, Norma Alarcón Valencia filed a request for its return before the district prosecutor on September 1, 2004.³⁸

58. Alexis Eduardo Valencia Alarcón, who was 11 years old at the time of the events, indicated that, during the search, he was taken out of the house in his pajamas and without his parent's permission, placed in the back of a patrol car and taken to the homes of Eladio Cruz and Patricia Gallardo Ardúz.³⁹

B.2.2. Search of the houses located at Nos. 2523/2525 Presbítero Medina

59. At the time of the raid, Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega); Genaro Ahuacho Luna (also known as Walter Herrera Flores or Walter Herrera Ríos); Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz or Alberto Farfán), Mercedes Valencia Chuquimia, and Mauricio Valenzuela Valencia (16 years of age at the time⁴⁰), were at No. 2525 Presbítero Medina.

³⁴ Cf. Statement by Blas Valencia Campos, undated (evidence file, folio 12756); affidavit made by Norma Lupe Alarcón on June 14, 2022 (evidence file, folio 12641); affidavit made by Claudia Valencia Alarcón on June 14, 2022 (evidence file, folio 12626); affidavit made by Gabriel Blas Valencia Alarcón on June 14, 2022 (evidence file, folio 12632); affidavit made by Alexis Valencia Alarcón on June 14, 2022 (evidence file, folio 12619).

³⁵ Norma Lupe Alarcón indicated that "they pointed a gun at my grandson, Claudio Centeno, aged 3, threatening his mother, my daughter Claudia; they made my daughter Claudia Valencia, aged 22, bleed; in front of me, they kicked her so hard that they made her bleed between her legs leaving a stain on the floor of the corridor; my sons, Edwin Rodríguez Alarcón, aged 28, and Gabriel Valencia Alarcón, aged 19, were brutally beaten" (affidavit made by Norma Lupe Alarcón on June 14, 2022, evidence file, folio 12641). Claudia Valencia Alarcón indicated that: "[s]ome minutes later, a police officer lifted my head by the hair and showed me my son, Claudio Tito Centeno Valencia, aged 3; he pointed a gun at his head and told me to indicate where there was any money" (affidavit made by Claudia Valencia Alarcón on June 14, 2022, evidence file, folio 12627).

³⁶ Cf. Affidavit made by Norma Lupe Alarcón on June 14, 2022 (evidence file, folio 12643); statement made by Claudia Valencia Alarcón on June 14, 2022 (evidence file, folio 12626) and affidavit made by Gabriel Blas Valencia Alarcón on June 14, 2022 (evidence file, folio 12632).

³⁷ Cf. Certification of the Secretary of the First Sentencing Court of September 3, 2002, indicating that "[t]he First Sentencing Court has never ordered that the jewelry in question should remain in the custody of the prosecutors, or as seized evidence, or as any other actual measure" (evidence file, folios 1817 and 1818).

³⁸ Cf. Brief submitted to the office of the La Paz district prosecutor by Norma Alarcón Valencia on September 1, 2004 (evidence file folios 1804 to 1808).

³⁹ Cf. Affidavit made by Alexis Eduardo Valencia Alarcón on June 14, 2022 (evidence file, folio 12620).

⁴⁰ Cf. Statement made by Mauricio Valenzuela Valencia during the public hearing.

60. At 3:00 a.m. on December 18, 2001, the police burst into the house and opened fire with heavy caliber weapons. On hearing the shots, Víctor Manuel Boggiano Bruzzón fled to a neighboring house, No. 2523. The police entered that house also and arrested Mr. Boggiano Bruzzón, taking him back to No. 2525.⁴¹ There, the police rounded up all those present, handcuffed them, made them lie face down on the floor, and then beat them. Víctor Manuel Boggiano Bruzzón was kicked in the face even though he was helpless on the floor, and also struck in the face with a rifle butt by a police officer, leaving him with injuries that remain visible today.⁴²

61. The police beat Mercedes Valencia Chuquimia very violently with their firearms and threatened her to make her provide information on the robbery. Even though she told the police that he was only a child, her son Mauricio Valenzuela Valencia was interrogated alone in a room and was beaten. Subsequently, he was taken to the room where his mother was being kept and could watch how the police beat her, undressed her, and poked their firearms between her legs.⁴³

62. Genaro Ahuacho Luna was interrogated by the Police while he was on the floor. The police officers used their boots to subjugate him and pulled him up violently by the hair in order to show his face in the video recorded during the police operation.⁴⁴ The same video shows Alfredo Bazán y Rosas lying on the floor with blood on his injured face.⁴⁵

B.2.3. Search of the house at No. 75 Cívica Avenue, El Alto, La Paz

63. The Police raided this house on December 18, 2001, at approximately 1:00 a.m. At the time of the raid, those present included Victoria Gutiérrez de Lulleman together with her children, Raúl Oswaldo Lulleman Gutiérrez, Jenny Paola Lulleman de Zaconeta and Maribel Lulleman Gutiérrez, and her grandson, Daniel Zaconeta (aged 4 at the time). Also present were Julia Mamanu Mamani, the family's domestic worker and her eight-year-old daughter.⁴⁶

64. The police officers entered the home violently, making all the occupants leave their rooms without even allowing them to get dressed. Raúl Oswaldo Lulleman was handcuffed and thrown down the stairs from the second floor of the house. He was then taken back to his room where the police officers beat his back with their rifles to force him to provide information on the robbery.⁴⁷ Victoria Lulleman Gutiérrez stated that, during the operation, she was threatened and had to watch how they mistreated her son.⁴⁸ Julia Mamanu Mamani was also beaten during the raid. The video of the operation also shows how the police officers interrogated Julia Mamanu Mamani's daughter, for several minutes.⁴⁹

65. Luis Fernando Lulleman Gutiérrez arrived home a 7:00 a.m. after working all night. On his arrival, he was surprised by police officers who had remained there waiting for him since the start

⁴¹ Cf. Statement by Víctor Manuel Boggiano Bruzzón, undated (evidence file, folio 12604).

⁴² Cf. Statement by Víctor Manuel Boggiano Bruzzón, undated (evidence file, folio 12604) and affidavit made by forensic physician Marcelo Flores Torrico on June 15, 2022 (evidence file, folio 12705).

⁴³ Cf. Statement made by Mauricio Valenzuela Valencia during the public hearing.

⁴⁴ Cf. VHS video (without audio) of the police operation and the reconstruction of the events, minute 33:06.

⁴⁵ Cf. VHS video (without audio) of the police operation and the reconstruction of the events, minute 28:23.

⁴⁶ Cf. Affidavit made by Oswaldo Lulleman Gutiérrez on June 15, 2022 (evidence file, folio 12708).

⁴⁷ Cf. Affidavit made by Oswaldo Lulleman Gutiérrez on June 15, 2022 (evidence file, folio 12709).

⁴⁸ Cf. Statement by Victoria Lulleman Gutiérrez during the domestic trial (evidence file, folios 9638 and 9639).

⁴⁹ Cf. VHS video (without audio) of the police operation and the reconstruction of the events, minute 10:05.

of the raid. They then proceeded to arrest him using great violence.⁵⁰ Oswaldo Lulleman Antezana encountered a similar situation when he arrived home at around 8:00 a.m.⁵¹

B.2.4. Search of the house located at No. 1365 Juan Manuel Cáceres Passage

66. Between 4:00 and 5:00 a.m., several dozen police officers burst into the property located at No. 1365 Juan Manuel Cáceres Passage.⁵² At the time of the raid, Eladio Cruz Añez, F.E.P.M. and Carlos Enrique Castro Ramírez were present. This property was not one of the houses listed in resolutions 180/2001 and 186/2001 ordering the raids relating to the robbery involving the Prosegur truck.⁵³

67. Eladio Cruz Añez stated that the police officers hit him with their rifles and kicked him until he lost consciousness. He indicated that the officers tried to asphyxiate him with a bag and he even vomited blood. In addition, he stated that Carlos Enrique Castro Ramírez was also beaten violently by the police officers, and tortured with a gas-filled bag.⁵⁴

68. In the statement she made during a private hearing, F.E.P.M. indicated that, on entering her home, the police officers began to beat her with their firearms. She indicated that Eladio Cruz Añez, who was her husband at the time, yelled at the police that she was pregnant, and, as a result, the police officers proceeded to hit her stomach and placed a black bag over her head.⁵⁵

B.2.5. Search of the home of Patricia Catalina Gallardo Ardúz

69. Between 6:00 and 6:30 a.m. on December 18, 2001, around thirty hooded police officers entered the home of Patricia Catalina Gallardo Ardúz in the Iparvi area of La Paz.⁵⁶

70. Patricia Gallardo Ardúz indicated that the police officers beat her stomach and back, handcuffed her, and continued to beat her violently, while insulting her. She stated that her mother, her daughter, and her youngest grandson were at her home at the time.⁵⁷

B.2.6. Other raids and arrests

71. On December 18, 2001, at approximately 8:30 a.m., several police officers raided a house on Simón López Avenue in Cochabamba where Carlos Álvaro Taboada Valencia was present. After being interrogated by the police, he was taken to an office to identify someone in an identification

⁵⁰ Cf. Affidavit made by Luis Fernando Lulleman Gutiérrez on June 17, 2022 (evidence file, folio 12776).

⁵¹ Cf. Affidavit made by Luis Fernando Lulleman Gutiérrez on June 17, 2022 (evidence file, folio 12776).

⁵² Cf. Statement by Eladio Cruz Añez, undated (evidence file, folio 12589)

⁵³ According to the statement by W.O., Police Commander General, when the home of Blas Valencia Campos was being searched "one of the persons detained told us that there were other individuals who were involved in the attack who were in Juan Manuel Cáceres Passage (...). Then, we went to the Cáceres Passage around 05:30 a.m." (Report of W.O. to the prosecutors E.M. and M.D. on April 8, 2002, evidence file folio 9577).

⁵⁴ Cf. Statement by Eladio Cruz Añez, undated (evidence file, folios 12589 and 12590).

⁵⁵ Cf. Statement made by F.E.P.M. during the private hearing.

⁵⁶ According to the statement made by W.O., Police Commander General, it can be inferred that the raids, including the one in Iparvi Street, were conducted before 7:00 a.m. Indeed, the Commander indicated that "at 7:00 a.m., I received a call on my mobile phone from the Minister for Information [...]; I described all the actions that we had taken during the night and the early morning hours; he congratulated me" (Report of W.O. to the prosecutors E.M. and M.D. of April 8, 2002, evidence file folio 9577). According to the statement made by Patricia Gallardo Ardúz, the search began between 6 and 6:30 a.m. approximately (evidence file, folio 12719).

⁵⁷ Cf. Affidavit made by Patricia Catalina Gallardo Ardúz on June 15, 2022 (evidence file, folios 12719 and 12720).

parade, where he identified his uncle, Blas Valencia, and his brother, Mauricio Valenzuela. He was then taken to an unknown place where he was handcuffed to a metal bed and kicked in the back while being interrogated.⁵⁸

72. Freddy Cáceres was arrested on December 18, 2001, in the early hours of the morning in room 111 of the Tropical Inn Hotel where he was with his partner M.G.⁵⁹ The evidence in the case file contains no record of a court order requiring that the hotel be raided. His arrest was the result of instructions given by the Commander General of the National Police, W.O., to the Santa Cruz Departmental Commander, Colonel O.T.⁶⁰

B.3. The detentions and the presentation to the media

B.3.1. The detentions in the Judicial Technical Police facilities

73. Following the raids, alleged victims Eladio Cruz Añez, F.E.P.M., Carlos Enrique Castro Ramírez,⁶¹ Víctor Boggiano Bruzzón, Genaro Ahuacho Luna, Alfredo Bazán y Rosas, Mercedes Valencia Chuquimia, Mauricio Valenzuela Valencia,⁶² Patricia Gallardo Ardúz,⁶³ Blas Valencia Campos, Norma Alarcón de Valencia, Edwin Rodríguez Alarcón, Claudia Valencia Alarcón, Gabriel Valencia Alarcón, Claudio Centeno Valencia, Elacio Peña Córdoba, Oswaldo Lulleman Antezana, Victoria Gutiérrez de Lulleman, Luis Lulleman Gutiérrez, Jenny Paola Lulleman de Zaconeta, Julia Mamanu Mamani and her daughter,⁶⁴ and Freddy Cáceres Castro were taken to the Judicial Technical Police facilities (hereinafter also “the PTJ”).

74. During their detention, the alleged victims were confined in small cells, without beds or access to bathrooms.⁶⁵ They were subjected to verbal and physical violence by the police officers.⁶⁶ The women stated that they had been victims of rape and other acts of sexual

⁵⁸ Cf. Affidavit made by Carlos Álvaro Taboada Valencia on June 14, 2022 (evidence file, folio 12623).

⁵⁹ Cf. Informative statement made to the police by Freddy Cáceres Castro on December 18, 2001 (evidence file, folio 717) and Report of W.O. to the prosecutors E.M. and M.D. on April 8, 2002, (evidence file, folio 3952).

⁶⁰ Cf. Report of W.O. to the prosecutors E.M. and M.D. on April 8, 2002 (evidence file, folio 9576).

⁶¹ Cf. Statement made by Eladio Cruz Añez undated (evidence file, folio 12591).

⁶² Cf. Statement by Víctor Manuel Boggiano Bruzzón, undated (evidence file, folios 12606 and 12607).

⁶³ Cf. Affidavit made by Patricia Gallardo Ardúz on June 15, 2022 (evidence file, folio 12720).

⁶⁴ Cf. Affidavit made by Luis Fernando Lulleman Gutiérrez on June 17, 2022, (evidence file, folio 12576).

⁶⁵ Cf. Luis Fernando Lulleman stated that “all the men – including the minor – were accommodated in the same cell. There we were forced to sleep on the floor (without a mattress), which was dampened by the police officers so that we would feel the cold” (Affidavit made by Luis Fernando Lulleman Gutiérrez on June 17, 2022, evidence file, folio 12576). Eladio Cruz Añez stated that, in the PTJ, “we were made to sleep on the floor – without a mattress – and we did not have access to a bathroom or to water. We were given almost no food and our family members were not allowed to provide us with food or clothing” (Statement made by Eladio Cruz Añez undated, evidence file, folio 12591). In his statement, Víctor Manuel Boggiano Bruzzón also recounted that they did not have access to bathrooms and that he did not receive food of any kind (Statement by Víctor Manuel Boggiano Bruzzón, undated, evidence file, folios 12606 and 12607). Furthermore, Claudia Valencia Alarcón stated that “the cell did not have chairs, or beds; we sat on the floor; we were not given food or water; we did not have a bathroom; we slept on the floor” (Affidavit made by Claudia Mariela Valencia Alarcón on June 14, 2022, evidence file, folio 12628). Similarly, Norma Lupe Alarcón de Valencia stated that, in the PTJ, they did not have access to a bathroom or food (affidavit made by Norma Lupe Alarcón on June 14, 2022, evidence file, folio 12644).

⁶⁶ Among the abuses suffered, the alleged victims recounted that they were obliged to sleep on a wet floor; were woken up during the night to dowse them and to beat them; had limited access to food and water; a sergeant tore off the stitches from Elacio Peña Córdoba’s bullet wound with a ballpoint pen, and covered it with *locoto* (*Capsicum pubescens*) with salt in order to make him suffer (Statement made by Eladio Cruz Añez, undated, evidence file, folio 12591). Víctor Manuel Boggiano also described how he was beaten until he passed out, his ears bled, and he lost the toenails of his left foot (Statement by Víctor Manuel Boggiano Bruzzón, undated, evidence file, folio 12607). He also

violence.⁶⁷ In addition, they were not allowed to receive defense lawyers,⁶⁸ and they were obliged to accept public defenders with whom they had no contact of any kind.⁶⁹ Their statements were taken in these conditions, before any intervention by a judge or prosecutor.⁷⁰

75. In the PTJ, prosecutor E.M.V. asked that forensic medicine examinations be performed on some of those detained, with the following findings:

- *Claudia Valencia Alarcón*: pain in the occipital region due to a simple contusion; a superficial bruise of 1 cm on the lower lip; slight pain in the back of the thorax and ridge of the nose and superficial abrasions of 0.5 cm on the back of the ring finger and the middle of the right hand. Two-day sick leave determined.⁷¹
- *Norma Alarcón Castillo*: simple contusion on the bridge of the nose, without external injuries. Reports pain in the left buttock and leg. Simple contusion on back left-hand side of the thorax. Two-day sick leave determined.⁷²
- *F.E.P.M.*: linear diffuse ecchymosis of 5x5 cm on the forehead with other small ones in periphery. 6 cm ecchymosis on the right shoulder. Simple contusion on the anterior thorax and right inguinal region. Superficial ecchymosis of 4, 3 and 2 cms on the outer sides of both legs. Reports 10-day amenorrhea for presumed incipient pregnancy that was not detected clinically. No colostrum. Four-day sick leave.⁷³
- *Victoria Gutiérrez Aguilar*: does not report or show signs of injuries.⁷⁴
- *Jenny Paola Lulleman Gutiérrez*: does not report or show signs of injuries.⁷⁵
- *Enrique Castro Ramírez*: diffuse oedema of 8 cm on right cheek with superficial 2 cm wound on the inside of the same cheek. Superficial 2 cm bruise on the right parietal region. Several diffuse ecchymosis on the thorax with diffuse pain when sitting. Pain is also evident on palpation of the sacro-coccygeal region. Superficial oedema on the outer part of left ankle. Seven-day sick leave determined.⁷⁶

recounted how Genaro Ahuacho Luna was tortured: "I was in the hall. He was lying face down; a door opened. I was on the ground, I got up and they strung me up from hooks. When I was on the ground, I looked at the deceased, how two or three of them hit him ... with a rifle and with truncheons. He fainted due to the immense pain. They brought him round and again hit him on the head very brutally with batons and blunt objects, while they kept him handcuffed with his hands behind his back, the same way they did to me when I was captured" (Psychological expertise in relation to alleged cruel, inhuman and degrading treatment against Víctor Manuel Boggiano Bruzzón conducted by Pablo Gabriel García in August 2021, evidence file folio 9859).

⁶⁷ Claudia Valencia stated that they were searched constantly, with ungloved fingers introduced into the vagina; firearms were also sometimes introduced into the vagina (Affidavit made by Claudia Mariela Valencia Alarcón on June 14, 2022, evidence file, folio 12628). Patricia Gallardo stated that she was interrogated for 4 to 5 hours. During the interrogation, she was beaten and they made her spread her legs to introduce a gun barrel between her legs. She recounted that, on several occasions, the police officers took the women who had been detained into a corridor, where they undressed them and then assaulted them, placing fingers in their private parts. She also indicated that they threatened to harm her children. In particular, she stated that, on several occasions during the night, she was taken from her cell to a room where she was raped by several police officers (Affidavit made by Patricia Gallardo Ardúz on June 15, 2020, evidence file, folios 12720 and 12721).

⁶⁸ Cf. Statement made by Eladio Cruz Añez undated (evidence file, folio 12591)

⁶⁹ Cf. Affidavit made by Luis Fernando Lulleman Gutiérrez on June 17, 2022, (evidence file, folio 12776), affidavit made by Patricia Gallardo Ardúz on June 15, 2020, (evidence file, folio 12722).

⁷⁰ Cf. Statement made by Eladio Cruz Añez undated (evidence file, folio 12591).

⁷¹ Cf. Forensic medical certificate of December 18, 2011 (evidence file, folio 11554).

⁷² Cf. Forensic medical certificate of December 18, 2011 (evidence file, folio 11555).

⁷³ Cf. Forensic medical certificate of December 18, 2011 (evidence file, folio 11556).

⁷⁴ Cf. Forensic medical certificate of December 18, 2011 (evidence file, folio 11557).

⁷⁵ Cf. Forensic medical certificate of December 18, 2011 (evidence file, folio 11558).

⁷⁶ Cf. Forensic medical certificate of December 18, 2011 (evidence file, folio 11559).

- *Mercedes Valencia Chuquimia*: pain due to simple contusions in the lateral costal region. Reports pain in the buttocks.⁷⁷
- *Julia Mamanu Mamani*: does not report or show signs of injuries.⁷⁸
- *Víctor Manuel Boggiano Bruzzón (Juan Ramírez Ortega)*: simple contusions in the left parietal and right occipital regions. One-centimeter bruise on the upper right eyelid involving the inner and outer surface. Superficial peripheral ecchymosis. Diffuse ecchymosis in the left lower palpebral and malar region. Superficial one-centimeter bruise with fracture of the bone, bruising on the left nostril. Cuts and bruises of 3 and 5 cms in the right nasal-labial furrow. Superficial ecchymosis and abrasions on both cheeks. Superficial ecchymosis and abrasions on the left shoulder and para-vertebral region of 5 and 7 cms. Simple contusions on rear thorax, right arm, with faint ecchymosis. Simple contusions on anterior thorax. Lineal abrasions of 5 and 7 cms. On the anterior wall of the abdomen. 5 cm abrasions due to friction on the anterior face of the left and right knee with peripheral superficial ecchymosis. Superficial ecchymosis and oedema on the anterior face of the left leg. Traumatic loss of the left foot thumb nail following a fall, also reports diffuse pain in the ankle due to slight ligament distension. Fifteen-day sick leave determined.⁷⁹

76. F.E.P.M. indicated that, at the time of her arrest, she was around two and a half months pregnant. As a result of the beatings and being raped numerous times by police officers in the PTJ facilities she suffered a miscarriage. Even though she was bleeding, she did not have access to medical care.⁸⁰

77. Following the raid, Raul Oswaldo Lulleman Gutiérrez was taken to a police facility where he was locked up in a room and then beaten until he fainted. The following morning, he was transferred to a second police facility on Sucre Street, where he continued to be a victim of violence. He remained at this second facility for from two to five days. Then, he was transferred to the PTJ where he remained for a month and a half in total solitary confinement. On February 14, 2002, he was transferred to the San Pedro prison where he was confined for two years without having taken part in any hearing to monitor the precautionary measure. He was then transferred to the Chonchocoro Prison.⁸¹

78. Raúl Oswaldo Lulleman's family filed a complaint before the Human Rights Committee of the Chamber of Deputies concerning his alleged disappearance. As a result of this complaint, a committee official went to the PTJ where she was able to verify that the cells were small, and to note that some of the detainees revealed signs of physical violence.⁸² She also noted that the detainees were kept in solitary confinement and that lawyers were not allowed to enter.

79. Following the raid of his home, Carlos Álvaro Taboada was taken to the PTJ Homicide Division where his statement was taken. He was then detained there and was not given any food and only allowed to drink bath water. According to his statement, he was kept for two days and then

⁷⁷ Cf. Forensic medical certificate of December 18, 2011 (evidence file, folios 11560 and 13066, both partially illegible).

⁷⁸ Cf. Forensic medical certificate of December 19, 2011 (evidence file, folio 11561).

⁷⁹ Cf. Forensic medical certificate of December 18, 2011 (evidence file, folio 13063).

⁸⁰ Cf. Statement made by F.E.P.M. at a private hearing on June 21, 2022.

⁸¹ Cf. Affidavit made by Raúl Lulleman Gutiérrez on June 15, 2022 (evidence file, folios 12710 and 12711).

⁸² She specifically referred to the bruise on the face of Blas Valencia Campos and the bruising suffered by Norma Alarcón (Statement made by RVG, official of the Human Rights Committee of the Chamber of Deputies, in the context of the Prosegur case, oral proceedings hearing of April 7, 2003, evidence file, folios 264 267).

released.⁸³ Meanwhile, Alexis Valencia Alarcón was also taken to the PTJ facilities where he was reunited with his nephew, Claudio Centeno Valencia, who was 3 years old at the time. They remained there until around midday on December 19, 2001, when they were released and custody was given to a person identified merely as "Marcia."⁸⁴ Gabriel Blas Valencia indicated that he was allowed to leave the PTJ after several days, but he had nowhere to go, until he was taken in by a woman who he did not identify in his statement.⁸⁵ Mauricio Valenzuela Valencia was detained in the PTJ facilities for seven days and then released.⁸⁶ On December 20, 2001, Jenny Paola Lulleman Gutiérrez and Julia Mamanu Mamani were released. The following day Luis Fernando Lulleman Gutiérrez was also released.⁸⁷

80. The remaining alleged victims were detained in the PTJ facilities until December 24, 2001. On that date, Genaro Ahuacho Luna, Alfredo Bazán y Rosas, Víctor Manuel Boggiano Bruzzón, Freddy Cáceres Castro, Carlos Enrique Castro Ramírez, Carlos Eladio Cruz Añez, Oswaldo Lulleman Antezana, Elacio Peña Córdova, Edwin Rodríguez Alarcón and Blas Valencia Campos were transferred to the Chonchocoro Prison, while Victoria Gutiérrez de Lulleman, Claudia Valencia Alarcón, Norma Alarcón de Valencia, Mercedes Valencia Chuquimia, Patricia Catalina Gallardo Ardúz and F.E.P.M. were transferred to the Miraflores Prison.

B.3.2. The press conference and the presentation of the alleged victims to the media

81. On December 19, 2001, the Executive Branch ordered that a press conference be held in the offices of the Ministry of the Interior. During the conference, the following alleged victims were presented to the media as the persons responsible for the robbery: Blas Valencia Campos, Norma Alarcón de Valencia, Gabriel Valencia Alarcón, Claudia Valencia Alarcón, Edwin Rodríguez Alarcón, Luis Fernando Lulleman Gutiérrez, Oswaldo Lulleman Antezana, Victoria Gutiérrez de Lulleman, Jenny Paola Lulleman de Zaconeta, Víctor Boggiano, Elacio Peña Córdova, Genaro Ahuacho, Alfredo Bazán y Rosas, Mercedes Valencia Chuquimia, Julia Mamanu Mamani, F.E.P.M., Eladio Cruz Añez, Carlos Enrique Castro Ramírez, Patricia Gallardo, Freddy Cáceres Castro and the adolescent Mauricio Valenzuela Valencia. The children Claudio Centeno Valencia and Alexis Valencia Alarcón were also present at this press conference⁸⁸ although there is no evidence that

⁸³ Cf. Affidavit made by Carlos Álvaro Taboada Valencia on June 14, 2022 (evidence file, folio 12624).

⁸⁴ Cf. Affidavit made by Alexis Eduardo Valencia Alarcón on June 14, 2022 (evidence file, folio 12620).

⁸⁵ Cf. Affidavit made by Gabriel Blas Valencia on June 14, 2022 (evidence file, folio 12633).

⁸⁶ Cf. Statement made by Mauricio Valenzuela Valencia during the public hearing.

⁸⁷ Cf. Affidavit made by Luis Fernando Lulleman Gutiérrez on June 17, 2022 (evidence file, folio 12782)

⁸⁸ Cf. Undated statement by Blas Valencia Campos in which he indicated that, in addition to himself, the following were presented to the media: Norma Lupe Alarcón de Valencia, Gabriel Valencia Alarcón, Claudia Valencia Alarcón, Edwin Rodríguez Alarcón, Alexis Valencia Alarcón and Mauricio Valenzuela Valencia (evidence file, folio 12756). Affidavit made by Alexis Eduardo Valencia Alarcón on June 14, 2022, in which he mentioned the presence in the room where the press conference was held of Blas Valencia, Edwin Rodríguez Alarcón, Gabriel Valencia Alarcón and Claudia Valencia Alarcón (evidence file, folio 12620). Affidavit made by Luis Fernando Lulleman Gutiérrez on June 17, 2022, in which he indicated that during the press conferences, he was presented together with Oswaldo Lulleman Antezana, Victoria Gutiérrez de Lulleman, Jenny Paola Lulleman de Zaconeta. Mauricio Valenzuela Valencia, Víctor Boggiano, Elacio Peña Córdova, Genaro Ahuacho, Alfredo Bazán y Rosas, Mercedes Valencia Chuquimia, Julia Mamanu Mamani, F.E.P.M., Eladio Cruz Añez, Carlo Enrique Castro Ramírez, Patricia Gallardo, and Blas Valencia Campos and members of his family (evidence file, folio 12779). Undated statement made by Eladio Cruz Añez in which he indicated that, during the press conference, in addition to himself, the following persons were presented: F.E.P.M., Carlos Enrique Castro Ramírez, Víctor Boggiano, Elacio Peña Córdova, Alfredo Bazán y Rosas, Genaro Ahuacho, Mercedes Valencia Chuquimia, Victoria Gutiérrez de Lulleman, Jenny Paola Lulleman, Luis Fernando Lulleman, Edwin Rodríguez Alarcón, Freddy Cáceres Castro, Mauricio Marcelo Valenzuela Valencia, Patricia Gallardo, Blas Valencia Campos, Claudia Valencia Alarcón and Norma Alarcón de Valencia (evidence file, folio 12592). Undated statement by Víctor Manuel Boggiano Bruzzón in which he indicated that, during the press conference, in addition to himself, the following persons

they were exhibited before the journalists. Photographs from the press conference were published by several media outlets.⁸⁹

82. Carlos Álvaro Taboada Valencia indicated that, following his arrest, he was taken to the courtyard of an unidentified place where there were members of the media and he was presented as the head of the band in Cochabamba;⁹⁰ however, the Court has no evidence to prove that this information was published.

B.3.3. The detentions in the Chonchocoro and Miraflores Prisons and the death of Genaro Ahuacho Luna

83. In the Chonchocoro Prison, the alleged victims continued to suffer acts of verbal and physical violence.⁹¹ Carlos Eladio Cruz Añez, Víctor Boggiano Bruzzón, Carlos Enrique Castro Ramírez, Alfredo Bazán y Rosas, Genaro Ahuacho Luna, Elacio Peña Córdova, Oswaldo Lulleman Antezana

were presented: Enrique Castro Ramírez, Genaro Ahuacho Luna, Alfredo Bazán, Elacio Peña Córdova, Luis Lulleman, Blas Valencia and Eladio Cruz Añez. He also indicated that there were many more people (evidence file, folio 12607). Affidavit made by Claudia Mariela Valencia Alarcón on June 14, 2022, in which she stated that, during the press conference, they were presented one-by-one, indicating their names; that, in her case, they said: “[t]his is Claudia Mariela Valencia Alarcón, daughter of Blas Valencia, complicit in the robbery.” She indicated that she recalled seeing Gabriel Valencia, Edwin Rodríguez, Mauricio Valenzuela, Blas Valencia and Norma Lupe Alarcón (evidence file, folios 12627 and 12628). Affidavit made by Patricia Gallardo Ardúz on June 15, 2022, in which she indicated that she was taken, together with the other detainees to the Ministry of the Interior, where all the radio and television media were present (evidence file, folio 12722). Statement made by Mauricio Valenzuela Valencia during the public hearing in which he indicated that he had been presented together with Blas Valencia and another two persons, that they gave out his name and his aliases. He indicated that Alexis Valencia Alarcón and Claudio Centeno Valencia were present in the room where the conference was held. In her statement during the private hearing, F.E.P.M. indicated that she recalled that Carlos Eladio Cruz Añez, Luis Lulleman and Oswaldo Lulleman were among those present with her in the press conference.

⁸⁹ The case file contains copies of the following newspaper articles regarding the case, which include photographs of the press conference:

- The newspaper *La Prensa* of December 18, 2001 (evidence file, folios 1777 a 1779)
- The newspaper *El Diario* of December 19, 2001, which named Blas Valencia and Norma de Valencia (evidence file, folio 1780).
- The weekly publication *Pulso* of December 21 to 27, 2001 (evidence file, folio 1782).
- The newspaper *La Jornada* of December 19, 2001. In this article, representative Gómez Rojas identified Claudia Valencia Alarcón and Gabriel Valencia Alarcón among the people in the photographs of the press conference (merits file, folios 1760 and 1764). The article also included the list of those detained with their full names.
- The newspaper *La Prensa* of December 19, 2001. In this article, representative Gómez Rojas identified Mauricio Valenzuela Valencia among the people in the photographs of the press conference (merits file, folio 1761).
- Unidentified newspaper article in which representative Gómez Rojas identified Norma Alarcón de Valencia among the people in the photographs of the press conference (merits file, folio 1762). The same newspaper article includes individual photographs with the following names: Alberto Farfán, Blas Valencia, Carlos Cruz Añez, Edwin Rodríguez, Norma de Valencia, Luis Lulleman G., Oswaldo Lulleman, Patricia Gallardo, Walter Herrera, Paola de Zaconeta, Juan Ramírez, F.E.P.M, Elacio Peña, Alfredo Bazán, and Carlos Enrique Castro.
- Unidentified newspaper article in which representative Gómez Rojas identified Blas Valencia among the people in the photographs of the press conference (evidence file, folio 1763).
- The newspaper *El diario* of December 19, 2001, which named Blas Valencia, Freddy Cáceres, Patricia Gallardo, Elacio Peña Córdova, and Walter Herrera as the leaders (evidence file, folio 9796).

⁹⁰ Cf. Affidavit made by Carlos Álvaro Taboada Valencia on June 14, 2022 (evidence file, folio 12623).

⁹¹ Eladio Cruz Añez recounted that: “[o]n entering the Chonchocoro maximum security prison, handcuffed, the prison guards lined up in two rows, forming a narrow passageway, and obliged us to walk between them in order to hit us with their firearms and their batons, and to kick us. They also threw gas at us. Then they made us undress while they beat us and spat into our mouths while inspecting them” (Cf. Statement made by Eladio Cruz Añez, undated, evidence file, folio 12593). Blas Valencia Campos recounted that, when they arrived at the prison, “they hit us with their fists, kicked us, and beat us with batons. This continued all night at any time until the morning; this went on for three days; during those three days, we received no food; on the fourth day we were given a mate tea with bread” (Cf. Statement by Blas Valencia Campos, undated, evidence file, folio 12757).

and Blas Valencia Campos were kept for 70 days under closed regime, with no communication or sunlight.⁹²

84. On March 6, 2002, Blas Valencia Campos filed before the Ombudsman a complaint against the governor of the San Pedro de Chonchocoro Prison due to unlawful isolation. In this complaint, he reported that, together with Oswaldo Lulleman, Carlos Cruz Añez, Enrique Castro Ramírez, Genaro Ahuacho Luna, Alfredo Bazán y Rosas and other detainees, he had been kept for more than 60 days under closed regime. Following measures taken by the Ombudsman's office, they were transferred to open cells, a situation that was verified by that office on March 5, 2002.⁹³

85. When the women arrived at the Miraflores Prison, they were taken to a single cell and were not given either food or blankets.⁹⁴ During their time in that prison they were not provided with medical care. They merely received the visit of a forensic physician who did not even auscultate them.⁹⁵

86. On April 12, 2002, Genaro Ahuacho Luna (also known as Walter Herrera Ríos) lost consciousness momentarily. The Chonchocoro Prison doctor diagnosed that he had had a stroke and recommended transferring him to a hospital.⁹⁶ According to Víctor Boggiano Bruzzón, who shared a cell with Genaro Ahuacho Luna, more than four hours passed before they took him to a hospital, leaving him without medical attention during that time.⁹⁷ Finally, he was transferred to the Corazón de Jesús Hospital where he was interned with a presumptive diagnosis of an ischemic cerebrovascular accident involving the middle left cerebral artery, acute coronary syndrome with probable acute myocardial infarction, and treatment was initiated. However, on April 14, 2002, at 1:15 a.m. he suffered sudden respiratory failure, and was intubated and put on a mechanical ventilator. At 6:50 p.m. he suffered irreversible cardio-respiratory arrest and died.⁹⁸

B.4. The death of María Fernanda Peña Gallardo

87. Following the arrest of her mother, Patricia Gallardo, María Fernanda Peña Gallardo suffered an emotional crisis. In the indictment filed by the Public Prosecution Service for the crimes of aggravated robbery and murder in the Prosecur case, María Fernanda Peña Gallardo appeared as one of the accused;⁹⁹ she had therefore been summoned to provide an informative statement

⁹² Cf. Statement made by Eladio Cruz Añez, undated (evidence file, folio 12594).

⁹³ Cf. Office of the Ombudsman. Report on direct procedure of March 6, 2002. Case of No. 0277-ALT-2002 (evidence file, folios 1788 and 1789).

⁹⁴ Cf. Statement made by F.E.P.M. at a private hearing on June 21, 2022.

⁹⁵ Cf. Affidavit made by Patricia Gallardo Ardúz on June 15, 2022 (evidence file, folio 12722).

⁹⁶ Cf. Medical report signed by A.Y.A., doctor of the San Pedro de Chonchocoro Prison, April 12, 2002 (evidence file, folio 9835).

⁹⁷ In his statement before Pablo Gabriel García during a psychological appraisal, he indicated: "I took care of him; he had a stroke. He was lying on the bed. I called out to him: Walter! and he merely (action of moving arms and legs compulsively). The doctor said that they were going to look after him. But he only brought paracetamol. The light faded from his eyes and he stopped moving. This had a profound impact on me. Police! Come and get him! I began to yell. No one responded. They came to get him around 5 or 6 a.m., but it was already too late. From 2 to 6 a.m. they waited without doing anything. The doctor looked at him as he passed by. He did nothing. The only thing he did was ... from time to time he took his pulse. They wanted him to die! (Psychological appraisal in relation to the supposed cruel, inhuman and degrading treatment of Víctor Manuel Boggiano Bruzzón conducted by Pablo Gabriel García in August 2021, evidence file, folio 9867).

⁹⁸ Cf. Medical report No. 001380 signed by JCZ (internal medicine) and JFG (neurologist), undated (evidence file, folio 9837).

⁹⁹ Cf. Indictment for the crime of aggravated robbery and murder issued by the Public Prosecution Service in June 2002 (evidence file, folio 532).

before the Public Prosecution Service on June 6, 2002.¹⁰⁰ On June 5, 2002, María Fernanda Peña Gallardo tried to commit suicide by medical intoxication and this resulted in her death on July 14, 2002.¹⁰¹

C. The criminal proceedings against the alleged victims, convictions, and execution of sentence

C.1. The criminal proceedings against the alleged victims

88. On December 19, 2001, at 4:00 p.m., the Eighth Criminal Investigation Court opened the public hearing on precautionary measures, which was one of the Judicial Police procedures undertaken at the request of the Public Prosecution Service against Carlos Enrique Castro Ramírez, Alfredo Bazán y Rosas,¹⁰² Víctor Manuel Boggiano Bruzzón,¹⁰³ Genaro Ahuacho Luna,¹⁰⁴ Mercedes Valencia Chuquimia, Victoria Gutiérrez Aguilar, Blas Valencia Campos, Oswaldo Lulleman Antezana, Claudia Valencia Alarcón, F.E.P.M., Norma de Valencia, Carlos Cruz Añez, Elacio Peña Córdova, Freddy Cáceres, Patricia Gallardo Ardúz and Raul Lulleman Gutiérrez¹⁰⁵ for the alleged crimes of murder, aggravated robbery, criminal association, and manufacture of explosive substances.¹⁰⁶ The defendants were represented by the public defense service; nevertheless, it has been indicated that they had no contact with the designated public defenders prior to the hearing.¹⁰⁷

89. During the hearing, the defense counsel argued that the detentions were unlawful and that the police had used unnecessary and excessive force.¹⁰⁸ In response to the arguments presented by the defense, the judge indicated: "I would kindly ask counsel to merely present the defense in relation to the precautionary measures."¹⁰⁹ In reasoned order No. 189/2011 of December 19, 2001, the Eighth Criminal Investigation Court ordered the pre-trial detention of all the defendants in the Judicial Technical Police facilities. In this order, the court referred to the defense lawyers' arguments regarding the violation of the constitutional rights and guarantees of their clients, but failed to take any action in this regard.¹¹⁰

¹⁰⁰ Cf. Record of suspension of hearing on informative statements issued by the Public Prosecution Service on June 6, 2002 (evidence file, folio 838).

¹⁰¹ Cf. Death certificate No. 155643 of July 19, 2021, certifying that María Fernanda Peña Gallardo died at 4:15 p.m. on July 14, 2002, as a result of cardio-pulmonary arrest (evidence file, folio 10221).

¹⁰² Identified in the respective record as "Alberto Farfán Larrosa or José Miguel Aroldo Díaz."

¹⁰³ Identified in the respective record as "Juan Ramírez Organi."

¹⁰⁴ Identified in the respective record as "Walter Herrera Ríos."

¹⁰⁵ Even though he was named in the hearing record, Raúl Lulleman Gutiérrez was not present. As indicated above, he was in solitary confinement in the PTJ facilities. According to his representatives, his brother, Luis Lulleman, attended the hearing, and they presented him as Raúl.

¹⁰⁶ Cf. Record of public hearing on precautionary measures issued by the Eighth Criminal Investigation Court on December 19, 2001 (evidence file, folio 1764). The record also mentions an additional defendant who is not one of the alleged victims in this case.

¹⁰⁷ Cf. Statement made by Eladio Cruz Añez, undated (evidence file, folio 12592).

¹⁰⁸ Cf. Record of public hearing on precautionary measures issued by the Eighth Criminal Investigation Court on December 19, 2001 (evidence file, folios 1766, 1767 and 1769).

¹⁰⁹ Record of public hearing on precautionary measures issued by the Eighth Criminal Investigation Court on December 19, 2001 (evidence file, folio 1767).

¹¹⁰ Cf. Resolution No. 189/2001 issued by the Eighth Criminal Investigation Court on December 19, 2001 (evidence file, folio 1773).

90. On June 25, 2002, the Public Prosecution Service filed charges for the crimes of murder, criminal association, manufacture, sale or ownership of explosive substances, coercion, aggravated robbery, and aggravated injury against Patricia Catalina Gallardo Ardúz, Freddy Cáceres Castro, Blas Valencia Campos, Mercedes Valencia Chuquimia, Norma Lupe Alarcón Castillo de Valencia, Oswaldo Lulleman Antezana, Carlos Eladio Cruz Añez, Carlos Enrique Castro Ramírez, Alfredo Bazán y Rosas (José Miguel Abildo Díaz), Víctor Manuel Boggiano Bruzzón (Juan Ramírez Ortega), Elacio Peña Córdoba, Raúl Oswaldo Lulleman Gutiérrez and F.E.P.M.¹¹¹ It also filed charges for aiding and abetting and receiving stolen items against María Fernanda Peña Gallardo and Claudia Mariela Valencia Alarcón.¹¹²

91. The oral proceedings began on January 10, 2003. During the trial, most of the defendants abstained from testifying.¹¹³ However, F.E.P.M. made a statement placing on record the ill-treatment suffered during her detention:

I was surprised when they arrested me; they beat me, they humiliated me physically and morally and when they entered the house, they hit me and made me lose my baby, because I was pregnant. [...] I want to tell you that when they arrested me, the police officer in charge of the investigation [...] humiliated me, and hit and kicked me so much that he made me lose baby; I was two and a half months pregnant. And when we arrived at the PTJ they made us undress and spread our legs; they yelled at us that we were bitches, whores; my statement was taken while being threatened with a gun and being beaten. [...] They put their fingers in our private parts; they yelled that we should die, as if we were animals; they squeezed my companions' breasts; when we were in the cells of the Judicial Technical Police, the police officers threw water on us, we slept on the floor, there wasn't even one bed; we suffered from the inclement weather conditions, we were taken out at 5:00 a.m.; they threw cold water on us and, during the nights, together with Claudia Valencia, they tried to take us out of the cell, and

¹¹¹ These charges were also filed against another four persons who are not part of these international proceedings.

¹¹² Cf. Indictment filed by the Public Prosecution Service before the president and members of the La Paz Sentencing Court on June 25, 2002 (evidence file, folios 2567 to 2595).

¹¹³ The following defendants abstained from testifying:

- 1) Blas Valencia Campos (Record of the oral proceedings before the El Alto Second Sentencing Court, January 17, 2003, evidence file, folio 58).
- 2) Freddy Cáceres (Record of the oral proceedings before the El Alto Second Sentencing Court, January 17, 2003, evidence file, folio 61).
- 3) Mercedes Valencia Chuquimia (Record of the oral proceedings before the El Alto Second Sentencing Court, January 17, 2003, evidence file, folio 62). However, at the end of the trial she asked to speak to make a clarification and indicated that "I have been tortured just because I am Blas Valencia's sister, and now I even have a dented skull, and my body has been beaten; I am not the same person as before" (statement before the El Alto Second Sentencing Court on May 16, 2003, evidence file, folio 516).
- 4) Norma Lupe Alarcón (Record of the oral proceedings before the El Alto Second Sentencing Court, January 17, 2003, evidence file, folio 62).
- 5) Oswaldo Lulleman Antezana (Record of the oral proceedings before the El Alto Second Sentencing Court, January 17, 2003, evidence file, folio 63).
- 6) Raul Lulleman Gutiérrez (Record of the oral proceedings before the El Alto Second Sentencing Court, January 17, 2003, evidence file, folio 64).
- 7) Carlos Eladio Cruz Añez (Record of the oral proceedings before the El Alto Second Sentencing Court, January 17, 2003, evidence file, folio 64). However, subsequently, as a clarification, he stated that, during the raid, he was the victim of a brutal beating, and that his statements were obtained unlawfully (statement made in the oral proceedings before the El Alto Second Sentencing Court, April 21, 2003, evidence file, folio 321).
- 8) Alfredo Bazán y Rosas (Record of the oral proceedings before the El Alto Second Sentencing Court, January 21, 2003, evidence file, folio 82).
- 9) Víctor Manuel Boggiano Bruzzón (Record of the oral proceedings before the El Alto Second Sentencing Court, January 21, 2003, evidence file, folio 83).

Meanwhile, Patricia Gallardo answered the questions put to her by her defense counsel; however, he did not ask her about the acts of violence she had suffered (Record of the oral proceedings before the El Alto Second Sentencing Court, January 17, 2003, evidence file, folio 61).

when I asked to see the forensic physician because I was bleeding heavily, he refused to help me.¹¹⁴

92. Meanwhile, Claudia Valencia Alarcón stated:

It was on 18 [December] when, at 3:00 a.m., I saw a man approaching my house and, seconds later, more than 100 police officers entered; then, I heard screams and cries from my parents. When I was able to go down to see what was happening, I saw my two younger brothers lying on the ground; then I saw how they put a rifle between my mother's buttocks; she was bleeding; then, they began to beat me; they put a nylon bag over my head; they brought my son to me and they undressed me; I heard my 11-year old brother crying and, that was the day they kidnapped him; we had no news of him; in the middle of all this, they began to speak to my brother who was trembling, who was afraid, and the police officers were so ignorant that they did not even realize that my brother was foaming at the mouth; my brother suffered from epilepsy and he was having a seizure; they had no compassion [...]. They beat us for 3 hours, they groped us; I felt hands touching my body [...]. The ill-treatment continued in the PTJ; that day, they made us sleep in dark, cold and humid cells; without a right to anything; we didn't have a bathroom; the following day, we were taken to the Ministry of the Interior to be presented to the media; we were all taken, even the young children, who were the children of the defendants present in this trial; we were shown to the people; they allowed us to be insulted and even spat on; all our statements were taken under threat and torture; we were obliged to speak; every day they took us out of the cells to touch our bodies; they put their fingers in our mouths and vaginas in front of all the men; they did this four times a day; we were kept in solitary confinement; we were allowed to go to the bathroom only two minutes each day; I saw how [F.E.P.M.] was bleeding heavily because she had been pregnant and they made her lose her baby; no one defended us; when we arrived at the different prisons, we were kept in solitary confinement; I was unable to communicate with my father for 3 months; they told me that he was dying; I could not see my son; they took him away from me.¹¹⁵

93. In addition, several of the defense lawyers argued that the raids, the ill-treatment and acts of torture committed during them, and the detentions were unlawful before the court during the oral proceedings¹¹⁶ and in their final oral arguments.¹¹⁷ Similarly, during the interrogation of the

¹¹⁴ Statement by F.E.P.M. during the oral proceedings before El Alto Second Sentencing Court, January 17, 2003 (evidence file, folios 65 and 66).

¹¹⁵ Statement by Claudia Valencia Alarcón in the oral proceedings before the El Alto Second Sentencing Court, January 21, 2003 (evidence file, folio 84).

¹¹⁶ Statement by Blas Valencia's co-sponsoring lawyers in the oral proceedings before the El Alto Second Sentencing Court, January 29, 2003 (evidence file, folio 95); statement by Patricia Gallardo's lawyer in the oral proceedings before the El Alto Second Sentencing Court, January 29, 2003 (evidence file, folio 96); statement by the Norma Alarcón de Valencia's co-sponsoring lawyer before the El Alto Second Sentencing Court, January 29, 2003 (evidence file, folio 99); statement by Raul and Oswaldo Lulleman's lawyer before the El Alto Second Sentencing Court, January 29, 2003 (evidence file, folios 99 and 100); statement by F.E.P.M.'s lawyer before the El Alto Second Sentencing Court, January 29, 2003 (evidence file, folio 101); statement by Elacio Peña Córdova's lawyer before the El Alto Second Sentencing Court, January 29, 2003 (evidence file, folio 104); statement by Carlos Enrique Castro's lawyer before the El Alto Second Sentencing Court, January 29, 2003 (evidence file, folio 104).

¹¹⁷ Patricia Gallardo Ardúz's lawyer referred to the unlawful nature of the raids (final oral arguments presented before the El Alto Second Sentencing Court on May 13, 2003, evidence file folio 485); Mercedes Valencia Chuquimia's lawyer stated that his client's son had been beaten and tortured (final oral arguments presented before the El Alto Second Sentencing Court on May 14, 2003, evidence file, folios 492 and 493); similarly, the lawyer for Oswaldo Lulleman Antezana and Raul Oswaldo Lulleman Gutiérrez stated that the acts of violence had been reported to the Ombudsman and to the Human Rights Committee of the Chamber of Deputies. He also denounced the abuse suffered by being presented to the media as criminals (final oral arguments presented before the El Alto Second Sentencing Court on May 14, 2003, evidence file, folio 494). Also, F.E.P.M.'s lawyer reiterated the ill-treatment that his client had suffered during the raid and subsequent detention (final oral arguments presented before the El Alto Second Sentencing Court on May 14, 2003, evidence file, folios 497 and 498). The lawyer for Elacio Peña Córdova and Carlos Enrique Castro also referred to the unlawful nature of the raid and stated that his clients' statements had been

witnesses, several of the defendants referred to what they had endured during the raids and detentions. For example, in response to the testimony of W.O., Police Commander General, Raul Oswaldo Lulleman Gutiérrez asked to speak and stated: "I was attacked; I was put into a barrel of water; my mother was beaten; my sisters were ill-treated; I have been kept solitary confinement for two months; they have violated my rights; my brother was shown on television."¹¹⁸ Victoria Gutiérrez de Lulleman, testifying as a witness for the defense, stated that, during the search of her home, she was treated inhumanely; they pointed a gun at her four-year old grandson, and all those who lived in the house were arrested. They were treated very badly when they were in the cells; they were unable to go to the bathroom; they had no food. They took the women out into the corridor and made them undress and spread their legs.¹¹⁹

94. On May 16, 2003, the court read out the operative paragraphs of the judgment.¹²⁰ In its ruling, it declared that Blas Valencia Campos, Patricia Gallardo Ardúz, Carlos Eladio Cruz Añez, Elacio Peña Córdova, Carlos Enrique Castro Ramírez, Alfredo Bazán y Rosas and Víctor Manuel Boggiano Bruzzón were guilty of the crimes of murder, aggravated robbery, criminal association, and aggravated injury, and sentenced each of them to thirty years' imprisonment without right of pardon. In addition, the defendants Freddy Cáceres Castro and Norma Lupe Alarcón Castillo de Valencia were found guilty of the crimes of aggravated robbery, criminal association, and complicity in the crimes of murder and aggravated injury, and sentenced to twenty-two years' imprisonment. The defendants Mercedes Valencia Chuquimia, Raúl Oswaldo Lulleman Gutiérrez and Oswaldo Lulleman Antezana were found guilty of the crimes of aggravated robbery and criminal association, and of complicity in the crimes of murder and aggravated injury, and sentenced to eighteen years' imprisonment. The court declared that F.E.P.M. was guilty of complicity in the crime of aggravated robbery and sentenced her to seven years' imprisonment. Claudia Mariela Valencia Alarcón was found to have been complicit in the crime of aggravated robbery and sentenced to three years' imprisonment. She was granted a conditional suspended sentence, subject to a one-year probationary period.¹²¹

95. Judgment No. 12/2003 of May 16, 2003, was based solely on the documentary, material and testimonial evidence presented during the oral proceedings, and in the inspection hearing following the reconstruction of the events conducted by the court in the presence of the defendants and their defense lawyers.¹²² The court only took into account the statements made by the defendants during the oral proceedings.¹²³ In the case of the claims made by the lawyers regarding the irregularity of the detentions, the court found it appropriate to make a doctrinal analysis of the constitutional guarantees and legal certainty. However, it concluded that:

[I]t has been insinuated, albeit indirectly, that the apprehension of some of the accused was allegedly carried out in an irregular manner. If so, their lawyers should have denounced such

obtained under duress (final oral arguments presented before the El Alto Second Sentencing Court on May 15, 2003, evidence file, folio 507).

¹¹⁸ Intervention of Raul Oswaldo Lulleman in the oral proceedings before the El Alto Second Sentencing Court, March 10, 2003 (evidence file, folio 186).

¹¹⁹ Cf. Testimony of Victoria Gutiérrez de Lulleman in the oral proceedings before the El Alto Second Sentencing Court, April 8, 2003 (evidence file, folios 274 to 276)

¹²⁰ Cf. Certification at 6:30 p.m. on May 16, 2003 (evidence file, folio 598).

¹²¹ Cf. Record of the reading of the judgment delivered by the El Alto Second Sentencing Court at 6:00 p.m. on May 16, 2003 (evidence file, folios 599 to 605).

¹²² Cf. Judgment No. 12/2003 delivered by the El Alto Second Sentencing Court at 6:00 p.m. on May 16, 2003 (evidence file, folios 1829 to 1921).

¹²³ Cf. Judgment No. 12/2003 delivered by the El Alto Second Sentencing Court at 6:00 p.m. on May 16, 2003 (evidence file, folios 1829 to 1921).

facts in a timely manner before the Criminal Investigation Judge, who is precisely the authority responsible for the oversight of such guarantees. Since that did not occur and given that the said official decided on his own authority to order the defendants to be placed in pre-trial detention, any such supposed anomalies have been regularized. Therefore, at this stage of the proceedings, the defendants' claims that they are being detained unlawfully are without any legal grounds.¹²⁴

96. However, taking into account that, during the trial, it had been reported that violations of the defendants' human rights had been committed by public officials, the court ordered that the case file be forwarded to the Public Prosecution Service for investigation.¹²⁵ This Court has no evidence proving that the file was, in fact, forwarded¹²⁶

97. Those convicted filed an appeal, reiterating the alleged violations of their human rights during the detention and investigation.¹²⁷ On August 21, 2003, the First Criminal Chamber of the Superior Court of Justice declared the appeal inadmissible without ruling on the allegations of human rights violations.¹²⁸ The convicted persons then filed a remedy of cassation¹²⁹ and this was declared inadmissible by the Criminal Chamber of the Supreme Court of Justice on October 29, 2003.¹³⁰

C.2. Execution of the sentences

98. Claudia Mariela Valencia Alarcón was released from prison on February 6, 2002, with a release order. On May 10, 2008, a final release order was issued for F.E.P.M. On October 7, 2010, a conditional release order was issued in favor of Mercedes Valencia Chuquimia. Raúl Oswaldo Lulleman Gutiérrez left prison following a release order in the form of house arrest on May 18, 2009; however, it was recorded that he entered the Patacmaya Custodial Center on August 9, 2016, owing to the perpetration of another offense. On December 1, 2010, a conditional release order was issued for Oswaldo Lulleman Antezana,¹³¹ who died on July 5, 2011.¹³² Then, on August 30, 2013, a conditional release order was issued for Norma Lupe Alarcón Castillo. On February

¹²⁴ Judgment No. 12/2003 delivered by the El Alto Second Sentencing Court at 6 p.m. on May 16, 2003 (evidence file, folios 1910 to 1911).

¹²⁵ Cf. Judgment No. 12/2003 delivered by the El Alto Second Sentencing Court at 6 p.m. on May 16, 2003 (evidence file, folio 1920).

¹²⁶ With a report of March 3, 2010, the Secretariat of the First Criminal Chamber Primera sent a letter to the president of the superior district court in which he indicated that no criminal proceedings existed in which any of the 26 alleged victims in this case appeared as victims (evidence file, folio 12825).

¹²⁷ Cf. Appeals filed by: F.E.P.M. on June 2, 2003; and individually, on June 9, 2003, by Alfredo Bazán y Rosas; Blas Valencia Campos; Mercedes Valencia Chuquimia; Norma Lupe Alarcón Castillo de Valencia; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Víctor Manuel Boggiano Bruzzón; Elacio Peña Córdova; Carlos Enrique Castro Ramírez; Oswaldo Lulleman Antezana, and Raúl Lulleman Gutiérrez (evidence file, folios 850 to 986)

¹²⁸ Cf. Resolution No. 539/03 issued by the First Criminal Chamber on August 21, 2003 (evidence file, folios 3442 to 3445).

¹²⁹ Cf. Cassation appeals filed by: Carlos Eladio Cruz Añez on September 12, 2003, and, individually, on September 13 by Alfredo Bazán y Rosas; Blas Valencia Campos; Patricia Catalina Gallardo; Norma Lupe Alarcón Castillo de Valencia; Mercedes Valencia Chuquimia; Víctor Manuel Boggiano Bruzzón; Oswaldo Lulleman Antezana and Raúl Lulleman Gutiérrez; F.E.P.M.; Carlos Enrique Castro Ramírez, and Elacio Peña Córdova (evidence file, folios 613 to 698).

¹³⁰ Cf. Supreme order No. 541 issued by the Criminal Chamber of the Supreme Court of Justice on October 29, 2003 (evidence file folios, 3527 and 3528).

¹³¹ Cf. Table prepared by the State based on information provided by the Prison Regime General Directorate attached to the Ministry of the Interior (evidence file, folios 7570 to 7572).

¹³² Cf. Death certificate No. 011137 (merits file, folio 80.4). Mr. Lulleman's death was unrelated to the facts of this case.

20, 2018, Elacio Peña Córdova left prison with an order for house arrest, as did Carlos Enrique Castro Ramírez on December 24, 2018. When this judgment was being deliberated, Freddy Cáceres Castro had been released with an order for house arrest. Blas Valencia Campos, Carlos Eladio Cruz Añez and Alfredo Bazán y Rosas remained serving their prison sentences¹³³ at the date this judgment was handed down.

99. In November 2021, the temporary house arrest for six months of Víctor Manuel Boggiano Bruzzón was ordered due to health problems¹³⁴ and, on May 4, 2022, Mr. Boggiano was required to present himself to the San Pedro Prison in order to serve the rest of his sentence.¹³⁵ Mr. Boggiano Bruzzón filed an appeal against this decision on May 12, 2022,¹³⁶ and, on May 17, 2022, he requested an extension of the measure of house arrest.¹³⁷

100. Lastly, on July 31, 2018, Patricia Catalina Gallardo Ardúz left prison with a temporary order for house arrest, which was extended four times on March 1, 2019, September 12, 2019, June 26, 2020, and May 13, 2021. Ms. Gallardo Ardúz filed an incidental plea for parole on November 25, 2021.¹³⁸ On May 3, 2022, it was declared that the house arrest had been completed and an arrest warrant was issued.¹³⁹ The court scheduled the hearing on the request for conditional release for May 24, 2022.¹⁴⁰ The hearing was held on May 30, 2022, and it was decided to grant her the benefit of conditional release.¹⁴¹

D. The investigation into the complaints of ill-treatment and torture

101. In Instruction No. 467/2010 of June 23, 2010, the Prosecutor General of the Public Prosecution Service instructed the La Paz district prosecutor, a.i., to order the opening of the corresponding criminal investigation of the perpetrators of the alleged acts of torture and the inhuman treatment of the 26 alleged victims in this case.¹⁴² On July 7, 2010, the prosecutor, director of operations for cases reported to the Special Crime Fighting Force, announced the opening, *ex officio*, of investigations into the crimes of ill-treatment and torture. This responded

¹³³ Cf. Table prepared by the State based on information provided by the Prison Regime General Directorate attached to the Ministry of the Interior (evidence file, folios 7570 to 7572).

¹³⁴ Cf. Order for temporary house arrest issued by the Second Court for Execution of Sentence on November 3, 2021 (merits file, folio 907).

¹³⁵ Cf. Resolution No. 064/2022 issued by the Second Court for Execution of Sentence on May 4, 2022 (merits file, folio 964).

¹³⁶ Cf. Remedy of appeal against resolution 064/2022 filed by Víctor Manuel Boggiano Bruzzón on May 12, 2022 (merits file, folio 1065).

¹³⁷ Cf. Request to extend house arrest filed by Víctor Manuel Boggiano Bruzzón on May 17, 2022 (merits file, folios 1066 and 1067).

¹³⁸ Cf. Incidental plea for parole filed by Patricia Catalina Gallardo Ardúz on November 25, 2021 (merits file, folios 977 and 978).

¹³⁹ Cf. Resolution No. 063/2022 issued by the Second Court for Execution of Sentence on May 3, 2022 (merits file, folios 984 to 986).

¹⁴⁰ Cf. Schedule for hearing on the incidental plea for parole filed by Patricia Catalina Gallardo issued on May 13, 2022 (merits file, folio 1053).

¹⁴¹ Cf. Brief of representative Jemio Mendoza of May 31, 2022 (merits file, folios 1098 and 1099).

¹⁴² Cf. Instruction No. 467/2010 issued by the Prosecutor General of the Public Prosecution Service on June 23, 2010 (evidence file, folios 12820 y12821).

to verification by the Inter-American Commission that those acts were not being investigated, as recorded in Admissibility Report No. 84/08 on this case.¹⁴³

102. Consequently, case No. 6147/10 was opened. In the context of this investigation, summonses were issued to Mercedes Valencia Chuquimia, Mauricio Valenzuela Valencia, Álvaro Taboada Valencia, Freddy Cáceres Castro, Oswaldo Lulleman Antezana, Claudia Valencia Alarcón, Raul Oswaldo Lulleman Gutiérrez, Victoria Gutiérrez de Lulleman, Carlos Eladio Cruz Añez, Norma Lupe Alarcón de Valencia, Patricia Catalina Gallardo Ardúz and Blas Valencia Campos.¹⁴⁴ Statements were only taken from Patricia Catalina Gallardo Ardúz,¹⁴⁵ Mercedes Valencia Chuquimia,¹⁴⁶ Blas Valencia Campos¹⁴⁷ and Elacio Peña Córdoba.¹⁴⁸ In addition, requests were made to several institutions,¹⁴⁹ and information was received from the Commander of the Bolivian Police,¹⁵⁰ from the La Paz district prosecutor,¹⁵¹ and from the Forensic Investigations Institute.¹⁵²

103. On April 8, 2014, by Resolution No. 023/2013, the special prosecutor assigned to the Crimes against Persons Division presented a rejection resolution to the Seventh Criminal Investigation Judge. In this resolution, he considered that the investigation that had been conducted had not provided any evidence that would clarify the act denounced and, therefore, there were insufficient indications or evidence to prove that the act denounced had effectively been executed.¹⁵³

104. On October 23, 2014, the interim Vice Minister of Justice and Fundamental Rights filed an objection to the rejection resolution considering that a diligent investigation had not been conducted. In it, he asked the departmental prosecutor to forward the rejection resolution in order to exercise hierarchical control and annul it.¹⁵⁴ Subsequently, some requests were recorded in order to be able to serve notice of the rejection.¹⁵⁵ On September 12, 2019, the Prosecutor General decided the objection to the rejection and annulled Rejection Resolution No. 023/2013 of

¹⁴³ Cf. Report on the opening of an investigation issued by the prosecutor, director of operations for cases reported to the Special Crime Fighting Force, on July 7, 2010 (evidence file, folio 11581).

¹⁴⁴ Cf. Summons to appear before the Public Prosecution Service as a victim issued by the prosecutor on August 2, 2010 (evidence file, folios 12875 to 12886).

¹⁴⁵ Cf. Statement to the police by Patricia Catalina Gallardo Ardúz on August 24, 2010 (evidence file, folios 12888 and 12889).

¹⁴⁶ Cf. Statement to the police by Mercedes Valencia Chuquimia on August 27, 2010 (evidence file, folios 12897 and 12898).

¹⁴⁷ Cf. Record of statement by Blas Valencia Campos on February 7, 2011 (evidence file, folios 13000 to 13002).

¹⁴⁸ Cf. Record of statement by Elacio Peña Córdoba on March 21, 2011 (evidence file, folios 13021 and 13022).

¹⁴⁹ Cf. Request to the National Director for National Identification to forward a notarized photocopy of the criminal record or Kardex index card of the alleged victims on August 3, 2010 (evidence file, folio 12867), and Request to the Director of the Cossmil Military Hospital to forward information on the health of Blas Valencia Campos on August 2, 2010 (evidence file, folio 12874).

¹⁵⁰ Cf. Copy of Kardex index cards forwarded by the National Directorate for National Identification on August 27, 2010 (evidence file, folios 13006 to 13014).

¹⁵¹ Cf. Report No. 119/2011 of the La Paz departmental prosecutor sent on July 14, 2011 (evidence file, folios 13029 to 13032).

¹⁵² Cf. Report CITE/NE-COOR-GRAL-IDIF-JTD-418/2012 of the Forensic Investigations Institute of August 31, 2012 (evidence file, folios 13054 to 13067).

¹⁵³ Cf. Resolution No. 023/2013 of the special prosecutor of April 8, 2014 (evidence file, folios 11583 and 11584).

¹⁵⁴ Cf. Intervention of the interim Vice Minister of Justice and Fundamental Rights on October 23, 2014 (evidence file folios 13081 to 13089).

¹⁵⁵ Cf. Request to the director of the National Civil Registry Service of November 17, 2016 (evidence file, folios 13119-13120) and response of the Civil Registry Service by official communication SERECI-LPZ-CERT-N-70465-2-6999/2016 of November 17, 2016 (evidence file folios 13121 to 13126).

April 8, 2013, ordering that the investigation continue.¹⁵⁶ Prior to notification of this decision, the Service for the Prevention of Torture (hereinafter also "SEPRET") had filed an objection to the rejection of the complaint in a brief of September 16, 2019.¹⁵⁷

105. In the context of the continuation of the investigation, requests were sent to the Forensic Investigations Institute (hereinafter also "IDIF") to forward assessments made of the alleged victims in this case in December 2001 and January 2002;¹⁵⁸ to the National Director of the Prison Regime for information on the actual situation of the alleged victims;¹⁵⁹ to the General Personal Identification Service to provide notarized copies of the criminal record and Kardex index card of the alleged victims;¹⁶⁰ to the Civil Registry Service to advise the last domicile of the alleged victims.¹⁶¹ The General Personal Identification Service sent the requested photocopies on December 6, 2019,¹⁶² and the Civil Registry forwarded the information requested on December 9, 2019.¹⁶³

106. On December 20, 2019, the SEPRET again intervened in the investigation process and proposed that several measures be taken.¹⁶⁴ The Ministry of the Interior forwarded the information on the incarceration of the alleged victims on January 9, 2020.¹⁶⁵ On January 23, 2020, Víctor Manuel Boggiano made a statement in the context of the investigations into the complaint of ill-treatment and torture.¹⁶⁶

107. In a brief of February 2, 2020, the prosecutor in charge of the investigation asked the Seventh Criminal Investigation Judge to expand the investigation to include nine persons for the alleged perpetration of the crime of ill-treatment and torture.¹⁶⁷ In a request of February 11, 2020, the Commander General of the Bolivian Police was asked to provide information on the nine

¹⁵⁶ Cf. Resolution FDLP/ARVM No. 1455/2019 issued by the Prosecutor General's Office on September 12, 2019 (evidence file, folios 13172 to 13178).

¹⁵⁷ Cf. Official communication SEPRET/DGE/502/2019/UTO/AP/33/2019 issued by the Service for the Prevention of Torture on September 16, 2019 (evidence file, folios 13187 to 13190).

¹⁵⁸ Cf. Request of the special prosecutor for crimes against life to the Director of the Forensic Investigations Institute of December 5, 2019 (evidence file, folios 13196 and 13197).

¹⁵⁹ Cf. Request of the special prosecutor for crimes against life to the National Director of the Prison Regime of December 5, 2019 (evidence file, folios 13198 and 13199).

¹⁶⁰ Cf. Request of the special prosecutor for crimes against life to the General Personal Identification Service of December 5, 2019 (evidence file, folios 13200 and 13201).

¹⁶¹ Cf. Request of the special prosecutor for crimes against life to the Civil Registry Service of December 5, 2019 (evidence file, folios 13202 and 13203).

¹⁶² Cf. Report No. SEGIP-DDLP/AI/CERTIFICACION/ NO. 335472019 of the Departmental Directorate of La Paz of December 6, 2019 (evidence file, folios 13217 to 13239).

¹⁶³ Cf. Certification SERECI-LPZ-CERT-No 222248-2-51607/2019 issued by the Civil Registry Service of La Paz on December 9, 2019 (evidence file, folios 13204 to 13206).

¹⁶⁴ Cf. Official communication SEPRET/DGE/744/2019/UTO/AP/539/2019 issued by the SEPRET on December 20, 2019 (evidence file, folios 13240 to 13244).

¹⁶⁵ Cf. Official communication MG/DGRP No. 0082/STRIA-0030/2020 of the Ministry of the Interior of January 9, 2020 (evidence file, folios 13250 to 13282).

¹⁶⁶ Cf. Record of statement by Víctor Manuel Boggiano Bruzzón of January 23, 2020 (evidence file, folio 13292).

¹⁶⁷ Cf. Official communication requesting expansion of the investigation sent by the special prosecutor for crimes against life to the Seventh Criminal Investigation Judge of La Paz of February 2, 2020 (evidence file, folio 13301).

individuals investigated.¹⁶⁸ This information was forwarded on February 17, 2020.¹⁶⁹ Summonses were issued against five of the accused in order to obtain their statements.¹⁷⁰ The statement of the accused J.V.V. was received on February 17, 2020;¹⁷¹ and the statements of the accused A.R.P.A.¹⁷² and D.G.U.M. on March 13, 2020.¹⁷³ Lastly, on August 20, 2020, the statement of the accused E.I.R.C. was received.¹⁷⁴ Subsequently, other steps were taken in the investigation, such as requests¹⁷⁵ and summonses to the alleged victims to appear.¹⁷⁶

108. On August 20, 2020, the prosecutor assigned to the case submitted to the Seventh Criminal Investigation Judge an indictment resolution and request for a hearing on individual precautionary measures against J.V.V. for the crimes of ill-treatment and torture against the 26 alleged victims in this case.¹⁷⁷ On September 10, 2021, individual precautionary measures were issued against J.V.V.¹⁷⁸ On May 19, 2022, the Public Prosecution Service filed formal charges against J.V.V. for the crimes of ill-treatment and torture.¹⁷⁹ On May 19, 2022, the Public Prosecution Service filed formal charges against G.S.H. for the crimes of ill-treatment and torture.¹⁸⁰

VIII MERITS

109. This case relates to the international responsibility of the Bolivian State for the alleged acts committed by state agents, including sexual violence and torture, during the raids, arrests and subsequent detentions of the alleged victims in the context of the investigation of a robbery involving a security van, as well as the alleged failure to investigate those alleged

¹⁶⁸ Cf. Request of the special prosecutor for crimes against life to the Commander General of the Bolivian Police of February 11, 2020 (evidence file, folios 13304 and 13305).

¹⁶⁹ Cf. Report DMOPE/MOV.FINC/ITD No. 378/2020 of the National Personnel Directorate of the Bolivian Police of February 14, 2020 (evidence file, folios 13374 and 13375).

¹⁷⁰ Cf. Summonses sent by the special prosecutor for crimes against life to J.V.V.; S.E.G.M.; A.R.P.A.; D.G.U.M.Y E.I.R.D.C on February 11, 2020 (evidence file, folios 13306 to 13316).

¹⁷¹ Cf. Record of reception of statement by the accused J.V.V. on February 17, 2020 (evidence file, folios 13326 to 13329).

¹⁷² Cf. Record of reception of statement by the accused A.R.P.A. on March 13, 2020 (evidence file, folios 13385 to 13387).

¹⁷³ Cf. Record of reception of statement by the accused D.G.U.M. on March 13, 2020 (evidence file, folios 13391 to 13393).

¹⁷⁴ Cf. Record of reception of statement by the accused E.I.R.C. on August 20, 2020 (evidence file, folios 13469 to 13471).

¹⁷⁵ Cf. Request of the special prosecutor for crimes against life to the Commander General of the Bolivian Police of August 3, 2020 (evidence file, folio 13459); Request of the special prosecutor for crimes against life to the Director for Protection of Victims, Witnesses and Members of the Public Prosecution Service of February 14, 2020 (evidence file, folios 13333 to 13335); Request of the special prosecutor for crimes against life to the La Paz Ombudsman of August 17, 2020 (evidence file, folio 13461); Request of the special prosecutor for crimes against life to the Director of the newspaper *El Diario* of August 17, 2020 (evidence file, folio 13462).

¹⁷⁶ Cf. Summonses issued by the special prosecutor on May 4, 2021 (evidence file, folios 13404 and 13405).

¹⁷⁷ Cf. Indictment resolution issued by the special prosecutor on August 20, 2020 (evidence file, folios 13477 to 13483).

¹⁷⁸ Cf. Resolution No. 136/2021 issued by the Seventh Criminal Investigation Court of La Paz on September 10, 2021 (evidence file, folios 13764 to 13777).

¹⁷⁹ Cf. Resolution No. 06/2022 issued by the special prosecutors of the Special Prosecution Service for Crimes against Personal Integrity of the Central Zone of May 19, 2022 (evidence file, folios 13999 to 14009).

¹⁸⁰ Cf. Resolution No. 14/2022 issued by the special prosecutors of the Special Prosecution Service for Crimes against Personal Integrity of the Central Zone of May 19, 2022 (evidence file, folios 13991 to 13998).

facts. The Court will proceed as follows when examining the merits: (1) analysis of the alleged violation of the rights to personal liberty, privacy, inviolability of the home, protection of the family, and property in relation to the raids and arrests; (2) analysis of the alleged violations of the rights to personal integrity and of women to live without violence; (3) the specific case of the violation of the personal liberty and personal integrity of the alleged victims who were children; (4) analysis of the alleged violation of the right to life of Genaro Ahuacho; (5) analysis of the alleged violation of the right to health, and (6) analysis of the alleged violation of judicial guarantees, judicial protection, the right to honor and dignity, the duty to investigate and punish acts of torture, and the duty to investigate and punish violence against women.

VIII-1
RIGHTS TO PERSONAL LIBERTY, PRIVACY, INVIOABILITY OF THE HOME,
PROTECTION OF THE FAMILY, AND PROPERTY¹⁸¹

A. Arguments of the parties and of the Commission

110. The **Commission** considered that, pursuant to the laws in force in Bolivia at the time of the facts, raids and arrests of individuals in their homes between 7:00 p.m. and 7:00 a.m. were prohibited, except with the consent of the inhabitant or in cases of *flagrante delicto*. It indicated that consent had not been given, and this case could not be considered to be subsumed under a situation of flagrancy. Consequently, it found that the raids and arrests carried out in this case were unlawful. It added that, as the raids and arrests were conducted with violence, they were arbitrary and had a disproportionate impact on the women and children. It also argued that the alleged victims did not have an effective remedy to control the lawfulness of their detentions. Therefore, it concluded that Bolivia had violated the right to personal liberty of 16 alleged victims,¹⁸² and the right not to be the object of arbitrary interference in their private life and home of 22 alleged victims.¹⁸³

111. With regard to personal liberty, the **inter-American public defenders** agreed with the arguments presented by the Commission. They specified that, in the case of Oswaldo Lulleman Antezana and Luis Fernando Lulleman Gutiérrez, even though they were arrested during the daytime because they were absent when the raid on their home was initiated, the police officers remained there following their unlawful entry; they therefore argued that the initial unlawfulness necessarily tainted the whole procedure until its culmination in the arrests. Regarding the raid in Juan Manuel Cáceres Passage, they indicated that no copy existed of the warrant for the raids and, therefore, the arrests of F.E.P.M., Eladio Cruz Añez and Carlos Enrique Castro Ramírez not only occurred in the context of a prohibited nighttime raid, but were not even authorized by a judge. They argued that the arrest of Freddy Cáceres Castro in the Tropical Inn Hotel was made without a court order, and during the night; therefore, they also considered that his arrest was unlawful. They added that although Edwin Rodríguez Alarcón, Julia Mamanu Mamani, Jenny Paola Lulleman de Zaconeta and Raul Oswaldo Lulleman were arrested they were never brought before

¹⁸¹ Articles 7, 11(2), 17 and 21 of the American Convention.

¹⁸² Blas Valencia Campos; Norma Lupe Alarcón de Valencia; Claudia Valencia Alarcón; Elacio Peña Córdoba; Víctor Manuel Boggiano Bruzzón (Juan Ramírez Ortega); Genaro Ahuacho Luna (Walter Herrera Flores); Alfredo Bazán y Rosas (José Miguel Abildo Díaz); Mercedes Valencia Chuquimia; Oswaldo Lulleman Antezana; Raúl Oswaldo Lulleman Gutiérrez; Victoria Gutiérrez de Lulleman; F.E.P.M.; Carlos Eladio Cruz Añez; Carlos Enrique Castro Ramírez; Freddy Cáceres Castro, and Patricia Catalina Gallardo Ardúz.

¹⁸³ Blas Valencia Campos; Norma Lupe Alarcón de Valencia; Edwin Rodríguez Alarcón; Claudia Valencia Alarcón; Gabriel Valencia Alarcón; Alexis Valencia Alarcón; Claudio Centeno Valencia; Elacio Peña Córdoba; Víctor Manuel Boggiano Bruzzón (Juan Ramírez Ortega); Genaro Ahuacho Luna (Walter Herrera Flores); Alfredo Bazán y Rosas (José Miguel Abildo Díaz); Mercedes Valencia Chuquimia; Mauricio Valenzuela Valencia; Oswaldo Lulleman Antezana; Raúl Oswaldo Lulleman Gutiérrez; Victoria Gutiérrez de Lulleman; Paola Lulleman de Zaconeta, Luis F. Lulleman Gutiérrez; Julia Mamanu Mamani; F.E.P.M.; Carlos Eladio Cruz Añez, and Carlos Enrique Castro Ramírez.

the investigating judge and, therefore, were unable to have a judge review the lawfulness of their arrest. In relation to the right to privacy and the inviolability of the home, and the right to honor and dignity, they argued that all the raids conducted were unlawful and, therefore, they also violated Article 11 of the Convention.

112. **Representative Jemio Mendoza** argued that, from the time of her arrest and up until the time it was declared that she had served her sentence on January 30, 2004, Ms. Gallardo Ardúz had been deprived of her liberty arbitrarily and abusively. He indicated that the police officers did not show her the warrant for the raid, or explain her rights as a detainee. Therefore, he considered that the State had violated Article 7 to the detriment of Patricia Catalina Gallardo Ardúz. He also considered that the State had violated Article 17(1) to the detriment of María Fernanda Peña Gallardo owing to the alleged acts committed against her son, A.A.D.P.

113. **Representative Gómez Rojas** argued that the raids and arrests of the alleged victims were carried out without any legal grounds and were, therefore, unlawful and contrary to the rights to personal liberty and privacy. He added that the State had violated the rights of the family, because the members of Valencia Alarcón's family witnessed the ill-treatment and violence she suffered. In addition, he argued that the State's failure to ensure effective measures of protection for the family of Blas Valencia Campos resulted in the rupture of the family unit, violating the rights of the family. He added that, during the raid on the home of Blas Valencia Campos, the police officers took money and items of value such as jewelry without authorization, and the latter were not returned, even though they were unrelated to the case investigated. He argued that the State had not specifically disputed those facts or provided an explanation about what happened. Consequently, he considered that the State had violated the right to property of Blas Valencia Campos and of the members of his family who lived with him.

114. The **State** argued that, in the circumstances of the case, the police strategy could not be announced in advance to avoid the escape of those implicated in the robbery. It also insisted that it was necessary to take into account the particular characteristics of the group that carried out the robbery which killed three people and violated the personal integrity of four others. It argued that the raids were conducted respecting the law, pursuant to the provisions of the Constitution and the Code of Criminal Procedure. It explained that, in the instant case, the suspects were *in flagrante delicto* and, therefore, the exceptions were applied that allowed the formalities for an arrest established in the Constitution and in the Code of Criminal Procedure to be obviated. It added that, when the raids were conducted, the prosecutor was present, and he had shown a dossier on the raids with the judge's signature. It therefore considered that the orders for the raids were search warrants issued previously by a competent authority. Moreover, since those documents referred to an act committed by a criminal organization that was holding the evidence of the *iter criminis*, it considered that the said organization was *in flagrante delicto*. It underscored that the actions of the police formed part of an Immediate Reaction Plan, coordinated by the competent institutions within the parameters of the constitutional and legal norms in force. It added that the competent judicial authority's authorization of special days and times for the raids was a necessary and reasonable measure, taking into account that they involved an organization that included foreigners who were former military personnel, and that there was a risk of flight. Furthermore, the use of force during the raids and arrests was proportionate. Consequently, it concluded that it had complied with the duty to respect the rights to personal liberty, privacy and inviolability of the home cited in Articles 7 and 11 of the Convention.

B. Considerations of the Court

B.1. Right to personal liberty

115. First, it should be recalled that States are obliged to guarantee security and maintain public order within their territory and, to this extent, they must take the necessary measures to tackle

criminality and organized crime, including measures that entail restrictions or even deprivations of personal liberty. Despite this, the State does not have unlimited power to achieve these ends, irrespective of the gravity of some actions and of the guilt of the alleged perpetrators. In particular, the authorities cannot violate the rights recognized in the American Convention, such as the rights to the presumption of innocence, to personal liberty, and to due process and, among other measures, they cannot carry out unlawful or arbitrary arrests.¹⁸⁴

116. The Court has indicated that the essential content of Article 7 of the Convention is the protection of the liberty of the individual against any arbitrary or unlawful interference by the State.¹⁸⁵ The Court has also indicated that this article includes two types of regulation: one general and one specific. The general aspect is found in the first paragraph, while the specific aspect is contained in paragraphs 2 to 7; any violation of those paragraphs necessarily results in the violation of Article 7(1) of the American Convention.¹⁸⁶

117. An unlawful deprivation of liberty violates Article 7(2) of the Convention, and occurs when the applicable domestic law is not observed.¹⁸⁷ The Court has explained that the restriction of the right to personal liberty “is only viable when it occurs based on the causes and conditions previously established by the Constitution or by the laws enacted in conformity with the latter (substantive aspect) and, also, strictly subject to the procedures that they objectively define (formal aspect).”¹⁸⁸ Regarding the requirement of lawfulness and the authority of the police to arrest an individual, the Court understands that it should be recalled that improper action by the law enforcement agencies represents “one of the main threats to the right to personal liberty.”¹⁸⁹ Therefore, the regulations which determine the authority of police to prevent and to investigate crime must include clear and specific references to parameters that prevent detentions that are arbitrary or contrary to constitutional mandates.¹⁹⁰

118. Moreover, it should be noted that the arbitrary nature of a deprivation of liberty, prohibited by Article 7(3) of the Convention, is not distinguished merely by being contrary to the law; rather, it includes elements of impropriety, injustice and unpredictability.¹⁹¹ Accordingly, the deprivation of liberty may be arbitrary if it is conducted based on “reasons and methods that – even though

¹⁸⁴ Cf. *Mutatis mutandis*, *Case of Cruz Sánchez et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of April 17, 2015. Series C No. 292, para. 262, and *Case of Olivares Muñoz et al. v. Venezuela. Merits, reparations and costs*. Judgment of November 10, 2020. Series C No. 415, para. 92.

¹⁸⁵ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C No. 99, para. 84, and *Case of Palacio Urrutia et al. v. Ecuador. Merits, reparations and costs*. Judgment of November 24, 2021. Series C No. 446, para. 130.

¹⁸⁶ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of November 21, 2007. Series C No. 170, para. 54, and *Case of Palacio Urrutia et al. v. Ecuador, supra*, para. 130.

¹⁸⁷ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador, supra*, para. 57, and *Case of González et al. v. Venezuela. Merits and reparations*. Judgment of September 20, 2021. Series C No. 436, para. 95.

¹⁸⁸ *Case of Gangaram Panday v. Suriname. Merits, reparations and costs*. Judgment of January 21, 1994. Series C No. 16, para. 47, and *Case of González et al. v. Venezuela, supra*, para. 95.

¹⁸⁹ *Case of Servellón García et al. v. Honduras*. Judgment of September 21, 2006. Series C No. 152, para. 86, and *Case of González et al. v. Venezuela, supra*, para. 96.

¹⁹⁰ *Case of Fernández Prieto and Tumbeiro v. Argentina. Merits and reparations*. Judgment of September 1, 2020. Series C No. 411, para. 90, and *Case of González et al. v. Venezuela, supra*, para. 96.

¹⁹¹ Cf. *Case of Gangaram Panday v. Suriname, supra*, para. 47, and *Case of González et al. v. Venezuela, supra*, para. 97.

categorized as lawful – may be considered incompatible with respect for the fundamental human rights because, among other matters, it is unreasonable, unpredictable or disproportionate.”¹⁹²

119. It is also relevant to consider the guarantee of judicial control established in Article 7(5) of the Convention, which must occur “promptly” in order to constitute an effective safeguard against unlawful or arbitrary detentions.¹⁹³ The same provision also establishes that any person detained “is entitled to trial within a reasonable time or to be released,” even if the proceedings continue. The meaning of this rule is that deprivation of liberty during criminal proceedings is in keeping with the Convention provided it has a precautionary purpose; in other words, that it is used to neutralize procedural risks; in particular, non-appearance at trial.¹⁹⁴

120. In addition to the foregoing, Article 7(6) of the Convention protects the right of everyone deprived of liberty to question the lawfulness of their detention before a competent judge or court for the latter to take a prompt decision on the lawfulness of the deprivation of liberty and, if appropriate, order their release.¹⁹⁵ The Court has clarified that the remedies available to comply with this guarantee “should not only exist formally by law, but must be effective; that is, they must comply with the objective of obtaining a prompt decision on the lawfulness of the arrest or detention.”¹⁹⁶

121. Based on the above, and on more specific standards that will be outlined below, this Court will examine the facts of the case and the arguments of the parties and the Commission concerning personal liberty. Accordingly, it will analyze: (1) the lawfulness of the raids and of the arrests made during those raids; (2) the arbitrary nature of the raids and of the arrests made during those raids; (3) the lack of judicial control of the detention of some of the alleged victims, and (4) the absence of an effective remedy, in order to, finally, reach (5) conclusions.

B.1.1. The lawfulness of the raids and of the arrests made during those raids (Art. 7(2) of the Convention)

122. Article 9(1) of the Constitution in force at the time of the events established that: “[n]o one may be arrested, detained or imprisoned, except in the cases and according to the procedures established by law, and execution of such actions shall require the corresponding order issued by a competent authority, and notified in writing.” According to article 10, the only exceptions to this general principle were consent and *flagrante delicto*. Likewise, article 21 established that: “[e]very home is an inviolable refuge; by night, it may not be entered without the consent of its inhabitant and, by day, it may only be entered with a written, reasoned order from a competent authority, except in cases of *flagrante delicto*.”

¹⁹² *Case of Gangaram Panday v. Suriname, supra*, para. 47, and *Case of González et al. v. Venezuela, supra*, para. 97.

¹⁹³ *Cf. Case of Chaparro Álvarez and Lapo Iñiguez v. Ecuador, supra*, para. 81, and *Case of González et al. v. Venezuela, supra*, para. 100.

¹⁹⁴ *Cf. Case of Romero Feris v. Argentina. Merits, reparations and costs*. Judgment of October 15, 2019. Series C No. 391, para. 100, and *Case of González et al. v. Venezuela, supra*, para. 100.

¹⁹⁵ *Cf. Habeas Corpus in Emergency Situations (Arts. 27.2, 25.1 and 7.6 American Convention on Human Rights)*, Advisory Opinion OC-8/87, January 30, 1987. Series A No. 8, para. 33, and *Case of González et al. v. Venezuela, supra*, para. 101.

¹⁹⁶ *Case of Acosta Calderón v. Ecuador. Merits, reparations and costs*. Judgment of June 24, 2005. Series C No.129, para. 97, and *Case of González et al. v. Venezuela, supra*, para. 101.

123. Consequently, according to the laws of Bolivia in force at the time of the events, any arrest or detention had to be carried out based on an order issued by a competent authority. Moreover, the Constitution prohibited nighttime raids except in cases of consent or *flagrante delicto*.

124. The State argued that the arrests made during the nighttime raids were justified because they were conducted in the presence of *flagrante delicto*. Indeed, *flagrante delicto* was the only exception to the prohibition of arrests without a warrant and nighttime raids established in the Bolivian Constitution. According to expert witness María Luisa Piqué:

In general, three types of *flagrante delicto* are recognized. "*Flagrante delicto*, strictly speaking" (when the perpetrator is detected at the very moment of committing the crime or immediately after); "quasi-*flagrante delicto*" (when the perpetrator of the criminal conduct is detected on being pursued), or "fictitious" or "presumed" *flagrante delicto* (when the act is not seen, but instead objects or indications appear that give rise to a strong presumption that the individual has just participated in a crime).¹⁹⁷

125. However, Bolivian law at the time of the events was particularly restrictive when defining *in flagrante delicto*, considering that it occurred when the perpetrator of the act "is surprised while attempting to commit an offense, committing it, or immediately afterwards while pursued by law enforcement agents, the victim, or eyewitnesses."¹⁹⁸ In this way, at the time of the events, Bolivian law only established the mechanisms of *flagrante delicto* and quasi-*flagrante delicto*

126. In the instant case, the Court finds it proved that the crime that resulted in the raids and the arrests of the alleged victims – the robbery of the Prosegur truck – was committed on December 14, 2001, at around 8:15 a.m. (*supra* para. 51). Similarly, it has also been proved that the raids and the arrests were carried out starting in the early morning hours of December 18, 2001; in other words, four days after the criminal act (*supra* para. 54). Furthermore, when they were carried out, a criminal investigation was already underway with a prosecutor and a judge because search warrants had been issued. Thus, and as expert witness Piqué asserted: "it is not possible to subsume the situation under any plausible concept of *flagrante delicto*, especially taking into account the laws of Bolivia in force at the time of the events, which were the most restrictive in the region."¹⁹⁹

127. Consequently, the arrests made in: (1) the house at No. 2319 Las Rosas Street at 2:45 a.m. on December 18, 2001, in which Elacio Peña Córdova, Blas Valencia Campos, his wife Norma Alarcón de Valencia, and his children, Edwin, Claudia and Gabriel were found; (2) the houses at Nos. 2523/2525 Presbítero Medina at 3:00 a.m. on December 18, in which Víctor Manuel Boggiano Bruzzón; Genaro Ahuacho Luna; Alfredo Bazán y Rosas and Mercedes Valencia Chuquimia were present; (3) the house at No. 75 Cívica Avenue at 1:00 a.m. on December 18, in which Victoria Gutiérrez de Lulleman together with her children, Raúl Oswaldo Lulleman Gutiérrez and Jenny Paola Lulleman de Zaconeta were located, and also Julia Mamanu Mamani, and (4) the house in Iparvi where Patricia Gallardo Ardúz lived, all took place in the context of nighttime raids carried out in violation of an express constitutional prohibition; therefore, they violated Article 7(2) of the American Convention.

128. Moreover, although the arrests of Luis Fernando Lulleman and Oswaldo Lulleman Antezana, in the house located at No. 75 Cívica Avenue on December 18, 2001, at 7:00 and 8:00 a.m.,

¹⁹⁷ Written expert opinion provided by María Luisa Piqué on June 16, 2022 (evidence file, folio 12552).

¹⁹⁸ Article 230 of the Code of Criminal Procedure, in force at the time of the facts (evidence file, folio 2125).

¹⁹⁹ Written expert opinion provided by María Luisa Piqué on June 16, 2022 (evidence file, folio 12554).

respectively, were carried out in daytime hours, they originated from a raid that began during the night; therefore, they were also contrary to Article 7(2) of the Convention.

129. Regarding the raid of the house located at No. 1365 Juan Manuel Cáceres Passage between 4:00 and 5:00 a.m. on December 18, 2001 (where Eladio Cruz Añez, F.E.P.M. and Carlos Enrique Castro Ramírez were present), and the arrest of Freddy Cáceres in the Tropical Inn Hotel, the Court notes that those properties were not included among the places listed in the search warrants; consequently, the arrests made there were executed without a valid warrant, outside working hours, and without the presence of *flagrante delicto*. Therefore, the Court finds that they violated Article 7(2) of the Convention.

130. Lastly, at 08:30 a.m. on December 18, 2001, a raid was carried out at the house of Carlos Álvaro Taboada Valencia in Simón López Avenue in Cochabamba. According to the factual framework (*supra* para. 71), this was also carried out without a valid search warrant and without a situation of *flagrante delicto*; therefore, the raid and arrest also violated Article 7(2) of the Convention, even though they occurred during daytime hours.

B.1.2. Arbitrary nature of the raids and the arrests (Art. 7(3) of the Convention)

131. Even though the Court has already considered that the arrests of the alleged victims were unlawful, in this case, it finds it necessary to examine the alleged arbitrary nature of the arrests. Indeed, as will be developed in Chapter VIII (*infra* paras. 170 to 207), during the execution of the search warrants and the arrests carried out without a court order, distressing actions and even acts of torture were committed against those arrested.

132. Based on the above, the Court finds that the State violated Article 7(3) of the Convention, to the detriment of the alleged victims who were deprived of liberty in the context of the raids and arrests that took place on December 18, 2021.

B.1.3. Lack of control judicial of the arrests (Art. 7(5) of the Convention)

133. According to paragraph 5 of Article 7 of the American Convention, "any person arrested shall be brought promptly before a judge or other officer authorized by law to exercise judicial powers."

134. Following the raids, alleged victims Eladio Cruz Añez, F.E.P.M., Carlos Enrique Castro Ramírez,²⁰⁰ Víctor Boggiano Bruzzón, Genaro Ahuacho Luna, Alfredo Bazán y Rosas, Mercedes Valencia Chuquimia, Mauricio Valenzuela Valencia,²⁰¹ Patricia Gallardo Ardúz,²⁰² Blas Valencia Campos, Norma Alarcón de Valencia, Edwin Rodríguez Alarcón, Freddy Cáceres, Claudia Valencia Alarcón, Gabriel Valencia Alarcón, Alexis Eduardo Valencia Alarcón, Claudio Centeno Valencia, Elacio Peña Córdoba, Oswaldo Lulleman Antezana, Victoria Gutiérrez de Lulleman, Luis Lulleman Gutiérrez, Jenny Paola Lulleman de Zaconeta and Julia Mamanu Mamani²⁰³ were taken to the PTJ facilities.

135. In addition, the facts of the case reveal that, following the raid on his house, Carlos Álvaro Taboada was taken to the PTJ Homicide Division where he was detained for two day before being

²⁰⁰ Cf. Statement made by Eladio Cruz Añez, undated (evidence file, folio 12591).

²⁰¹ Cf. Statement by Víctor Manuel Boggiano Bruzzón, undated (evidence file, folios 12606 and 12607).

²⁰² Cf. Affidavit made by Patricia Gallardo Ardúz on June 15, 2022 (evidence file, folio 12720).

²⁰³ Cf. Affidavit made by Luis Fernando Lulleman Gutiérrez on June 17, 2022, (evidence file, folio 12776).

released.²⁰⁴ Gabriel Blas Valencia indicated that he was released from the PTJ after several days.²⁰⁵ On December 20, 2001, Jenny Paola Lulleman and Julia Mamanu Mamani were released. The following day Luis Fernando Lulleman was released.²⁰⁶

136. Among those detained in the PTJ facilities, only Carlos Enrique Castro Ramírez, Alfredo Bazán y Rosas, Víctor Manuel Boggiano Bruzzón, Genaro Ahuacho Luna, Mercedes Valencia Chuquimia, Victoria Gutiérrez Aguilar, Blas Valencia Campos, Oswaldo Lulleman Antezana, Claudia Valencia Alarcón, F.E.P.M., Norma Lupe Alarcón de Valencia, Carlos Eladio Cruz Añez, Elacio Peña Córdova, Freddy Cáceres and Patricia Gallardo Ardúz²⁰⁷ were brought before a judge during the public hearing on precautionary measures held on December 19, 2001.

137. Thus, despite being detained in the PTJ facilities, Edwin Rodríguez Alarcón, Gabriel Valencia Alarcón, Luis Fernando Lulleman Gutiérrez, Jenny Paola Lulleman de Zaconeta, Julia Mamanu Mamani and Carlos Álvaro Taboada were never brought before a judge or other authority; therefore, the Court finds that Article 7(5) of the American Convention was violated to their detriment.

138. Regarding Raúl Oswaldo Lulleman, even though his name appeared among those who attended the public hearing on December 19, according to the testimony of the official of the Human Rights Committee of the Chamber of Deputies who went to the PTJ in response to a complaint by the Lulleman family owing to the disappearance of Raúl Oswaldo, he was in the PTJ facilities in Sucre Street and, therefore, could not have taken part in the said hearing.²⁰⁸ Also, the facts of the case reveal that Raúl Oswaldo Lulleman was deprived of liberty for two years without having taken part in any hearing for the control of precautionary measures. Therefore, this Court also finds the State responsible for the violation of Article 7(5) of the American Convention, to the detriment of Raúl Oswaldo Lulleman.

B.1.4. Absence of an effective remedy (Art. 7(6) of the Convention)

139. In this section, the Court will analyze whether the State granted the alleged victims who were brought before a judge the possibility of having recourse to him to take a prompt decision on the lawfulness of their detention and, if this was unlawful, to order their release, pursuant to Article 7(6) of the Convention.

140. Article 7(6) of the Convention has its own legal content which consists in the direct protection of personal or physical liberty by means of the judicial order addressed to the corresponding authorities that they must bring the person detained before a judge so that the latter may examine the lawfulness of the deprivation of liberty and, if appropriate, order that person's release.²⁰⁹ In its case law, the Court has already asserted that such remedies should not only exist formally in the law, but must also be effective; that is, comply with the objective of obtaining a prompt

²⁰⁴ Cf. Affidavit made by Carlos Álvaro Taboada Valencia on June 14, 2022 (evidence file, folio 12624).

²⁰⁵ Cf. Affidavit made by Gabriel Blas Valencia on June 14, 2022 (evidence file, folio 12633).

²⁰⁶ Cf. Affidavit made by Luis Fernando Lulleman Gutiérrez on June 17, 2022, (evidence file, folio 12782)

²⁰⁷ Cf. Record of public hearing on precautionary measures issued by the Eighth Criminal Investigation Court on December 19, 2001 (evidence file, folio 1764).

²⁰⁸ Cf. Statement made by RVG, official of the Human Rights Committee of the Chamber of Deputies, in the context of the Prosegur case, oral proceedings hearing of April 7, 2003, (evidence file, folio 265).

²⁰⁹ Cf. Advisory Opinion OC-8/87 of January 30, 1988, *supra*, para. 33, and *Case of Villarroel Merino et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of August 24, 2021. Series C No. 430, para. 110.

decision on the lawfulness of the arrest or detention.²¹⁰ To the contrary, the judicial activity would not signify a true control, but rather a merely formal or even symbolic procedure resulting in an impairment of the individual's freedom. Furthermore, an analysis of the lawfulness of a deprivation of liberty "should examine the reasons invoked by the plaintiff and specifically express an opinion on them, pursuant to the standards established by the American Convention."²¹¹

141. As already described (*supra* para. 88), among the measures taken against Carlos Enrique Castro Ramírez, Alfredo Bazán y Rosas, Víctor Manuel Boggiano Bruzzón, Genaro Ahuacho Luna, Mercedes Valencia Chuquimia, Victoria Gutiérrez Aguilar de Lulleman, Blas Valencia Campos, Oswaldo Lulleman Antezana, Claudia Valencia Alarcón, F.E.P.M., Norma Lupe Alarcón de Valencia, Carlos Cruz Añez, Elacio Peña Córdova, Freddy Cáceres and Patricia Gallardo Ardúz, on December 19, 2001, the Eighth Criminal Investigation Court held a public hearing on precautionary measures in relation to the alleged crimes of murder, aggravated robbery, criminal association and manufacture of explosive substances.²¹²

142. The record of the hearing reveals that at least three public defenders argued that the raids had been unlawful and that the police had used unnecessary and excessive force.²¹³ In response to these arguments, the judge indicated: "I would kindly ask counsel to merely present the defense in relation to the precautionary measures."²¹⁴ Also, in the reasoned order requiring pre-trial detention, although the court referred to the arguments of the defense lawyers concerning the violation of their clients' constitutional rights and guarantees, it took no decision in this regard.²¹⁵

143. Based on the above, this Court finds that, in the instant case, the remedy that existed to verify the lawfulness of the precautionary measure was neither appropriate nor effective, because the judge did not analyze the lawfulness of the raids, and failed to rule on the arguments concerning their arbitrariness or on the alleged actions of the law enforcement agencies. Consequently, the Court concludes that the State violated Article 7(6) of the Convention to the detriment of Genaro Ahuacho Luna, Norma Lupe Alarcón de Valencia, Alfredo Bazán y Rosas, Víctor Manuel Boggiano Bruzzón, Freddy Cáceres, Carlos Enrique Castro Ramírez, Carlos Cruz Añez, Patricia Gallardo Ardúz, Victoria Gutiérrez Aguilar de Lulleman, Oswaldo Lulleman Antezana, Elacio Peña Córdova, F.E.P.M., Claudia Valencia Alarcón, Blas Valencia Campos and Mercedes Valencia Chuquimia.

B.1.5. Conclusions with regard to the right to personal liberty

144. Based on the foregoing, the Court declares that the State violated the right to personal liberty recognized in paragraphs 1, 2 and 3 of Article 7 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Genaro Ahuacho Luna; Norma Lupe Alarcón

²¹⁰ Cf. *Case of López Álvarez v. Honduras. Merits, reparations and costs*. Judgment of February 1, 2006. Series C No. 141, para. 96, and *Case of Villarroel Merino et al. v. Ecuador, supra*, para. 110.

²¹¹ Cf. *Case of López Álvarez v. Honduras, supra*, para. 96 and *Case of Villarroel Merino et al. v. Ecuador, supra*, para. 110.

²¹² Cf. Record of public hearing on precautionary measures issued by the Eighth Criminal Investigation Court on December 19, 2001 (evidence file, folio 1764). The record also mentions an additional defendant who is not one of the alleged victims in this case.

²¹³ Cf. Record of public hearing on precautionary measures issued by the Eighth Criminal Investigation Court on December 19, 2001 (evidence file, folios 1766, 1767 and 1769).

²¹⁴ Record of public hearing on precautionary measures issued by the Eighth Criminal Investigation Court on December 19, 2001 (evidence file, folio 1767).

²¹⁵ Cf. Resolution No. 189/2001 issued by the Eighth Criminal Investigation Court on December 19, 2001 (evidence file, folio 1773).

Castillo; Alfredo Bazán y Rosas; Víctor Manuel Boggiano Bruzzón; Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar; Oswaldo Lulleman Antezana; Jenny Paola Lulleman Gutiérrez; Luis Fernando Lulleman Gutiérrez; Raúl Oswaldo Lulleman Gutiérrez; Julia Mamanu Mamani; Elacio Peña Córdova; F.E.P.M; Edwin Rodríguez Alarcón; Carlos Álvaro Taboada Valencia; Claudia Valencia Alarcón; Gabriel Valencia Alarcón; Blas Valencia Campos, and Mercedes Valencia Chuquimia.

145. In addition, the State violated the right to personal liberty in relation to the right to be brought promptly before a judge or competent authority established in Article 7(5) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Jenny Paola Lulleman Gutiérrez, Luis Fernando Lulleman Gutiérrez, Raúl Oswaldo Lulleman Gutiérrez, Julia Mamanu Mamani, Edwin Rodríguez Alarcón, Carlos Álvaro Taboada and Gabriel Valencia Alarcón.

146. Furthermore, the State violated the right to personal liberty, in relation to the right to appeal against the detentions for the court to decide on their lawfulness, established in Article 7(6) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Genaro Ahuacho Luna, Norma Lupe Alarcón de Valencia, Alfredo Bazán y Rosas, Víctor Manuel Boggiano Bruzzón, Freddy Cáceres, Carlos Enrique Castro Ramírez, Carlos Cruz Añez, Patricia Gallardo Ardúz, Victoria Gutiérrez Aguilar, Oswaldo Lulleman Antezana, Elacio Peña Córdova, F.E.P.M., Claudia Valencia Alarcón, Blas Valencia Campos and Mercedes Valencia Chuquimia.

B.2. Rights to privacy, inviolability of the home, and family life

147. The Court has established that the protection of private and family life and the home entails the recognition that a personal sphere exists that must be exempt from or immune to arbitrary or abusive interference by third parties or public authorities. Thus, the home and private and family life are intrinsically connected because the home is a space in which private and family life can be freely developed.²¹⁶ The Court has also considered that the sphere of privacy is characterized by being exempt from or immune to arbitrary or abusive interference by third parties or public authorities.²¹⁷ In this regard, the home is a space in which private life can be developed freely.²¹⁸

148. In addition, the Court has determined that the family – without establishing that this is represented by any specific model – is the natural and fundamental element of society and has a right to protection by society and the State. In light of the importance of this right, recognized in Article 17 of the Convention, the Court has established that the State is obliged to facilitate the development and strength of the family unit. Thus, it must take positive and negative measures to protect the individual against unlawful or arbitrary interference in the family and promote effective respect for family life.²¹⁹ In addition, the Court recalls that interference in family life is exacerbated when it has an impact on the rights of children.²²⁰ Moreover, the separation of

²¹⁶ Cf. *Case of the Ituango Massacres v. Colombia*. Judgment of July 1, 2006. Series C No. 148, paras. 193 and 194, and *Case of the Barrios Family v. Venezuela, supra*, para. 140.

²¹⁷ Cf. *Case of the Ituango Massacres v. Colombia, supra*, para. 194, and *Case of Pavez Pávez v. Chile. Merits, reparations and costs*. Judgment of February 4, 2022. Series C No. 449, para. 57.

²¹⁸ Cf. *Case of the Ituango Massacres v. Colombia, supra*, paras. 193 and 194, and *Case of Vereda La Esperanza v. Colombia. Preliminary objections, merits, reparations and costs*. Judgment of August 31, 2017. Series C No. 341, para. 242.

²¹⁹ Cf. *Case of López et al. v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 25, 2019. Series C No. 396, paras. 98 and 99, and *Case of Movilla Galarcio et al. v. Colombia. Merits, reparations and costs*. Judgment of June 22, 2022. Series C No. 452, para. 183

²²⁰ Cf. *Case of López et al. v. Argentina, supra*, paras. 98 and 99, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 183.

children from their parents may, in certain contexts, jeopardize the survival and development of their rights, which must be guaranteed by the State, as established in Article 19 of the American Convention and Article 6 of the Convention on the Rights of the Child, especially through protection of the family and abstention from unlawful or arbitrary interference in the family life of children, because the family plays an essential role in their development.²²¹

149. Therefore, the Court has considered that, in light of Article 11(2) of the Convention, obtaining proper authorization or a court order to conduct a house search or raid should be understood as the general rule and exceptions, such as *in flagrante delicto*, are valid only in the circumstances established by law, which – precisely because they are exceptions – must be interpreted strictly.²²²

150. In the instant case, the Court finds it proved that nighttime raids were conducted and these were expressly prohibited by Bolivian law at the time of the events (*supra* paras. 122 to 130). Also, based on the circumstances of this case, it could be inferred that children would be present in the houses and that the police could foresee this when nighttime raids were ordered. Nevertheless, the law enforcement agents did not take any special measures to protect the children who were present during the raids and, therefore, they witnessed the events (*supra* paras. 55 to 70). Moreover, as described below (*infra* paras. 185 to 191), during the raids, the police executed acts of violence, including sexual violence, against the women present, taking advantage of their vulnerable situation, being at home during the night and in night attire.

151. The restriction of nighttime raids is a way of guaranteeing the right to privacy, the protection of the family, and the inviolability of the home, within the framework of the State's authority to make arrests in the exercise of its punitive power. Diverse legal systems in the region establish the prohibition or the restriction of nighttime raids.²²³

²²¹ Cf. *Juridical Status and Human Rights of the Child*, Advisory Opinion OC-17/02, August 28, 2002. Series A No. 17, para. 71, and *Case of Ramírez Escobar et al. v. Guatemala. Merits, reparations and costs*. Judgment of March 9, 2018. Series C No. 351, para. 162.

²²² Cf. *Case of Pollo Rivera et al. v. Peru. Merits, reparations and costs*. Judgment of October 21, 2016. Series C No. 319, para. 116.

²²³ Cf. Article 140 of the Federal Code of Criminal Procedure of Argentina establishes "House raids. If the search has to be carried out in a place used as a private room or house or closed outbuildings, the procedure shall be carried out during daytime hours. Exceptionally, in cases in which a delay would be dangerous, it may be carried out at any time. The order authorizing this must explain the special circumstances. The raid shall be ordered by a judge and this may not be substituted by the consent of the person who lives on the property."

Article 5.XI of the Constitution of Brazil: "[t]he house is the inviolable refuge of the individual and cannot be entered without the consent of the resident, except in case of *flagrante delicto* or disaster, or to provide help, or, during the day, based on a court order."

Article 245 of the Code of Criminal Procedure of Brazil establishes: "House searches shall be carried out during the day, except if the resident consents to them being carried out at night and, before entering the house, those executing the search shall show and read the order to the resident, or the person representing him, then require him to open the door."

Article 207 of the Code of Criminal Procedure of Chile establishes: "Timing of searches. The search must be carried out in the hours between 6:00 a.m. and 10:00 p.m.; but it may be executed outside these hours in places freely accessible to the public, which are open during the night. Also, it is admissible in urgent cases when its execution cannot be delayed. In the latter case, the order authorizing the entry and the search must expressly indicate the reason for the urgency."

Article 193 of the Code of Criminal Procedure of Costa Rica: "When the search is to be carried out in a place that is inhabited, in its outbuildings, business premises or office, the raid and search shall be carried out in person by the judge and he must initiate it between 6:00 a.m. and 6:00 p.m. It can be carried out at any time when the resident or his representative consents or in extremely serious and urgent cases. The order authorizing the raid must indicate the urgent situation."

Article 189 of the Code of Criminal Procedure of Guatemala: "Generally, searches of closed or enclosed spaces, even though allowing public access, may not be carried out before 6:00 a.m. or after 6:00 p.m."

152. The European Court of Human Rights has had occasion to analyze the impact of nighttime raids on the private and family life guaranteed by Article 8 of the European Convention on Human Rights. In the case of *Gutsanovi v. Bulgaria* it analyzed the validity of a raid carried out at dusk in a place where it was known that children were present. In this regard, that Court established:

Of course, the Court cannot go so far as to require the law-enforcement agencies not to arrest persons suspected of criminal offences in their homes whenever their children or spouses are present. However, it considers that the possible presence of family members at the scene of an arrest is a circumstance that must be taken into consideration in planning and carrying out this type of police operation. This was not done in the present case and the law-enforcement agencies did not contemplate any alternative means of carrying out the operation at the applicants' home, such as staging the operation at a later hour or even deploying a different type of officer in the operation. Consideration of the legitimate interests of Mrs Gutsanova and her daughters was especially necessary since the former was not under suspicion of involvement in the criminal offences of which her husband was suspected, and her two daughters were psychologically vulnerable because they were so young (five and seven years of age).²²⁴

153. In addition, as expert witness Piqué explained, it must be taken into account that "interference in homes during night hours has a disproportionate impact on women and children. The home is the place *par excellence* where caregiver roles are played and those roles have historically been assigned to women. The domestic sphere is a sphere that is especially feminine."²²⁵ Accordingly, it becomes necessary to incorporate a gender approach into the execution of raids and searches. As expert witness Diana Guzmán explained:

Article 211 of the Code of Criminal Procedure of Honduras: "Searches that do not entail raiding a home may be carried out in working and non-working hours."

Article 217 of the Code of Criminal Procedure of Nicaragua: "When the search must be carried out in a place that is inhabited, in its outbuildings, business premises or office, the raid and search shall be carried out with a court order, which must be requested and authorized in light of due cause and in writing. The raid must be carried out between 6:00 a.m. and 6:00 p.m. It can be carried out at any time when the resident or his representative consents or in extremely serious and urgent cases in which the judges must decide within one hour at the most on requests made by the prosecutor or the head of the police unit in charge of the investigation. A record must be made of the urgent situation requiring the raid."

Article 293 of the Code of Criminal Procedure of Panama: "House raids. If it is necessary to search a place that is inhabited or its immediate outbuildings, the raid shall be authorized by the supervisory judge following a substantiated request by the prosecutor. The hours in which it may be carried out shall be between 6:00 a.m. and 10:00 p.m. When the resident or his representative consents to this, or in extremely urgent and serious cases, it may be carried out at any time and the order authorizing the raid must indicate the urgent situation. The owner of the property or the person occupying it may authorize the prosecutor to carry out the search. This consent must be noted in writing in the corresponding record."

Article 186 of the Code of Criminal Procedure of Paraguay: "Searches, with or without a raid, in closed or enclosed places, even though allowing public access, may only be carried out between 6:00 a.m. and 6:00 p.m. However, nighttime searches may be carried out: (1) in places accessible to the public, open during the night, and in a serious case requiring immediate action, and (2) in cases in which the judge expressly orders this with a reasoned decision."

Article 11 of the Constitution of the Oriental Republic of Uruguay: "The home is a sacred place that is inviolable. No one may enter it at night without the consent of the head of the household and, during the day, only with an express order from a competent judge, in writing, and in the cases established by law."

Article 195 of the Code of Criminal Procedure of Uruguay: "1. The raid and search of a home or its outbuildings, may only be carried out with the order of the judge, issued at the request of the prosecutor, in the hours between sunrise and sunset. 2. Home or private dwelling shall be understood to be the place occupied in order to live in it, even though this is only on a temporary basis. 3. Nevertheless, the search may be carried out during night hours with the express consent of the head of the household, advising the competent prosecutor and judge immediately. 4. If the judge orders the raid of a dwelling in which there are no elderly persons or there are no residents, the procedure shall be carried out by the most senior person in charge of the service, after the competent prosecutor has been advised. 5. A complaint to the police of domestic violence shall always be considered express authorization to raid and search the home within the 48 hours following its presentation.

²²⁴ ECHR. *Case of Gutsanovi v. Bulgaria*, no. 34529/10. Judgment of October 15, 2013, para. 132.

²²⁵ Written expert opinion provided by María Luisa Piqué on June 16, 2022 (evidence file, folios 12550-12551).

A gender approach is useful and pertinent as a specific crosscutting element in the actions of States, among other actors, in criminal investigations, because it provides analytical tools to understand the way in which gender contributes to creating specific differentiated risks for women and those with non-heteronormative sexual orientations and gender identities. This may help counteract more effectively the different forms of gender-based discrimination and violence.²²⁶

154. The unlawful and arbitrary measures of deprivation of liberty also had an impact on the family unit. In fact, in several of the homes raided, in addition to the persons implicated as suspects in the attack on the Prosegur truck, members of their family were present, including children, as in the cases of Alexis Eduardo Valencia Alarcón (son of Blas Valencia Campos and Norma Lupe Alarcón de Valencia) and Claudio Tito Centeno Valencia (grandson of Blas Valencia Campos and Norma Lupe Alarcón de Valencia), present during the raid of the house in Las Rosas Street, and of Mauricio Valenzuela Valencia (son of Mercedes Valencia Chuquimia) present during the raid in Presbítero Medina Street. As mentioned previously (*supra* paras. 55 to 62), the children witnessed the ill-treatment and torture inflicted on the members of their family. The severity of those acts had an impact not only on those who were present during the raid individually, but also on the family units as a whole.

155. Moreover, due to the deprivation of liberty of their family members, the children were left unprotected, a situation that the State did nothing to rectify. In fact, the State offered no explanation and no evidence was provided as to how Claudio Centeno Valencia, a 3-year-old child at the time of the events, arrived at the PTJ. Alexis Valencia Alarcón stated that, after spending half a day in the PTJ facilities, he was released together with his nephew, Claudio Centeno Valencia, but had nowhere to go because none of his relatives could receive them, and therefore custody was given to a person identified merely as "Marcia."²²⁷ He also indicated that "since the day my parents were imprisoned I have lived in different houses, I never had another toy; I went to different schools because it was not possible to pay the one I went to previously."²²⁸ Gabriel Blas Valencia indicated that he was allowed to leave the PTJ after several days, but had nowhere to go until he was taken in by a woman who he did not identify in his statement.²²⁹ In his statement during the public hearing, Mauricio Valenzuela Alarcón indicated that, when he was released from the PTJ, the State did not take any steps to ensure that he had somewhere to go. They left him outside the premises where a friend of his mother came to collect him and offered to provide him with accommodation.

156. Based on the above, the Court finds that the entry of police officers into the houses located at No. 2319 Las Rosas Street, No. 2523/2525 Presbítero Medina, No. 75 Cívica Avenue, and No. 1365 Juan Manuel Cáceres Passage during the night and without consent or indications of *flagrante delicto*, together with the raids in the zone of Iparvi, on Simón López Avenue in Cochabamba, and in the room at the Tropical Inn Hotel, which were carried out without a court order or the consent of the occupants, constituted abusive and arbitrary interference in those properties. In addition, the unlawful and arbitrary deprivations of liberty entailed a rupture of the family units, exposing children to scenes of torture and extreme violence against their family members and to a situation of abandonment, because the State failed to take any measures to ensure that, following their release, the children who were detained during the raids were taken

²²⁶ Expert opinion provided by affidavit by Diana Guzmán on June 16, 2022 (evidence file, folio 12764).

²²⁷ Cf. Affidavit made by Alexis Eduardo Valencia Alarcón on June 14, 2022 (evidence file, folio 12620).

²²⁸ Affidavit made by Alexis Eduardo Valencia Alarcón on June 14, 2022 (evidence file, folio 12621).

²²⁹ Cf. Affidavit made by Gabriel Blas Valencia on June 14, 2022 (evidence file, folio 12633).

in by other family members or persons who were suitable to ensure their protection, taking into account that their parents had been deprived of liberty.

157. Consequently, the State violated the rights to privacy and to family life, recognized in Articles 11(2) and 17 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of the persons who were present or lived in those places, namely: Genaro Ahuacho Luna; Norma Lupe Alarcón de Valencia; Alfredo Bazán y Rosas; Víctor Manuel Boggiano Bruzzón; Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Claudio Tito Centeno Valencia; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar de Lulleman; Oswaldo Lulleman Antezana; Jenny Paola Lulleman Gutiérrez de Zaconeta; Luis Fernando Lulleman Gutiérrez; Raúl Oswaldo Lulleman Gutiérrez; Julia Mamanu Mamaní; Elacio Peña Córdova; María Fernanda Peña Gallardo; F.E.P.M.; Edwin Rodríguez Alarcón; Álvaro Taboada Valencia; Alexis Valencia Alarcón; Claudia Valencia Alarcón; Gabriel Valencia Alarcón; Blas Valencia Campos; Mercedes Valencia Chuquimia, and Mauricio Valenzuela Valencia.

B.3. Right to property

158. In its case law, this Court has developed a broad concept of property that encompasses the use and enjoyment of possessions, defined as appropriable material objects, as well as any right that may form part of a person's patrimony.²³⁰ It should be reiterated that the right to property is not absolute and may be subject to restrictions and limitations,²³¹ provided these are implemented lawfully and in accordance with the standards established in Article 21 of the Convention.²³² In light of this right, the Court must now analyze the seizure of some of Norma Lupe Alarcón de Valencia's jewelry²³³ during the raid of No. 2319 Las Rosas Street.²³⁴ It is important to underline that the jewelry was unrelated to the case investigated.²³⁵

159. The Court has established that, in the domestic jurisdiction, the adoption of precautionary measures (such as the confiscation of property) does not constitute, *per se*, a violation of the right to property – even when it does entail a limitation of that right insofar as it affects the ability of the owners to dispose freely of their property – because it does not signify a transfer of the

²³⁰ Cf. *Case of Ivcher Bronstein v. Peru. Merits, reparations and costs*. Judgment of February 6, 2001. Series C No.74, paras. 120 and 122, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary objections, Merits and reparations*. Judgment of February 1, 2022. Series C No. 448, para. 112.

²³¹ Cf. *Case of Ivcher Bronstein v. Peru, supra*, para. 128, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru, supra*, para. 112.

²³² Cf. *Case of Salvador Chiriboga v. Ecuador. Preliminary objection and merits*. Judgment of May 6, 2008. Series C No. 179, paras. 60 to 63, and *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru, supra*, para. 112.

²³³ According to the two briefs filed before the La Paz prosecution service, Norma Alarcón Valencia claimed to be the owner of this jewelry (evidence file, folios 1803 to 1808).

²³⁴ Cf. Annex to the brief submitted to the La Paz district prosecutor's office by Norma Alarcón Valencia on September 1, 2004 (evidence file, folios 1804 to 1808).

²³⁵ Cf. Certification by the Secretary of the First Sentencing Court of September 3, 2002, indicating that "the First Sentencing Court has never ordered that the jewelry in reference remain in the custody of the prosecutors, either as confiscated goods or as any other measure of a substantive nature (evidence file, folios 1817 and 1818).

ownership of the property.²³⁶ Thus, the Court considers that confiscated property cannot be disposed of, and can only and exclusively be conserved and managed.²³⁷

160. In this specific case, even though the jewelry did not form part of the assets related to the robbery of the Prosegur truck and despite the requests made by Norma Lupe Alarcón de Valencia, there is no evidence that the jewelry was the object of a confiscation order or that it was returned after the trial. In fact, in official communication RQ/LPZ/00818/2004/AP of October 11, 2004, the Ombudsman requested a written report with information on the processing of Norma Alarcón's requests for its return.²³⁸ There is no record in the case file, and it has not been proved by the State, that this request was answered.

161. In conclusion, the Court finds that the State violated the right to property established in Article 21(1) and 21(2) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Norma Lupe Alarcón de Valencia.

VIII-2

RIGHTS TO PERSONAL INTEGRITY AND OF WOMEN TO LIVE WITHOUT VIOLENCE²³⁹

A. Arguments of the parties and of the Commission

162. The **Commission** considered that it had been sufficiently proved that, during the raids on the houses, heavily armed state agents used a high level of physical and mental violence, violating the personal integrity of all those present. It emphasized that the State had not argued or proved that the force used at the time of the raids was reasonable or necessary.

163. Regarding the allegations of torture, it argued that it had also been proved that 16 people²⁴⁰ were taken to the PTJ facilities where they were interrogated with great violence and without effective legal assistance. They were then detained in unsanitary conditions, without being able to receive visits by either their families or lawyers, while continuing to be physically assaulted and beaten. Following their transfer to different prisons, eight of them²⁴¹ were kept in solitary confinement for more than 60 days. Therefore, it considered that they were all victims of torture and cruel, inhuman and degrading treatment at the hands of state agents. It underlined that all those facts met the criteria of severity, intentionality, and perpetration with a specific object and purpose and, therefore, qualified as acts of torture.

²³⁶ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, para. 187; *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of June 22, 2015. Series C No. 293, para. 345, and *Case of Andrade Salmón v. Bolivia. Merits, reparations and costs*. Judgment of December 1, 2016. Series C No. 330, para. 128.

²³⁷ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, *supra*, paras. 187 and 188, and *Case of Granier et al. (Radio Caracas Televisión) v. Venezuela*, *supra*, para. 345.

²³⁸ Cf. Request No. RG/LPZ/00818/2004 AP issued on October 11, 2004, by the Ombudsman and addressed to the La Paz district prosecutor a.i. (evidence file, folios 1936 and 1937).

²³⁹ Articles 5 and 11 of the American Convention and 7 of the Convention of Belem do Pará.

²⁴⁰ According to the Commission, they were Blas Valencia Campos, Norma Lupe Alarcón de Valencia, Claudia Valencia Alarcón, Elacio Peña Córdova, Víctor Manuel Boggiano Bruzzón, Genaro Ahuacho Luna, Alfredo Bazán y Rosas, Mercedes Valencia Chuquimia, Oswaldo Lulleman Antezana, Raúl Oswaldo Lulleman Gutiérrez, Victoria Gutiérrez de Lulleman, F.E.P.M., Carlos Eladio Cruz Añez, Carlos Enrique Castro Ramírez, Freddy Cáceres Castro and Patricia Catalina Gallardo Ardúz.

²⁴¹ Namely: Blas Valencia Campos, Oswaldo Lulleman Antezana, Carlos Eladio Cruz Añez, Carlos Enrique Castro Ramírez, Elacio Peña Córdova, Víctor Manuel Boggiano Bruzzón, Genaro Ahuacho Luna and Alfredo Bazán y Rosas.

164. The Commission recalled that the women who were arrested and detained were victims of particular insults; they were forced to undress and spread their legs, and were also victims of groping and the introduction of fingers and firearms in their genitalia. Those acts were carried out while the women were subject to the total control of state agents. Therefore, it considered that the said acts directly violated the dignity of those women and constituted serious acts of torture and violence against women.

165. The **inter-American public defenders** agreed with the Commission's arguments. They indicated that the ill-treatment was aimed at self-incrimination by the alleged victims or, at least, at obtaining information to clarify a criminal act. They argued that the requirements had been met for the execution of torture. They alleged that, even if people were not beaten, the coercion, insults and threats suffered during the raids, arrests and detentions constituted "real psychological torture." They added that most of the alleged victims also endured solitary confinement for more than 60 days. In particular, in the case of F.E.P.M., who was pregnant at the time of her arrest and had a miscarriage as a result of the violence suffered during the raid and the detention, and also the lack of medical assistance, they alleged that this was a case of gender-based violence.

166. **Representative Jemio Mendoza** alleged that, on numerous occasions, Patricia Catalina Gallardo Ardúz had been the victim of ill-treatment, torture and rape by police officers. In the case of María Fernanda Peña Gallardo, he considered that she had been a victim of psychological torture and that the threats she received resulted in a violation of Article 5 of the Convention because they were sufficiently real and imminent that they led her to contemplate suicide. He also alleged that the prosecutors and investigators took advantage of her condition as a woman and of her mental breakdown to exercise coercion by threatening to implicate her in the Prosegur case. He considered that this could be interpreted as a manifestation of violence against women.

167. **Representative Gómez Rojas** argued that it had been proved that the alleged victims had been subjected to torture and cruel, inhuman and degrading treatment, both at the time of their arrest and in the detention centers. He indicated that the disproportionate impact of the raids was due to the absence of a gender-based approach to prevent the numerous types of ill-treatment perpetrated against the women. He also argued that the circumstances and conditions in which Norma Alarcón de Valencia and Claudia Valencia Alarcón had been detained violated not only their right to personal integrity, but also the right of women to live free of violence established in the Convention of Belem do Pará. He considered that the acts of sexual violence were gender-based acts of violence aimed at subjugating the alleged victims, attacking them and denigrating as women.

168. The **State** argued that the Commission had not identified the violation of the right to personal integrity of the 26 alleged victims precisely because, in order to prove this violation, it had merely referred to the statements of five people,²⁴² and newspaper photographs of eight people.²⁴³ It also argued that the Commission had considered proven that 16 people who had been taken to the Judicial Technical Police facilities had been subjected to violence and ill-treatment; however, this assertion was only supported by the statements of the alleged victims, and there was no individualized evidence of such facts. It indicated that the forensic medical certifications requested by the prosecutor in the case described only minor injuries in the case of nine of the alleged victims.

²⁴² This refers to the statements of Mercedes Valencia, Alfredo Bazán y Rosas (José Miguel Abildo Díaz), Víctor Boggiano Bruzzón (Juan Ramírez Ortega), F.E.P.M. and Claudia Valencia Alarcón.

²⁴³ This refers to photographs in which it is possible to identify Blas Valencia, Norma Lupe Alarcón de Valencia, Carlos Enrique Castro, Víctor Manuel Boggiano Bruzzón (identified as Juan Ramírez), Elacio Peña, Alfredo Bazán y Rosas (identified as Alberto Farfán), Genaro Ahuacho Luna (identified as Walter Herrera Ríos) and Carlos Cruz Añez.

169. In the case of María Fernanda Peña Gallardo, the State argued that there was no evidence to corroborate that she had been subjected to psychological torture by the State. It underscored that neither the State nor its agents had executed deliberate acts to undermine her mental resistance and force her to incriminate herself and confess to certain criminal acts or be subjected intentionally to a context of intense anguish and suffering. It added that the alleged anguish suffered owing to the publication of news articles and/or photographs in the media could not be considered acts by the State that violated her dignity, because they were related to a major criminal act that had generated a legitimate interest for the press to report on it. It indicated that, since she had been linked to the robbery, she had become a person of public interest.

B. Considerations of the Court

170. In this section, the Court will establish (1) general guidelines on the right to personal integrity and the prohibition of torture and ill-treatment, and the means of evidence, and then analyze (2) the facts related to the torture and ill-treatment suffered during the raids and the detentions; (3) in particular, the sexual violence suffered by the women; (4) the determination of the ill-treatment that occurred and its legal classification as torture; (5) the measures of solitary confinement, and (6) the conditions of the detention centers and, lastly, it will examine (7) the specific case of the alleged violation of the personal integrity of María Peña Gallardo.

B.1. General guidelines on the right to personal integrity and the prohibition of torture and ill-treatment, and the means of evidence

171. Article 5(1) of the Convention recognizes the right to physical, mental and moral integrity in general terms, while, Article 5(2) establishes, more specifically, the absolute prohibition of subjecting anyone to torture or cruel, inhuman or degrading treatment or punishment, as well as the right of all persons deprived of liberty to be treated with respect for the inherent dignity of the human person. The Court understands that any violation of Article 5(2) of the American Convention necessarily results in the violation of Article 5(1) of this instrument.²⁴⁴ In addition, the Court has established that torture or cruel, inhuman or degrading treatment or punishment is strictly and categorically prohibited by international human rights law²⁴⁵ – absolutely and irrevocably – and nowadays this prohibition forms part of international *jus cogens*.²⁴⁶

²⁴⁴ Cf. *Case of Yvon Neptune v. Haiti. Merits, reparations and costs*. Judgment of May 6, 2008. Series C No. 180, para. 129, and *Case of Azul Rojas Marín et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 12, 2020. Series C No. 402, para. 139.

²⁴⁵ Cf. International Covenant on Civil and Political Rights, Article 7; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 2; Convention on the Rights of the Child, Article 37, and International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 10 and, at the regional level, Inter-American Convention to Prevent and Punish Torture, Articles 1 and 5; African Charter on Human and Peoples' Rights, Article 5; African Charter on the Rights and Welfare of the Child, Article 16; Convention of Belém do Pará, Article 4, and European Convention on Human Rights, Article 3.

²⁴⁶ Cf. *Case of Maritza Urrutia v. Guatemala. Merits, reparations and costs*. Judgment of November 27, 2003. Series C No. 103, para. 92, and *Case of Bedoya Lima et al. v. Colombia. Merits, reparations and costs*. Judgment of August 26, 2021. Series C No. 431, para. 100. In this regard, see, Article 53 of the Vienna Convention on the Law of Treaties, which establishes: "A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character."

172. The Court also recalls that Article 5(2) of the American Convention establishes that all those deprived of their liberty “have the right to live in detention conditions that are compatible with their personal dignity.”²⁴⁷

173. Regarding the assessment of the evidence, the Court underlines that its criteria are less rigid than in the case of domestic legal systems.²⁴⁸ The Court must make an assessment of the evidence that takes into account the seriousness of the attribution of international responsibility to a State and that, despite this, is capable of establishing the truth of the allegations in a convincing manner.²⁴⁹ In cases such as this one, it is not necessary for the responsibility of the State to be proved beyond any reasonable doubt or for the agents attributed with the violations to be identified individually;²⁵⁰ rather, it is sufficient to show that acts and omissions have been verified that have allowed the perpetration of those violations, or that the State had an obligation that it failed to fulfill.²⁵¹

174. In addition, the Court recalls that the use of circumstantial evidence, indicia and presumptions to substantiate a judgment is legitimate, provided they lead to conclusions consistent with the facts.²⁵² In this regard, the Court has indicated that, in principle, the plaintiff has the burden of proving the facts on which his arguments are based. However, it has stressed that, contrary to domestic criminal law, in proceedings on human rights violations, the State’s defense cannot rest on the defendant’s impossibility of providing evidence when it is the State that controls the means to clarify acts that have taken place within its territory.²⁵³

B.2. The acts of torture and ill-treatment during the raids and the detentions

B.2.1. Acts that occurred during the raids

175. The facts of the case reveal (*supra* paras. 53 to 70) that during the raids on the houses located at No. 2319 Las Rosas Street, Nos. 2523/2525 Presbítero Medina, No. 75 Cívica Avenue, No. 1365 Juan Manuel Cáceres Passage, and in the home of Patricia Gallardo Cruz, the police acted with violence. Without differentiating between suspects and family members, children and pregnant women, they proceeded to beat, insult and interrogate all those present in the homes, using disproportionate force.

B.2.2. The forensic medical examinations performed in the PTJ

²⁴⁷ Cf. *Case of Bulacio v. Argentina. Merits, reparations and costs*. Judgment of September 18, 2003. Series C No. 100, paras. 126 and 138, and *Case of González et al. v. Venezuela, supra*, para. 142.

²⁴⁸ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits*. Judgment of July 29, 1988. Series C No. 4, paras. 127 and 128, and *Case of Alvarado Espinoza et al. v. Mexico. Merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 370, para. 168.

²⁴⁹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 129, and *Case of the Massacre of the Village of Los Josefinos v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of November 3, 2021. Series C No. 442, para. 73.

²⁵⁰ Cf. *Case of the “White Van” (Paniagua Morales et al.) v. Guatemala. Merits, supra*, para. 91, and *Case of Terrones Silva et al. v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 360, para. 138.

²⁵¹ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, paras. 172 and 173, and *Case of Alvarado Espinoza et al. v. Mexico, supra*, para. 168.

²⁵² Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 130, and *Case of Vicky Hernández et al. v. Honduras. Merits, reparations and costs*. Judgment of March 26, 2021. Series C No. 422, para. 99.

²⁵³ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 135, and *Case of López Soto et al. v. Venezuela. Merits, reparations and costs*. Judgment of September 26, 2018. Series C No. 362, para. 163.

176. In the PTJ, at the request of a prosecutor, forensic medical examinations were performed on Claudia Valencia Alarcón, Norma Alarcón Castillo, F.E.P.M., Victoria Gutiérrez Aguilar, Jenny Paola Lulleman, Carlos Enrique Castro Ramírez, Mercedes Valencia Chuquimia, Julia Mamanu Mamani and Víctor Manuel Boggiano Bruzzón. According to these examination, it was determined that Victoria Gutiérrez Aguilar, Jenny Paola Lulleman Gutiérrez and Julia Mamanu Mamani showed no signs of injury. The evaluations of Claudia Valencia Alarcón and Norma Alarcón indicated that they had injuries that warranted two days sick leave. In the case of F.E.P.M, the evaluation indicated four days sick leave; for Enrique Castro Ramírez, seven days, and for Víctor Manuel Boggiano, fifteen days. Regarding Mercedes Valencia Chuquimia, some injuries were noted, but no sick leave was indicated.²⁵⁴

177. It is also necessary to indicate that the absence of physical evidence should not be construed to suggest that ill-treatment did not occur since such acts of violence against persons frequently leave no marks or permanent scars.²⁵⁵ The same is true for cases of sexual violence and rape in which the fact that this has occurred is not necessarily revealed by a medical examination because not all cases of sexual violence and/or rape cause physical injuries or illnesses that can be verified by a medical examination.²⁵⁶

B.2.3. Acts that occurred during the detentions

178. According to the statements of the alleged victims who were taken to the PTJ, during their detention they were subjected to verbal and physical violence by the police officers.²⁵⁷ The women stated that they were victims of rape and other acts of sexual violence,²⁵⁸ and these will be analyzed in the following section.

B.2.4. Subsequent medical assessments

²⁵⁴ Cf. Forensic medical certificates dated December 18, 2001 (evidence file, folios 11554 to 11561).

²⁵⁵ Cf. United Nations, Office of the High Commissioner for Human Rights, Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) New York and Geneva, 2004, para. 161.

²⁵⁶ Cf. *Case of Fernández Ortega et al. v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of August 30, 2010. Series C No. 215, para. 124, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 153.

²⁵⁷ Among the abuse they suffered, the alleged victims recounted that they were obliged to sleep on a wet floor; were woken up during the night to douse them with water and beat them; had limited access to food and water; a sergeant tore off the stitches from Elacio Peña Córdoba's bullet wound with a ballpoint pen, and covered it with *locoto* (*Capsicum pubescens*) and salt in order to make him suffer (Statement made by Eladio Cruz Añez undated, evidence file, folio 12591). Víctor Manuel Boggiano also described how he was beaten until he passed out, his ears bled, and he lost the toenails off his left foot (Statement by Víctor Manuel Boggiano Bruzzón, undated, evidence file, folio 12607). He also recounted how Genaro Ahuacho Luna was tortured: "I was in the hall. He was lying face down; a door opened. "I was on the ground, I got up and they strung me up from hooks. When I was on the ground, I looked at the deceased, and saw how two or three of them hit him ... with a rifle and with truncheons. He fainted due to the immense pain. They brought him round and again hit him on the head very brutally with batons and blunt objects, while they kept him handcuffed with his hands behind his back, in the same way that they did to me at the time I was captured" (Psychological expertise in relation to the alleged cruel, inhuman and degrading treatment of Víctor Manuel Boggiano Bruzzón conducted by Pablo Gabriel García in August 2021, evidence file folio 9859).

²⁵⁸ Claudia Valencia stated that they were searched constantly, with ungloved fingers introduced in the vagina; firearms were also sometimes introduced into the vagina (Affidavit made by Claudia Mariela Valencia Alarcón on June 14, 2022, evidence file, folio 12628). Patricia Gallardo stated that she was interrogated for from 4 to 5 hours. During the interrogation, she was beaten and they made her spread her legs to introduce a gun barrel between her legs. She indicated that, on several occasions, the police officers took the women detainees into a corridor where they undressed them and then raped them, putting their fingers in the women's private parts. She also indicated that they threatened to harm her children. In particular, she indicated that, on several occasions during the night, she was taken from her cell to a room where she was raped by several police officers (Affidavit made by Patricia Gallardo Ardúz on June 15, 2020, evidence file, folios 12720).

179. The representatives of the alleged victims presented medical certificates verifying the aftereffects of the acts of violence. In this way, it was certified that, currently, Víctor Manuel Boggiano suffers from generalized epilepsy and from an anxiety and depression disorder.²⁵⁹ A psychological appraisal of Mr. Boggiano Bruzzón prepared by the ITEI was also presented establishing the psycho-social aftereffects he suffered owing to the alleged torture and ill-treatment experienced during the raid and his subsequent detention. Specific reference was made to the physical and psychological torture he suffered and that he had been diagnosed with post-traumatic stress syndrome.²⁶⁰ These findings were repeated in the affidavit made by psychologist Pablo García Nava, who concluded that “all the evidence collected during the evaluation to which I have been referring is fully consistent, leading me to the conclusion that Víctor Manuel Boggiano Bruzzón was a victim of torture and cruel and degrading treatment while detained in the cells of the Judicial Technical Police on Landaeta Street.”²⁶¹

180. Regarding F.E.P.M., a medical certificate was presented that certified scars on her left elbow and stiffness and arthrosis resulting from a physical attack suffered 20 years ago.²⁶² In an affidavit, the ITEI forensic physician, Marcelo Flores Torrico, indicated that “all the evidence compiled in the case is fully consistent; leading me, together with my colleague Pablo Gabriel García, to the conclusion that [F.E.P.M] was a victim of torture and cruel, inhuman and degrading treatment during her arrest and while detained in the cells of the Judicial Technical Police on Landaeta Street.”²⁶³

181. In the case of Patricia Gallardo Ardúz, a social and medical appraisal prepared by the ITEI was presented indicating that “all the evidence compiled in this report is fully consistent, leading to the conclusion that Patricia Catalina Gallardo Ardúz was a victim of torture and ill-treatment, including sexual torture, while detained in the cells of the Judicial Technical Police on Landaeta Street.”²⁶⁴

B.2.5. Legal classification of torture

182. Based on the facts described above, the Court has no doubt that the alleged victims were subjected to ill-treatment and abuse during the raids and subsequent detentions, and this entailed a violation of the alleged victims’ personal integrity by the police. However, the Court has explained that violation of the right to personal integrity may have different degrees of severity and occur due to the perpetration of diverse types of ill-treatment, ranging from torture to other acts or treatment that is cruel, inhuman or degrading.²⁶⁵

183. The Court has also understood that, “in order to classify” an act as torture, it is necessary to use the “utmost rigor,” because it is “particularly heinous” and includes its own particularities, because the perpetrator “intentionally inflicts severe pain or suffering on a powerless victim for a specific purpose, or uses a methods designed to annul the personality or diminish the physical or

²⁵⁹ Cf. Medical report prepared by F.F., Head of Neurology, of the Hospital de Clínicas on November 28, 2019 (evidence file, folio 9842).

²⁶⁰ Cf. Psychological appraisal of Víctor Manuel Boggiano Bruzzón prepared by the ITEI in August 2021 (evidence file, folios 9850 to 9888).

²⁶¹ Affidavit made by Pablo García Nava on June 15, 2022 (evidence file, folio 12694).

²⁶² Cf. Medical certificate issued by Dr. M.J.J. from the Ministry of Health, on August 11, 2021 (evidence file, folio 9965).

²⁶³ Affidavit made by Marcelo Flores Torrico on June 15, 2022 (evidence file, folio 12655).

²⁶⁴ Psychological report prepared by the ITEI on July 11, 2012 (evidence file, folio 10337).

²⁶⁵ Cf. *Case of Loayza Tamayo v. Peru. Merits*. Judgment of September 17, 1997. Series C No. 33, paras. 57 and 58, and *Case of González et al. v. Venezuela, supra*, para. 112.

mental capacity to achieve a specific purpose.”²⁶⁶ Regarding the concept of torture, Article 5(2) of the Convention should be understood in relation to the foregoing and it should be concluded that it encompasses acts of ill-treatment that: (i) are intentional; (ii) cause severe physical or mental suffering, and (iii) are committed with an objective or purpose.²⁶⁷

184. Owing to their *severity*, the Court underscores the acts of torture committed by the police against Víctor Manuel Boggiano Bruzzón. Also, during the raid on the house in Juan Manuel Cáceres Passage, it has been proved that Carlos Enrique Castro Ramírez, Eladio Cruz Añez and F.P.E.M. were beaten and plastic bags were placed over their heads and filled with gas. According to the Istanbul Protocol, this practice is classified as torture.²⁶⁸ Likewise, according to his statement, Raúl Oswaldo Lulleman’s feet were beaten, severely injuring his toes and causing him to lose several toenails, which is consistent with *falanga* [application of blunt trauma to the feet], classified as torture by the Istanbul Protocol.²⁶⁹ In these cases, the *intentionality* of the ill-treatment is evident, because the law enforcement agents acted with a specific objective or purpose, which was to force the alleged victims to confess to their presumed implication in the robbery of the Prosegur truck. Therefore, this Court finds that, owing to the acts committed by law enforcement personnel during the raids, Víctor Manuel Boggiano Bruzzón, Carlos Enrique Castro Ramírez, Eladio Cruz Añez, F.P.E.M. and Raúl Oswaldo Lulleman were subjected to torture.

B.3. The particular sexual violence and torture suffered by the women

185. The Court understands that it must incorporate a gender perspective into the analysis of acts that constitute ill-treatment because this allows it to make a more precise examination of the nature, severity and implications of such acts, as well as, when applicable, their roots in discriminatory attitudes.²⁷⁰ In this regard, acts of sexual violence may have their own particularities in the case of women and girls.²⁷¹

186. Regarding sexual violence and rape, this Court’s case law has recognized that these forms of sexual violence may constitute cruel, inhuman or degrading treatment, and even torture, if

²⁶⁶ Cf. *Case of Guzmán Albarracín et al. v. Ecuador. Merits, reparations and costs.* Judgment of June 24, 2020. Series C No. 405, para. 152, and *Case of Guerrero, Molina et al. v. Venezuela. Merits, reparations and costs.* Judgment of June 3, 2021. Series C No. 424, para. 113.

²⁶⁷ Cf. *Case of Bueno Alves v. Argentina. Merits, reparations and costs.* Judgment of May 11, 2007. Series C No. 164, para. 79, and *Case of Guerrero, Molina et al. v. Venezuela, supra*, para. 113.

²⁶⁸ Cf. United Nations, Office of the High Commissioner for Human Rights, Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) New York and Geneva, 2004, para. 214.

²⁶⁹ Cf. United Nations, Office of the High Commissioner for Human Rights, Istanbul Protocol (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment) New York and Geneva, 2004, para. 203.

²⁷⁰ The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has made similar remarks in relation to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, indicating that “[f]ull integration of a gender perspective into any analysis of torture and ill-treatment is critical to ensuring that violations rooted in discriminatory social norms around gender and sexuality are fully recognized, addressed and remedied.” (Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/HRC/31/57, January 5, 2016, para. 6.)

²⁷¹ In the sphere of the United Nations, the Special Rapporteur of the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment has indicated that women “are subjected to gender-specific forms of torture, including rape, sexual abuse and harassment, virginity testing, forced abortion or forced miscarriage.” He also indicated that “forms of sexual abuse” may constitute acts of torture of children” (Interim report presented by the Special Rapporteur to the Commission on Human Rights on torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/55/290, August 11, 2000, paras. 5 and 10.)

they comply with the elements of the definition.²⁷² The European Court of Human Rights,²⁷³ the Human Rights Committee,²⁷⁴ the Committee against Torture,²⁷⁵ the Committee for the Elimination of Discrimination against Women,²⁷⁶ and the United Nations Special Rapporteur on Torture²⁷⁷ have all expressed a similar opinion.

187. In the instant case, it has been proved that, during the raids, the police beat Norma Lupe Alarcón Valencia and Claudia Valencia Alarcón on their intimate parts (*supra* para. 56). Mercedes Valencia Chuquimia was beaten in a similar way during the raid; also, in front of her son, she was undressed and a weapon was introduced between her legs (*supra* para. 61).

188. With regard to Norma Lupe Alarcón de Valencia, Claudia Valencia Alarcón, Mercedes Valencia Chuquimia and Julia Mamanu Mamani, it has been established by different statements that, during the raids, they were beaten in front of their family members and, in particular, their children/grandchildren were threatened in front of them in order to make them confess (*supra* paras. 55 to 65). These intentional actions by the police may be characterized as acts of psychological torture, aggravated in this case by a bias based on a gender stereotype, taking advantage of their status as mothers and/or grandmothers of the alleged victims. This Court has recognized that, under certain circumstances, the threat or the real danger that a person will be subjected to serious physical injuries produces a moral anguish of such intensity that it may be considered "psychological torture."²⁷⁸ Thus, the Court has established that an act of torture may be perpetrated both by acts of physical violence and by acts that produce acute mental or moral anguish in the victim.²⁷⁹ The severity of the act and its intentionality are therefore proved. The effects and the severity of the anguish felt may be considered proved by the statements given by Norma Lupe Alarcón and Claudia Valencia.²⁸⁰ However, since the Court does not have a statement by Julia Mamanu Mamani or by Mercedes Valencia Chuquimia, it is unable to evaluate the impact and the severity of their suffering. Therefore, the Court finds that Norma Lupe Alarcón and Claudia

²⁷² Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 312, and *Case of Bedoya Lima et al. v. Colombia, supra*, para. 101.

²⁷³ Cf. ECHR, *Aydin v. Turkey [GS]*, No. 23178/94. Judgment of September 25, 1997, para. 86. The European Court has also ruled on the positive obligations arising from Article 3 of the European Convention (Prohibition of torture) in cases of sexual abuse and rape. Cf., among others, ECHR, *M.C. v. Bulgaria*, No. 39272/98. Judgment of September 25, 1997, para. 83.

²⁷⁴ Cf. UN, Human Rights Committee, General Comment No. 28, Article 3 (The equality of rights between men and women), HRI/GEN/1/Rev.7, 2000, paras. 11 and 20.

²⁷⁵ Cf. Committee against Torture, General Comment No. 2, Application of Article 2 by States parties, CAT/C/GC/2, January 24, 2008, para. 18.

²⁷⁶ Cf. UN, Committee for the Elimination of Discrimination against Women, General Recommendation No. 35, Gender-based violence against women, updating General Recommendation No. 19, CEDAW/C/GC/35, July 26, 2017, para. 16: "[G]ender-based violence against women may amount to torture or cruel, inhuman or degrading treatment in certain circumstances, including in cases of rape, domestic violence or harmful practices."

²⁷⁷ Cf. UN, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/7/3, January 15, 2008, paras. 28 to 31, and Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, UN Doc. A/HRC/31/57, January 5, 2016, para. 51.

²⁷⁸ Cf. *Case of Cantoral Benavides v. Peru. Merits*. Judgment of August 18, 2000. Series C No. 69, para. 102, and *Case of Azul Rojas Marín et al. v. Peru, supra*, para. 160.

²⁷⁹ Cf. *Case of Cantoral Benavides v. Peru. Merits, supra*, para. 100, and *Case of López Soto et al. v. Venezuela, supra*, para. 183.

²⁸⁰ Cf. Affidavit made by Norma Lupe Alarcón on June 14, 2022 (evidence file, folio 12641) and affidavit made by Claudia Valencia Alarcón on June 14, 2022 (evidence file, folio 12626).

Valencia were victims of acts of torture that, since they were based on a gender stereotype, were contrary to Article 7 of the Convention of Belém do Pará.

189. F.E.P.M. and Patricia Gallardo Ardúz were raped several times by police officers during their detention. Also, Claudia Valencia Alarcón testified that all the women who were confined in the PTJ holding cells were taken out into a corridor several times where they were undressed and the police searched them, introducing their ungloved fingers into the women's vaginas (*supra* para. 74). Consequently, in keeping with the prevailing normative and case law criteria in both international criminal law and in comparative criminal law, this Court finds that the foregoing constituted an act of gang rape against Norma Lupe Alarcón de Valencia, Claudia Valencia Alarcón, Mercedes Valencia Chuquimia, Victoria Gutiérrez, Jenny Paola Lulleman and Julia Mamanu Mamani. This Court considers that rape is any act of non-consensual vaginal or anal penetration with any body part of the perpetrator or object, as well as oral penetration by the male organ.²⁸¹ For an act to be considered rape, it is sufficient that there is sexual penetration, however slight, as described above.²⁸² In addition, it should be understood that vaginal penetration refers to penetration with any part of the perpetrator's body or objects, of any genital orifice, including the labia majora and minora, as well as the vaginal orifice. This interpretation corresponds to the concept that any type of penetration is sufficient for an act to be considered rape.

190. The Court understands that rape is a form of sexual violence.²⁸³ In particular, rape constitutes a paradigmatic form of violence against women the consequences of which even go beyond the person of the victim.²⁸⁴ In this case, it is clear that the police officers acted against the women deliberately. In addition, with regard to the severity of the suffering, this Court has recognized that sexual violence committed by state agents while the victims are in their custody is a grave and reprehensible act during which the agent abuses of his power and takes advantage of the victim's vulnerability, so that it may cause the victims severe psychological suffering.²⁸⁵ Such consequences may be presumed, despite the lack of testimony in this regard. Indeed, it should be borne in mind that, in the case of sexual violence, sexual assault corresponds to a type of crime that the victim usually does not report owing to the stigma generally entailed by a report of this nature. Consequently, in many cases, the victims decide to keep silent, so that it is possible to have recourse to presumptions and indications. Lastly, regarding the purpose, the Court notes that the facts of the case reveal that the sexual violence had an intimidating purpose, and included threats and humiliations to force the victims to confess and cooperate in the context of the investigation of the Prosegur case.

191. Based on the above, the Court finds that F.E.P.M., Patricia Gallardo Ardúz, Norma Lupe Alarcón de Valencia, Claudia Valencia Alarcón, Mercedes Valencia Chuquimia, Victoria Gutiérrez,

²⁸¹ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 310, and *Case of Azul Rojas Marín et al. v. Peru*, *supra*, para. 142.

²⁸² Cf. International Criminal Tribunal for the former Yugoslavia, *The Prosecutor v. Anto Furundzija*. Judgment of December 10 1998, case No. IT-95-17/1-T, para. 185; International Criminal Tribunal for the former Yugoslavia, *The Prosecutor v. Kunarac et al.* Judgment of February 22, 2001, case No. IT-96-23-T and IT-96-23/1-T, paras. 437 and 438; International Criminal Tribunal for the former Yugoslavia, *The Prosecutor v. Kunarac et al.* Judgment on Appeal of June 12, 2002, case No. IT-96-23-T and IT-96-23/1-T, para. 127.

²⁸³ Cf. *Case of J. v. Peru. Preliminary objection, merits, reparations and costs*. Judgment of November 27, 2013. Series C No. 275, para. 359, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 28, 2018. Series C No. 371, para. 182.

²⁸⁴ Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 119, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico*, *supra*, para. 183.

²⁸⁵ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 311, and *Case of the Women Victims of Sexual Torture in Atenco v. Mexico*, *supra*, para.196.

Jenny Paola Lulleman and Julia Mamanu Mamani were victims of sexual torture, which is also a form of violence against women.

B.4. The measures of solitary confinement

192. Solitary confinement is an exceptional measure aimed at preventing any obstruction of the investigation of the facts. According to the Constitution in force at the time of the events, solitary confinement could only be imposed in extremely serious cases and never for more than 24 hours (article 9.I.). Also, Rule 43 of the updated version of the UN Standard Minimum Rules for the Treatment of Prisoners establishes the prohibition of prolonged solitary confinement; that is, according to Rule 44, for a time period in excess of 15 consecutive days.²⁸⁶

193. This Court has established that solitary confinement should be exceptional because isolation from the outside world may result in extreme moral and mental suffering and psychological disorders for the detainee and an increased risk of violence and arbitrariness in prisons. Prolonged isolation and coercive incommunicado represent, in themselves, forms of cruel and inhuman treatment. Anyone deprived of their liberty has a right to contact with family members.²⁸⁷

194. Based on the facts of the case, the Court finds it proved that Genaro Ahuacho Luna, Alfredo Bazán y Rosas, Víctor Boggiano Bruzzón, Carlos Enrique Castro Ramírez, Carlos Eladio Cruz Añez, Oswaldo Lulleman Antezana, Elacio Peña Córdova and Blas Valencia Campos were kept in solitary confinement for 70 days, incommunicado, and without any sunlight (*supra* paras. 83 and 84). This, in itself, constitutes a form of cruel and inhuman treatment.

B.5. The conditions of the detention centers

195. To protect the right to integrity of those deprived of liberty, one of the obligations that the State must necessarily assume in its position of guarantor is to ensure minimum conditions compatible with their dignity while they are confined in detention centers.²⁸⁸ The United Nations Standard Minimum Rules for the Treatment of Prisoners establish basic criteria for interpreting the content of the right of prisoners to dignified and humane treatment. These rules include the complete prohibition of corporal punishment, and punishment by placing in a dark cell, as well as the basic rules with regard to accommodation and hygiene.²⁸⁹

196. Similarly, this Court has indicated that keeping prisoners in overcrowded conditions, without ventilation and natural light, without a bed to rest on and adequate hygiene facilities, constitutes a violation of their personal integrity.²⁹⁰

197. The Court finds it proved that the alleged victims who were taken to the PTJ were detained in small cells, without beds, which forced them to sleep on the floor, and they did not have access

²⁸⁶ UN. United Nations Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules). A/RES/70/175, adopted by the General Assembly on December 17, 2015.

²⁸⁷ Cf. *Case of J. v. Peru*, *supra*, para. 376, and *Case of Pollo Rivera et al. v. Peru*, *supra*, para. 159.

²⁸⁸ Cf. *Case of the "Juvenile Re-education Institute" v. Paraguay. Preliminary objections, merits, reparations and costs*. Judgment of September 2, 2004. Series C No. 112 para. 159, and *Case of Valenzuela Ávila v. Guatemala. Merits, reparations and costs*. Judgment of October 11, 2019. Series C No. 386, para. 203.

²⁸⁹ Cf. United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and adopted by the Economic and Social Council in its resolutions 663C (XXIV) of July 31, 1957, and 2076 (LXVII) of May 13, 1977.

²⁹⁰ Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 150, and *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs*. Judgment of November 22, 2019. Series C No. 395, para. 60.

to bathrooms (*supra* para. 74); therefore, it finds that there was a situation of overcrowding contrary to the personal integrity of the persons detained in the PTJ.

B.6. The alleged violation of the personal integrity of María Fernanda Peña Gallardo

198. With regard to María Fernanda Peña Gallardo, the Court considers that it is not possible to find a direct link between the State's actions and her suicide. No evidence was presented that proved the use of psychological torture against her, or coercion and threats by members of the Prosecution Service and the Police. It has merely been proved that Ms. Peña Gallardo was among the suspects in the case and that she had been summoned to provide an informative statement before the Public Prosecution Service on June 6, 2002.²⁹¹

199. Nevertheless, the Court has understood that it is appropriate to presume the violation of the right to personal integrity applying a *iuris tantum* presumption with regard to family members, such as mothers and fathers, daughters and sons, spouses and permanent companions, and siblings of victims of certain human rights violations, provided this responds to the particular circumstances of the case.²⁹² It has declared the violation of this right owing to the suffering derived from the acts perpetrated against their loved ones.²⁹³

200. In the instant case, according to Patricia Gallardo's sworn statement, her daughter, María Fernanda, was present during the raid of her home, so that she witnessed the violence to which the police subjected her mother. This situation could have caused María Fernanda Peña Gallardo anguish, stress and pain, which could have had an impact on her emotional state.

201. Consequently, the Court concludes that the State is responsible for the violation of Article 5(1) of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of María Fernanda Peña Gallardo.

B.7. Conclusions

202. Based on all the above, the Court finds the Plurinational State of Bolivia responsible for the violation of personal integrity recognized in Article 5(1) and 5(2) of the American Convention, in relation to the general obligation established in Article 1(1) of this instrument, owing to the acts of torture committed against Víctor Manuel Boggiano Bruzzón, Carlos Enrique Castro Ramírez, Eladio Cruz Añez, F.E.P.M. and Raúl Oswaldo Lulleman Gutiérrez.

203. Similarly, based on acts of sexual torture, it is responsible for the violation of Article 5(1) and 5(2) in relation to Article 1(1) of the American Convention and Article 7(a) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará), to the detriment of F.E.P.M., Patricia Gallardo Ardúz, Norma Lupe Alarcón de Valencia, Claudia Valencia Alarcón, Mercedes Valencia Chuquimia, Victoria Gutiérrez, Jenny Paola Lulleman and Julia Mamanu Mamani.

²⁹¹ Cf. Public Prosecution Service, Record of suspension of hearing on informative statement of June 6, 2002 (evidence file, folio 838).

²⁹² Cf. *Case of Blake v. Guatemala. Merits*. Judgment of January 24, 1998. Series C No. 36, para. 114, and *Case of Movilla Galarcio et al. v. Colombia, supra*, para. 174.

²⁹³ Cf. *Case of Bámaca Velásquez v. Guatemala. Merits*. Judgment of November 25, 2000. Series C No. 70, paras. 162 and 163, and *Case of Vera Rojas et al. v. Chile. Preliminary objections, merits, reparations and costs*. Judgment of October 1, 2021. Series C No. 439, para. 153.

204. Based on the acts of police violence during the raids and arrests, the State is responsible for the violation of the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention, in relation to the general obligation established in Article 1(1) of this instrument, to the detriment of Genaro Ahuacho Luna; Norma Lupe Alarcón Castillo; Alfredo Bazán y Rosas; Víctor Manuel Boggiano Bruzzón; Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar; Oswaldo Lulleman Antezana; Jenny Paola Lulleman Gutiérrez; Luis Lulleman Gutiérrez; Raúl Oswaldo Lulleman Gutiérrez; Julia Mamanu Mamani; Elacio Peña Córdova; F.E.P.M; Edwin Rodríguez Alarcón; Carlos Álvaro Taboada Valencia; Claudia Valencia Alarcón; Gabriel Valencia Alarcón; Blas Valencia Campos, and Mercedes Valencia Chuquimia.

205. Based on the prolonged solitary confinement, the State is responsible for subjecting Genaro Ahuacho Luna, Alfredo Bazán y Rosas, Víctor Boggiano Bruzzón, Carlos Enrique Castro Ramírez, Eladio Cruz Añez, Oswaldo Lulleman, Elacio Peña Córdova and Blas Valencia Campos to cruel, inhuman and degrading treatment and, therefore, violated Article 5(1) and 5(2) in relation to Article 1(1) of the Convention to their detriment.

206. Based on the egregious detention conditions, the State subjected Genaro Ahuacho Luna; Norma Lupe Alarcón de Valencia; Alfredo Bazán y Rosas; Víctor Manuel Boggiano Bruzzón; Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar de Lulleman; Oswaldo Lulleman Antezana; Jenny Paola Lulleman Gutiérrez de Zaconeta; Luis Fernando Lulleman Gutiérrez; Raúl Oswaldo Lulleman Gutiérrez; Julia Mamanu Mamani; Elacio Peña Córdova; F.E.P.M.; Edwin Rodríguez Alarcón; Álvaro Taboada Valencia; Claudia Valencia Alarcón; Gabriel Valencia Alarcón, Blas Valencia Campos, and Mercedes Valencia Chuquimia to cruel, inhuman and degrading treatment in violation of Article 5(1) and 5(2) in relation to Article 1(1) of the Convention, to their detriment.

207. Based on the violation of her personal integrity, the State is responsible for the violation of Article 5(1) in relation to Article 1(1) of the Convention to the detriment of María Fernanda Peña Gallardo.

VIII-3

VIOLATION OF PERSONAL LIBERTY, PERSONAL INTEGRITY, AND THE RIGHTS OF THE CHILD IN THE CASE OF THE CHILD ALLEGED VICTIMS²⁹⁴

A. Arguments of the parties and of the Commission

208. With regard to the children, the **Commission** considered that, even though there was insufficient proof that the alleged child victims were directly subjected to physical violence, it has been demonstrated that they were at home at the time of the raids, and it may be surmised that they experienced fear and anguish on seeing the members of their family suffer ill-treatment. Therefore, it considered that the children present suffered, at the very least, violations of their mental integrity owing to failure to comply with the special protection due to them because of their age.

209. **Representative Gómez Rojas** alleged that Alexis Eduardo Valencia Alarcón, 11 years of age at the time of the facts, was kidnapped for several hours, beaten, and obliged to inform on and incriminate his parents. He also indicated that Claudio Tito Centeno Valencia, aged 3 at the time of the facts, was also subjected to ill-treatment and directly witnessed the torture inflicted on his mother. He added that Mauricio Marcelo Valenzuela Valencia, 16 years old at the time of

²⁹⁴ Articles 7(1), 7(2), 7(3), 5(1), 5(2) and 19 of the Convention

the facts, who was in the house on Presbítero Medina Street at the time of the raid, was also tortured and presented to the public as a criminal. He therefore considered that the State was responsible for violating the rights of the child.

210. The **State** argued that there was a lack of evidence in relation to the use of excessive force against children by the police officers. In particular, it indicated that the video used as a means of proof revealed that no child was beaten, handcuffed or made to lie face down; moreover, no indication of tears or pain can be noted that might attest to the physical or mental impact on them. It added that a violation of Article 19 could not be justified by the mere presence of children on the premises where the raids were carried out and that there was no evidence to prove that state agents exhibited the children before the media.

B. Considerations of the Court

211. The proven facts reveal that, at the time of the raids, the following children were present: Alexis Valencia Alarcón, aged 12, Claudio Centeno Valencia, aged 3, and Mauricio Valenzuela Valencia, aged 16. The Court has established that when it is alleged that children are victims, this gives rise to the obligation to apply a higher standard when classifying actions that violate their personal integrity.²⁹⁵

212. Article 19 of the American Convention imposes on States the obligation to adopt the “measures of protection” required by the special condition of children. The concept of “measures of protection” may be analyzed taking into account other provisions, especially bearing in mind that, pursuant to Article 31 of the Vienna Convention, when interpreting a treaty it is necessary to take into account any agreement or instrument relating to the treaty and the system within which it is inscribed.²⁹⁶ Both the other provisions of the American Convention and those of the Convention on the Rights of the Child help this Court to establish the content and scope of Article 19 of the American Convention.²⁹⁷

213. The Convention on the Rights of the Child, which has been ratified almost universally, contains various provisions that refer to State obligations in relation to children who are involved in factual assumptions similar to those examined in this case and they can throw some light on the conduct that Bolivia should have observed in this regard. Among such provisions, it is worth underlining those relating to non-discrimination (art. 2),²⁹⁸ the prohibition of torture (art. 37(a)),²⁹⁹ and the conditions that should be observed when a child is deprived of his or her liberty (art. 37(b), (c) and (d)).³⁰⁰ Accordingly, the Court indicates that, as soon as a raid began, the

²⁹⁵ Cf. *Case of the Gómez Paquiyauri Brothers v. Peru*, *supra*, para. 170.

²⁹⁶ Cf. *The Right to Information on Consular Assistance in the Framework of the Guarantees of the Due Process of Law*, Advisory Opinion OC-16/99, October 1, 1999. Series A No. 16, para. 113, and *Case of the Massacre of the Village of Los Josefinos v. Guatemala*, *supra*, para. 88.

²⁹⁷ Cf. *Case of the “Street Children” (Villagrán Morales et al.)*, *Merits*. Judgment of November 19, 1999. Series C No. 63, para. 193, and *Case of the Gómez Paquiyauri Brothers v. Peru*, *supra*, para. 164.

²⁹⁸ Article 2.1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status. 2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

²⁹⁹ Article 37 States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. [...];

³⁰⁰ Article 37 States Parties shall ensure that: [...] (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only

children present should have been given the treatment and the rights that corresponded to them due to their condition as such.

214. The Court has also maintained that, in cases where children are involved, the content of the right to personal liberty cannot be separated from the best interests of the child and from the nature of the State's position as guarantor of the rights of children.³⁰¹ Thus, article 37(b) of the Convention on the Rights of the Child (ratified by Bolivia in 1990), establishes that: "States Parties shall ensure that: [...] (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time."³⁰²

215. In addition, as the Court has previously affirmed, other international instruments are relevant for safeguarding the rights of children subject to different actions by the State.³⁰³ Rules 10.1 and 10.2 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) establish that: "[u]pon the apprehension of a juvenile, her or his parents or guardian shall be immediately notified of such apprehension, and, where such immediate notification is not possible, the parents or guardian shall be notified within the shortest possible time thereafter," and "[a] judge or other competent official or body shall, without delay, consider the issue of release."³⁰⁴

216. The statements made in these proceedings reveal that, while his home was being raided, Alexis Valencia Alarcón was placed in the back of a patrol vehicle and covered with a blanket so that he even found it difficult to breathe. He was taken from his home without informing his parents and held in the patrol vehicle for more than three hours, while being taken to the other homes raided.³⁰⁵ During the public hearing, Mauricio Valenzuela Valencia recounted that he was detained in the Judicial Police facilities for more than seven days. He was never brought before a judge; rather, he stated that, after seven days, while the other detainees were put into buses to take them to a prison, he was taken out of the line and released from the PTJ without anyone to meet him. The case file does not show that the State took any measure to ensure that the adolescent was collected or taken in by a family member or placed in the care of a state institution. In the case of the child, Claudio Centeno Valencia, the Court has no probative element explaining how he was taken to the PTJ. Alexis Valencia's statements reveal that, when taken to the PTJ, he

as a measure of last resort and for the shortest appropriate period of time; (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances; (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

³⁰¹ Cf. *Case of the " Juvenile Re-education Institute" v. Paraguay*, *supra*, para. 152, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela. Preliminary objections, merits, reparations and costs*. Judgment of August 27, 2014. Series C No. 281, para. 161.

³⁰² Likewise, the Committee on the Rights of the Child has established that: "The leading principles for the use of deprivation of liberty are: (a) the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; and (b) no child shall be deprived of his/her liberty unlawfully or arbitrarily." Cf. UN, Committee on the Rights of the Child. General Comment No. 10, Children's rights in juvenile justice, April 25, 2007, para. 79.

³⁰³ Cf. *Case of Mendoza et al. v. Argentina. Preliminary objections, Merits and reparations*. Judgment of May 14, 2013. Series C No. 260, para. 149, and *Case of the Landaeta Mejías Brothers et al. v. Venezuela*, *supra*, para. 167.

³⁰⁴ UN. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules). Adopted by the General Assembly in Resolution 40/33 of November 28, 1985, Rules 10.1 and 10.2.

³⁰⁵ Cf. Affidavit made by Alexis Eduardo Valencia Alarcón on June 14, 2022 (evidence file, folios 12620 and 12621).

was able to reunite with this child and that, subsequently, when they left the PTJ, no measures were taken to place these minors in the custody of a family member or of a state institution.³⁰⁶

217. Based on the above, the Court finds that the State violated the right to personal liberty established in Articles 7(1), (2) and (3), and 19 of the American Convention to the detriment of Alexis Valencia Alarcón and Mauricio Valenzuela Valencia, as well as the violation of Articles 7(4) and 19 of the American Convention to the detriment of Mauricio Valenzuela Valencia.

218. In addition, regarding the allegations of ill-treatment and abuse, Alexis Valencia Alarcón recounted that, during the raid, and when he was in the patrol vehicle, he was hit on the head with machine gun butts, he was insulted, and told that his father was a crook.³⁰⁷ During the public hearing, Mauricio Valenzuela Valencia stated that during the raid the police beat him and pressed his head against the floor until he passed out.³⁰⁸

219. These acts, executed intentionally, inflicted serious physical and mental suffering on the alleged victims who were children at the time of the events. Therefore, the Court finds that Alexis Valencia Alarcón and Mauricio Valenzuela Valencia were victims of cruel and degrading treatment at the hands of the police. Regarding Claudio Centeno Valencia, another child who is a party to these proceedings, there is no evidence that the police committed acts of violence against him. Consequently, the Court concludes that the State violated Articles 5(1), 5(2) and 19 of the American Convention to the detriment of Alexis Valencia Alarcón and Mauricio Valenzuela Valencia.

220. It is therefore clear that, in light of the aforementioned provisions, in this specific case the state agents did not respect their enhanced obligation to protect the children who were present at the time of the raids and that, to the contrary, they committed acts that violated their rights and, in the case of Claudio Centeno Valencia, they failed to guarantee a minimum of protection for a 3-year-old child, by not ensuring that he was placed under the care and protection of a family member or a state institution. Consequently, the Court finds that the State violated Article 19 of the American Convention to the detriment of Alexis Valencia Alarcón, Mauricio Valenzuela Valencia and Claudio Centeno Valencia.

VIII-4 RIGHT TO LIFE³⁰⁹ OF GENARO AHUACHO LUNA

A. Arguments of the parties and of the Commission

221. The **Commission** indicated that Genaro Ahuacho Luna (Walter Herrera Flores or Walter Herrera Ríos), died while imprisoned in the Chonchocoro Prison. It recalled that the State is responsible for ensuring respect for the life of all those in its custody and that there is no record that the State provided him with medical attention, nor has it offered a satisfactory or convincing explanation for what occurred. Therefore, it is responsible for violating his right to life.

222. The **inter-American public defenders** alleged that Genaro Ahuacho Luna was subjected to severe physical and mental ill-treatment during his detention and that he died while confined in the Chonchocoro Prison. They indicated that there had been a delay in providing him with adequate medical care when he suffered a stroke. They added that the State had not provided a satisfactory explanation for what happened and therefore considered that it had violated Article 4

³⁰⁶ Cf. Affidavit made by Alexis Eduardo Valencia Alarcón on June 14, 2022 (evidence file, folios 12620 and 12621).

³⁰⁷ Cf. Affidavit made by Alexis Eduardo Valencia Alarcón on June 14, 2022 (evidence file, folio 12620).

³⁰⁸ Cf. Statement made by Mauricio Valenzuela Valencia during the public hearing on June 21, 2022.

³⁰⁹ Article 4(1) of the American Convention.

of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Genaro Ahuacho Luna.

223. The **State** argued that it had not deprived the alleged victim of his life; rather it had taken the appropriate measures to protect and preserve his health while he was deprived of liberty. It stressed that Mr. Ahuacho Luna died in hospital and not in the prison. It alleged that there was no evidence whatsoever that would have allowed the State to know Mr. Ahuacho Luna's health problems because they were due to high blood pressure, smoking, diabetes, alcohol intake and lipid profile. It therefore concluded that there was no evidentiary element proving that the death of Mr. Ahuacho Luna was due to the use of force by state agents; rather the cause of death was a stroke suffered on April 12, 2004, owing to which the State had activated all the appropriate mechanisms to protect and preserve his health.

B. Considerations of the Court

224. This Court has already indicated that the State, in its capacity as guarantor of the rights recognized in the Convention, is responsible for ensuring the right to personal integrity of every individual in its custody.³¹⁰ Therefore, the Court reiterates that, as the entity responsible for detention centers and prisons, the State has the duty to safeguard the health and well-being of persons deprived of liberty, and to guarantee that the manner and method of deprivation of liberty does not exceed the inevitable level of suffering inherent in incarceration.³¹¹ Thus, a presumption exists that the State is responsible for any injuries suffered by a person who has been in the custody of state agents,³¹² and the State has the obligation to provide a satisfactory and convincing explanation of what happened and to refute the allegations of its responsibility with satisfactory probative elements.³¹³

225. First, the Court notes that, in the instant case, it has already been determined that Genaro Ahuacho Luna was a victim of cruel and degrading treatment during the raid of the house located at No. 2525 Presbítero Merina and his detention in the PTJ facilities (*supra* paras. 175 and 204). Even though he had visible injuries, as revealed by the video of the PTJ police operation (*supra* para. 62), he was not examined by a forensic physician when he arrived at the PTJ. On April 12, 2002, while in the Chonchocoro Prison, he suffered a loss of consciousness. The prison doctor indicated that he should be transferred to a hospital; however, this transfer only occurred four hours later. Finally, Genaro Ahuacho Luna died on April 14, 2002, in the Corazón de Jesús Hospital as the result of a cerebrovascular accident involving the middle left cerebral artery, and respiratory failure.

226. The State argued that there was no evidence that permitted Mr. Ahuacho Luna's death to be linked to an action by the State and that it was due to pre-existing conditions. However, it can be observed that the alleged victim did not receive medical attention on entering the detention center and, therefore, there is no way of verifying the extent of the injuries resulting from the ill-treatment he suffered and its possible aftereffects. Furthermore, it has been proved that the state

³¹⁰ Cf. *Case of Juan Humberto Sánchez v. Honduras*, *supra*, para. 99, and *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs*. Judgment of March 26, 2021. Series C No. 426, para. 151.

³¹¹ Cf. *Case of the "Juvenile Re-education Institute" v. Paraguay*, *supra*, para. 159, and *Case of Montesinos Mejía v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of January 27, 2020. Series C No. 398, para. 150.

³¹² Cf. *Case of the "Street Children" (Villagrán Morales et al.) v. Guatemala. Merits, supra*, paras. 95 and 170, and *Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 163.

³¹³ Cf. *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela. Preliminary objection, merits, reparations and costs*. Judgment of July 5, 2006. Series C No. 150, para. 80, and *Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 163.

agents in charge of the prison took four hours to transfer Mr. Ahuacho to a hospital after he had suffered a stroke which left him unconscious and, during that time, he did not receive adequate medical care according to the statements of his cellmate (*supra* para. 86).

227. In light of these considerations, the Court notes that the United Nations Standard Minimum Rules for the Treatment of Prisoners, in addition to requiring that medical examinations be conducted as often as necessary (*infra* para. 239), also indicates that:

Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.³¹⁴

228. Finally, the Court notes that, in this case, the State did not provide Mr. Ahuacho with adequate and timely medical care, because he did not undergo a medical examination when entering the prison to be able to evaluate his health, and because he was not transferred rapidly and promptly to a medical center after suffering a stroke in the prison and losing consciousness. In addition, the State did not provide a satisfactory or convincing explanation of what happened to refute the presumption of responsibility owing to the lack of adequate medical attention for Genaro Ahuacho Luna, who was in its custody.

229. Therefore, the Court concludes that the State is responsible for violating Article 4(1) in relation to Article 1(1) of the American Convention to the detriment of Genaro Ahuacho Luna.

VIII-5 RIGHT TO HEALTH³¹⁵

A. Arguments of the parties and of the Commission

230. **Representative Jemio Mendoza** alleged that, as a result of the ill-treatment, torture and sexual violence, both the physical and the mental health of Patricia Catalina Gallardo were seriously affected. He alleged that, since she was granted house arrest, she no longer receives treatment and medication paid for by the State. Therefore, he considered that the State had violated the right to health of Ms. Gallardo Ardúz established by Article 26 of the Convention.

231. The other representatives, the Commission and the State did not refer to this violation.

B. Considerations of the Court

³¹⁴ Rule 22(2) of the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and adopted by the Economic and Social Council in its resolutions 663C (XXIV) of July 31, 1957, and 2076 (LXVII) of May 13, 1977.

³¹⁵ Article 26 of the American Convention.

232. The Court recalls that, taking into account that, based on Articles 34(i), 34(l)³¹⁶ and 45(h)³¹⁷ of the Charter of the Organization of American States (hereinafter “the OAS Charter”), the right to health is included in the Charter, in different precedents it has recognized the right to health as a right protected under Article 26 of the Convention.³¹⁸ Regarding the consolidation of this right, there is also a broad regional consensus because it is explicitly recognized in several constitutions and in domestic laws of the States of the region.³¹⁹ The Court underscores that the right to health was recognized by the Bolivian Constitution at the time of the events.³²⁰

233. The Court has also indicated that the rights to integrity and to life are directly and immediately linked to health care,³²¹ and that the lack of adequate medical care may also entail the violation of Articles 5(1)³²² and 4 of the Convention.³²³

234. The general obligation to protect health results in the State’s duty to ensure that everyone has access to essential health services, guaranteeing efficient and professional medical services, as well as to promote an improvement in the health of the population.³²⁴ This right covers opportune and appropriate health care in keeping with the principles of availability, accessibility, acceptability and quality, the application of which will depend on the prevailing conditions in each State. In complying with the obligation to respect and ensure this right, the State must provide

³¹⁶ Article 34(i) and (l) of the OAS Charter establishes “[t]he Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic objectives of integral development. To achieve them, they likewise agree to devote their utmost efforts to accomplishing the following basic goals: [...] (i) Protection of man’s potential through the extension and application of modern medical science; and [...] (l) Urban conditions that offer the opportunity for a healthful, productive, and full life.”

³¹⁷ Article 45(h) of the OAS Charter establishes: “[t]he Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, agree to dedicate every effort to the application of the following principles and mechanisms: [...] (h) Development of an efficient social security policy.”

³¹⁸ Cf. *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs*. Judgment of March 8, 2018. Series C No. 349., para. 106 and 110, and *Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs*. Judgment of November 2, 2021. Series C No. 441, para. 182.

³¹⁹ These include: Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Uruguay and Venezuela. See, the Constitutions of Argentina (art. 10); Barbados (art. 17.2.A); Bolivia (art. 35); Brazil (art. 196); Chile (art. 19) Colombia (art. 49); Costa Rica (art. 46); Dominican Republic (art. 61); Ecuador (art. 32); El Salvador (art. 65); Guatemala (arts. 93 and 94); Haiti (art. 19); Mexico (art. 4); Nicaragua (art. 59); Panama (art. 109); Paraguay (art. 68); Peru (art. 70); Suriname (art. 36); Uruguay (art. 44), and Venezuela (art. 83). Cf. Constitutional Chamber, Supreme Court of Justice of Costa Rica, Resolution No. 13505–2006, of September 12, 2006, considering paragraph III; Constitutional Court of Colombia, Judgment C-177 of 1998; Supreme Court of Justice of Mexico, Case law opinion 8/2019 (10). Right to the Protection of Health. Individual and social dimension. Constitutional Court of Ecuador, Judgment No. 0012-09-SIS-CC, October 8, 2009.

³²⁰ Article 7 of the 2004 Bolivian Constitution establishes that: “[e]veryone has the following fundamental rights, subject to the laws that regulate their implementation: (a) to life, health and security [...]” (evidence file, folio 2055).

³²¹ Cf. *Case of Albán Cornejo et al. v. Ecuador. Merits, reparations and costs*. Judgment of November 22, 2007. Series C No. 171, para. 117, and *Case of Manuela et al. v. El Salvador, supra*, para. 183.

³²² See, for example, *Case of Tibi v. Ecuador, supra*, and *Case of Manuela et al. v. El Salvador, supra*.

³²³ See, for example, *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 1, 2015. Series C No. 298, para. 171, and *Case of Manuela et al. v. El Salvador, supra*, para. 184.

³²⁴ Cf. *Case of Poblete Vilches et al. v. Chile, supra*, para. 118, and *Case of Manuela et al. v. El Salvador, supra*, para. 184.

special care for vulnerable and marginalized groups, and this must be provided progressively in accordance with available resources and the applicable domestic laws.³²⁵

235. As it has reiterated in its recent case law, the Court considers that the nature and scope of the obligations derived from the protection of the right to health include aspects that are enforceable immediately, and also aspects that have a progressive character.³²⁶ In this regard, the Court recalls that, in relation to the former (obligations that are enforceable immediately), States must adopt effective measures to guarantee access, without discrimination, to the services recognized as part of the right to health; guarantee the equality of rights between women and men and, in general, advance towards the full effectiveness of the economic, social, cultural and environmental rights (ESCER). Regarding the latter (obligations of a progressive character), the progressive implementation signifies that States Parties have the specific and constant obligation to advance as rapidly and efficiently as possible towards the full effectiveness of this right, to the extent of available resources, and by legislation or other appropriate means. In addition, States are obliged to ensure non-retrogressivity in relation to the rights that have been achieved. Based on the foregoing, the obligations to respect and to ensure rights, together with the adoption of measures of domestic law (Articles 1(1) and 2 of the Convention), are fundamental to achieve their effectiveness.³²⁷

236. This Court finds that representative Jemio Mendoza's arguments have been substantiated regarding the violation of Patricia Gallardo's right to health, which was exacerbated during her house arrest because the State ceased to provide her with her treatment. The Court has noted (*supra* para. 189) that Ms. Gallardo Ardúz was a victim of acts of torture and that those acts caused her physical and mental aftereffects that violated her right to health. In addition, according to the ITEI medical report of July 14, 2021, "Patricia Gallardo suffers from irreversible ailments that require permanent treatment; she needs special food, medication and, above all, daily physiotherapy to supplement the treatment with medication."³²⁸ On several occasions, Ms. Gallardo Ardúz submitted her claims regarding health care to address the effects of the torture and ill-treatment she experienced,³²⁹ and the State has not responded to them. Therefore, the Court finds that the State violated the right to health of Patricia Gallardo Ardúz.

237. This Court also finds that the proven facts reveal that several actions taken by the State in relation to the events of this case entailed a violation of the alleged victims' right to health. Consequently, in application of the *iura novit curia* principle, which international case law has repeatedly validated, and under which the judge has the authority – and even the duty – to apply the legal provisions relevant to a case even when the parties have not expressly invoked them,³³⁰ the Court finds it necessary to examine the facts in light of the right to health of the other alleged victims in this case.

³²⁵ Cf. *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of August 23, 2018. Series C No. 359, para. 39, and *Case of Manuela et al. v. El Salvador, supra*, para. 185.

³²⁶ Cf. *Case of Poblete Vilches et al. v. Chile, supra*, para. 104, and *Case of Manuela et al. v. El Salvador, supra*, para. 186.

³²⁷ Cf. *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of March 6, 2019. Series C No. 375, para. 190, and *Case of Manuela et al. v. El Salvador, supra*, para. 186.

³²⁸ Medical report prepared by Marcelo Flores of the ITEI on July 14, 2021 (evidence file, folio 10401).

³²⁹ Cf. Brief submitted by Patricia Gallardo Ardúz to the Deputy Attorney for the State's Legal Defense and Representation of the Attorney General's Office on September 21, 2020 (evidence file, folios 10264 to 10283).

³³⁰ Cf. *Case of Velásquez Rodríguez v. Honduras. Merits, supra*, para. 163, and *Case of Guachalá Chimbo et al. v. Ecuador, supra*, para. 205.

238. First, as established above (paras. 224 to 229), a lack of adequate medical care has been proved in the case of Genaro Ahuacho Luna, who was taken to a hospital four hours after suffering a stroke, without being given any type of care during this lapse.

239. In addition, the Court has established that the State has the duty, as guarantor of the health of those in its custody, to provide detainees and prisoners with regular medical examinations and adequate medical care and treatment when required.³³¹ The Court also recalls that numerous decisions of international bodies cite the Standard Minimum Rules for the Treatment of Prisoners in order to interpret the content of the right of persons deprived of liberty to dignified and humane treatment.³³² Regarding the medical services that should be provided, these Rules indicate, *inter alia*, that “[t]he medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures.”³³³ Meanwhile, Principle 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment determines that “[a] proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.”³³⁴

240. Recently, the Court has recognized that certain specific situations, such as pregnancy, or during delivery, postpartum and breastfeeding, increase the vulnerability of women in prison because their life and integrity are at greater risk. Thus, the Court has recognized the special vulnerability of pregnant women,³³⁵ particularly when they are deprived of their liberty.³³⁶ In this regard, the Court finds that, based on the principle of equality and non-discrimination, the care provided to women detained within the prison system during pregnancy, delivery, postpartum, and in the case of any obstetric emergency, should be equal to that available outside the prison. Furthermore, considering that such women are under the complete control of the prison authorities, the State has the obligation to prevent irreparable harm to the rights of pregnant women to physical and mental health, personal integrity, and life,³³⁷ as well as during delivery,

³³¹ Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs*. Judgment of September 7, 2004. Series C No. 114, para. 156, and *Case of Rodríguez Revolorio et al. v. Guatemala. Preliminary objection, merits, reparations and costs*. Judgment of October 14, 2019. Series C No. 387, para. 90.

³³² Cf. *Case of Raxcacó Reyes v. Guatemala. Merits, reparations and costs*. Judgment of September 15, 2005. Series C No. 133, para. 99, and *Case of Manuela et al. v. El Salvador, supra*, para. 198.

³³³ Cf. United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and adopted by the Economic and Social Council in its resolutions 663C (XXIV) of July 31, 1957, and 2076 (LXVII) of May 13, 1977, Rule 24. See also, Rules 49 and 50 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty adopted by the General Assembly in resolution 45/113 of December 14, 1990.

³³⁴ Cf. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly in resolution 43/173 of December 9, 1988, Principle 24. See also, Rule 24 of the United Nations Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Geneva in 1955, and adopted by the Economic and Social Council in its resolutions 663C (XXIV) of July 31, 1957, and 2076 (LXVII) of May 13, 1977.

³³⁵ Cf. *Case of the Sawhoyamaya Indigenous Community v. Paraguay. Merits, reparations and costs*. Judgment of March 29, 2006. Series C No. 146, para. 177, and *Differentiated Approaches with respect to Certain Groups of Persons Deprived of Liberty*. Advisory Opinion OC-29/22 of May 30, 2022. Series A No. 29, para. 128.

³³⁶ Cf. *Case of the Miguel Castro Castro Prison v. Peru, supra*, paras. 275, 300 and 322; *Case of Gelman v. Uruguay. Merits and reparations*. Judgment of February 24, 2011. Series C No. 221, para. 97, and Advisory Opinion OC-29/22, *supra*, para. 128.

³³⁷ Cf. *Matter of B. Provisional measures with regard to El Salvador*. Order of the Inter-American Court of Human Rights of May 29, 2013, considering paragraphs 14 and 17.

postpartum or in the event of any obstetric emergency. It is also essential that mental health care is provided by specialized doctors.³³⁸

241. The facts of the case reveal that, of the group of alleged victims who were taken to the PTJ, only Claudia Valencia Alarcón, Norma Alarcón Castillo, F.E.P.M., Victoria Gutiérrez Aguilar, Jenny Paola Lulleman, Carlos Enrique Castro Ramírez, Mercedes Valencia Chuquimia, Julia Mamanu Mamani and Víctor Manuel Boggiano Bruzzón underwent a forensic medical examination (*supra* para. 75). Consequently, the right to health was violated of all the other persons detained who were not subject to a medical examination at the time of their detention, namely: Blas Valencia Campos, Edwin Rodríguez Alarcón, Gabriel Valencia Alarcón, Elacio Peña Córdoba, Genaro Ahuacho Luna, Alfredo Bazán y Rosas, Mauricio Valenzuela Valencia, Oswaldo Lulleman Antezana, Raúl Oswaldo Lulleman Gutiérrez, Luis Lulleman Gutiérrez, Carlos Eladio Cruz Añez, Freddy Cáceres Castro and Patricia Catalina Gallardo Ardúz.

242. Moreover, the Court notes that F.E.P.M. had a miscarriage as a result of the beating she received at the hands of police agents (*supra* para. 76). In addition, the facts of the case reveal that she did not receive medical attention despite experiencing loss of blood, and that she was not provided with any specialized care taking into account her special vulnerability, so that her right to health was also violated because the State failed to comply with its duty of enhanced protection for a vulnerable person.

243. Based on the above, the Court finds that the State violated the right to health recognized in Article 26 of the American Convention to the detriment of Genaro Ahuacho Luna, Alfredo Bazán y Rosas, Carlos Eladio Cruz Añez, Freddy Cáceres Castro, Patricia Gallardo Ardúz, Oswaldo Lulleman Antezana, Luis Lulleman Gutiérrez, Raúl Oswaldo Lulleman Gutiérrez, Elacio Peña Córdoba, F.E.P.M., Edwin Rodríguez Alarcón, Gabriel Valencia Alarcón, Blas Valencia Campos and Mauricio Valenzuela Valencia.

VIII-6

JUDICIAL GUARANTEES, JUDICIAL PROTECTION, RIGHTS TO HONOR AND DIGNITY, DUTY TO INVESTIGATE AND PUNISH ACTS OF TORTURE, AND DUTY TO INVESTIGATE AND PUNISH VIOLENCE AGAINST WOMEN³³⁹

A. Arguments of the parties and of the Commission

244. The **Commission** argued that the alleged victims had repeatedly denounced that they had been victims of torture and cruel, inhuman and degrading treatment; also, that their statements had been obtained under duress. It underlined that the State had not proved that those facts had been investigated. It indicated that the absence of a diligent and effective investigation had continued over time and that it had not been conducted with a child and gender perspective. Thus, it considered that the rights to judicial guarantees and judicial protection had been violated. Moreover, since the complaints referred to torture, the obligations contained in Articles 1, 6 and 8 of the ICPPT had also been violated.

245. It added that, following their arrest, the alleged victims, including children, were presented to the press as the persons responsible for the Prosegur robbery before they had been tried or convicted. Some of them were not even indicted by the Public Prosecution Service subsequently,

³³⁸ Cf. Advisory Opinion OC-29/22, *supra*, para. 155.

³³⁹ Arts. 8 and 25(1) of the American Convention, 1 and 6 of the Inter-American Convention to Prevent and Punish Torture, and 7(b) of the Convention of Belem do Pará.

but released in the course of the investigation. Therefore, the Commission considered that the presumption of innocence had also been violated.

246. The **inter-American public defenders** considered that the public exhibition of the alleged victims by the police was a violation of the right to the presumption of innocence. They underlined that those arrested during the raids were presented at a press conference, and individuals who were not even suspects were present. They considered that the attacks in the press were fostered by the State and created a stigmatizing effect. Regarding the right of defense, they stressed that the suspects were held for more than 60 days in solitary confinement and this prevented access to their defense lawyers; moreover, initially, they were even prohibited from choosing their own lawyer, and the assistance of an official public defender was imposed on them. They also argued that the defense counsel did not act with due diligence because, on learning of the acts of torture, they either did nothing in this regard or merely reported it without taking any action in response to the indifference of the judges. Therefore, they considered that the State had violated the right to be heard with due guarantees, and the right of defense guaranteed by Article 8(1), 8(2)(d) and 8(2)(e) of the Convention.

247. Regarding the enhanced duty to investigate torture, they argued that, during the hearing on precautionary measures, at least two of the public defenders who intervened argued that those who had been detained had suffered ill-treatment. However, the investigating judge failed to take any measure in this regard. Subsequently, when delivering the judgment convicting the defendants, the judge once again ignored the allegations of their torture and ill-treatment. He merely ordered that the case file be forwarded to the Public Prosecution Service for an investigation to be opened into acts committed by public officials that violated human rights; however, they indicated that they were unaware of the result of this process. It was not until 2010, after the Inter-American Commission had issued its Admissibility Report in this case that an investigation was opened, *ex officio*. Several irregularities occurred during this process in relation to time frames and the way in which statements were taken, and it was not until 10 years later that one suspect was formally indicted. Consequently, they considered that the investigation had not complied with the standards of due diligence. In conclusion they argued that the State had violated the right to judicial protection and its duty of due diligence when investigating torture and cruel treatment arising from Articles 8(1) and 25 of the Convention and Articles 1, 6 and 8 of the ICPPT. They added that, since the acts of sexual violence against the women alleged victims had not been investigated diligently, Article 7(b) of the Convention of Belem do Pará had also been violated.

248. **Representative Jemio Mendoza** argued that María Fernanda Peña Gallardo should also have been included in the proceedings initiated in 2010 for the crimes of ill-treatment and torture, as a victim of those crimes, owing to the mental torture suffered; however, her name was not included among the victims in the investigation conducted under case file No. 6147/2010. He also argued that neither her family nor her legal representative had been informed of the procedural status of that case. Therefore, he considered that the enhanced duty to investigate torture and the need for due diligence and a gender perspective in cases of violence against women had been violated..

249. **Representative Gómez Rojas** argued that gross human rights violations had occurred in this case and, therefore, the State had an enhanced obligation to investigate, prosecute and punish all those responsible, including the superior officers. He considered that, during the raids, and subsequently in the Judicial Technical Police facilities, police agents acting in coordination, under the command of their superior officers, committed acts of violence, rape, and torture in a public, massive and reiterated way, without their superiors intervening to prevent or avoid such acts. Therefore, he considered that, to comply with the established standards for an investigation,

the State should investigate not only the perpetrators, but also the superior officers in the Judicial Technical Police's chain of command.

250. The **State** argued that it had complied with the duty to investigate and punish in relation to the events that violated the life and integrity of the seven individuals who had been affected by the robbery of the Prosegur truck. It indicated that, during those proceedings, on becoming aware of indications of acts that possibly violated the human rights of the alleged victims, the jurisdictional authority in charge of the case had asked for an investigation to be opened and, in the judgment, ordered that the case file be forwarded to the Public Prosecution Service. It also argued that the right of defense had been respected by ensuring that the defendants were represented by public defenders who they subsequently rejected in favor of their own lawyers. It indicated that there was no record of any formal complaint by the defendants in relation to torture, cruel, inhuman or degrading treatment and sexual torture. Regarding the precautionary measures ordering pre-trial detention, it indicated that this was in strict compliance with the laws in force and to ensure that the investigation was not obstructed. It added that the right not to be obliged to self-incriminate had not been violated, and argued that the judgment was not substantiated by the statements of the defendants at the time of their arrest, but only on documentary, testimonial, expert and material evidence obtained lawfully, and that the defendants had exercised their right to appeal the conviction by remedies of appeal and cassation.

251. Regarding the alleged media exposure, the State reiterated that, owing to the nature of the robbery of the Prosegur truck, there had been some media coverage. It argued that this was a case that had aroused public interest, and in which high ranking police officers and government officials participated; this had led to considerable interest by the press. Accordingly, the State could not be considered responsible for the coverage given by the media, exercising its right to information and the freedom of the press. Regarding the alleged exhibition of children to the media, it argued that the photographs and video presented as evidence by the Commission and the representatives did not show any kind of exhibition of children before the media by state agents.

252. It indicated that it had complied with the duty to investigate the alleged acts of torture by means of Investigation LPZ 10006147, and that, despite the absence of statements by the alleged victims, the State had conducted an investigation, *ex officio*, culminating in a formal indictment of J.J.V. It argued that progress had been made in the criminal proceedings, and that the State had clearly demonstrated its willingness to allow the investigation to continue. Regarding the duration of the proceedings, it argued that the alleged victims had not proved to what extent this had prejudiced them. It added that the description of the proceedings revealed the willingness of all the jurisdictional authorities to help clarify the case and, thereby, punish those responsible. Consequently, it concluded that it had not violated the right to judicial protection.

B. Considerations of the Court

253. In this chapter, the Court will examine the alleged violation of the rights to judicial guarantees and judicial protection of the alleged victims owing to their presentation before the media, the lack of access to their lawyers, and the failure to investigate the torture inflicted. Based on the arguments of the parties and the Commission, the Court will examine: (1) the alleged violation of the rights to the presumption of innocence and the protection of honor and dignity; (2) the alleged violation of the right of defense, and finally, (3) the alleged failure to investigate the tortures inflicted.

B.1. Alleged violation of the rights to the presumption of innocence and to the protection of honor and dignity

254. Article 8(2) of the Convention stipulates that “[e]very person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law,” and this is one of the basic tenets of judicial guarantees.³⁴⁰ The presumption of innocence signifies, among other matters,³⁴¹ that the State must not condemn an individual informally, or issue an opinion publicly, thereby contributing to form public opinion, while a person’s criminal responsibility has not been legally proven. Consequently, this right can be violated by both the judge in charge of the proceedings, and other public authorities; therefore, before an individual has been tried and convicted, they should be discreet and prudent when making public statements concerning criminal proceedings.³⁴²

255. In addition, Article 11 of the Convention establishes that “everyone has the right to have his honor protected and his dignity recognized.” The Court has indicated that the right to honor recognizes that everyone has the right to have his honor respected and his dignity recognized, and that no one may be the object of unlawful attacks on his honor or reputation; also, it imposes on States the duty to provide legal protection against such attacks. In general, the Court has indicated that the right to honor relates to self-esteem and self-worth, whereas reputation refers to the opinion that others have of a person.³⁴³ The Court has declared that this right has been violated in cases in which it was proved that the State had subjected a person or group of persons to hate, stigmatization, public contempt, persecution or discrimination owing to public statements by public officials.³⁴⁴

256. The facts of the case reveal that, on December 19, 2001, the Executive Branch ordered that a press conference be held in the offices of the Ministry of the Interior, in which the following alleged victims were presented to the media as those responsible for the robbery: Blas Valencia Campos, Norma Alarcón de Valencia, Gabriel Valencia Alarcón, Claudia Valencia Alarcón, Edwin Rodríguez Alarcón, Luis Fernando Lulleman Gutiérrez, Oswaldo Lulleman Antezana, Victoria Gutiérrez de Lulleman, Jenny Paola Lulleman de Zaconeta, Víctor Boggiano, Elacio Peña Córdova, Genaro Ahuacho, Alfredo Bazán y Rosas, Mercedes Valencia Chuquimia, Julia Mamanu Mamani, F.E.P.M., Eladio Cruz Añez, Carlos Enrique Castro Ramírez, Patricia Gallardo, Mauricio Valenzuela and Freddy Cáceres.³⁴⁵ Pictures of this conference were published by several media outlets (*supra*

³⁴⁰ Cf. *Case of Suárez Rosero v. Ecuador. Merits*. Judgment of November 12, 1997. Series C No. 35, para. 77, and *Case of Habbal et al. v. Argentina. Preliminary objections and merits*. Judgment of August 31, 2022. Series C No. 463, para. 95.

³⁴¹ Presumption of innocence means that the defendant does not have to prove that he has not committed the offense of which he is accused because the *onus probandi* is on the accuser (Cf. *Case of Ricardo Canese v. Paraguay. Merits, reparations and costs*. Judgment of August 31, 2004. Series C No. 111, para. 154, and *Case of Manuela et al. v. El Salvador, supra*, para. 132) and any doubt should be used to the benefit of the defendant. Solid evidence of guilt is an essential requirement for a criminal conviction, and therefore the burden of proof falls on the plaintiff and not on the defendant (Cf. *Case of Zegarra Marín v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of February 15, 2017. Series C No. 331, para. 123, and *Case of Manuela et al. v. El Salvador, supra*, para. 132). Furthermore, the principle of the presumption of innocence means that judges may not initiate proceedings with a preconceived idea that the defendant has committed the offense of which he is accused (Cf. *Case of Cabrera García and Montiel Flores v. Mexico. Preliminary objection, merits, reparations and costs*. Judgment of November 26, 2010. Series C No. 220. para. 184, and *Case of Manuela et al. v. El Salvador, supra*, para. 132).

³⁴² Cf. *Case of Pollo Rivera et al. v. Peru, supra*, para. 177, and *Case of Acosta et al. v. Nicaragua. Preliminary objections, merits, reparations and costs*. Judgment of March 25, 2017. Series C No. 334, para. 190.

³⁴³ *Case of Tristán Donoso v. Panama. Preliminary objection, merits, reparations and costs*. Judgment of January 27, 2009. Series C No. 193, para. 57, and *Case of Palacio Urrutia et al. v. Ecuador, supra*, para. 101.

³⁴⁴ Cf. *Case of the Santo Domingo Massacre v. Colombia. Preliminary objections, merits and reparations*. Judgment of November 30, 2012. Series C No. 259, para. 286, and *Case of Andrade Salmón v. Bolivia, supra*, para. 183.

³⁴⁵ In the case of Carlos Álvaro Taboada Valencia, although he indicated that, following his arrest, he was presented to the media in Cochabamba, no evidence was presented that verified the press conference or the publication of his photograph in the media.

para. 81). During the press conference, government authorities presented the alleged victims as those responsible for the robbery of the Prosegur truck, even though they had not been formally indicted and prior to the hearing on precautionary measures.

257. The impact of the press conference in the media had a negative effect on the honor of the alleged victims who were presented as guilty parties before they had been formally indicted in any way. In addition, it had a special impact on the honor and reputation of Gabriel Valencia Alarcón, Edwin Rodríguez Alarcón, Luis Fernando Lulleman Gutiérrez, Victoria Gutiérrez de Lulleman, Jenny Paola Lulleman de Zaconeta, Julia Mamanu Mamani and Mauricio Valenzuela Valencia who were presented as members of a criminal band and subsequently acquitted or not even indicted. Accordingly, during the public hearing, Mauricio Valenzuela, referring to the presentation to the media, stated that “people judge me when they point at me; they say that I am a crook and everything.” Meanwhile, in his statement, Alexis Eduardo Valencia recounted that “in school, owing to my last name, everyone realized that I was Blas Valencia’s son and rejected me; the boys hit me; they told me that they had seen my father on the television, that he was the police agent with the black eye.”³⁴⁶ This reveals the stigmatization to which they were subjected because they had been presented during the press conference as guilty parties, and this violated their right to honor and dignity.

258. In addition, to the victims listed (*supra* para. 256), the children, Alexis Valencia Alarcón and Claudio Centeno Valencia, were also present during the press conference, as was Mauricio Valenzuela Valencia, although it was only the latter who was presented to the press with his name as a member of the band of assailants. However, in the case of children who are detained, the State is obliged to exercise its function of guarantor, adopting all the measures of care required by a child’s vulnerability. In this regard, Rule 8 of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules) on the protection of privacy establishes: 8.1. The juvenile’s right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. 8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.” Considering the specific vulnerability of children and the position of the State as their guarantor, their mere presence during the press conference where their family members were presented as guilty parties is sufficient to find that their privacy had been violated and that they had been identified as offenders; therefore, their right to honor and dignity was also violated.

259. Based on the above, the Court finds that the State violated Articles 8(2) and 11 of the American Convention, in relation to Article 1(1) of this instrument, to the detriment of Blas Valencia Campos, Norma Alarcón de Valencia, Gabriel Valencia Alarcón, Claudia Valencia Alarcón, Edwin Rodríguez Alarcón, Luis Fernando Lulleman Gutiérrez, Oswaldo Lulleman Antezana, Victoria Gutiérrez de Lulleman, Jenny Paola Lulleman de Zaconeta, Víctor Boggiano, Elacio Peña Córdova, Genaro Ahuacho, Alfredo Bazán y Rosas, Mercedes Valencia Chuquimia, Julia Mamanu Mamani, F.E.P.M., Eladio Cruz Añez, Carlos Enrique Castro Ramírez, Patricia Gallardo and Freddy Cáceres Castro. In addition, the fact that it presented a juvenile before the press as a member of a criminal band and allowed two children related to the alleged suspects to remain in the same space, signified that the State violated Article 8(2) of the Convention, in relation to Articles 11, 19 and 1(1) of this instrument, to the detriment of Mauricio Valenzuela Valencia, Alexis Valencia Alarcón and Claudio Centeno Valencia.

B.2. Alleged violation of the right of defense

260. The right of defense is a key component of due process and obliges the State, at all times, to treat the individual as a true subject of the proceedings, in the broadest sense of the concept,

³⁴⁶ Affidavit made by Alexis Eduardo Valencia Alarcón on June 14, 2022 (evidence file, folio 12621).

and not merely as an object of it. The right of defense has two aspects in criminal proceedings. It relates, on the one hand, to the actions of the defendant, of which the main example is the possibility to make a free statement about the acts he is charged with and, on the other hand, the defense exercised by a lawyer whose function is to advise the defendant on his rights and duties and who also exercises, *inter alia*, a crucial control of lawfulness in the production of evidence.³⁴⁷

261. The Court underlines that a literal reading of Article 8(2)(d) of the Convention reveals that “everyone has the right to communicate freely and privately with his counsel.” Moreover, this Court has stressed that it is not sufficient that the defendant has a defense lawyers to guarantee his right of defense; rather it is necessary to guarantee the effective exercise of this defense by ensuring adequate time and means for its preparation.³⁴⁸

262. In the instant case, the Court finds it proved that the alleged victims who were indicted in the Prosegur case had difficulties exercising their defense. First, they indicated that, for the hearing on precautionary measures, they were assigned public defenders with whom they had no prior contact. This lack of access of the defense lawyers was one of the complaints that motivated the intervention of the representative of the Human Rights Committee of the Chamber of Deputies. In addition, owing to the incommunicado regime to which some of the accused were subjected at the start of their detention, they were unable to meet with their lawyers (*supra* paras. 83 and 84).

263. Consequently, the Court finds that the State violated the right recognized in Article 8(2)(d) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of Genaro Ahuacho Luna, Norma Lupe Alarcón de Valencia, Alfredo Bazán y Rosas, Víctor Manuel Boggiano Bruzzón, Freddy Cáceres Castro, Carlos Enrique Castro Ramírez, Carlos Eladio Cruz Añez, Patricia Catalina Gallardo Ardúz, Victoria Gutiérrez de Lulleman, Oswaldo Lulleman Antezana, Raúl Oswaldo Lulleman Gutiérrez, Elacio Peña Córdoba, F.E.P.M., Edwin Rodríguez Alarcón, Claudia Valencia Alarcón, Blas Valencia Campos and Mercedes Valencia Chuquimia.

264. The Court has also indicated that a guarantee of the concrete exercise of the right of defense is the prohibition of testifying against oneself (Article 8(2)(g)). This provision signifies the right of the defendant to play an active role in the probative elements, the right not to self-incriminate and, more specifically, the right to keep silent. Thus, the use of torture to obtain a confession from the defendant would be completely contrary to this provision. In this regard, the Court has indicated that “[t]he exclusion of evidence obtain by coercion is of an absolute and non-derogable nature.”³⁴⁹

265. Therefore, any statement obtained by torture, whether it is self-incriminating or incriminates a third party, is absolutely invalid as a means of evidence. In the instant case, the acts of torture were committed with the intention of obliging the alleged victims to self-incriminate or to provide other information, despite which they did not succeed. Nevertheless, Article 8(2)(g) of the Convention, which involves the active participation of the defendant in the probative elements, recognizes the right not to self-incriminate and, more specifically, the right to remain silent in a criminal investigation or proceedings in which it is indicated that the individual is the probable

³⁴⁷ Cf. *Case of Barreto Leiva v. Venezuela. Merits, reparations and costs.* Judgment of November 17, 2009. Series C No. 206, para. 61, and *Case of Manuela et al. v. El Salvador, supra*, para. 120.

³⁴⁸ Cf. *Case of Palamara Iribarne v. Chile. Merits, reparations and costs.* Judgment of November 22, 2005. Series C No. 135, para. 170, and *Case of Rosadio Villavicencio v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of October 14, 2019. Series C No. 388, para. 174.

³⁴⁹ *Case of Cabrera García and Montiel Flores v. Mexico, supra*, para. 165, and *Case of Grijalva Bueno v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of June 3, 2021. Series C No. 426, para. 125.

perpetrator or is suspected of committing a wrongful act. Given that the administration of criminal justice should be based on the analysis of the evidence obtain lawfully, a means of investigation that involves the use of coercion to break the will of the suspect ceases to be valid because it entails an instrumentalization of the person and a violation, *per se*, of that right, regardless of the level of coercion (ranging from a threat, to other cruel, inhuman or degrading treatment or torture) and of the result (that a confession or information is effectively obtained).³⁵⁰ Consequently, there is no doubt that, in the instant case, the State is responsible for the violation of the right recognized in Article 8(2)(g) of the Convention, in relation to Article 1(1) of this instrument, to the detriment of all those alleged victims who were subjected to torture and to criminal proceedings. Therefore, the State violated Article 8(2)(g) of the Convention in relation to Article 1(1) of this instrument, to the detriment of Víctor Manuel Boggiano Bruzzón, Carlos Enrique Castro Ramírez, Eladio Cruz Añez, Raúl Oswaldo Lulleman Gutiérrez, F.E.P.M., Patricia Gallardo Ardúz, Norma Lupe Alarcón de Valencia, Claudia Valencia Alarcón and Mercedes Valencia Chuquimia.

B.3. The investigation of the acts of torture

266. Pursuant to Article 1(1) of the American Convention, the obligation to ensure the rights recognized in Article 5(1) and 5(2) of this instrument entails the duty of the State to investigate possible acts of torture or other cruel, inhuman or degrading treatment.³⁵¹ This obligation to investigate is augmented by the provisions of Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture which oblige the State to “take effective measures to prevent and punish torture within their jurisdiction,” and “to prevent and punish other cruel, inhuman, or degrading treatment or punishment.” Moreover, under Article 8 of that Convention, States Parties guarantee:

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

267. The judge responsible for deciding the legal situation of a detainee or suspect, either to release him or to order precautionary measures – since he is the first impartial authority with whom those detained come into contact – must guarantee that the duty to investigate contained in the Inter-American Convention to Prevent and Punish Torture is complied with and, consequently, in cases in which there is a report or suspicion that a person detained has been subjected to acts of torture, he should immediately refer that person to the competent authority so that a medical examination may be performed in order to collect the necessary evidence for the procedure that must be opened, *ex officio*. To this end, he must forward the evidence collected to the competent authority so that an investigation be opened, *ex officio*. Furthermore, he must ensure that the person detained is evaluated by a doctor who can provide him with immediate health care. The examination to document any injuries to physical integrity should be performed by a doctor who has no links to the detention or prison authorities.³⁵²

³⁵⁰ *Case of Pollo Rivera et al. v. Peru, supra*, para. 176.

³⁵¹ *Cf. Case of Ximenes Lopes v. Brazil. Merits, reparations and costs. Judgment of July 4, 2006. Series C No. 149, para. 147, and Case of Guerrero, Molina et al. v. Venezuela, supra*, para. 154.

³⁵² *Cf. Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela, supra*, para. 102, and *Case of Díaz Peña v. Venezuela. Preliminary objection, merits, reparations and costs. Judgment of June 26, 2012. Series C No. 244, para. 137.*

268. In parallel, the Convention of Belém do Pará establishes that the State is obliged to apply due diligence to prevent, punish and eradicate violence against women. Thus, Article 7(b) of this instrument specifies and supplements those obligations.³⁵³ In such cases, state authorities should open, *ex officio* and without delay, a serious, impartial and effective investigation as soon as they become aware of facts that possibly constitute violence against women,³⁵⁴ including sexual violence. This obligation to investigate should take into account the duty of society to reject violence against women and the State's obligation to eradicate it and to ensure that the victims have confidence in the State's institutions for their protection.³⁵⁵

269. On other occasions, this Court has indicated the guiding principles that must be observed in criminal investigations into human rights violations.³⁵⁶ In cases of violence against women, several international instruments are useful for clarifying and providing content to the enhanced State obligation to investigate this with due diligence.³⁵⁷ In a criminal investigation into sexual violence, it is necessary, among other matters, that: (i) the victim's statement is recorded so that the need to repeat it is avoided or limited; (ii) medical, hygienic and psychological care is provided to the victim, on both an emergency and an ongoing basis if this is required, by a protocol of attention aimed at reducing the consequences of rape; (iii) a complete and detailed medical and psychological examination is performed by suitable qualified personnel, if possible of the sex indicated by the victim, offering the latter the possibility of being accompanied by someone they trust if they so wish.

270. In this case, starting during the hearing on precautionary measures, some of the alleged victims' lawyers reported the ill-treatment to which the alleged victims had been subjected during the raids. However, the court did not take those reports into account, either during the hearing, or when issuing the order requiring pre-trial detention. Similarly, during the oral proceedings, at least three defendants and a witness referred in their statements to the ill-treatment suffered during the raids and detentions (*supra* paras. 91 to 93). In addition, during the oral proceedings, several of the defense lawyers described the ill-treatment and acts of torture suffered during the raids and detentions to the court and in their final oral conclusions (*supra* para. 93). Although the court referred to the reports that human rights violations had been committed in judgment No. 12/2003, it merely ordered that the case file be forwarded to the Public Prosecution Service for investigation. However, there is no record that the case file was forwarded.

271. The investigation, *ex officio*, of the alleged perpetration of acts of torture was not opened until June 23, 2010, almost nine years after the first complaint and of the reported acts.³⁵⁸ Even

³⁵³ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 346, and *Case of López Soto et al. v. Venezuela*, *supra*, para. 131.

³⁵⁴ Cf. *Case of the Miguel Castro Castro Prison v. Peru*, *supra*, para. 378, and *Case of Maidanik et al. v. Uruguay. Merits and reparations*. Judgment of November 15, 2021. Series C No. 444, para. 156.

³⁵⁵ Cf. *Case of Fernández Ortega et al. v. Mexico*, *supra*, para. 193, and *Case of Maidanik et al. v. Uruguay*, *supra*, para. 156.

³⁵⁶ These may include: recover and preserve the probative material in order to assist in any possible criminal investigation into those responsible; identify possible witnesses and obtain their statements, and determine the cause, form, place and time of the act investigated. In addition, it is necessary to conduct a thorough investigation of the crime scene, and rigorous analyses should be performed by competent professionals, using the most appropriate procedures.

³⁵⁷ Istanbul Protocol, paras. 67, 77, 89, 99, 101 to 105, 154, 161 to 163, 170, 171, 224, 225, 260, 269 and 290, and World Health Organization, *Guidelines for medical-legal care for victims of sexual violence*, Geneva, 2003, *inter alia*, pp. 17, 30, 31, 34, 39 to 44 and 57 to 74.

³⁵⁸ Cf. Instruction No. 467/2010 of the Head Prosecutor of the Bolivian Public Prosecution Service to the La Paz district prosecutor *a.i.* regarding the opening of investigations, dated June 23, 2010 (evidence file, folios 12820 and 12821). This instruction ordered the opening of the corresponding criminal investigation into alleged torture and

though some investigative procedures were conducted, on April 8, 2014, the prosecutor in charge of the investigation presented a rejection resolution, considering that there were insufficient indications and evidence to prove what had happened. In response to this request, the Vice Minister of Justice and Human Rights filed an objection on October 23, 2014, which was not decided until September 12, 2019, when an order was issued to continue the investigation. Since then, procedures have been conducted and requests for information issued and, as a result, two individuals have been formally indicted and another one charged for the crimes of ill-treatment and torture.

272. This Court has held that a prolonged delay in the proceedings may constitute, in itself, a violation of judicial guarantees.³⁵⁹ The assessment of the reasonable time should be analyzed in each specific case based on the total duration of the proceedings from the first procedural act until the final judgment is handed down, including any appeals that may eventually be filed.³⁶⁰ In this case, nine years passed before Bolivia opened, *ex officio*, the investigation into the alleged acts of torture. Once initiated, the State's failure to expedite it can be noted and this resulted in the investigation being interrupted for more than five years. Moreover, it was reactivated as a result of the notification of the Commission's Admissibility Report in this case. This reveals a lack of diligence by the State in complying with its obligation to investigate.

273. The State justified the delays in the investigation by the alleged victims' lack of cooperation. However, the Court notes that the participation of the alleged victims is not necessary for the State's obligation to investigate to arise. Indeed, it is the State's duty to initiate, *ex officio*, such investigations. In addition, when cases of sexual torture are involved, the investigation must try, insofar as possible, to avoid revictimization or the reliving of the traumatic experience each time the victim recalls or testifies about what happened.³⁶¹ Therefore, it is not reasonable to require a victim to describe the sexual abuse in each of her statements or each time that she addresses the authorities. An examination of the file of this investigation does not reveal that special measures were taken to assist and protect the alleged victims of sexual violence to avoid their revictimization.

274. Therefore, owing to the lack of diligence in the investigation of the acts of torture suffered by the alleged victims, the Court finds that the State failed to respect the obligation to investigate the acts of torture which is derived from Article 5 of the Convention in relation to Article 1(1) of this instrument, as well as Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture and, as applicable, Article 7(b) of the Convention of Belém do Pará, to the detriment of Genaro Ahuacho Luna; Norma Lupe Alarcón de Valencia; Alfredo Bazán y Rosas; Víctor Manuel Boggiano Bruzzón; Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Claudio Tito Centeno Valencia; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar de Lulleman; Oswaldo Lulleman Antezana; Jenny Paola Lulleman Gutiérrez de Zaconeta; Luis Fernando Lulleman Gutiérrez; Raúl Oswaldo Lulleman Gutiérrez; Julia Mamanu Mamani; Elacio Peña Córdova; María Fernanda Peña Gallardo; F.E.P.M.; Edwin Rodríguez Alarcón; Álvaro Taboada Valencia; Alexis Valencia Alarcón; Claudia Valencia Alarcón; Gabriel Valencia Alarcón; Blas Valencia Campos; Mercedes Valencia Chuquimia, and Mauricio Valenzuela Valencia.

inhuman acts against the 26 alleged victims in this case; thus, the Court rejects the representative's allegation that the investigation did not take María Fernanda Peña Gallardo into account.

³⁵⁹ 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, and *Case of Sales Pimenta v. Brazil. Preliminary objections, merits, reparations and costs*. Judgment of June 30, 2022. Series C No. 454, para. 106.

³⁶⁰ Cf. *Case of Suárez Rosero v. Ecuador. Merits, supra*, para. 71, and *Case of Sales Pimenta v. Brazil, supra*, para. 107.

³⁶¹ Cf. *Case of Fernández Ortega et al. v. Mexico, supra*, para. 196, and *Case of Bedoya Lima et al. v. Colombia, supra*, para. 139.

IX REPARATIONS

275. Based on the provisions of Article 63(1) of the American Convention, the Court has indicated that any violation of an international obligation that has caused harm entails the duty to repair this adequately and that this provision reflects a customary norm that is one of the fundamental principles of contemporary international law on State responsibility.³⁶²

276. The reparation of the harm caused by the violation of an international obligation requires, whenever possible, full restitution (*restitutio in integrum*), which consists in the restoration of the previous situation. If this is not feasible, as in most cases of human rights violations, the Court will determine measures to guarantee the rights that have been violated and to redress the consequences of the violations.³⁶³ Therefore, the Court has found it necessary to grant diverse measures of reparation in order to redress the harm integrally so that, in addition to pecuniary compensation, measures of restitution, rehabilitation and satisfaction, together with guarantees of non-repetition have special relevance for the harm caused.³⁶⁴

277. The Court has established that the reparations should have a causal nexus with the facts of the case, the violations declared, the harm proved, and the measures requested to repair the respective harm.³⁶⁵

278. Taking into account the violations of the American Convention declared in the preceding sections, in light of the criteria established in the Court's case law concerning the nature and scope of the obligation to make reparation,³⁶⁶ the Court will examine the claims submitted by the Commission and the representatives, together with the corresponding arguments of the State, in order to establish measures aimed at redressing the said violations.

A. Injured party

279. This Court considers that pursuant to Article 63(1) of the Convention, the injured party refers to those who have been declared victims of the violation of any right recognized therein. Therefore, the Court finds that the following are the "injured party": Genaro Ahuacho Luna (also known as Walter Herrera Flores or Walter Herrera Ríos); Norma Lupe Alarcón Castillo de Valencia; Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz or Alberto Farfán); Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega); Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Claudio Centeno Valencia; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar; Oswaldo Lulleman Antezana; Jenny Paola Lulleman Gutiérrez; Luis Lulleman Gutiérrez; Raúl Oswaldo Lulleman Gutiérrez; Julia Mamanu Mamani (also known as Julia Mamani Mamani); Elacio Peña Córdova (also known as Elacio Peña Córdoba); María Fernanda

³⁶² Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs*. Judgment of July 21, 1989. Series C No. 7, para. 25, and *Case of Mina Cuero v. Ecuador. Preliminary objection, merits, reparations and costs*. Judgment of September 7, 2022. Series C No. 464, para. 137.

³⁶³ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 and 2, and *Case of Mina Cuero v. Ecuador, supra*, para. 138.

³⁶⁴ Cf. *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. 226, and *Case of Mina Cuero v. Ecuador, supra*, para. 138.

³⁶⁵ Cf. *Case of Ticona Estrada v. Bolivia. Merits, reparations and costs*. Judgment of November 27, 2008. Series C No. 191, para. 110, and *Deras García et al. v. Honduras. Merits, reparations and costs*. Judgment of August 25, 2022. Series C No. 462, para. 92.

³⁶⁶ Cf. *Case of Velásquez Rodríguez v. Honduras. Reparations and costs, supra*, paras. 25 to 27, and *Case of Deras García et al. v. Honduras, supra*, para. 93.

Peña Gallardo; F.E.P.M; Edwin Rodríguez Alarcón; Carlos Álvaro Taboada Valencia; Claudia Valencia Alarcón; Gabriel Valencia Alarcón; Alexis Valencia Alarcón; Blas Valencia Campos; Mercedes Valencia Chuquimia, and Mauricio Valenzuela Valencia and, in their capacity as victims of the violations declared in Chapter VIII, they will be the beneficiaries of the reparations ordered by the Court.³⁶⁷

B. Measures of restitution

280. The **inter-American public defenders** asked that “the sentence handed down against [their] clients who were criminally convicted be annulled; consequently, granting the immediate release of Víctor Manuel Boggiano Bruzzón (or Juan Ramírez Ortega) and Eladio Cruz Añez (or Carlos Eladio Cruz Añez), as well as any of the other alleged victims who were not located and who remain deprived of liberty owing to these facts.” Alternatively, they asked that the Court “order a review of the judgment in question in light of the violations declared in these international proceedings. In particular, [...] that the lawfulness of the raids conducted in the context of this case and the consequent detentions be reviewed.” They also asked that “the proceedings be reviewed in light of the violation of the right of defense and the presumption of innocence.” Lastly, they asked that the Court “require the Bolivian State to eliminate the names of all the alleged victims from its public records and databases in which they appear with a criminal record related to this case.

281. The **State** argued that this measure “not only runs counter to the principle of subsidiarity, [...] but also violates the rights of the seven victims of the Prosegur armed robbery.” It also argued “the existence of the appeal for review of a conviction, described in the briefs forwarded to the IACHR, because once the [criminal] proceedings have concluded, it could provide evidence to substantiate such a review.”

282. In the instant case, the **Court** has concluded that the State is responsible for cruel and degrading treatment, including acts of torture, committed in the context of the raids and detentions ordered in the case of the Prosegur robbery (*supra* paras. 202 to 207). It has also determined that the State violated the right to the presumption of innocence and the right of defense of the victims who were indicted in the Prosegur case (*supra* paras. 259 and 263), violations that could have had an impact on the judgment convicting them. Therefore, the Court orders the State, within six months, to adopt the necessary measures for the competent judge to review judgment No. 12/2003 of May 16, 2003, in application of article 421 of the Code of Criminal Procedure, in order to assess the effects of the violation of the rights of defense and to the presumption of innocence determined by this Court on Blas Valencia Campos, Patricia Gallardo Ardúz, Carlos Eladio Cruz Añez, Elacio Peña Córdova, Carlos Enrique Castro Ramírez, Alfredo Bazán y Rosas, Víctor Manuel Boggiano Bruzzón, Freddy Cáceres Castro, Norma Lupe Alarcón Castillo de Valencia, Mercedes Valencia Chuquimia, Raúl Oswaldo Lulleman Gutiérrez, Oswaldo Lulleman Antezana, F.E.P.M. and Claudia Mariela Valencia Alarcón, if the victims so request.

C. Obligation to investigate

283. The **Commission** asked that the State “[i]nitiate a diligent and effective criminal investigation within a reasonable time in order to clarify the events fully, identify all those who bear possible responsibility, and impose the appropriate penalties for the gross human rights violations recognized.” It added that, “[a]s these are gross human rights violations, the State may not invoke the statute of limitations or other grounds for excluding criminal responsibility.” Furthermore, it considered that “acts of torture should be investigated in keeping with the due

³⁶⁷ The Court has been informed that the following persons are deceased: Genaro Ahuacho Luna, Oswaldo Lulleman Antezana, María Fernanda Peña Gallardo and Mercedes Valencia Chuquimia.

diligence parameters prescribed in th[e] report, including those contained in the Istanbul Protocol, and a gender perspective in the case of the women who were victims of sexual torture.”

284. The **inter-American public defenders** asked that the Court order the State “to undertake, seriously and within a reasonable time, all necessary actions to identify, prosecute and punish all the instigators and perpetrators of the violations committed in criminal proceedings conducted by competent ordinary courts during which the necessary safeguards are observed to minimize the revictimization of the victims of torture.” They also considered that the “victims, their family members or their representatives must have full access and legal standing in all instances and at all stages of the domestic criminal proceedings instituted as a result of this case.” In addition, they asked that the Court “establish that the authorities must publicize the results of that investigation so that the general public may know the truth of what happened.”

285. **Representative Jemio Mendoza** asked the Court to order that the criminal proceedings based on the facts of the case “be conducted effectively and independently, within a reasonable time, and that the investigation result in the identification of the real perpetrators and those responsible, and their conviction and punishment.” Specifically, he asked that “María Fernanda Peña Gallardo, who [...] endured harassment, ill-treatment and psychological torture be included as a victim in the said proceedings.”

286. **Representative Gómez Rojas** asked that the Court order the State “to investigate the facts through the competent organs of justice, effectively and independently, within a reasonable time, and that the said investigation lead to the identification of the instigators and perpetrators of the ill-treatment, torture and violations committed by the police” and, to this end, “the State should ensure that the authorities responsible for the investigation have all the necessary means to conduct it.” In addition, he asked that the results of the investigation be “widely publicized among the whole Bolivian population.” Lastly, he asked that the Court order the State “to undertake immediately the necessary measures to identify, prosecute and punish all the officials responsible for obstructing the investigation, and to open a serious and effective investigation into the reported facts.”

287. The **State**, in its answering brief, indicated that it “was continuing to conduct the corresponding criminal investigation to identify and punish those responsible for the alleged ill-treatment and torture; also [it expressed] its willingness to provide State protection to victims and witnesses,” but that “this has not been implemented owing to the lack of intervention by the alleged victims.”

288. The **Court** appreciates the fact that, since 2019, under Procedure No. 6147/10, the State has reactivated the investigation into alleged acts of torture and ill-treatment to the detriment of the 26 victims in this case.³⁶⁸ It also takes note that, since 2019, measures have been taken that have permitted indictments to be filed against two individuals and charges to be brought against one suspect (*supra* para. 108).

289. Taking the foregoing into account, the Court establishes that the State must continue to conduct the domestic criminal proceedings that are underway effectively and within a reasonable time and, as appropriate, punish those responsible for the acts of torture suffered by the victims in this case. These proceedings must be conducted in keeping with the guidelines established in the Istanbul Protocol. In addition, and taking into account that the victims include individuals who have endured sexual violence, the investigation and proceedings must avoid any action that could

³⁶⁸ The 26 victims in this case, including María Fernanda Peña Gallardo, appear as victims in those proceedings (Cf. Instruction No. 467/2010 issued by the Head Prosecutor of the Public Prosecution Service on June 23, 2010, instructing that the criminal investigation be opened (evidence file, folios 12820 and 12821).

revictimize them. All the victims must have full access and legal standing in all instances and at all stages of the investigation and the corresponding trial, pursuant to domestic law and the standards of the American Convention. The result of the proceedings must be publicized.

D. Measures of rehabilitation

290. The **Commission** asked the Court to establish that the State should “arrange for the victims in this case to receive the necessary physical and mental health care for their rehabilitation, if they so wish, and in a manner that meets with their agreement.”

291. The **inter-American public defenders** considered that it was “essential that the State [...] provide quality psychological and psychiatric treatment to the victims who require this, free of charge, following their consent, with a gender perspective in appropriate cases.” They added that, if “the State lacks specialized institutions to ensure such treatment, it must have recourse to specialized private or civil society institutions.”

292. In the specific case of *Víctor Manuel Boggiano Bruzzón (or Juan Ramírez Ortega)*, they asked that the State “provide him with neurological and trauma treatment [...], because, as a result of the beatings and torture, he suffers from permanent brain damage that causes him to have epileptic seizures requiring specialized treatment and appropriate medication that he is unable to pay for.” They also asked the Court to “order the State to arrange for him to have cosmetic surgery to his face to eliminate the permanent damage caused by the punches, beatings with firearms, and kicks inflicted by state agents.” They added in their final arguments that, taking into account that Mr. Boggiano Bruzzón was currently in prison, medical care should be provided outside the prison and the necessary transportation guaranteed.

293. In addition, in the case of *F.E.P.M.*, they asked “that, in addition to the specialized psychological treatment requested for all the alleged victims [...], the State provide treatment by a traumatologist,” because as a “result of the torture received, she suffered injuries of such importance that her arm had to be operated on and she still suffers from a permanent injury that impedes proper movement.” Therefore, they asked that the State “provide her with adequate and quality rehabilitation treatment, covering the cost of any intervention that might be necessary, as well as any physiotherapy sessions and medication that might be required.”

294. Regarding *Eladio Cruz Añez (or Carlos Eladio Cruz Añez)*, they asked that, in addition to the “necessary medical and psychological treatment,” the Court require that he be provided with the following health care: (a) ophthalmic treatment “owing to the beatings he received in the face, he suffered several injuries to his vision, which persist”; (b) treatment by a traumatologist and/or rheumatologist, because “he suffers from various aches and pains in his arms, shoulders and feet as a result of the torture to which he was subjected”; (c) otorhinolaryngologic treatment, because “he was beaten in the face by state agents, and has respiratory sequelae that require specialized treatment,” and (d) treatment by a urologist, because “the injuries caused to his testicles by the torture still have consequences that need to be controlled.” Considering that Mr. Cruz Añez is in prison, they asked that the treatment be provided outside the prison and that the necessary transportation be guaranteed.

295. With regard to the alleged victims absent from the proceedings, they asked that the Court order the State to provide “the necessary treatment they require that is duly related to the alleged violations, once they have been located.”

296. **Representative Jemio Mendoza** indicated that, to date, Patricia Catalina Gallardo Ardúz “is being provided with medical and psychological care by the Institute for Therapy and Research into the Aftereffects of Torture and State Violence (ITEI),” but that “she could be released on

parole shortly, after which the ITEI could no longer provide her with psychological therapy and medical examinations free of charge.” He advised that the State had offered her “health care under the universal health system, an offer that she had accepted.” However, he alleged that “three months after having indicated her acceptance, the State has still not implemented the insurance in her favor even though it has all the required information and documentation as already indicated.” Therefore, in order to continue the treatments she requires, he asked that the Court order the State to pay forty-four thousand eight hundred and thirty-four dollars to cover the cost of psychological treatment; also, that it orders the payment of fifty-four thousand dollars to cover the cost of medical treatment. In addition, he indicated that she required the sum of eighty-nine thousand six hundred and sixty-eight dollars for physiotherapy sessions, as well as seven thousand four hundred and forty-two dollars for swimming classes. He clarified that Patricia Gallardo Ardúz “requires life-long continuous specialized medical and psychological treatment, treatment that is not covered and are not considered priority by the Unified Health System (SUS) or by the emergency services provided under public health funding.” Therefore, he asked that she be provided with appropriate health coverage in the private sphere by a public health fund of her preference.

297. **Representative Gómez Rojas** asked that the Court order the State “to provide psychosocial and medical care to the members of the family of Blas Valencia Campos,” which he considered should “be provided for as long as necessary and include the cost of the medicines that are part of the treatment” and “be decided by mutual agreement with the beneficiaries, taking into account the particular circumstances and needs of each one.”

298. The **State** asked “that the victims accept and come forward to take advantage of their registration – which the State has already arranged – with the [universal health system], which covers the health care and the specialists claimed.” It concluded that “under domestic law, it is not possible to provide such measures when the alleged victims have short-term social insurance in effect.”

299. The **Court** considers that the State must provide, immediately, free medical and psychological and/or psychiatric care that is adequate and effective through its specialized public health institutions to all the victims who request this. To this end, it must take into consideration the specific ailments of the victims that result from the facts of this case by a prior physical and psychological appraisal. The respective treatments must be provided in Bolivia for as long as necessary and include the provision, free of charge, of any medicines that may be required. In the case of the victims who are in prison, the State must guarantee access to the necessary treatments in establishments outside the prison, guaranteeing the necessary transportation between the prison and the health center.

300. Regarding the State’s argument that some of the victims are already registered with the universal health system and that their membership of that system would comply with this measure, the Court recalls that the victims must be provided with preferential attention,³⁶⁹ because their ailments are the result of the violations declared in this judgment. The Court has indicated that the social services that the State provides to individuals, such as the universal health service, should not be confused with the reparations to which anyone who has been declared a victim of human rights violations has a right owing to the specific harm resulting from

³⁶⁹ Cf. *Case of the 19 Traders v. Colombia. Monitoring compliance with judgment and provisional measures*. Order of the Inter-American Court of Human Rights of July 8, 2009, considering paragraph 30, and *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile. Monitoring compliance with judgment*. Order of the Inter-American Court of Human Rights of February 18, 2021, considering paragraph 29.

a violation.³⁷⁰ Consequently, the Court orders that the victims who so wish should receive a differentiated treatment as compared to the formalities and procedures they must follow to be attended by the State's institutions.

E. Measures of satisfaction

301. The **Commission** asked that the State "provide full reparation for the human rights violations found" in its Merits Report.

302. The **inter-American public defenders** asked the Court to "order the Bolivian State to arrange the publication of the judgment in the official gazette and in another national newspaper." They also asked that the Court order "the preparation and mailing to the alleged victims of an individual private letter of apology [which] records the violations of their essential rights and fundamental guarantees that are declared, and should be signed by the State's highest authorities." This is because they do not want to relive the violations during a public act.

303. **Representative Jemio Mendoza** asked that the Court "establish, as a measure of satisfaction, that the Bolivian State publish the official summary of the judgment delivered in this case in the official gazette of the Plurinational State of Bolivia, and in a national newspaper. Also, that the State publish the full text of the judgment, for at least one year, on an appropriate official website of the State taking into account the characteristics of the publication that is ordered." He also asked that the Court "order the Bolivian State to conduct a private act to acknowledge responsibility for the facts of this case."

304. **Representative Gómez Rojas** asked the Court to establish that the State should "publish the summary of the judgment delivered in this case in the official gazette and in another national newspaper. Also, that the Bolivian State publish the complete text of the judgment for at least one year on an appropriate official website of the State, taking into consideration the characteristics of the publication ordered." In addition, he asked that the State conduct "a public act to acknowledge its responsibility for the facts of this case in the municipality of La Paz" and that "the act and all the details of this public ceremony be duly consulted previously with the members of the Valencia Alarcón family."

305. The **State** asked the Court to "assess each of the State's arguments in the [answering brief], which objectively disprove the alleged international responsibility."

306. The **Court** establishes, as it has in other cases,³⁷¹ that, within six months of notification of this judgment, the State must publish the following in an appropriate and legible font: (a) the official summary of this judgment, prepared by the Court, once, in the official gazette; (b) the official summary of this judgment, prepared by the Court, once, in a national newspaper with widespread circulation, and (c) this judgment, in full, available for one year on the official website of the Bolivian Police in a way that is accessible to the public from the website's home page. The State must advise the Court immediately when it has made each of the publications ordered, regardless of the one-year time frame for presenting its first report established in the twenty-ninth operative paragraph of this judgment.

³⁷⁰ Cf. *Case of González et al. ("Cotton Field") v. Mexico. Preliminary objections, merits, reparations and costs.* Judgment of November 16, 2009, Series C No. 205, para. 529, and *Case of La Cruz Flores v. Peru. Monitoring compliance with judgment.* Order of the Inter-American Court of Human Rights of September 2, 2015, considering paragraph 34.

³⁷¹ Cf. *Case of Cantoral Benavides v. Peru. Reparations and costs.* Judgment of December 3, 2001. Series C No. 88, para. 79, and *Case of Mina Cuero v. Ecuador, supra*, para. 147.

307. The Court considers that the publication of this judgment, together with the other measures of reparation ordered in this chapter are sufficient and adequate measures of reparation to redress the violations of the rights of the alleged victims in this case; therefore, it does not find it appropriate to order other measures of satisfaction.

F. Guarantees of non-repetition

308. The **Commission** asked that the State adopt "such measures as may be necessary to prevent a recurrence of similar events. In particular, implement permanent human rights training programs for the various police agencies, Public Prosecution Service personnel, and judicial officials in order to eradicate indiscriminate use of force in the investigation of criminal acts and in the arrest and detention of those responsible for them; and, when such conduct occurs, ensure that effective investigations are immediately opened *ex officio*, with a gender perspective when necessary, in order to identify, prosecute, and punish those responsible."

309. The **inter-American public defenders** considered it essential "to provide training to the police on the international standards that exist for conducting raids and arrests, as well as the application of a gender perspective in such procedures." Consequently, they asked the Court to order the State "to provide training to prosecutors, judicial officials, public defenders and judges on how to proceed in cases of raids and detentions to ensure that such procedures are compatible with the [Convention] and with other international standards." They also considered that it was pertinent "to provide training to these same officials on how to proceed in cases in which torture or other cruel, inhuman or degrading treatment is denounced, not only at the time of the arrest, but also during detention." In addition, they asked for the implementation of "permanent programs and courses on diligent investigation in cases of sexual violence against women that include a gender perspective." They also asked that the Court order "the implementation of permanent training courses for public defenders, particularly with regard to the guarantees of due process and the right of defense, including the case law of the Inter-American Court." Lastly, they asked that the State "incorporate into its domestic laws the obligation to provide adequate compensation to the victims of torture."

310. **Representative Jemio Mendoza** asked that the Court "require the State to create a training program for police officers, and officials of the Public Prosecution Service and the Judiciary on the national and international norms concerning the use of force and arrest procedures, as well as on the prohibition of torture and other cruel, inhuman or degrading treatment against individuals who are arrested, detained and/or deprived of their liberty." He also asked that the State "elaborate and implement a mechanism to monitor and evaluate the effectiveness of policies and institutions related to the use of force and arrest and detention procedures, and also the prohibition of torture and other cruel, inhuman or degrading treatment, as well as to monitor cases of the sexual torture of women."

311. **Representative Gómez Rojas** asked the Court to order that the State "prepare a special report on the institutional shortcomings that led to the ineffectiveness and paralysis of the system of justice in relation to the investigation of the human rights violations and the failure to identify and convict those responsible." He considered it important that such a report "be drawn up by experts who can guarantee impartiality and rigor in their conclusions, based on the facts established in the judgment and considering the statements of the victims and of the civil society organizations involved." Lastly, he asked that the report be "circulated among public authorities, schools, universities, the victims and society in general, so that they may learn about the errors and shortcoming of Bolivian justice in the case of Blas Valencia Campos and to facilitate a public discussion that promotes the necessary institutional changes to guarantee the non-repetition of impunity in other cases."

312. The **State** argued that it had “implemented education and training processes supported by the State and, therefore, as it had described these in detail *ut supra*, it asked [... the Court] to consider and emphasize those efforts.” With regard to the adaptation of its laws, it explained that the Code of Criminal Procedure already established “the civil action for reparation or compensation for damage caused by a crime, which can be filed by the injured party [or] his heirs.” Regarding the monitoring and evaluation mechanism, it indicated that it already “has the National Mechanism for the Prevention of Torture that, in accordance with international recommendations concerning its autonomy and independence, was incorporated into the Ombudsman’s Office”; consequently, it considered that “the request cited is not necessary.” In the area of training, it indicated that education and training programs were already being implemented for members of the Bolivian Police. In this regard, it underscored the existence of a Code of Conduct and the Manual on Basic Police Intervention Techniques in the Context of Human Rights, in addition to the course on human rights that was part of the undergraduate program of the *Universidad Policial Antonio José de Sucre* and the *Escuela Superior de Policías*. In the case of lawyers, it indicated that the State Lawyers’ Academy imparted numerous training courses on human rights and control of conventionality and that the State Prosecutors’ Academy included special human rights courses in its catalogue of on-going specialized training. Lastly, regarding judges, it advised that training and specialization courses include specific content on human rights.

F.1. Training programs and action protocols

313. The **Court** appreciates the efforts made by the State in relation to human rights education and training. However, it considers that it should implement specific training programs aimed at avoiding the occurrence of acts like those of this case, based on the aspects touched on in the judgment. Thus, the Court orders the State to create and implement a training program for members of the Bolivian National Police, the Scientific and Technical Investigations Institute of the *Universidad Policial*, and the Public Prosecution Service, and for judges and public defenders on: (a) the scope of the protection of privacy, the home, and honor, as well as the limitation of the use of force in raids on people’s homes; (b) the international standards for the effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment, with special emphasis on the standards derived from the Istanbul Protocol, and (c) the standards for due diligence in the investigation and prosecution of cases of sexual violence against women, as well as the measures of protection for the victim during the substantiation of such proceedings. In addition, the training should be imparted with a gender perspective and from the perspective of the protection of women’s rights in order to eliminate negative or prejudicial gender stereotypes. This training program should be incorporated into the regular training courses for the aforementioned individuals within no more than one year.

314. Furthermore, taking into account the violations of the rights of the child declared in this case, the Court also orders the State, within one year, to review and update the existing protocols on the treatment of children who intervene in judicial proceedings, either as defendants or witnesses, or as members of a defendant’s family. This review and updating must take into account the United Nations Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and the standards described in this judgment. Those protocols must, in particular, establish rules for conducting raids in houses where children are presumed to be present, so that their rights are not violated disproportionately.

315. The Court notes, also, that even though domestic mechanisms exist for the prevention and investigation of torture, it cannot be said that, today, Bolivia has instruments that regulate, uniformly and in a binding manner, the actions of state agents who intervene in cases of sexual violence. Consequently, the Court finds it appropriate to order the State, within two years, to adopt, implement and monitor protocols that establish clear and uniform criteria both for the

investigation of acts of violence in which a woman is the victim and for the comprehensive attention to such victims. These instruments must conform to the guidelines established in the Istanbul Protocol and those of the World Health Organization, as well as to this Court's case law. The protocols must be addressed at those involved in the administration of justice and in the area of public and private health who, in any way, intervene in the investigation, processing and/or attention of cases of women victims of sexual violence.

F.3. Mechanism for reopening judicial proceedings

316. Without prejudice to the obligation of the State's authorities to comply with the judgments of this Court and to carry out the respective control of conventionality within their frame of reference, the Court deems it pertinent to order the State to create, within three years, a mechanism that permits the reopening of investigations and judicial proceedings based on the best practices that exist in this area, even in cases subject to the statute of limitations, when, a judgment of the Inter-American Court determines the international responsibility of the State.

G. Compensation

317. The **Commission** asked that the State "provide full reparation for the human rights violations found in the Merits Report, including both pecuniary and non-pecuniary dimensions."

318. The **inter-American public defenders** asked that, for non-pecuniary damage, the Court establish a sum, in equity, based on the particularities of each of the alleged victims it was representing. Regarding the pecuniary damage, in general, it also asked the Court to establish a sum, in equity, owing to the absence of vouchers, which it considered was justified by the passage of time.

319. In the specific case of the *Lulleman family*, they specified that "the violations that can be attributed to the Bolivian State had an adverse effect on the relationship aspect of the life of all the members of the Lulleman family, understanding this to be the comprehensive development of the spiritual and social interaction dimensions of the individual, in accordance with the conditions in which his existence unfolds." With regard to *Victoria Gutiérrez de Lulleman, Jenny Paola Lulleman de Zaconeta* and *Julia Mamanu Mamani*, they indicated that, in their cases, "it was necessary to add the moral harm suffered owing to the sexual violence to which they were subjected in different locations, which increased their suffering and this should receive special redress." Regarding the pecuniary damage, they indicated that the family had to sell several of their properties to be able to subsist," and attached the vouchers for the valuations and sales of the said buildings, seeking reimbursement. They added that, based on the raid of their home, the consequential damage "also includes all the possessions that the Lulleman family lost on that occasion and could never recover, either because it was stolen or because it was irremediably damaged." They concluded that, in addition, the family "suddenly had nowhere to live, because they were not allowed to enter their home for several months and, among other matters, this resulted in numerous expenses for accommodation, clothing and food, that should receive due redress." Furthermore, they indicated that *Victoria Gutiérrez de Lulleman* "owned a finance company that loaned money and also received jewelry and other objects," and that "as a result of the detention and their public exposure, they were obliged to close, and [...] to assume the debts resulting from being unable to enter their home," and unable to "reopen the company when they were released." Regarding *Luis Fernando Lulleman Gutiérrez*, they indicated that "he also lost the possibility of continuing to work in the INE, where, one day before the arrest [...] he had begun an internship."

320. In the case of *F.E.P.M.*, they indicated that "it should be taken into consideration that she suffered torture at the hands of state agents, owing especially to her condition as a woman. [...]"

Indeed, in addition to the physical violence she endured, as did all those who were detained in this case, she suffered sexual torture repeatedly by several state agents, acting both individually and as a group." Regarding the pecuniary damage, they explained that "she worked in a beauty salon, and earned around US\$500 a month," and that "owing to the torture inflicted on her, she was unable to go back to working as an esthetician once she had been released," and therefore, in her case, it was necessary to add "the difficulties that to date she has had to find work."

321. Regarding *Víctor Manuel Boggiano Bruzzón* (or *Juan Ramírez Ortega*), they indicated that the Court should take into account "not only the impairment of his mental and moral integrity [...] as a logical consequence of the human rights violations – especially the torture – their impact and consequences, but also the impact this has had on his social and labor relations and the fact that he was unable to see his daughter grow up and enjoy a decent life." Regarding the pecuniary damage, they indicated that "prior to the arrest and deprivation of liberty, he owned a hydrocarbon company in Peru," and "following his arrest, he ceased to receive the profits that corresponded to him, and never again received any money from the company." They added that the company was sold and, since "he was incarcerated, he found out about the sale much later and did not receive any money from it."

322. Regarding *Eladio Cruz Añez* (or *Carlos Eladio Cruz Añez*), they indicated that "when establishing the non-pecuniary damage, the torture he suffered should be taken into account." With regard to the alleged victims who were absent, they affirmed that "they have suffered exceedingly owing to the facts described" and that no evidence was required to reach the conclusion that anyone subjected to beatings and ill-treatment such as those described in this case would have experienced moral suffering. In particular, in the case of *Mercedes Valencia*, it should be taken into account that she was also a victim of sexual violence. Consequently, they asked that, in relation to the absent alleged victims, the Court establish that any pecuniary compensation be deposited by the State in a bank account opened in their name.

323. **Representative Jemio Mendoza** asked that, for non-pecuniary damage, the Court order the sum of one hundred thousand dollars in favor of each of the alleged victims *Patricia Catalina Gallardo Ardúz* and *María Fernanda Peña Gallardo*. In the case of the pecuniary damage, he indicated that, in the case of *Patricia Catalina Gallardo Ardúz* "she probably had an active working life of a minimum of 10 more years" and that, "taking into account that the national minimum wage was established at 2,250 bolivianos, equivalent to US\$323.28," he asked that the Court establish the payment of at least US\$38,793.60, plus twelve thousand five hundred dollars for loss of earnings. Also, in relation to the pecuniary damage of *María Fernanda Peña Gallardo* he asked that the Court establish the sum that the State should pay based on the equity principle.

324. **Representative Gómez Rojas** asked, with regard to non-pecuniary damage, that, "given the seriousness of the facts denounced and the intensity of the suffering caused to the victims, duly identified," that the Court should order a sum of more than one hundred and fifty thousand dollars for each of the alleged victims. Regarding the pecuniary damage, he asked the Court to establish compensation of sixty thousand dollars as consequential damage for each member of the family, "despite the absence of expense vouchers owing to the passage of time."

325. The **State** argued that "it [was] not internationally responsible for the rights invoked" and asked that "the Court [...] distinguish between the measures claimed, which relate to the effects of the deprivation of liberty of the persons alleged as victims." Regarding the services that the alleged victims contracted during the stages of the Prosegur case, it indicated that "the State does not consider that the reimbursement of professional fees under the Prosegur case can be a measure of reparation."

326. The **Court** has noted that pecuniary damage supposes the loss of or detriment to the income of the victims, the expenses incurred as a result of the facts, and the consequences of a pecuniary nature that have a causal nexus to the facts of the case.³⁷² In addition, it has established that non-pecuniary damage may include both the suffering and affliction caused to the direct victim and his family unit, and also the impairment of values of great significance to the individual, as well as changes of a non-pecuniary nature in the living conditions of the victims or their families.

327. This Court understands that, given the nature of the facts and the violations determined in this judgment, the victims have suffered both pecuniary and non-pecuniary damage that should be compensated. The representatives submitted probative elements for some of the harm suffered by some of the victims, including the expenses incurred in the context of the domestic proceedings (see *infra* para. 331). However, some of the vouchers correspond to elements that bear no direct relationship to the facts of this case. Also, with regard to some of the harm that has been alleged, and in relation to most of the victims, the representatives have not submitted sufficient probative elements concerning the amount of the pecuniary damage that they are claiming.

328. Consequently, the Court finds it appropriate to determine, in equity, the compensation for pecuniary and non-pecuniary damage, in order to provide unified or combined reparation. Therefore, considering the different human rights violations suffered by the victims, it establishes the following sums in favor of each of the alleged victims, beneficiaries of the reparations:

- a) Genaro Ahuacho Luna: US\$40,000.00 (forty thousand United States dollars).
- b) Norma Lupe Alarcón Castillo: US\$40,000.00 (forty thousand United States dollars). In addition, she is granted US\$1,000.00 (one thousand United States dollars) as compensation for the jewelry confiscated during the raid, which has not been returned.
- c) Alfredo Bazán y Rosas: US\$20,000.00 (twenty thousand United States dollars).
- d) Víctor Manuel Boggiano Bruzzón: US\$40,000.00 (forty thousand United States dollars).
- e) Freddy Cáceres Castro: US\$20,000.00 (twenty thousand United States dollars).
- f) Carlos Enrique Castro Ramírez: US\$40,000.00 (forty thousand United States dollars).
- g) Claudio Centeno Valencia: US\$10,000.00 (ten thousand United States dollars).
- h) Carlos Eladio Cruz Añez: US\$40,000.00 (forty thousand United States dollars).
- i) Patricia Catalina Gallardo Ardúz: US\$40,000.00 (forty thousand United States dollars).
- j) Victoria Gutiérrez Aguilar: US\$40,000.00 (forty thousand United States dollars).
- k) Oswaldo Lulleman Antezana: US\$20,000.00 (twenty thousand United States dollars).
- l) Jenny Paola Lulleman Gutiérrez: US\$40,000.00 (forty thousand United States dollars).
- m) Luis Lulleman Gutiérrez: US\$20,000.00 (twenty thousand United States dollars).
- n) Raúl Oswaldo Lulleman Gutiérrez: US\$40,000.00 (forty thousand United States dollars).
- o) Julia Mamanu Mamani: US\$40,000.00 (forty thousand United States dollars).
- p) Elacio Peña Córdova: US\$20,000.00 (twenty thousand United States dollars).
- q) María Fernanda Peña Gallardo: US\$10,000.00 (ten thousand United States dollars).
- r) F.E.P.M.: US\$65,000.00 (sixty-five thousand United States dollars).
- s) Edwin Rodríguez Alarcón: US\$20,000.00 (twenty thousand United States dollars).
- t) Carlos Álvaro Taboada Valencia: US\$20,000.00 (twenty thousand United States dollars).
- u) Claudia Valencia Alarcón: US\$40,000.00 (forty thousand United States dollars).
- v) Gabriel Valencia Alarcón: US\$20,000.00 (twenty thousand United States dollars).
- w) Alexis Valencia Alarcón: US\$20,000.00 (twenty thousand United States dollars).
- x) Blas Valencia Campos: US\$20,000.00 (twenty thousand United States dollars).
- y) Mercedes Valencia Chuquimia: US\$40,000.00 (forty thousand United States dollars).

³⁷² Cf. *Case of Bámaca Velásquez v. Guatemala. Reparations and costs*. Judgment of February 22, 2002. Series C No. 91, para. 43, and *Case of Mina Cuero v. Ecuador, supra*, para. 158.

z) Mauricio Valenzuela Valencia US\$20,000.00 (twenty thousand United States dollars).

329. The sums allocated to Genaro Ahuacho Luna, Oswaldo Lulleman Antezana,³⁷³ María Fernanda Peña Gallardo,³⁷⁴ and Mercedes Valencia Chuquimia³⁷⁵ must be delivered to their heirs, pursuant to the applicable domestic law.

H. Costs and expenses

330. The **Commission** did not refer to this point.

331. The **inter-American public defenders** considered that “special weight should be given to the expenses that the alleged victims had to assume for both the domestic litigations and for these international proceedings.” Therefore, they asked that “the expenses in which they incurred be reimbursed, establishing them, in equity, as in other similar cases. They included the following clarifications regarding the alleged victims they were representing:

- a) In the case of *Víctor Manuel Boggiano Bruzzón* (or *Juan Ramírez Ortega*), they asked that he be awarded “payment of the fees of the private lawyer that assisted him during the domestic proceedings; for this service he paid the sum of four thousand bolivianos, merely at the stage of execution of sentence.” Regarding “the professional services contracted to assist in the preliminary stage and during the trial, owing to the time that has passed, he has not kept any record of the payments made, but he recalls that it was one thousand five hundred dollars.”
- b) With regard to the *Lulleman family*, they mentioned that “they paid the fees of the private defense counsel that assisted them during the domestic trial and they calculate that these amounted to [eighteen thousand dollars],” and attached the notice to pay sent by the lawyer who represented them.
- c) Regarding *F.E.P.M.*, they indicated that “as a result of her detention, she lost her job and had to pay the sum of [ten thousand dollars] for her legal defense.” In this regard they attached the letter issued by her then lawyer certifying that she had paid his fees.

332. **Representative Jemio Mendoza** asked that the Court establish, “in equity, the amount that the State should pay for this concept and that this amount be reimbursed directly to the representatives.”

333. **Representative Gómez Rojas** did not mention a specific sum.

334. The **State** argued that “it [was] not internationally responsible for the rights invoked” and, regarding “professional fees in relation to the alleged ill-treatment and torture, it asked [the Court] to take into account only the legally proved official legal fees.”

335. The **Court** reiterates that, pursuant to its case law,³⁷⁶ costs and expenses form part of the concept of reparation because the activity deployed by the victims in order to obtain justice, at both the domestic and the international level, entails disbursements that should be compensated when the international responsibility of the State is declared in a judgment. Regarding the reimbursement of costs and expenses, it corresponds to the Court to make a prudent assessment

³⁷³ Cf. Death certificate of Oswaldo Lulleman Antezana (evidence file, folio 9717).

³⁷⁴ Cf. Death certificate of María Fernanda Peña Gallardo (evidence file, folio 10221).

³⁷⁵ Cf. Death certificate of Mercedes Valencia Chuquimia (evidence file, folio 9515)

³⁷⁶ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs*. Judgment of August 28, 1998. Series C No. 39, para. 82, and *Case of Mina Cuero v. Ecuador, supra*, para. 166.

of their scope, which includes the expenses arising before the authorities of the domestic jurisdiction, and also 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 made based on the equity principle and taking into account the expenses indicated by the parties, provided their *quantum* is reasonable.³⁷⁷

336. The Court has indicated that “the claims of the victims or their representatives for costs and expenses, and the evidence supporting them, must be submitted to the Court at the first procedural moment granted them; that is, in the pleadings and motions brief, without prejudice to updating those claims subsequently in keeping with the new costs and expenses incurred owing to the proceedings before this Court.”³⁷⁸ The Court also reiterates that it is not sufficient merely to forward probative documents; rather, the parties must include arguments that relate the evidence to the fact that it is considered to represent and, in the case of alleged financial disbursements, the items and their justification must be clearly established.³⁷⁹

337. The Court reiterates that, in the case of alleged financial disbursements, the representatives must clearly establish the items and their justification. In this case, the representatives merely provided vouchers for some of the alleged victims. However, the Court finds it reasonable to suppose that, over the years during which this case was processed, the representatives incurred expenses. However, it emphasizes that the expenses paid directly by the alleged victims were taken into account when calculating their financial compensation. Therefore, the Court decides to establish the reasonable sum of US\$10,000 (ten thousand United States dollars) each for the three representatives of the alleged victims.

I. Reimbursement of expenses to the Victims’ Legal Assistance Fund

338. In 2008, the General Assembly of the Organization of American States created the Legal Assistance Fund of the Inter-American System of Human Rights in order to “facilitate access to the inter-American human rights system by persons who currently lack the resources needed to bring their cases before the system.”³⁸⁰

339. In a note of the Court’s Secretariat of October 6, 2022, a report was sent to the State on the disbursements made in application of the Victims’ Legal Assistance Fund in this case, which amounted to US\$6,264.80 (six thousand two hundred and sixty-four United States dollars and eighty cents) and, pursuant to Article 5 of the Court’s Rules for the Operation of the said Fund, the Bolivian State was granted a time frame for presenting any pertinent observations.

340. In a brief of October 13, 2022, the **State** indicated that it had no observations to make on the report on the disbursement made in application of the Victims’ Legal Assistance Fund.

³⁷⁷ Cf. *Case of Garrido and Baigorria v. Argentina, Reparations and costs, supra*, para. 82, and *Case of Mina Cuero v. Ecuador, supra*, para. 166.

³⁷⁸ Cf. *Case of Garrido and Baigorria v. Argentina. Reparations and costs, supra*, para.79, and *Case of Mina Cuero v. Ecuador, supra*, para. 167.

³⁷⁹ Cf. *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador. Preliminary objections, merits, reparations and costs. Judgment of November 21, 2007. Series C No. 170, para. 277, and Case of Mina Cuero v. Ecuador, supra*, para. 167.

³⁸⁰ AG/RES. 2426 (XXXVIII-O/08), Resolution adopted at the fourth plenary session held on June 3, 2008, of the thirty-eighth General Assembly of the OAS, “Establishment of the Legal Assistance Fund of the Inter-American Human Rights System,” operative paragraph 2(a), and CP/RES. 963 (1728/09), Resolution adopted on November 11, 2009, by the OAS permanent Council, “Rules of Procedure for the Operation of the Legal Assistance Fund of the Inter-American Human Rights System,” article 1(1).

341. In light of Article 5 of the Rules for the Operation of the Fund, owing to the violations declared in this judgment and the fact that the requirements to access the Fund were met, the Court orders the State to reimburse the Fund the sum of US\$6,264.80 (six thousand two hundred and sixty-four United States dollars and eighty cents) for the necessary expenses paid. This sum must be reimbursed within six months of notification of this judgment.

J. Method of complying with the payments ordered

342. The State shall make the payment of the compensation established herein for pecuniary and non-pecuniary damage, directly to the persons indicated herein as specified with immediate effect, within one year of notification of this judgment, without prejudice to making the complete payment before that, pursuant to the following paragraphs.

343. If any of the beneficiaries are deceased or die before they receive the respective compensation, this shall be delivered directly to their heirs, pursuant to the applicable domestic law.

344. The State shall comply with its monetary obligations by payment in United States dollars or, if this is not possible, the equivalent in national currency, using the published market exchange rate or the rate calculated by a pertinent banking or financial authority on the date closest to the date of payment.

345. If, for reasons that can be attributed to the beneficiaries of the compensation or their heirs, it was not possible to pay the amount determined within the indicated time frame, the State shall deposit the said amount in their favor in a deposit account or certificate in a solvent Bolivian financial institution, in United States dollars, and in the most favorable conditions permitted by banking law and practice. If the corresponding compensation is not claimed, after ten years the amounts shall be returned to the State with the interest accrued. If this is not possible, the State shall ensure the availability of the funds for ten years.

346. The amounts allocated in this judgment for pecuniary damage, non-pecuniary damage, and costs and expenses shall be delivered to the persons indicated in full, as established in this judgment, without any deductions due to possible taxes or charges.

347. If the State should fall in arrears, including in the reimbursement of expenses to the Victims' Legal Assistance Fund of the Court, it shall pay interest on the amount owed corresponding to banking interest on arrears in the Plurinational State of Bolivia.

**X
OPERATIVE PARAGRAPHS**

348. Therefore,

THE COURT

DECIDES,

unanimously:

1. To reject the preliminary objection regarding the Court's lack of jurisdiction *ratione temporis*, pursuant to paragraphs 22 to 23 of this judgment.

DECLARES,

unanimously, that:

2. The State is responsible for the violation of the right to personal liberty established in Article 7(1), 7(2) and 7(3) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Genaro Ahuacho Luna (also known as Walter Herrera Flores); Norma Lupe Alarcón de Valencia; Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz or Alberto Farfán); Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega); Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar; Oswaldo Lulleman Antezana; Jenny Paola Lulleman Gutiérrez; Luis Fernando Lulleman Gutiérrez; Raúl Oswaldo Lulleman Gutiérrez; Julia Mamanu Mamani; Elacio Peña Córdova (also known as Elacio Peña Córdoba); F.E.P.M; Edwin Rodríguez Alarcón; Carlos Álvaro Taboada Valencia; Claudia Valencia Alarcón; Gabriel Valencia Alarcón; Blas Valencia Campos, and Mercedes Valencia Chuquimia, pursuant to paragraphs 122 to 132 and 144 of this judgment.

3. The State is responsible for the violation of Article 7(5) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Jenny Paola Lulleman Gutiérrez; Luis Fernando Lulleman Gutiérrez; Raúl Oswaldo Lulleman Gutiérrez; Julia Mamanu Mamani; Edwin Rodríguez Alarcón; Carlos Álvaro Taboada Valencia, and Gabriel Valencia Alarcón, pursuant to paragraphs 133 to 138 and 145 of the judgment.

4. The State is responsible for the violation of Article 7(6) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Genaro Ahuacho Luna (also known as Walter Herrera Flores); Norma Lupe Alarcón Castillo; Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz or Alberto Farfán); Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega); Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar; Oswaldo Lulleman Antezana; Elacio Peña Córdova (also known as Elacio Peña Córdoba); F.E.P.M; Claudia Valencia Alarcón; Blas Valencia Campos, and Mercedes Valencia Chuquimia, pursuant to paragraphs 139 to 143 and 146 of this judgment.

5. The State is responsible for the violation of the rights to private and family life and the inviolability of the home, recognized in Articles 11(2) and 17 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Genaro Ahuacho Luna (also known as Walter Herrera Flores); Norma Lupe Alarcón Castillo; Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz or Alberto Farfán); Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega); Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Claudio Centeno Valencia; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar; Oswaldo Lulleman Antezana; Jenny Paola Lulleman Gutiérrez; Luis Lulleman Gutiérrez; Raúl Oswaldo Lulleman Gutiérrez; Julia Mamanu Mamani; Elacio Peña Córdova (also known as Elacio Peña Córdoba); María Fernanda Peña Gallardo; F.E.P.M; Edwin Rodríguez Alarcón; Carlos Álvaro Taboada Valencia; Claudia Valencia Alarcón; Gabriel Valencia Alarcón; Alexis Valencia Alarcón; Blas Valencia Campos; Mercedes Valencia Chuquimia, and Mauricio Valenzuela Valencia, pursuant to paragraphs 147 to 157 of this judgment.

6. The State is responsible for the violation of the right to property recognized in Article 21(1) and 21(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Norma Lupe Alarcón Castillo, pursuant to paragraphs 158 to 161 of this judgment.

7. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to the general

obligation established in Article 1(1) of this instrument, owing to the acts of torture committed against Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega), Carlos Enrique Castro Ramírez, Eladio Cruz Añez, Raúl Oswaldo Lulleman Gutiérrez and F.E.P.M., pursuant to paragraphs 182 to 184 and 202 of this judgment.

8. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, and Article 7(1) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) owing to the acts of sexual torture committed against Norma Lupe Alarcón Castillo; Patricia Gallardo Ardúz; Victoria Gutiérrez Aguilar, Jenny Paola Lulleman Gutiérrez; Julia Mamanu Mamani; F.E.P.M.; Claudia Valencia Alarcón, and Mercedes Valencia Chuquimia, pursuant to paragraphs 185 to 191 and 203 of this judgment.

9. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to the general obligation established in Article 1(1) of this instrument, owing to the acts of police violence committed during the raids to the detriment of Genaro Ahuacho Luna (also known as Walter Herrera Flores); Norma Lupe Alarcón Castillo; Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz or Alberto Farfán); Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega); Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar; Oswaldo Lulleman Antezana; Jenny Paola Lulleman Gutiérrez; Luis Lulleman Gutiérrez; Raúl Oswaldo Lulleman Gutiérrez; Julia Mamanu Mamani; Elacio Peña Córdova (also known as Elacio Peña Córdoba); F.E.P.M; Edwin Rodríguez Alarcón; Carlos Álvaro Taboada Valencia; Claudia Valencia Alarcón; Gabriel Valencia Alarcón; Blas Valencia Campos, and Mercedes Valencia Chuquimia, pursuant to paragraphs 175 to 178 and 204 of this judgment.

10. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, owing to the prolonged solitary confinement imposed on Genaro Ahuacho Luna (also known as Walter Herrera Flores); Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz or Alberto Farfán); Víctor Boggiano Bruzzón (also known as Juan Ramírez Ortega); Enrique Castro Ramírez; Carlos Eladio Cruz Añez; Elacio Peña Córdova (also known as Elacio Peña Córdoba); Oswaldo Lulleman Antezana, and Blas Valencia Campos, pursuant to paragraphs 192 to 194 and 205 of this judgment.

11. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, owing to the egregious detention conditions to the detriment of Genaro Ahuacho Luna (also known as Walter Herrera Flores); Norma Lupe Alarcón Castillo; Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz or Alberto Farfán); Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega); Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar; Oswaldo Lulleman Antezana; Jenny Paola Lulleman Gutiérrez; Luis Lulleman Gutiérrez; Raúl Oswaldo Lulleman Gutiérrez; Julia Mamanu Mamani; Elacio Peña Córdova (also known as Elacio Peña Córdoba); F.E.P.M; Edwin Rodríguez Alarcón; Carlos Álvaro Taboada Valencia; Claudia Valencia Alarcón; Gabriel Valencia Alarcón; Blas Valencia Campos, and Mercedes Valencia Chuquimia, pursuant to paragraphs 195 to 197 and 206 of this judgment.

12. The State is responsible for the violation of the right to personal integrity recognized in Article 5(1) and 5(2) of the American Convention on Human Rights, in relation to Article 1(1)

of this instrument, to the detriment of María Fernanda Peña Gallardo, pursuant to paragraphs 198 to 201 and 207 of this judgment.

13. The State is responsible for the violation of Articles 7(1), 7(2), 7(3) and 19 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Alexis Valencia Alarcón and Mauricio Valenzuela Valencia, as well as the violation of Article 7(4) of the American Convention on Human Rights, to the detriment of Mauricio Valenzuela Valencia. Also, owing to the cruel and degrading treatment perpetrated by police agents, the State is responsible for the violation of Articles 5(1) and 5(2) and 19 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Alexis Valencia Alarcón and Mauricio Valenzuela Valencia. Similarly, the State is responsible for the violation of Article 19 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Claudio Centeno Valencia, Alexis Valencia Alarcón and Mauricio Valenzuela Valencia, pursuant to paragraphs 211 to 220 of this judgment.

14. The State is responsible for the violation of the right to life recognized in Article 4(1) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Genaro Ahuacho Luna (also known as Walter Herrera Flores), pursuant to paragraphs 224 to 229 of this judgment.

By five votes to two, that:

15. The State is responsible for the violation of the right to health established in Article 26 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Genaro Ahuacho Luna (also known as Walter Herrera Flores), Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz or Alberto Farfán), Freddy Cáceres Castro; Carlos Eladio Cruz Añez, Patricia Gallardo Ardúz, Oswaldo Lulleman Antezana, Luis Lulleman Gutiérrez, Raúl Oswaldo Lulleman Gutiérrez, Elacio Peña Córdova (also known as Elacio Peña Córdova), F.E.P.M., Edwin Rodríguez Alarcón, Gabriel Valencia Alarcón, Blas Valencia Campos and Mauricio Valenzuela Valencia, pursuant to paragraphs 232 to 243 of this judgment.

Dissenting Judge Humberto Antonio Sierra Porto and Judge Patricia Pérez Goldberg.

Unanimously, that:

16. The State is responsible for the violation of the rights to the presumption of innocence and to protection of honor and dignity recognized in Articles 8(2) and 11 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Genaro Ahuacho Luna (also known as Walter Herrera Flores); Norma Lupe Alarcón Castillo; Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz or Alberto Farfán); Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega); Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar; Oswaldo Lulleman Antezana; Jenny Paola Lulleman Gutiérrez; Luis Lulleman Gutiérrez; Julia Mamanu Mamani; Elacio Peña Córdova (also known as Elacio Peña Córdova); F.E.P.M; Edwin Rodríguez Alarcón; Claudia Valencia Alarcón; Gabriel Valencia Alarcón; Blas Valencia Campos, and Mercedes Valencia Chuquimia, and also the violation of Article 8(2) of the American Convention on Human Rights, in relation to Articles 11, 19 and 1(1) of this instrument, to the detriment of Mauricio Valenzuela Valencia, Alexis Valencia Alarcón and Claudio Centeno Valencia, pursuant to paragraphs 254 to 259 of this judgment.

17. The State is responsible for the violation of the right of defense established in Article 8(2)(d) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Genaro Ahuacho Luna (also known as Walter Herrera Flores);

Norma Lupe Alarcón Castillo; Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz or Alberto Farfán); Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega); Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar; Oswaldo Lulleman Antezana; Raúl Oswaldo Lulleman Gutiérrez; Elacio Peña Córdova (also known as Elacio Peña Córdoba); F.E.P.M; Edwin Rodríguez Alarcón; Claudia Valencia Alarcón; Blas Valencia Campos, and Mercedes Valencia Chuquimia, pursuant to paragraphs 260 to 263 of this judgment.

18. The State is responsible for the violation of the right not to be obliged to bear witness against oneself or to plead guilty recognized in Article 8(2)(g) of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, to the detriment of Víctor Manuel Boggiano Bruzzón (also known as Juan Ramírez Ortega), Carlos Enrique Castro Ramírez, Eladio Cruz Añez, Raúl Oswaldo Lulleman Gutiérrez, F.E.P.M., Patricia Gallardo Ardúz, Norma Lupe Alarcón de Valencia, Claudia Valencia Alarcón and Mercedes Valencia Chuquimia, pursuant to paragraphs 264 and 265 of this judgment.

19. The State is responsible for the violation of the obligation to investigate acts of torture derived from Article 5 of the American Convention on Human Rights, in relation to Article 1(1) of this instrument, and also Articles 1,6 and 8 of the Inter-American Convention to Prevent and Punish Torture and 7(b) of the Inter-American Convention for the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) to the detriment of Genaro Ahuacho Luna (also known as Walter Herrera Flores); Norma Lupe Alarcón Castillo; Alfredo Bazán y Rosas (also known as José Miguel Abildo Díaz or Alberto Farfán); Víctor Manuel Boggiano Bruzzón(also known as Juan Ramírez Ortega); Freddy Cáceres Castro; Carlos Enrique Castro Ramírez; Claudio Centeno Valencia; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; Victoria Gutiérrez Aguilar; Oswaldo Lulleman Antezana; Jenny Paola Lulleman Gutiérrez; Luis Lulleman Gutiérrez; Raúl Oswaldo Lulleman Gutiérrez; Julia Mamanu Mamani; Elacio Peña Córdova (also known as Elacio Peña Córdoba); María Fernanda Peña Gallardo; F.E.P.M; Edwin Rodríguez Alarcón; Carlos Álvaro Taboada Valencia; Claudia Valencia Alarcón; Gabriel Valencia Alarcón; Alexis Valencia Alarcón; Blas Valencia Campos; Mercedes Valencia Chuquimia, and Mauricio Valenzuela Valencia, pursuant to paragraphs 266 to 274 of this judgment.

AND ESTABLISHES,

unanimously, that:

20. This judgment constitutes, *per se*, a form of reparation.

21. The State shall adopt the necessary measures to review judgment No. 12/2003 of May 16, 2003, pursuant to paragraph 282 of this judgment.

22. The State shall continue and conclude within a reasonable time the necessary investigations and criminal proceedings to prosecute and punish, as appropriate, those responsible for the acts of torture and ill-treatment of the victims, pursuant to paragraph 289 of this judgment.

23. The State shall provide the medical, psychological and/or psychiatric treatment required by the victims, pursuant to paragraphs 299 and 300 of this judgment.

24. The State shall, within six months, make the publications indicated in paragraph 306 of this judgment.

25. The State shall design and implement training courses on human rights, and also protocols for the treatment of children involved in investigation procedures and the administration of justice and the investigation of cases of sexual violence, pursuant to paragraphs 313 to 315 of this judgment.

26. The State shall create a mechanism allowing the reopening of judicial proceedings, pursuant to paragraph 316 of this judgment.

27. The State shall pay the amounts established in paragraphs 328 and 337 of this judgment as compensation for pecuniary and non-pecuniary damage, and to reimburse costs and expenses, pursuant to paragraphs 329 and 342 to 347 of this judgment.

28. The State shall reimburse the Victims' Legal Assistance Fund of the Inter-American Court of Human Rights the sum disbursed during the processing of this case, pursuant to paragraph 341 of this judgment.

29. The State, within one year of notification of this judgment, shall provide the Court with a report on the measures adopted to comply with it, without prejudice to the provisions established in paragraphs 306 and 341 of this judgment.

30. The Court will monitor full compliance with this judgment, in exercise of its authority and in fulfilment of its duties under the American Convention on Human Rights, and will consider this case closed when the State has complied fully with its provisions.

DONE, at Maldonado, Uruguay, on October 18, 2022, in the Spanish language

Judge Humberto Sierra Porto informed the Court of his partially dissenting opinion. Judge Nancy Hernández López and Judge Rodrigo Mudrovitsch advised the Court of their joint concurring opinion, and Judge Patricia Pérez Goldberg advised the Court of her concurring and partially dissenting opinion.

I/A Court HR. Case of Valencia Campos et al. v. Bolivia. Preliminary objections, merits, reparations and costs. Judgment of October 18, 2022.

Ricardo C. Pérez Manrique
President

Humberto Antonio Sierra Porto

Eduardo Ferrer Mac-Gregor Poisot

Nancy Hernández López

Verónica Gómez

Patricia Pérez Goldberg

Rodrigo de Bittencourt Mudrovitsch

Pablo Saavedra Alessandri
Registrar

So ordered,

Ricardo C. Pérez Manrique
President

Pablo Saavedra Alessandri
Registrar

**PARTIALLY DISSENTING OPINION OF
JUDGE HUMBERTO ANTONIO SIERRA PORTO**

CASE OF VALENCIA CAMPOS ET AL. V. BOLIVIA

JUDGMENT OF OCTOBER 18, 2022

1. With my usual respect for the decisions of the Inter-American Court of Human Rights (hereinafter “the Court”), the purpose of this opinion is to explain my dissent with the fifteenth operative paragraph in which the international responsibility of the State of Bolivia (hereinafter “the State” or “Bolivia”) is declared for the violation of the right to health based on Article 26 of the American Convention on Human Rights (hereinafter “the ACHR” or “the Convention”), to the detriment of Genaro Ahuacho Luna, Alfredo Bazán and Rosas, Freddy Cáceres Castro, Carlos Eladio Cruz Añez, Patricia Gallardo Ardúz, Oswaldo Lulleman Antezana, Luis Lulleman, Raúl Oswaldo Lulleman Gutiérrez, Elacio Peña Córdova, F.E.P.M., Edwin Rodríguez Alarcón, Gabriel Valencia Alarcón, Blas Valencia Campos and Mauricio Valenzuela Valencia.

2. This opinion supplements the position already expressed in my partially dissenting opinions in the cases of Lagos del Campo v. Peru,¹ Dismissed Workers of PetroPeru et al. v. Peru,² San Miguel Sosa et al. v. Venezuela,³ Muelle Flores v. Peru,⁴ Hernández v. Argentina,⁵ ANCEJUB-SUNAT v. Peru,⁶ Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina,⁷ Workers of the Firework Factory of Santo Antônio de Jesus v. Brazil,⁸ Casa Nina v. Peru,⁹ Guachalá Chimbo v. Ecuador,¹⁰ FEMAPOR v. Peru¹¹ and Guevara Díaz v. Costa Rica;¹² as well as in my

¹ *Case of Lagos del Campo v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of August 31, 2017. Series C No. 340. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

² *Case of the Dismissed Workers of PetroPeru et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

³ *Case of San Miguel Sosa et al. v. Venezuela. Merits, reparations and costs.* Judgment of February 8, 2018. Series C No. 348. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

⁴ *Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

⁵ *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2019. Series C No. 395. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

⁶ *Case of the National Association of Discharged and Retired Employees of the National Tax Administration Superintendence (ANCEJUB-SUNAT) v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 21, 2019. Series C No. 39. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

⁷ *Case of the Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina. Merits, reparations and costs.* Judgment of February 6, 2020. Series C No. 400. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

⁸ *Case of the Workers of the Firework Factory of Santo Antônio de Jesus v. Brazil. Preliminary objections, merits, reparations and costs.* Judgment of July 15, 2020. Series C No. 407. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

⁹ *Case of Casa Nina v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 24, 2020. Series C No. 419. Concurring and partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

¹⁰ *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs.* Judgment of March 26, 2021. Series C No. 423. Concurring and partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

¹¹ *Case of the National Federation of Maritime and Port Workers (FEMAPOR) v. Peru. Preliminary objections, merits and reparations.* Judgment of February 1, 2022. Series C No. 448. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

¹² *Case of Guevara Díaz v. Costa Rica. Merits, reparations and costs.* Judgment of June 22, 2022. Series C No. 453. Concurring and partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

concurring opinions in the cases of *Gonzales Lluy et al. v. Ecuador*,¹³ *Poblete Vilches et al. v. Chile*,¹⁴ *Cuscul Pivaral et al. v. Guatemala*,¹⁵ *Miskito Divers v. Honduras*,¹⁶ *Vera Rojas et al. v. Chile*,¹⁷ *Manuela et al. v. El Salvador*,¹⁸ *Former Employees of the Judiciary v. Guatemala*,¹⁹ *Palacio Urrutia v. Ecuador*²⁰ and *Pavez Pavez v. Chile*,²¹ in relation to the justiciability of the economic, social, cultural and environmental rights (hereinafter ESCER) under Article 26 of the American Convention on Human Rights.

3. Since 2017 and without interruption, I have emphasized the logical and legal inconsistencies of the direct and autonomous justiciability of the ESCER under Article 26 of the Convention. The position assumed by the majority of the Court disregards the rules of interpretation of the Vienna Convention on the Law of Treaties,²² alters the nature of the obligation of progressivity textually established in Article 26,²³ ignores the intention of the States reflected in the Protocol of San Salvador²⁴ and undermines the legitimacy of the Court by unjustifiably expanding its competence,²⁵ to mention only some arguments.

4. On this occasion, I am not going to examine further, either this point or the difficulties in relation to the case law concerning the right to health; in this regard, I refer back to my previous opinions.²⁶ In the instant case, I wish to point out how the majority position of the Court in relation to the right to health derived from Article

¹³ *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2015. Series C No. 298. Concurring opinion of Judge Humberto Antonio Sierra Porto.

¹⁴ *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 349. Concurring opinion of Judge Humberto Antonio Sierra Porto.

¹⁵ *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359. Concurring opinion of Judge Humberto Antonio Sierra Porto.

¹⁶ *Case of the Miskito Divers (Lemoth Morris et al.) v. Honduras.* Judgment of August 31, 2021. Series C No. 432. Concurring opinion of Judge Humberto Antonio Sierra Porto.

¹⁷ *Case of Vera Rojas et al. v. Chile. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2021. Series C No. 439. Concurring opinion of Judge Humberto Antonio Sierra Porto.

¹⁸ *Case of Manuela et al. v. El Salvador. Preliminary objections, merits, reparations and costs.* Judgment of November 2, 2021. Series C No. 441. Concurring opinion of Judge Humberto Antonio Sierra Porto.

¹⁹ *Case of the Former Employees of the Judiciary v. Guatemala. Preliminary objections, merits and reparations.* Judgment of November 17, 2021. Series C No. 445. Concurring opinion of Judge Humberto Antonio Sierra Porto.

²⁰ *Case of Palacio Urrutia et al. v. Ecuador. Merits, reparations and costs.* Judgment of November 24, 2021. Series C No. 446. Concurring opinion of Judge Humberto Antonio Sierra Porto.

²¹ *Case of Pavez Pavez v. Chile. Merits, reparations and costs.* Judgment of February 4, 2022. Series C No. 449. Concurring opinion of Judge Humberto Antonio Sierra Porto.

²² *Cf. Case of Muelle Flores v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of March 6, 2019. Series C No. 375. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

²³ *Cf. Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359. Concurring opinion of Judge Humberto Antonio Sierra Porto.

²⁴ *Cf. Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 349. Concurring opinion of Judge Humberto Antonio Sierra Porto.

²⁵ *Cf. Case the Dismissed Workers of PetroPeru et al. v. Peru. Preliminary objections, merits, reparations and costs.* Judgment of November 23, 2017. Series C No. 344. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

²⁶ *Case of Gonzales Lluy et al. v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 1, 2015. Series C No. 298. Concurring opinion of Judge Humberto Antonio Sierra Porto; *Case of Poblete Vilches et al. v. Chile. Merits, reparations and costs.* Judgment of March 8, 2018. Series C No. 349. Concurring opinion of Judge Humberto Antonio Sierra Porto; *Case of Cuscul Pivaral et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of August 23, 2018. Series C No. 359. Concurring opinion of Judge Humberto Antonio Sierra Porto; *Case of Hernández v. Argentina. Preliminary objection, merits, reparations and costs.* Judgment of November 22, 2019. Series C No. 395. Partially dissenting opinion of Judge Humberto Antonio Sierra Porto; *Case of Guachalá Chimbo et al. v. Ecuador. Merits, reparations and costs.* Judgment of March 26, 2021. Series C No. 423. Concurring and partially dissenting opinion of Judge Humberto Antonio Sierra Porto.

26 of the ACHR erodes the strength of the standards established in its dear case law on the minimum conditions for the deprivation of liberty, and the State's obligations in relation to the rights to life and to integrity of those who are detained.

5. For more than 30 years, the Court has been ruling on prison conditions in the Americas, making a literal, systematic and finalist interpretation of the right to personal integrity contained in Article 5 of the Convention.²⁷ On this normative basis, the Court has developed standards according to which States have the obligation to guarantee the rights of persons deprived of liberty, and to ensure that they have the minimum conditions of food, health and infrastructure for a decent existence while they are in their custody.²⁸ Also, on several occasions, the Court has convicted States Parties owing to the lack of appropriate and effective measures to guarantee these rights and has ordered them to implement adequate measures to comply with their international obligations.²⁹

6. More precisely, the Court has established that Articles 1(1) and 5 of the ACHR reveal the obligation to provide persons deprived of liberty with, among other elements, ventilation and natural light, a bed to rest on, basic nutrition, access to potable water, and regular medical check-ups and appropriate treatment.³⁰ It has also indicated that these conditions are mandatory given a prisoner's situation of subjection in relation to the State.³¹ Consequently, in cases in which these conditions are not met due to overcrowding, isolation or solitary confinement, this constitutes a violation of the right to personal integrity and, thus, grounds for the international responsibility of the State.³² Evidently, it was not necessary to make any mention of the justiciability of the ESCER to achieve this level of protection.

7. However, in this case, the majority opted for a different reasoning to the one that the Court had used historically. The protection of the personal integrity of prisoners by Article 5 of the Convention was examined exclusively in relation to the acts of torture that the victims suffered in the context of an investigation.³³ Meanwhile, the obligation to provide them with adequate medical assessment, care and attention was examined solely in relation to the right to health derived from Article 26 of the Convention.³⁴

²⁷ Article 5. Right to humane treatment. 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person. 3. Punishment shall not be extended to any person other than the criminal. 4. Accused persons shall, save in exceptional circumstances, be segregated from convicted persons, and shall be subject to separate treatment appropriate to their status as unconvicted persons. 5. Minors while subject to criminal proceedings shall be separated from adults and brought before specialized tribunals, as speedily as possible, so that they may be treated in accordance with their status as minors. 6. Punishments consisting of deprivation of liberty shall have as an essential aim the reform and social readaptation of the prisoners.

²⁸ Cf. *Case of the "Juvenile Re-education Institute" v. Paraguay. Preliminary objections, merits, reparations and costs.* Judgment of September 2, 2004. Series C No. 112, para. 170.

²⁹ Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 7, 2004. Series C No. 114; *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006. Series C No. 160; *Case of Pacheco Teruel et al. v. Honduras. Merits, reparations and costs.* Judgment of April 27, 2012. Series C No. 241; *Case of Chinchilla Sandoval et al. v. Guatemala. Preliminary objection, merits, reparations and costs.* Judgment of February 29, 2016. Series C No. 312.

³⁰ Cf. *Case of Tibi v. Ecuador. Preliminary objections, merits, reparations and costs.* Judgment of September 7, 2004. Series C No. 114, paras. 150 to 157. Similarly, *Case of Fleury et al. v. Haiti. Merits and reparations.* Judgment of November 23, 2011. Series C No. 236, paras. 85 and 86.

³¹ Cf. *Matter of the Mendoza Prison with regard to Argentina. Provisional measures.* Order of the Inter-American Court of Human Rights of November 22, 2004, considering paragraph 10.

³² Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs.* Judgment of November 25, 2006, para. 315.

³³ *Case of Valencia Campos v. Bolivia*, paras. 170 ff.

³⁴ *Case of Valencia Campos v. Bolivia*, paras. 241 ff.

8. Thus, in relation to the right to personal integrity, the Court referred to the acts that constituted torture and ill-treatment during the raids and detentions and, in particular, examined the sexual violence and torture suffered by women, the situation of the children who were affected in the case, and the measures of solitary confinement. It also referred to the detention conditions, but only as regards the size of the cells and the absence of beds. In the latter case, it indicated that *"the alleged victims who were taken to the PTJ were detained in small cells, without beds, which forced them to sleep on the floor, and they did not have access to bathrooms [...]; therefore, it finds that there was a situation of overcrowding contrary to the personal integrity of the persons detained in the PTJ."*³⁵

9. Then, in relation to the right to health, the Court took into consideration four circumstances: (i) the lack of medical attention for Patricia Gallardo, which had a negative effect on her physical and mental condition during her house arrest; (ii) the delay in providing medical attention to Genaro Ahuacho Luna, which might have had an impact on his death; (iii) the failure to conduct a medical examination at the time of the detention of Blas Valencia Campos, Edwin Rodríguez Alarcón, Gabriel Valencia Alarcón, Alexis Valencia Alarcón, Claudio Centeno Valencia, Elacio Peña Córdoba, Genaro Ahuacho Luna, Alfredo Bazán la Rosas, Mauricio Valenzuela Valencia, Oswaldo Lulleman Antezana, Raúl Oswaldo Lulleman Gutiérrez, Luis Lulleman Gutiérrez, Carlos Eladio Cruz Añez and Patricia Catalina Gallardo Ardúz, and (iv) the lack of medical attention for F.E.P.M. following her miscarriage *"as a result of the beating she suffered at the hands of police agents."*³⁶

10. Therefore, even though the facts mentioned all constituted violations of the right to personal integrity and even to life because the failure to guarantee the obligations of assessment, care and treatment had an impact on the physical and mental condition of the victims, the Court chose to compartmentalize its analysis, excluding the relationship between those facts and the obligations arising from Articles 5 and 1(1) of the Convention.

11. This new reasoning adopted by the Court for the first time in a contentious case does not suppose a merely rhetorical differentiation. To the contrary, analyzing the obligation of medical assessment, care and treatment of persons deprived of liberty only in light of Article 26 of the Convention may have a negative impact on the effectiveness of the orders issued by the Court. As I indicated in my recent opinion in Advisory Opinion 29, *"[i]t is natural that the juridical inconsistencies of the concept of the justiciability of the ESCER, [...], are transferred to the standards for the minimum conditions of detention and that, in this way, the degree of efficacy that the States have is reduced. Although a majority within the Court have opted for the justiciability of Article 26, the Court should take into account that, internally, discussions still exist on the binding nature of the obligations arising from this article."*³⁷

12. Based on the above, I believe that this judgment could have been more effective and legitimate if it had upheld its case law associated with Article 5 of the Convention. On the one hand, because there would be no doubt about the content, binding nature, and justiciability of the obligation to provide medical assessment, care and treatment to prisoners as part of the minimum conditions of imprisonment; on the other, because compliance with the obligation would not depend on the State's financial capacity. It should not be overlooked that Article 1(1) read in relation to

³⁵ Case of Valencia Campos v. Bolivia, paras. 197 ff.

³⁶ Case of Valencia Campos v. Bolivia, paras. 242 ff.

³⁷ Differentiated approaches with respect to certain groups of persons in detention (Interpretation and scope of Articles 1(1), 4(1), 5, 11(2), 12, 13, 17(1), 19, 24 and 26 of the American Convention on Human Rights and other human rights instruments). Advisory Opinion OC-29/22 of May 30, 2022. Series A No 29. Concurring opinion of Judge Humberto Antonio Sierra Porto. Para. 8.

Article 5 of the ACHR establishes an obligation of immediate compliance. To the contrary, the obligations derived from Article 26 of the Convention are subject to progressive development and may be implemented gradually in keeping with the conditions in each State. Consequently, as a result of the position formulated in this case, the urgency is lost that gave substance to the obligation to maintain decent detention conditions based on the right to personal integrity. This is the reason why I dissented from the fifteenth operative paragraph of the judgment.

Humberto Antonio Sierra Porto
Judge

Pablo Saavedra Alessandri
Registrar

**SEPARATE OPINION OF JUDGE NANCY HERNÁNDEZ LÓPEZ AND
JUDGE RODRIGO MUDROVITSCH
INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF VALENCIA CAMPOS *ET AL.* V. BOLIVIA
JUDGMENT OF OCTOBER 18, 2022
(Preliminary objection, merits, reparations and costs)**

1. The case of Valencia Campos *et al.* v. Bolivia examines the international responsibility of the State for the human rights violations in the context of the house raids and the arrests conducted during the police operation that following an attack on an armored truck, as well as in the context of the subsequent detention and criminal proceedings against the alleged perpetrators and participants.¹

2. We agree fully with the reasoning adopted by the Inter-American Court of Human Rights (hereinafter “the Court”) in the judgment on the preliminary objection and merits, and with the measures of reparation established.²

3. Consequently, this opinion focuses on the specific issue of the nighttime house raids that occurred in this case. The Court rightly considered that those house raids entailed a violation of Articles 11(2) and 17 of the American Convention on Human Rights (“the Convention”), which establish, respectively, the right not to be subjected to arbitrary interference in private life and the home, and the right to protection of the family.³ In addition to the reasons given in the judgment, we believe it important to examine the issue of the violation of those rights further, considering the strictly exceptional nature of nighttime house raids, and the special vulnerability of women and children when this type of measure is executed.

4. We believe that the limitations to this procedural investigative measure should be established by law and should meet the requirements of strict legality and proportionality. We will organize our consideration on the issue as follows: after briefly recapitulating the factual base **(I)**, we will present the arguments that support the non-conformity with the Convention of nighttime house raids – except in absolutely exceptional situations which we will describe in this opinion – stressing the rights to privacy, intimacy and sociability, as well as the duty to protect vulnerable groups **(II)**, to establish the absolute necessity of observing both lawfulness and proportionality in the regulation and execution of nighttime raids of the home **(III)**.

I. Contextualization of the nighttime house raids conducted by state agents

5. According to the judgment, on December 14, 2001, a group of individuals attacked an armored truck in La Paz, and escaped from the scene of the crime.⁴ The same day, the

¹ *Case of Valencia Campos et al. v. Bolivia. Preliminary objections, merits, reparations and costs.* Judgment of October 18, 2022. Series C No. 469 (hereinafter, “the judgment”), para. 109.

² Specifically, the Court concluded that the State was responsible for violating the right to personal liberty; the rights to private and family life and to the inviolability of the home; the right to property; the right to personal integrity; the rights of the child; the right to life; the right to health; the rights to the presumption of innocence and to the protection of honor and dignity; the right to judicial guarantees (in particular, the right of defense and the right not to bear witness against oneself), and the obligation to investigate acts of torture.

³ *Cf.* Judgment, paras. 147 to 157. The arrests made in the context of the raids also supposed a violation of the right to personal liberty (Article 7 of the Convention); however, this opinion focuses on the raids themselves.

⁴ *Cf.* Judgment, paras. 51 and 52.

Eighth Criminal Investigation Court issued Resolution No. 180/2001, ordering a search with seizure powers of two houses⁵ to find the perpetrators.⁶ On December 17, 2001, the same court issued Resolution No. 186/2001, expanding the previous order to include six more properties⁷ and expressly authorizing the execution of the operations during night hours, based on article 118 of the Bolivian Code of Criminal Procedure.⁸

6. Article 118 of the Bolivian Code of Criminal Procedure⁹ establishes the power of the investigating judge to issue warrants outside working hours.¹⁰ However, this article and the resolutions issued by the Eighth Criminal Investigation Court must be situated with the general panorama of the Bolivian legal system. Therefore, it is essential that any analysis is based on the provisions of the Bolivian Constitution¹¹ concerning the inviolability of the home and, at the time of the events, it expressly prohibited nighttime raids in the absence of the resident's consent or *flagrante delicto*.¹²

7. The Code of Criminal Procedure also contained a specific provision that regulated house raids (article 180), establishing that "a raid on a house or private residence during nighttime hours shall be prohibited [...] except in the case of *flagrante delicto*" and defining nighttime hours as "the time between 7:00 p.m. and 7:00 a.m. the following day."¹³ Both provisions required the concept of *flagrante delicto* – defined in article 230 of the Code of Criminal Procedure – to be understood as when the perpetrator of the act was "surprised while attempting to commit an offense, committing it, or immediately afterwards while being pursued [...]."¹⁴

8. Based on Resolutions Nos. 180 and 186,¹⁵ on December 18, 2001, dozens of armed state agents burst into six buildings¹⁶ in El Alto, La Paz and Santa Cruz, and one in Cochabamba to locate and arrest the perpetrators of the attack on the armored vehicle four days previously – in other words, in the absence of a situation of *flagrante delicto*. Women and children were present in the homes raided¹⁷ and, owing to the late hour, most of the residents were in their nightwear.¹⁸

9. In addition to these six nighttime raids, at 8:30 a.m. the state agents also raided the home located at Simón López Avenue (Cochabamba) where Carlos Álvaro Taboada Valencia was found.¹⁹ Bearing in mind the legislative framework resumed above and presented in the judgment (paras. 49 and 50) – in particular, the constitutional paradigm

⁵ No. 55 Virgen de Rosario Street and No. 120 11th Street, in La Paz.

⁶ Cf. Judgment, para. 53.

⁷ Properties identified as: No. 75 Cívica Avenue, Nos. 2525 and 2523 Presbítero Medina Street, No. 2315 Las Rosas Passage, No.6568-B Plaza Liberal, and No. 600 Zarzuela Street.

⁸ Judgment, para. 53.

⁹ Cf. Code of Criminal Procedure, Law No. 1970 of March 25, 1999 (evidence file, folios 2109, 2110, 2118, 2124, 2125, 2137 and 2138).

¹⁰ Cf. Complete text of the article in the judgment, para. 50.

¹¹ Cf. 1995 Constitution of Bolivia, Law No. 1615 of February 6, 1995 (evidence file, folios 2056 and 2058).

¹² Cf. Complete text of the article in the judgment, para. 49.

¹³ Cf. Art. 180 of the Code of Criminal Procedure, complete text in the judgment, para. 50.

¹⁴ Cf. Complete text of the article in the judgment, para. 50.

¹⁵ It is underscored that the addresses of No. 1365 Juan Manuel Cáceres Passage, the Tropical Inn Hotel and Simón López Avenue in Cochabamba were not listed in the resolutions, cf. judgment, paras. 129 and 130.

¹⁶ Home located at No. 2319 Las Rosas Passage, entered at 2:45 a.m.; home located at No. 2525 Presbítero Medina Street, raided at 3:00 a.m.; home located at No. 75 Cívica Avenue, raided at 01:00 a.m.; home located at No. 1365 Juan Manuel Cáceres Passage, raided between 4:00 and 5:00 a.m.; home located in the zone of Iparvi, raided between 6:00 and 6:30 a.m. , and the room of Freddy Cáceres in the Tropical Inn Hotel, raided during the early morning hours, cf. judgment, para. 129.

¹⁷ No. 2319 Las Rosas Passage: two women and two children; No. 2525 Presbítero Medina: one woman and one child; No. 75 Cívica Avenue: three women and two children; zone of Iparvi: three women; No. 1365 Juan Manuel Cáceres Passage: one pregnant woman; Tropical Inn Hotel: one woman, Cf. Judgment, para. 127.

¹⁸ Police operations described in the judgment, para. 54, and detailed in paras. 55 to 72.

¹⁹ Cf. Judgment, para. 130.

of the inviolability of the home, the only exceptions to which are consent or *flagrante delicto* – it should be underscored that these raids took place four days after the attack on the truck that was transporting cash. As expert witness María Luisa Piqué stated ²⁰ (transcribed in the judgment), “it is not possible to subsume the situation under any plausible concept of flagrante delicto, especially taking into account the laws of Bolivia in force at the time of the events, which were the most restrictive in the region.” Therefore, it is evident that the nighttime raids were conducted in violation of domestic law and, consequently, in violation of the principle of legality, the main purpose of this opinion.²¹ This non-compliance is especially serious because, in addition to being a violation of domestic law, it disrespects the country’s Constitution.²²

10. In light of this serious situation, the judgment rightly indicates that the protection of the rights to private life, to family life, and to the inviolability of the home signifies the recognition of a personal sphere that is free and immune from arbitrary interference or invasion by third parties or authorities²³ and the understanding of the home as a space in which private and family life can be freely developed.²⁴ Also, referring specifically to the family unit, the judgment reinforces the State’s duty to protect the family from any arbitrary and unlawful interference.²⁵

11. Based on these essential considerations as premises, we will now examine the two aspects that are the reason for this opinion: the justification of the prohibition of nighttime raids to protect the rights to private life, to a home, and to the protection of the family – with emphasis on the State’s enhanced duty of protection in relation to groups that are especially vulnerable – and a more detailed analysis of the exceptional nature of nighttime house raids and the increased obligation to substantiate the reasons that justify them, including the reasons why the raid cannot be conducted during working hours.

II. The grounds for the restriction of nighttime house raids to safeguard the rights to privacy, to a home, and to protection of the family

12. The place where a family or an individual lives is not an insignificant physical space. To the contrary, it is an essential *locus* for individuals to enjoy their intimacy and sociability, with the heightened expectation of privacy inherent to a home. Therefore, the protection of the home is not merely a defense of the rights related to property against external interference; rather, its protection is a fundamental condition for the enjoyment of the rights to private life and to family life, rights of a special nature and singular relevance, justifying the existence of a specific right for the protection of the home. In addition, in cases such as this one, the obligation to protect the home is based on the specific vulnerability of groups such as women and children, regarding which the State has special obligations of protection.

13. Therefore, any arbitrary incursion of the State into a private home represents a grave threat to those rights, and is aggravated in the case of nighttime police operations. We will now: **(a)** delimit the concepts of privacy, intimacy and sociability, underlining the way in which these values support each other and should be protected in the context of the home; **(b)** emphasize the extreme gravity entailed by nighttime house raids, and **(c)** describe the particular violation on these values in relation to vulnerable groups.

²⁰ Written expert opinion of María Luisa Piqué of June 16, 2022 (evidence file, folio 12550)

²¹ In this case, in addition to the violation of the parameters of lawfulness, the arbitrary nature of the police operation was also proved because it involved acts of violence and torture, including against a pregnant woman and children; all of this covered in the judgment (paras. 175 to 191).

²² Cf. 1995 Constitution of the State of Bolivia, Law No. 1615 of February 6, 1995. Article 21, transcribed in para. 49 of the judgment.

²³ Cf. Judgment, para. 147.

²⁴ Cf. Judgment, para. 147.

²⁵ Cf. Judgment, para. 148.

a. The values of privacy, intimacy and sociability as grounds for the protection of the home

14. The values of **privacy and intimacy** are the natural basis for any discussion on the meaning of the inviolability of the home. Thus, the protection of the home, as this is usually established in national Constitutions, circumscribes a sphere of personal and family intimacy.

15. However, it is not possible to speak of privacy and intimacy without also referring to **sociability**. The usual references to the home as a “fortress” or “castle” within which the inhabitants should benefit from a barrier from the outside world,²⁶ may suggest simple notions of privacy and intimacy as individual rights. It is true that, as asserted by Jean-Paul Demoule, “the home” signifies “the level of autonomy of the group that resides there in relation to the rest of society.”²⁷ However, placing emphasis exclusively on the barriers imposed by the home may neglect its importance as a necessary condition for the establishment and conservation of the ties between individuals.

16. To guarantee the protection of privacy and, therefore, the possibility of creating and maintaining ties, certain legal and social structures are required, including norms that guarantee the rights of an individual in relation to his home. Ultimately, the home is the place where these trust-based relationships – which include dimensions of personal attachment and belonging – typically exists and in which each member of the group that dwells in the home is in a socially comfortable situation in which they are an active and valued member.²⁸ Thus, we underscore that undue intrusion in the home may be profoundly destructive for the underlying relationship at the specific moment of intimacy that is interrupted.²⁹ Such disturbances are capable of eroding the material foundations that support the previous affective relationships between the individuals that live there and add to the violation of the sphere of personal liberty and intimacy.

17. Thus, any disruption of the intimacy of the home represents serious risks for these extremely important rights: privacy, intimacy and sociability. Arbitrary interference in the inviolability of the home by the state apparatus is especially serious because it uses coercive instruments with a high potential impact.

18. Consequently, it is not surprising that the international instruments for the protection of human rights have always reflected a concern for the inviolability of the home. Both the Universal Declaration of Human Rights (Article 12), and the American Declaration of the Rights and Duties of Man (Article 5) had already established the inviolability of the home in 1948. This guarantee was replicated in Article 17 of the International Covenant on Civil and Political Rights (ICCPR) in 1966, in Article 8 of the European Convention on Human Rights in 1950, and in Article 11 (in relation to Article 17) of the American Convention in 1969.

19. The European Court has also recognized that the home is the place where private and family life is usually carried on, and that people have a right to respect for their home, conceived not only as the right to the physical space but also as the right to enjoy it peacefully, so that it should be protected against the entry of unauthorized persons.³⁰ Similarly, the Inter-American Commission has indicated on several occasions that interventions of a State’s law enforcement agents in the family *locus* have violated the

²⁶ Cf. MCCLAIN, L. C. Inviolability and privacy: the castle, the sanctuary, and the body. *Yale Journal of Law & the Humanities*, v. 7, n. 1, pp. 195–242, 1995. pp. 201-202.

²⁷ Cf. DEMOULE, J.-P. Qu’est-ce qu’une maison? *Rue Descartes*, v. 43, n. 1, p. 104, 2004. p. 111.

²⁸ TONER, C. Home and Our Need for It. *Journal of Philosophical Research*, v. 44, pp. 251–272, 2019. p. 264.

²⁹ GERSTEIN, R. S. Intimacy and Privacy. *Ethics*, v. 89, n. 1, pp. 76–81, out. 1978, p. 79.

³⁰ Cf. ECHR. *Halabi v. France* n. 66554, Judgment of May 16, 2019, §54; and *Sabani v. Belgium*, n. 53069/15, Judgment of March 8, 2022, §41.

right to the inviolability of the home,³¹ a right that constitutes a guarantee of the right to privacy and to due process of law.³²

b. The enhanced gravity of nighttime home raids

20. Historically, in different cultures, nighttime has been perceived as “man’s first necessary evil, our oldest and most haunting terror.”³³ Indeed, the risks to human integrity are magnified between sunset and sunrise, a commonly held perception, even with all the technological progress made over time that has facilitated human life during the night.

21. This perception is correct in relation to the specific circumstances of nighttime raids because – owing to the hour – this time is more advantageous than daytime for the perpetration of human rights violations, owing to the reduced circulation of persons and less possibility of help or eyewitnesses. Such conditions are demonstrably favorable to the abuse of authority in state operations. An example of abusive state practices in these circumstances can be found in *Vinks and Ribicka v. Latvia* (2020), in which the European Court of Human Rights indicated that “[t]he risk of abuse of authority and violation of human dignity is inherent in a situation such as the one which arose in the present case, where the applicants were confronted in their home early in the morning by a number of specially trained policemen.”³⁴

22. Our continent is no stranger to this problem. Historically, nighttime police and military operations have resulted in the perpetration of gross human rights violations. It is sufficient to recall, for example, the case of *Juan Humberto Sánchez v. Honduras* (2003), which took place in the context of the forced disappearances and extrajudicial executions in that country in the 1980s. In that case, the victim was twice arrested in his parent’s home during the night, in the absence of an arrest warrant or a situation of *in flagrante*, in violation of the 1982 Honduran Constitution, article 99 of which prohibited house raids between 6:00 p.m. and 6:00 a.m. – and this led the Court to conclude that such raids violated the Convention.³⁵

23. Another reason for the special gravity of nighttime raids is the heightened and reasonable expectation of intimacy during those hours.³⁶ In general, the most private family activities take place at night, so that the unlawful entry of police authorities into the home during the night hours produces more anxiety and is interpreted as more threatening, as recognized by the Supreme Court of the state of Minnesota in *State v. Jackson*.³⁷ In addition, the residents are in a more vulnerable situation if they are sleeping,

³¹ Cf. IACHR. Report on Citizen Security and Human Rights, OEA/Ser.L/V/II. Doc. 57, December 31, 2009. Available at: <https://www.cidh.oas.org/countryrep/seguridad.eng/citizenssecurity.toc.htm>. §176

³² Cf. IACHR. Report on the Situation of Human Rights Defenders in the Americas, OEA/Ser.L/V/II.124 Doc. 5 rev.17, March 2006. Available at: https://www.cidh.oas.org/countryrep/Defenders/DEFENDERS_ENGLISH.pdf. § 97.

³³ EKIRCH, A. R. *At Day’s Close: Night in Times Past*. New York: Norton, 2006. p. 3. Regarding the night, Borges wrote: “*Nadie puede contemplarla sin vértigo.*” BORGES, Jorge Luis. *Historia de la noche*. In: *Obras completas, 1975-1985*. Buenos Aires, Emecé, 1989, p. 201.

³⁴ Cf. ECHR. *Vinks and Ribicka v. Latvia*, n. 28926/10, Judgment of January 30, 2020, para. 114.

³⁵ Cf. *Case of Juan Humberto Sánchez v. Honduras. Preliminary objection, merits, reparations and costs*. Judgment of June 7, 2003. Series C, No. 99, para.79.

³⁶ “The reason for the prohibition is that at night the home is a particularly sensitive place in terms of private life, and the time when people generally carry out the most intimate activities, such as sleeping, bathing, dining, watching television, reading, and discussing personal matters. It is the time for family reunions, when the children are at home, when people are in their nightwear or even sleeping. Therefore, there is a very high expectation of privacy.” Written expert opinion of María Luisa Piqué of June 16, 2022 (evidence file, folio 12550).

³⁷ Cf. Supreme Court of Minnesota. *State of Minnesota v. Jackson*, No. A05-247 (2007).

because when asleep their alertness and ability to defend themselves are substantially reduced.³⁸

24. The vulnerability of individuals and families to violations during nighttime house raids is exacerbated when women and children are present in the home, an issue we will examine in the following section.

c. The special impact of the violation of the rights to privacy, intimacy and family life on vulnerable groups

25. The judgment recognizes that the negative effects of house raids are especially prejudicial for vulnerable groups, such as women and children.³⁹ The duty of due diligence and of enhanced protection in relation to the rights of members of vulnerable groups is widely recognized in this Court's case law.⁴⁰ However, we believe it necessary to include some specific considerations on the differentiated impact on vulnerable groups, as occurred in this case.

26. Regarding **women**, one of the factors that reveal this vulnerability is the greater risk of violence, including sexual violence. As the Court has repeatedly asserted, the American Convention and the Convention of Belém do Pará⁴¹ oblige States to adopt measures to prevent gender-based violence and to act with due diligence to investigate and punish those responsible, as well as to redress any violations that occur.⁴² In the case of house raids – as explained above (see II.a), these are already permeated by a high level of intrusion and risk – States have the obligation to adopt reinforced measures to prevent the violation of women's rights. In this regard, it is worth mentioning the position expressed by expert witness Guzmán Rodríguez:

In the context of raids, arrests and deprivations of liberty, the gender approach should be implemented by a comprehensive range of measures that should include, at least, the following: (i) prior identification of those potentially affected by the said measures in order to plan the corresponding actions; (ii) prevention of the risk of gender-based violence, for example, by the prior training of those who take part in criminal procedures and the adoption of specific verification measures during such procedures; (iii) early identification of possible cases of gender-based violence (GBV); (iv) elimination of risk factors that could result in GBV; (v) investigation of all the facts that could constitute some form of GBV, and (vi) attention to and reparation for the victims of GBV.⁴³

27. It is also possible to note the presence of gender stereotyping during the house raids and this had a negative impact on the conduct of the state authorities. As the Court has recognized in, among others, the case of *González et al. ("Cotton Field") v. Mexico* (2009), the subordination of women to practices based on gender stereotypes is exacerbated when it is reflected in the thinking and language of police authorities.⁴⁴ In the instant case, it is conspicuous that the women victims indicated on several occasions that they were subjected to extremely misogynistic and discriminatory language by the state

³⁸ For example, "At the same time, the reason for limiting nighttime searches — preventing abrupt intrusions on sleeping residents in the dark." US Court of Appeals for the First Circuit. *United States v. Young*, 877 F.2d 1099, 1104 (1st Cir.1989) (BREYER, J.).

³⁹ Cf. Judgment, para. 153.

⁴⁰ For example: *Case of Ximenes Lopes v. Brazil*. Judgment of July 4, 2006. Series C No. 149, para. 103.

⁴¹ Likewise, the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (1979), ratified by Bolivia in 1990.

⁴² *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. 258

⁴³ Expert opinion provided by affidavit by Diana Guzmán on June 16, 2022 (evidence file, folio 12765).

⁴⁴ Cf. *Case of González et al. ("Cotton Field") v. Mexico. supra*, para. 401.

agents who participated in the raids, who referred to them as "bitches,"⁴⁵ among other degrading terms.⁴⁶

28. In addition to the generalized verbal attacks, most of the women suffered some type of sexual violence at the time of the nighttime raid of their home, in clear contravention of the international precepts that require their protection against any form of violence or discrimination, including that based on sex,⁴⁷ especially when they are in the custody of the State.⁴⁸ The statements received by this Court are horrific, indicating an extreme level of violation of the privacy and intimacy of the women, reflected in part in the judgment (paras. 184 to 190). It should be recalled that the Court has underscored the particularly serious and reprehensible nature of rape committed by law enforcement agents against women prisoners,⁴⁹ and that this type of violation is never admissible.⁵⁰

29. The gender-based violence in this specific case was exacerbated, as described above (see II.b), because it occurred at night, a time when women are most vulnerable. In this regard, the statements received by the Court are appalling. For example, one of the victims recounted that, at the time of the raid on her home, she was wearing pajamas (shorts and a t-shirt), and she begged the police who were arresting her to allow her to put on a pair of trousers.⁵¹ They denied her request and began to insult and humiliate her even more.⁵²

30. As the Court's case law has crystallized and as is established in the judgment,⁵³ the State's enhanced duty of protection also exists in relation to **children**, based on the principle of the best interests of the child. This is manifested in the specific context of house raids and searches in which the vulnerability of children is intensified owing to the rupture of the protection of the home and the witnessing of the arrest of adults with whom they have developed trust-based family relationships. With good reason, article 16 of the Convention on the Rights of the Child (1989), ratified by Bolivia in 1990, expressly guarantees the protection of children against arbitrary or unlawful interference with their privacy, family and home.⁵⁴ Therefore, States have the strict duty to consider and, insofar as possible, mitigate the risk of a violation of their rights.

31. In particular, in the case of nighttime raids, the police authorities are able to foresee that children will be present on the site of the operation, and should therefore consider the trauma to which they will be exposed when their belief that their home is a place of protection and refuge is called into question. Consequently, it is essential, insofar as possible, to conduct police operations (if they are necessary and lawful) during the day when their impact on children can be mitigated. This obligation is in keeping with the understanding that children are especially vulnerable to different forms of violence and that any state action that may have a negative impact on them requires enhanced protection and diligence.⁵⁵

⁴⁵ For example, affidavit made by Patricia Gallardo Ardúz, (evidence file, folio 12719).

⁴⁶ For example, one female victim indicated that the police used "profanities" when speaking to her daughters. Statement made during the oral trial by Victoria Gutiérrez de Lulleman (evidence file, folio 9638).

⁴⁷ Cf. *Case of the Miguel Castro Castro Prison v. Peru. Merits, reparations and costs*. Judgment of November 25, 2006. Series C No. 160, para. 303.

⁴⁸ *Ibid.*, para. 311.

⁴⁹ *Ibid.*, para. 311.

⁵⁰ Cf. *Case of Espinoza González v. Peru. Preliminary objections, merits, reparations and costs*. Judgment of November 20, 2014. Series C No. 289, para. 303.

⁵¹ Cf. Affidavit made by Patricia Gallardo Ardúz (evidence file, folio 12719).

⁵² *Ibid.*

⁵³ Judgment, paras. 214 and 215.

⁵⁴ UNICEF. Convention on the Rights of the Child (1989).

⁵⁵ Cf. ECHR, *Dokukiny v Russia*, n. 1223/12, Judgment of May 24, 2022. Similarly, ECHR. *A. v. Russia*, n. 37735/09, Judgment of November 12, 2019, para. 67.

32. The European Court of Human Rights, when examining the issue in the case of *Dokukiny v. Russia* (2022), in which the father of a 4-year-old child was arrested in her presence, deplored the fact that the police paid no heed to her presence and did not take her interests into consideration. The court underscored that seeing her father being taken away by the police had been hurtful and traumatic.⁵⁶ It also emphasized its concern owing to “the absence of any specific guidelines and instructions in respect of planning and carrying out arrests and other police operations in situations involving the presence of children, in order to avoid or minimize their exposure to violent scenes and the risk of their falling victim to physical abuse.”⁵⁷ Precisely in this regard, the European Court underlined that, in the planning and carrying out of police operations against adults, the interest of any children present should be taken into consideration.⁵⁸

33. All these principles were violated during the operations that took place in the case of *Valencia Campos et al. v. Bolivia*. During the nighttime raids, the children were exposed to scenes of violence against their parents (including scenes of sexual violence).⁵⁹ As if the trauma of witnessing this type of violence were not enough, some children also suffered direct physical violence at the hands of state agents.⁶⁰ In a video of the operation presented as evidence in this case, the image of a little girl in bed, in her pajamas, being accosted by law enforcement agents is heartbreaking.⁶¹

34. We were shocked by the testimony of one of the victims, who was a minor at the time of the events, in which the two types of violence to which the children were subjected are revealed:

I saw my mother bleeding and the dining room table full of blood; I saw my father lying on the floor with blood on his face and the floor full of blood, they put something over his head; the police hit him all the time [...]; I began to cry, but silently because I didn't want them to hit me like they were hitting him. One of the police agents told me that he would stop hitting my father if I told him where money was kept, but I didn't know [...] and the policeman hit me again and again with the butt of his rifle; this went on for half an hour more; then he told me that he would stop hitting my father if I told him where El Camba lived (he was referring to Eladio Cruz) and he took me out of the house in my pajamas and slippers, without asking my parent's permission; they didn't let me put on a coat, they didn't let me take anything from my house; they left me standing in the street in Las Rosas Passage for a long time.⁶²

35. Therefore, consideration of the special vulnerability of these groups reinforces the understanding of the European Court, in *Gustanovi v. Bulgaria* (2014), that the presence of family members at the scene of an arrest was a factor to be taken into consideration in planning and carrying out police operations in order to safeguard the legitimate interests of vulnerable third parties who are not the objective of the arrest warrant, and to consider the special impact on women and children.⁶³ Thus, having called attention to the solid grounds for the imperative of the inviolability of the home, to the particularly intrusive nature of nighttime house raids, and to the negative effects of such police operations that are especially disproportionate for vulnerable groups, in Part III we will examine the strict conditions under which, exceptionally, nighttime raids can be justified.

III. The evaluation of the conformity with the Convention of nighttime raids based on the duties of strict lawfulness and proportionality

⁵⁶ *Ibid.*, para. 28

⁵⁷ *Ibid.*, para. 28.

⁵⁸ In this regard, ECHR. *A. v. Russia*, 2019, para. 67.

⁵⁹ As described in the judgment (paras. 187 and 188).

⁶⁰ Judgment, para. 216.

⁶¹ Cf. VHS video of the police operation attached to the evidence file, minute 10:15.

⁶² Cf. Affidavit made by Alexis Eduardo Valencia Alarcón, evidence file folios 12619 and 12620.

⁶³ ECHR, *Gustanovi v. Bulgaria*, n. 34529/10, Judgment of October 15, 2013.

36. The discussion regarding the conformity of nighttime raids with the Convention should be situated at the intersection between criminal procedure, constitutional law, and international human rights law. The tension between individual rights and collective or State interests is revealed with greatest intensity in the context of criminal proceedings. The way in which the State manages this tension is one of the main indicators of the level of protection of individual rights and guarantees provided by the respective legal and constitutional order. In this regard, Roxin and Schünemann state that criminal procedural law is the “seismograph of the State’s Constitution.”⁶⁴

37. This tensional relationship between individual rights and criminal prosecution, the compass of which is the constitutional order, may be examined from a twofold perspective. On the one hand, the national constitutions together with the Convention and other international legal instruments contain a series of “fundamental procedural rights,” such as the right to due process of law, the right to adversarial proceedings, and to a complete defense, the right to the presumption of innocence, and the right to remain silent.

38. However, from another perspective, criminal proceedings consist of interventions or restrictions of the “common” fundamental rights – although not of the rights that are specifically related to criminal proceedings such as those mentioned in the preceding paragraphs. For example, wiretapping represents an intervention in the right of the inviolability of communications; arrests *in flagrante delicto* and pre-trial detention are (severe) restrictions of the right to freedom of movement, sureties are an intervention in the right to property, etc. Also, home searches entail an intervention in the right to the inviolability of the home (particularly during nighttime), and in the right to intimacy and privacy. Thus, the coercive measures used against the accused during criminal proceedings (in the broadest sense, including the investigation stage), such as a home searches (at night),⁶⁵ are not merely criminal procedural tools available to the State, but constitute real interventions in fundamental rights and should be legally examined as such.⁶⁶ This means that the constitutional (and conventional) law apparatus should be used to verify the legitimacy of such restrictions of the individual’s most basic and essential rights. The criminal procedure should, therefore, be conceived using a pre-established standard, such as applied constitutional law (and, let it be said, convention-based law).⁶⁷

39. Intervention or restrictions of rights are not synonymous with violations of rights.⁶⁸ Restrictions of rights may be justified provided they meet two basic and essential

⁶⁴ ROXIN, Claus; SCHÜNEMANN, Bernd. *Strafverfahrensrecht*, 30th ed., Munich: C.H. Beck, 2022, § 2 Nm. 1. Regarding the relationship between Constitution and Criminal Procedure, see also, FIGUEIREDO DIAS, Jorge de. A Nova Constituição e o processo penal, *Revista da Ordem dos Advogados*, ano 36. I-III, 1976, pp. 103 ff; BARREIROS, José António. A Nova Constituição Processual Penal, *Revista da Ordem dos Advogados*, Lisboa, ano 48, v. 2, sept. 1988, pp. 425 ff; TASLITZ, Andrew; PARIS, Margaret; HERBERT, Lenese. *Constitutional Criminal Procedure*, 3rd ed., New York: Foundation Press, 2007, pp. 2 ff.

⁶⁵ Regarding the level of intervention in basic rights (severe) of home searches, cf. PARK, Tido. *Durchsuchung und Beschlagnahme*, 5th ed., Munich: H. Beck, 2022, § 1 No. 23.

⁶⁶ Cf. SCHMIDT, Eberhard. Von Sinn und Notwendigkeit wissenschaftlicher Behandlung des Strafprozeßrechts, *Zeitschrift für die gesamte Strafrechtswissenschaft*, 1953, p. 169 (“sensitive point of every criminal system”); AMELUNG, Knut. Zur dogmatischen Einordnung strafprozessualer Grundrechtseingriffe, *Juristenzeitung* 1987, pp. 737 ff; WOLTER, Jürgen. Verfassungsrecht im Strafprozeß- und Strafrechtssystem. Zugleich ein Beitrag zur Verfassungsmäßigkeit der Norm und zum rechtsfreien Raum “vor dem Tatbestand,” *Neue Zeitschrift für Strafrecht*, 1993, pp. 1 ff.

⁶⁷ Cf. GRECO, Luís. Introdução – O inviolável e o intocável no direito processual penal: Considerações introdutórias sobre o processo penal alemão (e suas relações com o direito constitucional, o direito de polícia e o direito dos serviços de inteligência) in WOLTER, Jürgen. *O Inviolável e o Intocável no Direito Processual Penal: Reflexões sobre dignidade humana, proibições de prova, proteção de dados (e separação informacional de poderes) diante da persecução penal*. Translated by Luís Greco, Alao Leite, Eduardo Viana. 1st Edición. São Paulo: Marcial Pons, 2018, p. 30. Cf. also NEGRI, Daniele. Agli albori di un paradigma dell’Italia repubblicana: il processo penale come “diritto costituzionale applicato,” in *Diritti individuali e processo penale nell’Italia repubblicana*, Milan, 2011, pp. 13 ff.

⁶⁸ Cf., similar distinction between “infringements” and “violations” in HUSAK, Douglas. Lifting the Cloak: Preventive Detention as Punishment, *San Diego Law Review*, vol. 48, 2011, p. 1191, “(...) rights are infringed when an action implicates rights justifiably, and rights are violated when an action implicates rights unjustifiably.”

requirements: the restriction must be based on a specific legal provision⁶⁹ and be applied proportionately.⁷⁰ In other words, the State may restrict rights justifiably if it observes the principle of legal reserve – formal justification⁷¹ – and the principle of proportionality – material justification. It is important to emphasize that those requirements should be complied with accumulatively.⁷² It is not sufficient to refer back to a norm that provides express authorization in order to certify the legitimacy of a specific intervention or restriction; rather, it is necessary to verify that the principle of proportionality was respected in the specific case. Conversely, it is not sufficient to demonstrate the proportionality of the restriction without being able to indicate specific legal grounds.⁷³ In this regard the UN Human Rights Committee has also indicated that it is necessary for any interference in the home not only to be lawful, but also not to be arbitrary, observing the particular circumstances of each case.⁷⁴

40. The first condition to justify a restriction of a fundamental right is observance of the principle of legal reserve.⁷⁵ Aharon Barak reminds us that “[i]n a constitutional democracy, a constitutional right cannot be limited unless such a limitation is authorized by law.”⁷⁶ The principle of legal reserve also requires that the law authorizing the intervention in a fundamental right be clear and decisive. As Greco has stated, “without a specific law that establishes the intervention with relative clarity and imposes material and procedural limits, the intervention in a fundamental right will not be lawful.”⁷⁷ In cases such as this one, compliance with this principle is even more important because it relates to an exception to a categorical prohibition: the general prohibition of nighttime house raids. Therefore, not only the normal intervention consisting in a house raid should be established by law,⁷⁸ but also, and with special rigor and care,⁷⁹ the limited exceptions to the prohibition of nighttime raids.

41. At first sight or in the abstract, this requirement relating to the principle of legal reserve is met in the case examined, given that, as already mentioned, the exceptions allowing nighttime raids were established in the Bolivian Constitution and in the infra-constitutional legal order, following the example of most of the domestic legal systems of the Americas.⁸⁰ However, the principle of legal reserve means not only that the intervention must be established by law; it is also necessary that the norm be applied within the strict limits of the authorizing law. In other words, it is essential that the law

⁶⁹ Cf., for example, Advisory Opinion 6/86. *The Word "Laws" in Article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86, May 9, 1986. Series A No. 6, para. 24

⁷⁰ Cf., for example, *Case of Jenkins v. Argentina. Preliminary objections, merits, reparations and costs*. Judgment of November 26, 2019. Series C, No. 397, para. 76.

⁷¹ Cf. MICHAEL, Lothar; MORLOK, Martin. *Grundrechte*, 8th ed., Baden-Baden: Nomos, 2023, p. 330.

⁷² Cf., for example, *Case of Gangaram Panday v. Suriname. Merits, reparations and costs*. Judgment of January 21, 1994. Series C No. 16, §47, and *Case of Servellón García et al. v. Honduras*. Judgment of September 21, 2006. Series C No. 152, §90.

⁷³ Cf. GRECO, *op. cit.*, p. 48.

⁷⁴ Cf. Human Rights Committee, ICCPR. Communication No 687/1996, Rojas García v. Colombia (2001). Available at: <https://digitallibrary.un.org/record/450059>. para. 10.3.

⁷⁵ Especially with regard to legal reserve in criminal proceedings, cf. ROGALL, Klaus. Informationseingriff und Gesetzvorbehalt im Strafprozeßrecht, *Zeitschrift für die gesamte Strafrechtswissenschaft*, vol. 103, 1991, pp. 907 ff.

⁷⁶ BARAK, Aharon. *Proportionality: Constitutional Rights and Their Limitations*, Cambridge, 2012, p. 107. Regarding the relationship between the principle of legality and human rights, cf. GARIBALDI, Oscar. General Limitations on Human Rights: The Principle of Legality, *Harvard International Law Journal*, vol. 17, 1976, pp. 503 ff.

⁷⁷ GRECO, *op. cit.*, p. 37.

⁷⁸ Cf. GENTZ, Manfred. *Die Unverletzlichkeit der Wohnung – Artikel 13 des Grundgesetzes*, Duncker & Humblot: Berlin, 1968, p. 74; CABEZUDO BAJO, *op. cit.*, p. 37.

⁷⁹ Regarding the importance of the clarity and limited scope of the law that authorizes intervention in a fundamental right, cf. KINGREEN, Thorsten; POSCHER, Ralf. *Grundrechte – Staatsrecht II*, 38th ed., C. F. Müller: Heidelberg, 2022, p. 111. And, specifically in relation to home raids, PARK, *cit.*, § 1 No. 26.

⁸⁰ Judgment, footnote 223.

authorizing the intervention in the fundamental right be interpreted and applied rigorously, especially in the case of an exception to a prohibition, as in the case of nighttime house raids. As in substantive criminal law, the prohibition of the analogy remains intact.⁸¹

42. Neither the judge nor the law enforcement agents are granted discretionality to instigate an intervention in the fundamental rights outside the scenarios demarcated by the semantic limits of the authorizing law. In this specific case, as already mentioned and correctly identified in the judgment there was a patent failure to respect the authorizing law when the raids were conducted subsequent to the situation of *flagrante delicto*.⁸²

43. In addition to being justified from a formal point of view, in light of the principle of legal reserve, a coercive measure such as a house raid (during the night), which supposes a restriction of a fundamental right, must have a substantive justification. This should be verified in keeping with the principle of proportionality. Further explanations are unnecessary concerning this principle, widely recognized by doctrine and the international courts.⁸³ Sufficient to say that, according to this principle, once the sphere of protection of any specific fundamental right has been breached, the State intervention will be proportionate if it complies with the following criteria or steps: suitability, necessity and strict proportionality. The measure taken by the State will be suitable if it is appropriate to achieve a constitutionally legitimate purpose, and necessary if there is no other measure that is as effective as the one adopted to achieve the aim pursued and that is less restrictive of the fundamental right involved. In addition to these criteria, according to the strict notion of proportionality – also known as “the prohibition of excess,” a translation of the German expression (*Übermaßverbot*) – it is necessary to consider whether, despite the suitability and necessity of the measure, it has too great an impact on the fundamental right concerned in relation to the importance of achieving the purpose sought. At this last stage of the analysis, it is necessary to weigh the antagonistic rights and interests involved.⁸⁴ This examination of proportionality has been adopted by the Court, for example, in *Wong Ho Wing et al. v. Peru* (2018), which refers to the issue of arbitrary detentions:

[N]otwithstanding the lawfulness of a detention, in each case an analysis must be made of the law's compatibility with the Convention, in the understanding that the law and its application must respect the following requirements to ensure that the deprivation of liberty is not arbitrary: (i) that the purpose of the measures that deprive or restrict liberty are compatible with the Convention; (ii) that the measures adopted are appropriate to achieve the purpose sought; (iii) that they are necessary, in the sense that they are absolutely essential to achieve the purpose sought and that there is no less onerous measure, with regard to the right affected, among all those with the same ability to achieve the proposed purpose - which is why the Court has asserted that the right to personal liberty presumes that any restriction of this right must be exceptional and (iv) that the measures are strictly proportionate, so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive in relation to the advantages obtained from its restriction and achievement of the purpose sought.

⁸¹ Cf. KUDLICH, Hans, in *Münchener Kommentar zur StPO*, 1st ed., C.H. Beck: Munich, 2014, Einleitung Nm. 602.

⁸² Regarding the concept of *flagrante delicto* for the purposes of house raids, cf. CABEZUDO BAJO, *op. cit.*, pp. 261 ff.

⁸³ *Inter alia* SCHLINK, Bernhard. Proportionality in Constitutional Law: why everywhere but here? *Duke Journal of Comparative & International Law*, vol. 22, 2012, pp. 291 ff.; BARAK, *op. cit.*, pp. 131 ff.; BERNAL PULIDO, Carlos. The Migration of Proportionality across Europe, *New Zealand Journal of public and international law*, vol. 11, 2013, pp. 483 ff.; ALEXY, Robert. Proportionality and Rationality, in JACKSON; TUSHNET (org.), *Proportionality: New Frontiers, New Challenges*, Cambridge, 2017, pp. 13 ff.; GREENE, Jamal. Rights as Trumps? *Harvard Law Review*, vol. 132, 2018, pp. 28, 56 ff.; POSCHER, Ralf. Proportionality and the Bindingness of Fundamental Rights, in: BILLIS/KNUST/PETTER RUI (org.), *Proportionality in Crime Control and Criminal Justice*, Hart Publishing: Oxford, 2021, pp. 49, 51 ff.

⁸⁴ ALEXY, *op. cit.*, pp. 14 ff.; KINGREEN; POSCHER, *op. cit.*, pp. 101 ff.

44. In the specific case of house raids – particularly during the night, which are only permitted exceptionally – the principle of proportionality requires that the magistrate or judge must justify the need for the measure and specify when it should take place⁸⁵ and, in the cases of strict necessity mentioned above, that it should be conducted during night hours.⁸⁶ In addition, the official must expressly substantiate why it is not possible to conduct the raid during daytime hours. Among the criteria that should support this analysis, we underscore, without prejudice to other considerations, those listed by the European Court of Human Rights in its judgment in *Buck v. Germany* (2005): “the severity of the offence in relation to the police operation; the manner and circumstances in which the order was issued; the content and scope of the order, having particular regard to the nature of the premises searched and the safeguards taken.”⁸⁷ It should also be taken into account that, in the case of nighttime raids, specific justification must be provided for the necessity for the police to enter the homes in the early morning hours while the residents are in bed.⁸⁸ Also, other important factors should be assessed, such as the presence of children and women in the home. As the International Committee of the Red Cross has indicated in its International Rules and Standards for Policing, it is important “that planned police operations are prepared carefully and with all possible precautions being taken to protect uninvolved people, and also the person to be arrested.”⁸⁹

45. It is important to consider, however, that the weighing between the interests of the State and the rights of the citizen should only occur if and after previous adequate steps have been taken to verify the justification of the restriction of the fundamental right. The weighing is not a substitute for either the decision on suitability and necessity or, above all, the principle of legal reserve or legality. When the judge authorizes a specific intervention (as in the case of the judicial authorization of a nighttime raid), it is not incumbent on him to weigh, freely and directly, the interests of the criminal prosecution and the individual rights; rather, his decision is related to the principles of legality and proportionality in the broad sense. In other words, when applying the law that authorizes an intervention in a fundamental right, the judge must make a strict subsumption of the factual substratum of the law. Over and above the semantic contours of the authorizing law and without the decisions on suitability and necessity, any consideration is proscribed.⁹⁰

46. Therefore, it should be indicated that the reserve of jurisdiction does not substitute or supplant the legal reserve, and especially the principle of proportionality; rather it defines them and supplements them, as the ECHR has indicated: “the fact that a search is based on a warrant issued by a judge does not necessarily amount to a sufficient safeguard. It also matters whether that prior judicial scrutiny was properly carried out (...): whether the judge duly examined the existence of a reasonable suspicion justifying the search.”⁹¹

47. In summary, it is fair to say that the case examined reveals the importance of conceiving coercive measures in criminal proceedings as restrictions of the fundamental rights that require justification, from both the formal point of view, by an authorizing law

⁸⁵ Cf. CABEZUDO BAJO, *op. cit.*, p. 215.

⁸⁶ As expressly required by German legal doctrine, *cf.* with further references PARK, *cit.*, § 2 No. 197.

⁸⁷ Cf. ECHR, *Buck v. Germany*, n. 41604/98, Judgment of April 28, 2005, §45.

⁸⁸ Cf. ECHR, *Keegan v. The United Kingdom*, n. 28867/03, Judgment of July 18, 2006, §33.

⁸⁹ Cf. ICRC. International Rules and Standards for Policing (2016). Available at: <https://www.icrc.org/en/doc/assets/files/other/icrc-002-0809.pdf> p. 40.

⁹⁰ See SCHAUER, Frederik. Balancing, Subsumption, and the Constraining Role of Legal Text, *Law & Ethics of Human Rights*, vol. 4, 2010, pp. 35 *ff.*, 40, 44, who states: “the typical subsumption inquiry is largely constrained, largely textually interpretive, and largely characterized by the way in which the constraints of a moderately clear text, when one exists, exclude numerous factors and considerations that would not only otherwise be relevant, but would also, typically, be relevant were the methodology to be one of balancing or proportionality rather than subsumption.”

⁹¹ ECHR, *Posevini v. Bulgaria*, n. 63638/14, Judgment of January 19, 2017, §70.

that should be interpreted within its intrinsic semantic limits, and the substantive viewpoint, with strict respect for the principle of proportionality and its components (suitability, necessity and proportionality *stricto sensu*). It is the legislator's task to establish categorically the prohibition of nighttime raids and to clearly define the restricted exceptions to this prohibition, and it is for the judge, in turn, to interpret strictly the authorizing law, granting or rejecting the measure in light of its suitability, necessity and proportionality *stricto sensu*, indicating the reasons that prevent the procedure from being conducted outside nighttime hours.

48. As a result of the scenarios analyzed above, it is important to define the specific situations that would justify the exceptionality of the inviolability of the home, in relation to the analysis of the proportionality of the measure, particularly during the night, which is what is claimed in this case. In other words, once it has been verified that there is a need to establish expressly in domestic law the prohibition of nighttime raids, and having verified the non-conformity with the Convention of such measures, it is necessary to establish the exceptions to this prohibition, so that they are also expressly established by law.

49. Consequently, the possibility of entering a home without a court order is an express exception to the general rule in the case of *flagrante delicto*, as established in the laws of Bolivia examined above, and also in those of countries such as Portugal, Spain, Paraguay and Brazil:

Constitution of Portugal: Article 34: Inviolability of the home

1. The home and the privacy of correspondence and other means of private communication are inviolable.
2. The entry into the home of citizens against their will may only be ordered by the competent judicial authority in the cases and in the way established by law.
3. No one may enter the home of anyone, with or without their consent, during the night, except in a situation of *flagrante delicto* or with a court order in the case of especially violent or highly organized crime, including terrorism or people-, arms-, or drug-trafficking, in the terms set forth in the law.

Constitution of Spain: article 18:

2. The home is inviolable. It cannot be entered or searched without the consent of the owner or a court order, except in cases of *flagrante delicto*.

Constitution of Paraguay: article 34:

Any private area is inviolable. It may only be raided or closed by order of the court and subject to the law. Exceptionally, it may be raided, also, in case of *flagrante delicto* or to prevent its imminent perpetration, or to avoid harm to people or property.

Constitution of Brazil: article 5:

XI. The home is an inviolable refuge for the individual and no one may enter it without the consent of the inhabitant except in case of *flagrante delicto* or catastrophe, or to provide assistance or, during the day, by a court order.

50. However, the issue of *flagrante delicto*, which is expressly established in numerous domestic laws, acquires special relevance in light of the need to establish parameters that go beyond the lawfulness of the measure. In other words, police agents cannot be allowed to enter the homes of third parties based on the simple allegation that there is information that a crime is underway, in supposed compliance with the legal provision, because this would weaken and undermine the guarantee of the inviolability of the home that we are examining.

51. Accordingly, the right to the inviolability of the home, given its importance and protagonism, can only be breached when the *flagrante delicto* reveals the legitimate

urgency to enter the home of another, duly justified and protected by reasons *de facto* and *de iure*, in order to avoid the smooth flow of the proceedings and the lawfulness of the evidence eventually obtained being compromised, and also undue restrictions of the right.

52. Consequently, it is necessary to go further proposing an interpretation that guarantees the inviolability of the home and that, at the same time, establishes clear parameters that guide the actions of law enforcement agents in exceptional situations. To this end, Article 11(2) of the Convention should be used as an interpretation standard. This article establishes the protection of the home from “arbitrary or abusive interference.”

53. This reveals that a criterion that must obligatorily be observed in the case of the exception derived from *flagrante delicto* is the *de facto* existence of a **prior justification under the law** that permits the raiding of a home. This means that the verification of *in flagrante delicto* should precede the entry into the home and cannot be justified subsequently. To the contrary, it would be an **arbitrary measure** prohibited by the Convention.

54. Despite the possibility of prescinding with the judicial control prior to the entry into someone’s home in this situation, allowing it to take place without a warrant, a rigorous analysis *a posteriori* is required by the respective magistrate or judge to verify whether or not the individual guarantees were violated during the raid specifically examined,⁹² as the Federal Supreme Court of Brazil, for example, has already decided. Subsequent judicial control is extremely important to examine the reasons that justified the house raid and whether elements truly existed that indicated the presence of *flagrante delicto*; in other words, whether the analysis of proportionality made by the law enforcement agents was coherent and whether minimum grounds existed for the adoption of the measures that restricted rights.

55. More specifically, in relation to the limits to the analysis made by the judge, we can mention that, for example, unlawful evidence, anonymous complaints, and statements made by unidentified “informers” cannot be used to undermine the inviolability of the home, especially during the nighttime, so that the police can raid it in an alleged situation of *flagrante delicto*. In such cases, the evidence eventually obtained should be considered unacceptable, owing to its evident unlawfulness, without prejudice to the possible liability of the law enforcement agents who took part in the unlawful operation.

56. This issue should be highlighted in light of crimes of an ongoing nature, where *flagrante delicto* extends over time – and in which the understanding adopted regarding the possibility of a violation of the home without a warrant should be limited to scenarios in which there is sufficient evidence that a crime has probably been committed; that is, substantial grounds for the entry into the home to be considered regular and lawful. Only in those circumstances in which the factual situation before the raid allows it to be concluded that, beyond any reasonable doubt, criminal acts are being committed in the home, is it possible to speak of the plausibility and lawfulness of the raid.

57. In such cases of ongoing offenses, it is usual that house raids occur merely when information exists (often from an unidentified informer or an anonymous report) that a specific offense is being committed. Evidently, based on the previous considerations, this information is not sufficient to suggest the situation of *flagrante delicto* necessary for

⁹² In this regard, the Federal Supreme Court of Brazil has recently decided, in light of Article 11(2) of the American Convention and Article 17(1) of the International Covenant on Civil and Political Rights, that the absence of judicial control before or after home raids, even in situation of *flagrante delicto*, removed “the fundamental core of the guarantee of the inviolability of the home (...) and would cease to protect against arbitrary interference in the home.” Federal Supreme Court, Special Appeal No. 603.615/RO. Judgment of November 5, 2015.

conducting a house raid, owing to either the source of the information or its content, if no evidence exists regarding the alleged conduct that gives rise to a well-founded suspicion.

58. Another issue that should be evaluated is the possible exception to the prohibition of house raids in the event of the "consent of the resident," which is included in some domestic laws. This situation merits greater attention because it evidently ignores the unequal relationship between the citizen and the public agent, especially in this situation in which the agent seeks to take a measures to restrict the guarantee of the inviolability of the home.

59. The lack of confidence in the consent of the resident is mentioned by the Supreme Court of the United States in *Amos v. United States* (1921),⁹³ in which it was held that the consent to enter a home without a warrant was not a waiver of the constitutional privilege against unreasonable search and seizure. In another decision, the Supreme Court established that the consent of the resident "must be unequivocal, specific and intelligently given, uncontaminated by any duress or coercion" (*United States v McCaleb*⁹⁴).

60. In the absence of a reasonable suspicion that the situation constitutes *flagrante delicto*, such consent should not be considered arbitrarily to allow the house raid owing to the fact that the citizen, within this unequal relationship with the public agent who possesses authority and power, has permitted the agent to enter his home. It is worth emphasizing that a raid without a warrant is only possible when there has been prior substantiated verification that a crime is being committed, with specific and objective evidence that, together with an analysis of proportionality, permits the action.

61. This requirement cannot be excluded alleging the consent of the residents. The fact is that the said consent, to be legally valid, must be voluntary and free of coercion. It is evident, therefore, that, for the resident to allow entry into his home, no coercion by the police authority is allowed.

62. Although the possibility of expressly establishing this exception is not denied, even with the safeguards described, consent, as in the case of *flagrante delicto*, also requires subsequent careful judicial analysis. In this case, the judge must first verify the evidence that the law enforcement agents had in order to be able to adopt this measure and then, what evidence there is that the resident consented to the entry, freely and spontaneously. In case of doubt, for example, if the versions of the agents and that of the resident differ, the version should prevail of the person whose right was violated: the citizen. This is because the State has the burden of proving that consent was truly free and voluntary. To guarantee the lawfulness of the measure, the French Code of Criminal Procedure requires express consent in a written statement by the interested party, as follows:

Article 76: Searches, home visits and the seizure of incriminating evidence or items whose confiscation is established in article 131-2 of the Criminal Code may not be carried out without the express consent of the person in whose home the operation takes place.

This consent shall be recorded in a handwritten statement by the interested party or, if he or she cannot write, it shall be noted in the record, as well as his or her consent.⁹⁵

63. Nevertheless, even if an express declaration of consent exists, the State must prove that this was given freely, and that there are no indications that it was obtained by coercion. This requirement is fundamental to avoid arbitrariness and abuse of authority when conducting a house raid.

⁹³ Cf. Supreme Court of the United States. *Amos v. US*, 255 US 313 (1921), judgment of February 28, 2021.

⁹⁴ US Court of Appeals. Sixth Circuit. *US v. McCaleb*. 552 f.2d 717 (1977), judgment of April 11, 1977.

⁹⁵ French Code of Criminal Procedure, article 76.

64. In addition, it is essential to examine the subjective characteristics of the individual who has expressed his consent, such as age, level of education, and intellectual capacity among other conditions that could possibly interfere in his free acquiescence.

65. Lastly, free consent cannot be conditioned to any peripheral circumstance, as when the authority makes "promises" if the individual authorizes the house raid.

66. In light of the preceding considerations and arguments, we conclude that any intervention in the fundamental right of the inviolability of the home, which encompasses many other intrinsic rights to intimacy and privacy, should be limited by the observance of two basic precepts: the principles of legal reserve and of proportionality, which together legitimize a specific coercive measure taken by the police authorities.

67. In light of the importance and magnitude of this issue, specific parameters should be determined for authorizing the entry of state agents into private homes, especially in situations of *flagrante delicto*. The authorities must be guided by the fact that there is a need to carefully examine the situation of *flagrante delicto a posteriori* to ensure that the occurrence of a crime within the residence was verified before the raid took place. Also, in relation to the resident's consent to the entry into his home of state agents, it is mandatory that this consent be spontaneous and free of coercion.

68. The foregoing is aimed at regulating and establishing standards for the actions of public agents related to house raids, seeking to put an end to abuses, particularly those that occur during police operations, and also to regulate the lawful entry into a private home to ensure that measures are not taken that violate fundamental human rights, especially those of women and children.

Conclusion

69. The judgment delivered by the Court in the instant case makes an in-depth examination of the international responsibility of the State in light of the Convention for the violations committed in the context of the criminal prosecution of the victims.

70. The purpose of this opinion has been to show that nighttime house raids are incompatible with the Convention and with this Court's standards, and are admissible only in absolutely exceptional situations and, above all, when they are clearly and distinctly established in the Constitution or the law. Furthermore, they require enhanced substantiation justifying why the measure cannot be conducted during the daytime. In other words, States should not consider that nighttime raids are routine criminal prosecution procedures, freely available to operators of justice; rather, they are instruments that constitute one of the most serious interventions in the sphere of individual rights. Therefore, nighttime raids can only be justified by strict observance of the requirements of both lawfulness and proportionality in all their dimensions.

Nancy Hernández López
Judge

Rodrigo Mudrovitsch
Judge

Pablo Saavedra Alessandri
Registrar

CONCURRING AND PARTIALLY DISSENTING OPINION OF
JUDGE PATRICIA PEREZ GOLDBERG
INTER-AMERICAN COURT OF HUMAN RIGHTS
CASE OF VALENCIA CAMPOS ET AL. V. BOLIVIA
JUDGMENT OF OCTOBER 18, 2022
(Preliminary objection, merits, reparations and costs)

With full respect for the majority decision of the Inter-American Court of Human Rights (hereinafter “the Court”), I issue this opinion¹ for two reasons. First, I wish to record my agreement with the majority decision establishing the responsibility of the Plurinational State of Bolivia for the violation of the rights recognized in Articles 7(2) and 11 of the American Convention on Human Rights (hereinafter, “the ACHR,” “the Convention” or “the Treaty”), without prejudice to making some general comments on the practice of nighttime raids in the context of criminal investigations. Second, I wish to explain why it is inappropriate to establish the international responsibility of the State for the alleged violation of the individual right to health based on Article 26 of the treaty.

For the sake of good order, I will refer to each of these issues separately.

I. Nighttime entry and search in light of the Convention

1. On December 14, 2001, in La Paz, an organized group attacked a Prosegur vehicle using heavy weaponry and, as a result, three people died: the driver, a police officer, and an employee who worked as a cashier.² These events resulted in the opening of a criminal investigation against the victims in this case. In this context, on the same December 14, the judicial authority ordered the “raid with authority to search” of two properties “in order to seek the perpetrators and proceed to arrest the suspects, seize weapons and military or police clothing, confiscate documentation related to the incident, and also objects or instruments related to the crimes investigated.” This order was subsequently expanded to include another six properties, authorizing operations during the night, in non-working hours, and on public holidays, pursuant to article 118 of the Code of Criminal Procedure.³

2. Raids and arrests were conducted in the homes of several of the suspects,⁴ most of them during the early morning hours and in the presence of children. During the raids, the victims were beaten and tortured, and the women were subjected to sexual violence.

3. In the instant case, when examining the right to personal liberty, the Court established that “States are obliged to guarantee security and maintain public order within their territory and, to this extent, they must take the necessary measures to tackle criminality and organized crime, including measures that entail restrictions or even

¹ Article 65(2) of the Rules of Procedure of the Inter-American Court: “Any Judge who has taken part in the consideration of a case is entitled to append a separate reasoned opinion to the judgment, concurring or dissenting. These opinions shall be submitted within a time limit to be fixed by the President so that the other Judges may take cognizance thereof before notice of the judgment is served. Said opinions shall only refer to the issues covered in the judgment.”

² Cf. Paragraph 51.

³ Cf. Paragraph 53.

⁴ Cf. Paragraphs 55 to 72.

deprivations of personal liberty.”⁵ All this, evidently, within the framework of respect for the right recognized by the Convention.

4. Regarding the required lawfulness of the deprivations of liberty of the victims, the Court concluded that they were unlawful because the Constitution in force at the time of the facts expressly prohibited nighttime house raids unless the occupant consented or in cases of *flagrante delicto*.

5. The State argued that the raids and arrests were protected because the suspects were in a situation of *flagrante delicto*. However, on examining the facts in light of domestic law, this was not plausible, because the definition found in the laws of Bolivia restricted *flagrante delicto* to cases in which the perpetrator of the act is “surprised while attempting to commit an offense, committing it, or immediately afterwards while pursued by law enforcement agents, the injured party or eyewitnesses.”⁶ In this case, the raids of the homes and the subsequent arrests took place four days after the crime investigated took place, a length of time that evidently exceeds the presumption of *flagrante delicto* established by domestic law.

6. When examining the merits of the case, the Court determined that the raids and arrests failed to comply with the requirement of lawfulness because they were conducted in violation of an express prohibition of nighttime raids contained in the Bolivian Constitution in force at the time of the events, thus violating Article 7(2) of the Convention.⁷

7. Evidently, I agree with that decision; however, it is worth underlining that Article 7(2) of the Treaty establishes that “[n]o one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.” Consequently, it should be pointed out that the wording of this paragraph does not prohibit nighttime raids, and none of the provisions of the ACHR contains such a prohibition. In fact, this article is a norm that refers back to domestic law and it was within that framework that the Court ruled on the unlawfulness of the raid. In this case, the nighttime procedure did not comply with the requirement of lawfulness because, as already mentioned, Bolivian law expressly proscribed such procedures, except in the presence of consent or *flagrante delicto*. Thus, it goes without saying that this decision cannot be considered a criterion that can be extrapolated to any future situation in relation to other States. This type of analysis must be made only of specific situations, considering the respective facts in light of the applicable domestic law and of the Convention.

8. In addition, in the instant case, among other violations, the Court declared the violation of the right to privacy and family life recognized in Article 11(2) and 17 of the Convention. The Court indicated that “[t]he restriction of nighttime raids is a way of guaranteeing the right to privacy, the protection of the family, and the inviolability of the home, within the framework of the State’s authority to make arrests in the exercise of its punitive power.”⁸

9. On this point, it is appropriate to include some considerations on the investigative measure of entering and searching a closed space, also referred to in some legislations as a “house raid.”

⁵ Cf. Paragraph 115.

⁶ Article 230 of the Code of Criminal Procedure in force at the time of the events.

⁷ Cf. Paragraphs 127 to 130.

⁸ Cf. Paragraph 151.

10. As is well known, the investigation measures conducted during criminal proceedings are aimed at gathering probative elements that permit the clarification of the respective wrongful act. Such measures may violate fundamental rights of those investigated; therefore, the State duty to solve the crimes committed within its territory is subject to certain formal limits to ensure that the incorporation into the body of evidence of the elements obtained is lawful.

11. Consequently, the legal systems establish such limits, endeavoring to balance the needs for criminal prosecution with the safeguard of individual liberties. The way in which the boundaries of the State's power to investigate are drawn has both an individual and a collective impact. According to López, the scope that a legal system recognizes to the right to privacy and the limits that this imposes on criminal prosecution shape, to a great extent, the degree of liberty that the individual enjoys in his daily life and, therefore, the way of life of the society of which he or she forms part.⁹

12. That said, one of the limits to the clarification of the material truth in criminal investigations is precisely the right to privacy, which encompasses different spheres: the body, clothing, baggage and vehicle, home, and private communications.

13. In fact, in order to protect the home and, particularly, the expectation of privacy¹⁰ within the home, domestic laws establish that this sphere of intimacy cannot be entered based on investigative interests, unless there are specific reasons to justify this. The corresponding regulations differ in each State.

14. The jurisdictional control that domestic laws usually establish as a prior requirement to the execution of an intrusive procedure of this type is justified insofar as measures of this significance may result in a collision with rights recognized in the constitution, especially the inviolability of the home or domicile, which is established and developed in most modern constitutions.

15. A review of the laws on home raids in our region reveals some characteristics that provide a general view of how these are regulated.

16. Such intrusive entry and search measures are present in most criminal procedural laws. Generally, such operations are conducted following a court order – which determines their limits – and, usually, they are subject to rules regarding the timing and the procedures aimed at ensuring that the person concerned has adequate information and at monitoring the procedures executed by the authority conducting them.

17. Such rules are closely related to the constitutional guarantee of the inviolability of the home and the right to privacy which are included in most constitutions in the Americas. However, those texts do not usually regulate in detail the conditions and requirements pursuant to which such rights may be violated legitimately; rather, they usually refer back to the corresponding law.

18. From a legal perspective, measures involving entry into private homes are usually regulated in combination with other measures – generally concerning searches – to which they are closely associated because the latter are a logical consequence of the former. In some cases both procedures are dealt with together and subject to similar requirements. In general, the norms are located in the chapter on evidence in the codes.

⁹ LOPEZ Y HORVITZ, "Derecho Procesal Penal Chileno," Volume II (2004:96).

¹⁰ However, in another area in which the right to privacy is involved – that of communications – it is pertinent to mention the judgment delivered by the European Court of Human Rights in *Liberty and Others v. The United Kingdom*. In that case, the Court referred to the foreseeable nature that possible state interference in this sphere should have based on domestic law, and declared the violation of Article 8 of the European Convention.

19. Regarding the hours during which the procedures may be conducted, in general, they should take place within specific daytime hours. Nonetheless, several laws (Model Criminal Procedural Code for the Americas, Nicaragua, Chile, Argentina) expressly allows raids to be conducted during night hours or even at any time (El Salvador), with the requirements that this has been authorized by a court and that its justification appears in the respective resolution. In some legislations (Panama, Chile), time limits do not apply when the raid is conducted in places that are open to the public and not intended for residential use. Others, such as Mexico, Dominican Republic and Paraguay, do not have rules regarding the timing, but establish a range of days or weeks following the issue of the resolution during which the procedure should be conducted; or the date on which it should occur, as in the case of Uruguay. Lastly, the case of Bolivia is one in which nighttime raids are legally prohibited except in the case of *flagrante delicto*. At the constitutional level, the Constitutions of Guatemala and Honduras establish express limitations to the timing.

20. Consequently, together with this panorama, it is necessary to take into account that the limitations to conducting this procedure of entry (and, eventually, search) are justified by the need to protect the right to privacy from unjustified state interference. This is important because, as we know, this measure is usually conducted based on a prior court order. Therefore, it is a court that should make the respective ponderation, evaluating whether or not the information provided concerning the wrongful act and the participation of the suspect or suspects warrants the impairment of the right, a decision that must be substantiated.

21. In this regard, it is clear that the possibility that a specific State establishes the intrusive measure of nighttime raids is not, *per se*, incompatible with the Convention. It will be – eventually – if, as in this case, this practice is prohibited by domestic law or if it does not comply with the proportionality test.¹¹

22. That said, when evaluating such a severe intrusion as this one, the State's court officials must consider alternative less onerous measures to comply with the investigative objective and, if this is not possible, they must adopt the measures to mitigate the prejudicial impact on the most vulnerable, such as children, women, and older persons.

23. In this regard, and in the words of expert witness Piqué during the hearing, the right to privacy is not an absolute right and the State may, and at times must, interfere in the home.¹²

24. Therefore, it is important to stress that, in the exercise of their investigative actions, state agents (such as, prosecutors, police, expert auxiliary bodies, and support personnel) should take into account the conditions of those who will be affected by any measure taken, using criteria that are appropriate in each case (for example, gender-, child-, or disability-based) in order to adapt their procedures so as to lessen the negative differentiated impacts of the measure in question.

25. In other words, the fact that, in the context of an investigation, it is necessary to enter a home where there are members of vulnerable groups does not make this entry

¹¹ Thus, for example, in *Gutsanov v. Bulgaria*, the European Court of Human Rights established that the State had violated Article 8 of the Convention, because the evaluation of the need for the measure "required specifying the elements connected to the criminal investigation that it was hoped to find by the intervention of the agents, and this was not done" and in the case of *Palenteyenko v. Ukraine*, it established that the procedure had been unlawful "because the authorities failed to comply with the legal guarantees such as that the procedure be conducted in the presence of an occupant of the building and that objects and documents unrelated to the investigation were not confiscated."

¹² The expert witness indicated that "this has been a historical complaint of feminism, for example, because acts of violence may take place in the home that have a disproportionate impact on women, children, etc."

non-viable; rather, it obliges the State to act diligently and to adopt pertinent measures in line with those previously indicated.

26. Moreover, as available information reveals,¹³ it is within the household where acts of physical, mental and sexual violence that severely harm women and children occur with horrifying frequency. Therefore, in some cases, greater State intervention in the traditionally private sphere of the family will be required. In general, and from a broader perspective of public policy, this will be expressed, for example, by the need for the State to adopt measures to prevent, investigate and punish violence.¹⁴

27. It is the preservation of social peace and order that permits the enjoyment of the individual freedoms. And it is the pursuit of this objective that justifies the State's monopoly of law enforcement. The exercise of that state power may entail the restriction of the rights of certain persons; limitations that are permitted under Article 30 read in relation to Article 32 of the ACHR. The latter provision indicates, specifically, that "the rights of each persons are limited by the rights of others, by the security of all, and by the just demands of the general welfare in a democratic society."

28. The risks associated with inaction in relation to public order give rise to perceptions of insecurity that – among other effects – gradually undermine the social cohesion within communities, foster the abandonment of public spaces, and lead to a change in routines and lifestyles that has a particular impact on women, children, and the most disadvantaged sectors of the population. The most financially vulnerable are unable to move house, vary their means of transportation or their routes, or hire private security to help them avoid the real or perceived dangers derived from the perpetration of crimes. The State's timely and effective action to prevent and deal with criminality is one of the fundamental institutional arrangements to ensure a society that is more just and free.

II. Inadmissibility of declaring the violation of Article 26 of the Convention

A. Application of Article 26 of the Convention based on the *iura novit curia* principle

29. First, it should be indicated that the only allegation concerning the violation of the right to health was submitted by the representative of Patricia Catalina Gallardo, who argued that, as a result of the ill-treatment, torture and sexual violence to which she had been subjected, both her physical and mental health had been seriously impaired. He added that, following her release from prison into house arrest, the State no longer provided Ms. Gallardo with treatment and medication. On this basis, he argued the violation of his client's right to health based on Article 26 of the Convention. The State did not refer to these arguments and neither the Commission nor the representatives of the other victims alluded to this request or submitted arguments in relation to the violation of the right to health of any other victim.

30. Nevertheless, the Court admitted those arguments,¹⁵ and indicated that, "[o]n several occasions, Ms. Gallardo Ardúz submitted her claims regarding health care to address the effects of the torture and ill-treatment she experienced, and the State has

¹³ Cf. Global Database on Violence Against Women, UN Women, available at: <https://evaw-global-database.unwomen.org/en>

¹⁴ In this regard, NUSSBAUM suggests that one of the main problems of Rawls theory is the classification of the family as an institution of a voluntary nature, an assertion that does not correspond to the configuration of all families and that clearly cannot be assumed in relation to the situation of children. "*E/ futuro del liberalismo feminista*" (2001:59).

¹⁵ Cf. Paragraph 236.

not responded to them. Therefore, the Court finds that the State violated the right to health of Patricia Gallardo Ardúz.”

31. The judgment then dedicates a paragraph¹⁶ to the assertion “that the proven facts reveal that several actions taken by the State in relation to the events of this case entailed a violation of the alleged victims’ right to health. Consequently, in application of the *iura novit curia* principle, which international case law has repeatedly validated, and under which the judge has the authority – and even the duty – to apply the legal provisions relevant to a case even when the parties have not expressly invoked them, the Court finds it necessary to examine the facts in light of the right to health of the other alleged victims in this case.”

32. Next, the Court recalled that it had established “that the State has the duty, as guarantor of the health of those in its custody, to provide detainees and prisoners with regular medical examinations and adequate medical care and treatment when required,”¹⁷ citing as examples of this criteria the cases of *Tibi v. Ecuador* (2004) and *Espinoza Gonzales v. Peru* (2014). It should be recalled that, in both judgments, the Court found that the deficiencies in the health care provided in prisons violated the personal integrity of the victims, and not that they constituted violations of an autonomous right to health.

33. Subsequently, the Court mentions some international recommendations in relation to the treatment of prisoners which refer to the need for a medical examination both on admission and thereafter periodically while in the custody of the State. It also underlines the obligation to respond to the needs of members of especially vulnerable groups, such as women who are pregnant or postpartum, or who have suffered an obstetric emergency.

34. Lastly, in application of the *iura novit curia* principle, it decides that the State violated the right to health of all those persons who did not undergo a medical examination at the time of their detention, and of F.E.P.M. because she did not receive specialized medical attention despite being in a vulnerable situation.

35. Unfortunately, the judgment does not provide reasons to justify the application of the *iura novit curia* principle, because the observation that international case law has repeatedly validated it merely states a fact, which is an argument of authority, but not a substantiation.

36. Here, I must reiterate what I indicated in my dissenting opinion in *Mina Cuero v. Ecuador*,¹⁸ that in the sphere of international adjudication the application of the said principle has not been uniform, and it is the case law of the inter-American system that stands out – owing to its habitual use of the principle – rather than international case law as a whole. In fact, the Permanent Court of International Justice (dissolved in 1946),¹⁹ the International Court of Justice,²⁰ and the European Court of Human Rights²¹

¹⁶ Cf. Paragraph 237.

¹⁷ Cf. Paragraph 239.

¹⁸ *Case of Mina Cuero v. Ecuador. Preliminary objection, merits, reparations and costs.* Judgment of September 7, 2002, Series C No. 464. Partially dissenting opinion of Judge Patricia Pérez Goldberg.

¹⁹ *Case of Lotus*, judgment No. 9, 1927, Series A, No. 1, p. 31.

²⁰ *Case of Fisheries Jurisdiction (United Kingdom v. Iceland)*, Judgment of July 25, 1974, paragraphs 17-18; *Case of Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment of June 27, 1986, paragraph 29.

²¹ *Case of Handyside v. The United Kingdom*, Judgment of December 7, 1976, Series A No. 24, paragraph 41; *case of Guerra and Others v. Italy*, Judgment of February 19, 1998, Reports 1998-I, p.13, paragraph 44; *case of Philis v. Greece*, Judgment of August 27, 1991, Series A No. 209, p. 19, paragraph 56; *case of Powell and Rayner v. The United Kingdom*, Judgment of February 21, 1990, Series A No. 172, p. 13,

have also reflected on the scope of the said principle, but making a more restricted use of it.

37. Although many of the Court's judgments have included arguments concerning this jurisdictional tool,²² the mere assertion that it is a principle that has been applied repeatedly in case law does not exempt the Court (either this one or any other) from justifying its application and using it with caution and moderation.

38. Therefore, it is necessary, on the one hand, to take into account that the facts²³ always establish a limit to the law, because the task of identifying and applying the latter must be performed based on the factual framework determined in the respective merits report and, on the other, to proceed in a way that does not affect the equality of arms and, in particular, the State's right of defense.

39. In this regard, I agree with Judge Sierra Porto's position in his partially dissenting opinion in the case of *Lagos del Campo v. Peru*,²⁴ that the possibility of applying the said principle is a faculty that should be used respecting certain criteria of reasonableness and pertinence, as "when a human rights violation is evident or when the representatives or the Commission have committed a serious omission or error, so that the Court rectifies

paragraph 29; case of *Scoppola v. Italy (No. 2)*, Judgment of September 17, 2009, p. 17, paragraph 5; case of *Celikkbilek v. Turkey*, Judgment of May 31, 2005, paragraphs 100 to 105.

²² Case of *Velásquez Rodríguez v. Honduras*, Judgment of July 29, 1988; Case of *Godínez Cruz v. Honduras*, Judgment of January 20, 1989; Case of *Blake v. Guatemala*, Judgment of January 24, 1998; Case of *Durand and Ugarte v. Peru*, Judgment of August 16, 2000; Case of *Hilaire, Constantine and Benjamín et al. v. Trinidad and Tobago*, Judgment of June 21, 2002; Case of *Castillo Petruzzi et al. v. Peru*, Judgment of May 30, 1999; Case of *Cantos v. Argentina*, Judgment of November 28, 2002; Case of *the Five Pensioners v. Peru*, Judgment of February 28, 2003; Case of *Myrna Mack Chang v. Guatemala*, Judgment of November 25, 2003; Case of *Maritza Urrutia v. Guatemala*, judgment of November 27, 2003; Case of the *Gómez Paquiyauri Brothers v. Peru*, Judgment of July 8, 2004; Case of the *Juvenile Re- education Institute v. Paraguay*, Judgment of September 2, 2004; Case of the *Moiwana Community v. Suriname*, Judgment of June 15, 2005; Case of *Acosta Calderón v. Ecuador*, Judgment of June 24, 2005; Case of the *Yean and Bosico Girls v. Dominican Republic*, Judgment of September 8, 2005; Case of the *Mapiripán Massacre v. Colombia*, Judgment of September 15, 2005; Case of *García Asto and Ramírez Rojas v. Peru*, Judgment of November 25, 2005; Case of the *Sawhoyamaxa Indigenous Community v. Paraguay*, Judgment of March 29, 2006; Case of the *Ituango Massacre v. Colombia*, Judgment of July 1, 2006; Case of *Ximenes Lopes v. Brazil*, Judgment of July 4, 2006; Case of *Bueno Alves v. Argentina*, Judgment of May 11, 2007; Case of *Kimel v. Argentina*, Judgment of May 2, 2008; Case of *Heliodoro Portugal v. Panama*, Judgment of August 12, 2008; Case of *Bayarri v. Argentina*, Judgment of October 30, 2008; Case of *González et al. ("Cotton Field") v. Mexico*, request to expand the number of alleged victims and refusal to forward documentary evidence, January 19, 2009; Case of *Escher et al. v. Brazil*, Judgment of July 6, 2009; Case of *Usón Ramírez v. Venezuela*, Judgment of November 20, 2009; Case of *Vélez Loor v. Panama*, Judgment of November 23, 2010; Case of *Vera Vera et al. v. Ecuador*, Judgment of May 19, 2011; Case of *Contreras et al. v. El Salvador*, Judgment of August 31, 2011; Case of *Grande v. Argentina*, Judgment of August 31, 2011; Case of *Furlán and family members v. Argentina*, Judgment of August 31, 2012; Case of *Gudiel Álvarez et al. ("Diario Militar") v. Guatemala*, Judgment of November 20, 2012; Case of *Suárez Peralta v. Ecuador*, Judgment of May 21, 2013; Case of the *Landaeta Brothers et al. v. Venezuela*, Judgment of August 27, 2014; Case of *Expelled Dominicans and Haitians v. Dominican Republic*, Judgment of August 28, 2014; Case of the *Human Rights Defender et al. v. Guatemala*, Judgment of August 28, 2014; Case of *Rochac Hernández et al. v. El Salvador*, Judgment of October 14, 2014; Case of *Cruz Sánchez et al. v. Peru*, Judgment of April 17, 2015; Case of the *Campesino Community of Santa Bárbara v. Peru*, Judgment of September 1, 2015; Case of the *Kaliña and Lokono Peoples v. Suriname*, Judgment of November 25, 2015; Case of *I. V. v. Bolivia*, Judgment of November 30, 2016; Case of *Acosta et al. v. Nicaragua*, Judgment of March 25, 2017; Case of *Lagos del Campo v. Peru*, Judgment of August 31, 2017; Case of *Vereda La Esperanza v. Colombia*, Judgment of August 31, 2017; Case of *San Miguel Sosa et al. v. Venezuela*, Judgment of February 8, 2018; Case of the *Women Victims of Sexual Torture in Atenco v. Mexico*, Judgment of November 28, 2018; Case of *Muelle Flores v. Peru*, Judgment of March 6, 2019; Case of *Rodríguez Revolorio et al. v. Guatemala*, Judgment of October 14, 2019; Case of the *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*, Judgment of February 6, 2020; Case of *Hernández v. Argentina*, Judgment of November 22, 2019; Case of *Cuya Lavy et al. v. Peru*, Judgment of September 28, 2021; Case of the *Former Judicial Employees v. Guatemala*, Judgment of 17 November 17, 2021; Case of *Casierra Quiñonez et al. v. Ecuador*, Judgment of May 11, 2022.

²³ Cf. Case of *González et al. (Cotton Field) v. Mexico*, paragraph 32.

²⁴ Position reiterated in his opinions in the cases of *Rodríguez Revolorio et al. v. Guatemala* and the *Indigenous Communities of the Lhaka Honhat (Our Land) Association v. Argentina*.

a possible injustice, but this principle should not be used to surprise a State with a violation that it had no way of anticipating and that it was unable to contest, not even at the time of the facts.”

40. As mentioned previously, apart from the specific allegation made by Patricia Catalina Gallardo’s representative, the alleged violation of the right to health of the other victims was not suggested by any of their representatives or invoked by the Commission. Since none of the exceptional situations that justify the application of the *iura novit curia* principle exist, it was not appropriate for the Court to declare the violation of the right to health of another thirteen victims. It is clear that the State was unable to foresee or contest this assertion from the point of view of either the facts or the law, and this constituted a breach of the due process that any court is obliged to guarantee.

B. This Court’s lack of competence to declare the autonomous violation of the right to health based on Article 26 of the Convention

41. The Court declared the violation of the right to health of a total of thirteen people. In the case of Ms. Gallardo, it indicated that this violation was due to the fact that she had “submitted her claims regarding health care in order to address the effects of the torture and ill-treatment she experienced, and the State has not responded to them.” In addition, the Court decided that the right to health of the twelve persons detained who had not received a medical examination at the time of their detention had also been violated. It also found that this right had been violated in the case of F.E.P.M, who had not received medical care despite suffering heavy bleeding as the result of a miscarriage, and had not received specialized care taking into account her situation of special vulnerability.

42. On this occasion, and as stated in my partially dissenting opinions in the cases of *Guevara Díaz v. Costa Rica* and *Mina Cuero v. Ecuador*, I ratify my position regarding this Court’s lack of jurisdiction in relation to the social, economic, cultural and environmental rights (hereinafter, ESCER).

43. I will not repeat here the numerous logical, legal and practical qualms that arise from the theory of the direct justiciability of the ESCER that, since its acceptance by the majority of the Court starting with the case of *Lagos del Campo v. Peru*, has given rise to a series of new problems that affect the reasonable predictability and legal certainty that the Court should guarantee.

44. Without prejudice to later making particular reference to the arguments set out in the judgment, I will merely note here the main problems that arise from this practice:

- a. It disregards the fact that international obligations should emanate from the prior and express consent of the States.
- b. The States have not granted this Court jurisdiction to rule on the ESCER.
- c. Attempting to expand the Court’s jurisdiction artificially entails circumventing the rules of treaty interpretation; consequently, in the practice, the content of the Treaty is altered without respecting the rules established for its modification or amendment;²⁵ in other words, this is amending the text through case law.²⁶
- d. Needless to say that, among the reasons given for adopting this

²⁵ See Articles 76(1) and 77(1) of the Convention.

²⁶ Evidently, this does not mean that the Court should not interpret the provisions of the Treaty in an evolutionary perspective, clarifying the scope of the terms it uses according to the context in which the facts that will be subsumed in the provision occur, as has occurred, for example, in the case of sexual orientation as a protected category and of indigenous communal property.

theory, none of them relates to the express rule contained in the Protocol of San Salvador, which it simply chooses to ignore.

45. The first reason used to support the Court's jurisdiction is that, based on certain standards in the OAS Charter, it is possible to derive – through interpretation – the inclusion of the right to health in the Charter. First, this instrument does not confer competences on the Court. Second, from a reading of the articles from which this supposed right is derived it can be noted that these are programmatic provisions that do not define rights or the correlative duties.

46. It is not possible to interpret Articles 34(i), 34(l) and 45(h) cited in the judgment ignoring the chapter heading: "Integral Development," Article 30. Indeed, Article 30 indicates that "[t]he Member States, inspired by the principles of inter-American solidarity and cooperation, **pledge themselves to a united effort to ensure**²⁷ international social justice in their relations and integral development for their peoples, as conditions essential to peace and security. Integral development encompasses the economic, social, educational, cultural, scientific, and technological fields through which the goals that each country sets for accomplishing it should be achieved."

47. Article 34 indicates that "[t]he Member States agree that equality of opportunity, the elimination of extreme poverty, equitable distribution of wealth and income and the full participation of their peoples in decisions relating to their own development are, among others, basic **objectives** of integral development. To achieve them, **they likewise agree to devote their utmost efforts** to accomplishing the following basic goals: [...] (i) Protection of **man's potential** through the extension and application of modern medical science; and [...] (l) Urban conditions that offer the opportunity for a healthy, **productive**, and full life."

48. Meanwhile, Article 45 indicates that "[t]he Member States, convinced that man can only achieve the full realization of his aspirations within a just social order, along with economic development and true peace, **agree to dedicate every effort** to the application of the following **principles and mechanisms**: [...] (h) **Development** of an efficient **social security** policy."²⁸

49. In summary, the OAS Charter does not recognize the right to work or, in particular, define its content. Consequently, and as I have indicated on other occasions, to conceive of Article 26 of the Convention as a norm that refers to all the ESCER that may be included in the OAS Charter disregards the undertakings made by the States Parties and opens the way towards uncertainty of the list of rights that are justiciable before the Court, affecting the legitimacy of its actions.

50. The majority opinion posits that, in different precedents, the Court has recognized the right to health as a right protected under Article 26 – which, by the way, does not constitute a reason in favor of its application – and that "[r]egarding the consolidation of this right, there is also a broad regional consensus because it is explicitly recognized in several constitutions and in domestic laws of the States of the region."²⁹

51. It is worth examining this argument because it would appear that it endeavors to equate the Convention to the Constitutions of the States Parties, as if they were equivalent elements in the so-called "regional consensus." This is an error both as regards the nature of the two types of instruments, and as regards their scope, because the Convention is an international treaty, signed by the respective States, whereas the

²⁷ Bold added by the author.

²⁸ Bold added by the author.

²⁹ Cf. Paragraph 232.

Constitution of each country is an agreement reached by its citizenry as a result of their internal democratic deliberative processes. Their scope is also different. While the ACHR is called on to operate at the level of international adjudication, the Constitutions have a domestic scope, circumscribed to the respective State.

52. As I have indicated on other occasions, it is necessary to distinguish between the two levels – related, but different. One is the domestic sphere where, through democratic procedures, the citizenry decides to embody the ESCER in their respective legal system, also incorporating the international law in this area, as occurs in the vast majority of the Member States of the inter-American system of human rights. In this context, it is the domestic courts that – within their sphere of competence – exercise their authority with regard to the interpretation and the justiciability of the ESCER, pursuant to their Constitutions and laws.

53. The other, different – although complementary – is the international sphere. As an international court, the Court's role in this area is to decide whether or not the State whose responsibility is claimed has violated one or more of the rights established in the Treaty. In light of its regulatory framework and pursuant to Article 26, the Court is authorized to establish the international responsibility of a State if the latter has failed to comply with the obligations of progressive and non-retrogressive development, not of the ESCER considered individually.

54. The majority's reasoning continues "that the right to life and to integrity are directly and immediately linked to health care, and that the lack of adequate medical care may also entail the violation of Articles 5(1) and 4 of the Convention."³⁰

55. This assertion is in line with what I have already indicated in *Guevara Díaz v. Costa Rica* (2022) and *Mina Cuero v. Ecuador* (2022), to the effect that the correct doctrine that the Court should follow is to consider the economic, social and cultural dimensions of the rights recognized in the articles of the Convention and to exercise its adjudicative competence by connectivity. This was the path that the Court followed in cases prior to *Lagos del Campo v. Peru* (2017); for example, in *Ximenes Lopes v. Brazil* (2006),³¹ *González Lluy et al. v. Ecuador* (2015),³² and *Chinchilla Sandoval v. Guatemala* (2016).³³ As we know, following the case of *Lagos del Campo*, the Court has been upholding the direct justiciability of the ESCER based on Article 26, except in *Rodríguez Revolorio v. Guatemala* (2019), and *Martínez Esquivia v. Colombia* (2020).

56. Indeed, in this judgment, the Court indicates that "[b]ased on the egregious detention conditions, the State violated Article 5(1) and 5(2) in relation to Article 1(1) of the ACHR to the detriment of [a series of victims]."³⁴ Therefore, it was perfectly possible to continue the path traced in *Chinchilla Sandoval v. Guatemala* (2016) and *Rodríguez Revolorio v. Guatemala* (2019), when it determined that the deficient health care conditions within the prisons constituted a violation of the victims' right to personal integrity. This would have allowed the Court to develop the scope of the right to health

³⁰ Cf. Paragraph 233.

³¹ Mr. Ximenes Lopes died in a psychiatric institution approximately two hours after he had been medicated by the clinical director of the hospital, and without being evaluated by any doctor. He was not given adequate assistance and, owing to the lack of care, was at the mercy of every kind of accident and ill-treatment that could endanger his life. The Court established the responsibility of the State for the violation of the rights to life and to personal integrity.

³² In this case – which involved a girl child who was infected with HIV on receiving a blood transfusion – the Court protected the victim's right to health by connectivity with the rights to life and to personal integrity, by declaring a violation of "the obligation to monitor and supervise the provision of health services, within the framework of the right to personal integrity and the obligation not to endanger life."

³³ The victim was a woman deprived of liberty who had a physical disability who was not provided with adequate health care given the numerous ailments she suffered and who, finally, died in the prison. This lack of health care resulted in the Court declaring a violation of the rights to life and to personal integrity.

³⁴ Cf. Paragraph 206.

care in connection with personal integrity, within the framework of its competence and without producing the institutional attrition and legitimacy problems generated by the type of decision it took.

57. Finally, the judgment suggests that it is possible to distinguish two dimensions of the right to health. On the one hand, a general obligation to protect health related to the obligation to guarantee quality medical services and, on the other, an obligation related to the individual right to health, characterized by its immediate enforceability. In keeping with the preceding paragraph, it is possible and desirable that the right to health, in its individual aspect, should be analyzed in connection with the rights to life or to personal integrity (connecting Articles 4 or 5 with Article 26 of the ACHR) and in its general and progressive aspect in light of Article 26 in concordance with Article 1(1) of the Convention. This would allow the Court to determine when deficient health care has impaired someone's life or integrity and when the service provided by the State, or in other words the public health policy that it executes, does not meet the expectations of its commitment to progressivity and non-retrogressivity in the terms of Article 26.

58. The path chosen affects the legal certainty that an international court should guarantee and also the legitimacy of its decisions, because the arguments set forth simply ignore a norm that expressly limits the Court's competence to examine possible violations of the ESCER.

59. The defining feature of the substantiation of a judgments is that its arguments allow the reader to reproduce and understand the reasons used by the Court to make a specific ruling. The decision to assert the justiciability of an ESCER cannot be founded on the basis of ignoring the relevant provisions of the Protocol of San Salvador, to which Bolivia is a State Party.

60. It should be recalled that Article 19 of the Protocol defines two types of protection mechanisms. One general – applicable to all the rights recognized in the Protocol – which consists in the examination, observations and recommendations that different organizations of the inter-American system may make on the reports that States must present on the progressive development of the ESCER, and the other – established only with regard to trade union rights and the right to education – enables the Court to examine a possible violation of them.

61. Unfortunately, and as Medina and David have indicated, the majority position undermines the effectiveness not only of the Protocol of San Salvador but also of Article 26 itself,³⁵ the provision of the Convention that has a specific content that the Court may and should develop in the cases it hears.

62. From a reading of Article 26 it can be noted that, contrary to the treatment accorded to the civil and political rights specified and developed in Chapter II of the Convention, it establishes an obligation for the States Parties to adopt "measures" – in other words, the actions, measures or public policies required to achieve "progressively" the full realization of the rights derived from the norms of the OAS Charter, subject to the available resources (which is congruent with the progressive nature of the obligation) and "by legislation or other appropriate means." In other words, each State Party is obliged to define and make decisive progress in this area, pursuant to its internal deliberative procedures.

63. I repeat that asserting the absence of direct justiciability of the ESCER before the Court does not mean ignoring the existence, the enormous importance, of such rights, their interdependent and indivisible nature in relation to the civil and political rights, or that they lack protection or that they should not be protected. Clearly, States have the

³⁵ MEDINA and DAVID, "The American Convention on Human Rights" (2022:28).

duty to permit the autonomy of individuals to be upgraded, which means that they can have access to primary goods (more extensive than those defined in the sphere of political philosophy by John Rawls),³⁶ that enable them to develop their capabilities; that is, to accede to economic, social and cultural rights.³⁷

64. The above should not result in a confusion between the repertory of laws available to domestic courts and those available to an international court such as the Inter-American Court of Human Rights. There is no article of the Treaty (consisting of the Convention and its Protocol) that authorizes the Court to declare an autonomous violation of the right to health in its individual dimension.

65. In summary, the international courts should exercise their jurisdiction within the framework established by the pertinent treaties. Such legal instruments constitute their foundation and also limit their actions. From a democratic perspective, this is coherent with due respect for the domestic deliberative processes conducted in order to ratify a treaty and with the type of interpretation made by international courts. This hermeneutic work is exercised in relation to provisions of international law, and is not of a constitutional nature.

Patricia Pérez Goldberg
Judge

Pablo Saavedra Alessandri
Registrar

³⁶ According to RAWLS, primary goods are a series of goods "necessary for the framing and successful execution of a rational plan of life," such as liberty, opportunities, income, wealth, and self-respect, "A Theory of Justice" (1995:393).

³⁷ PÉREZ GOLDBERG, "*Las mujeres privadas de libertad and el enfoque de capacidades*" (2021:94-109).