

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

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

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

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

also present:

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

pursuant to Articles 62(3) and 63(1) of the American Convention on Human Rights (hereinafter, "the Convention" or "the American Convention") and Articles 30, 32, 59, and 61 of the Court's Rules of Procedure¹ (hereinafter, "the Rules of Procedure"), delivers this Judgment.

I
INTRODUCTION OF THE CASE AND PURPOSE OF THE APPLICATION

1. On May 12, 2009, the Inter-American Commission on Human Rights (hereinafter, "the Commission" or "the Inter-American Commission") filed, pursuant to Articles 51 and 61 of the Convention, an application against the Plurinational State of Bolivia (hereinafter, "the State" or "Bolivia"), originating the instant case. The initial petition was lodged with the Commission on September 26, 2003. On October 12, 2005, the Inter-American Commission adopted Report N° 46/05, which declared the petition admissible. Afterwards, on October 31, 2008, the Commission adopted its Report on the Merits N° 93/08 under

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

the terms of Article 50 of the Convention, making certain recommendations to the State. The State was served notice of the Report on November 12, 2008. After the grant of two extensions of time and the presentation of certain information by the State, in light of the "lack of significant progress made in the effective compliance" with some of the recommendations set out in Report 93/08 and the express intention of the alleged victims' next of kin that the case be brought before the Inter-American Court, on May 8, 2009, the Commission decided to submit the instant case to the jurisdiction of the Court. The Commission appointed Commissioner Luz Patricia Mejía and Executive Secretary Santiago A. Canton as delegates; it also appointed Deputy Executive Secretary Elizabeth Abi-Mershed and attorneys of the Executive Secretariat Juan Pablo Albán and Silvia Serrano as legal advisors.

2. The application concerns the alleged "forced disappearance of [Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña] as of October 1971 and February 1973, respectively, under the military dictatorship led by Hugo Banzer Suárez [in Bolivia], followed by the [alleged] impunity with respect to those events; as well as the [alleged] lack of adequate reparation to their next of kin for the injuries they sustained; and the uncertainty as to the whereabouts of one of the victims." According to the Commission, the whereabouts of Mr. Rainer Ibsen Cárdenas were determined in the year 2008, when his remains were found, identified, and delivered to his next of kin, all of which has not occurred in the case of José Luis Ibsen Peña.

3. The Commission requested the Court to declare that the State of Bolivia is responsible for the violation of Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5 (Right to Humane Treatment [Personal Integrity]), 7 (Right to Personal Liberty), 8 (Right to a Fair Trial [Judicial Guarantees]), and 25 (Right to Judicial Protection) of the American Convention, in relation to the obligation established in Article 1(1) (Obligation to Respect Rights) of that instrument and with the obligations established in Articles I and XI of the Inter-American Convention on Forced Disappearance of Persons (hereinafter, "Convention on Forced Disappearance") to the detriment of Rainer Ibsen Cárdenas and José Luis Ibsen Peña; and for the violation of Articles 5 (Right to Humane Treatment [Personal Integrity]), 8 (Right to a Fair Trial [Judicial Guarantees]), and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) (Obligation to Respect Rights) thereof, to the detriment of the next of kin of Rainer Ibsen Cárdenas and José Luis Ibsen Peña, namely, Tito Ibsen Castro, Rebeca Ibsen Castro, Raquel Ibsen Castro, and Martha Castro Mendoza. Likewise, the Commission requested that the Court declares that the State "has failed to comply with the obligation contained in Articles III and IV of the Convention[...] on Forced Disappearance of Persons, [...] as it had failed to classify the crime of forced disappearance until the year 2004." Last, the Commission requested the Tribunal to order certain measures of reparation.

4. On September 25, 2009, Messrs. Mario Ressini Ordoñez, Daniel Enríquez Tordoya, and Tito Ibsen Castro, representatives of the alleged victims (hereinafter, "the representatives"), presented their brief containing pleadings, motions, and evidence (hereinafter, the "brief containing pleadings and motions") under the terms of Article 24 of the Rules of Procedure. The representatives agreed with the arguments of the Inter-American Commission in the application (*supra* paras. 2 and 3) and requested that the Court declares the international responsibility of the State for the violation of Article 24 of the American Convention (Right to Equal Protection). They also requested the Tribunal to order the State to adopt different measures of reparation.

5. On January 26, 2010, the State submitted its answer to the application and observations to the brief containing pleadings and motions (hereinafter, "answer to the

application"). The State acknowledged its international responsibility "for the rights established in Articles 1(1), 3, 4, 5, 7, 8, and 25 of the American Convention on Human Rights [and the obligations established in Articles] I, III, IV, and XI of the Inter-American Convention on Forced Disappearance of Persons, in relation to Rainer Ibsen Cárdenas and José Luis Ibsen Peña, [as well as the rights established in] Artic[les] 5, 8, and 25 of the American Convention, in connection with Article 1(1) [thereof], in relation to Martha Castro Mendoza (stepmother and spouse[,] respectively), Tito Ibsen Castro, Rebeca Ibsen Castro, and Raquel Ibsen Castro (siblings and children[,] respectively)[,] all of them mentioned by the Inter-American Commission on Human Rights." However, the State expressly indicated that "it [did] not acquiesce to the request for measures of reparation presented in the Commission's application and the brief containing pleadings[,] motions, and evidence of the next of kin." The State appointed Ms. M.C. Yovanka Oliden Tapia as Agent and Mr. Victor Montecinos Villca as Deputy Agent in the present case.

II PROCEEDINGS BEFORE THE COURT

6. After the presentation of the principal briefs (*supra* paras. 1, 4, and 5), the President of the Inter-American Court of Human Rights (hereinafter, "the President") ordered the submission of the sworn declarations (affidavit) of three alleged victims, three witnesses, and one expert witness, all of which were timely proposed by the parties. In addition, the President convened the parties to a public hearing in order to receive the statements of one alleged victim, one witness, and two expert witnesses presented by the Commission, the State of Bolivia, and the representatives, respectively, as well as the final oral arguments on the merits and any possible reparations and costs. Finally, the President ordered the parties to present their final written arguments no later than May 24, 2010.²

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

8. The public hearing was held on April 13, 2010, during the XLI Extraordinary Period of Sessions held in the city of Lima, Republic of Peru.³ During the hearing, the State submitted various documents to the Tribunal as evidence during its final oral arguments. Likewise, the Court requested that the State presents various documents as evidence to facilitate the adjudication of the case.

² Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Summons to a Public Hearing. Order of the President of the Inter-American Court of Human Rights of March 10, 2010, Operative Paragraphs one to four and twelve. Due to a request for substitution submitted by the representatives, the President of the Tribunal required Ms. Rebeca Ibsen Castro to render a sworn declaration before a public notary (affidavit) despite the fact that she had been summoned to testify during the abovementioned hearing. The Commission supported the representatives' request. The State did not submit observations on this matter. Said declaration was received on May 3, 2010. Cf. *Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia*. Summons to a Public Hearing. Order of the President of the Inter-American Court of Human Rights of April 6, 2010, Operative Paragraph three.

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

9. On April 16, 2010, in consultation with the plenary of the Court, the President of the Tribunal requested that the State submit information related to the judicial recusals alleged in the present case (*infra* paras. 175 to 191).

10. On May 24, 2010, the Inter-American Commission, the representatives, and the State presented their final written arguments. The representatives and the State also submitted documentary evidence along with their briefs. Additionally, the State submitted the information requested by the Tribunal on the judicial recusals (*supra* para. 9) and one of the documents requested by the Court during the public hearing as evidence to facilitate adjudication of the case (*supra* para. 8).

11. On June 18, 2010, the State submitted another document that had been requested by the Tribunal during the hearing as evidence to facilitate the adjudication of the case (*supra* para. 8).

12. On July 7, 2010, the Tribunal requested that the representatives and the State submit copies of some documents as evidence to facilitate the adjudication of the case.

13. On July 16 and August 11, 2010, the representatives and the State, respectively, submitted the documents requested by the Court as evidence to facilitate the adjudication of the case (*supra* para. 12).

14. On August 19, 2010, the State submitted to the Tribunal, as evidence to facilitate the adjudication of the case, a copy of a decision issued on August 16, 2010, by the Second Criminal Chamber of the Supreme Court of Justice of the Nation (hereinafter, "Supreme Court").

15. On August 20, 2010, the State submitted to the Tribunal additional information related to the creation of a postal stamp as a "measure of reparation" undertaken on its own accord.

16. On August 23, 2010, the Court requested that the Commission and the representatives provide certain information concerning the decision issued on August 16, 2010, by the Second Criminal Chamber of the Supreme Court of Justice (*supra* para. 14). Likewise, the Tribunal requested that the State and the representatives submit a copy of the postal stamp referred to by the State (*supra* para. 15).

17. On August 26, 2010, the State submitted to the Court a "report on the advances in fulfilling the commitments assumed by the State [...] in order to comply with its obligation to recover the historical memory of Messrs. José Luís Ibsen Peña and Rainer Ibsen Cárdenas," as well as information on the decision of August 16, 2010, issued by the Second Criminal Chamber of the Supreme Court of Justice. Likewise, the State submitted a copy of the postal stamp requested by the Tribunal (*supra* para. 16). On that same date, the representatives submitted the information requested by the Tribunal (*supra* para. 16), with the exception of the postal stamp, and informed the Court of two alleged "criminal acts" that occurred "after the ceremony in which the stamp was delivered." They also submitted various documents concerning the events alleged.⁴ Additionally, although

⁴ The Tribunal does not find any relation between the events reported by the representatives and the factual basis of the application presented by the Commission in this case (*infra* para. 228). Therefore, the Court shall not rule on those events.

the established deadline expired (*supra* para. 16), the Commission did not submit the information requested regarding the August 16, 2010, decision of the Second Criminal Chamber of the Supreme Court of Justice.

18. On August 31, the representatives submitted their observations on the “report on the advances in fulfilling the commitments assumed by the State” to the Court (*supra* para. 17). Though the established deadline had expired, the Commission did not submit observations regarding the State’s report.

III JURISDICTION

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

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

21. Moreover, this Tribunal has found on numerous occasions that it can exercise its jurisdiction *ratione temporis* to examine permanent or continuing violations, that is, those violations that began prior to both the date of ratification of the instruments and the State’s recognition of the jurisdiction of the Court and that persist even after that date, without transgressing the principle of non-retroactivity.⁵

22. Though the State accepted the contentious jurisdiction of the Court on July 27, 1993, given that it has expressly acknowledged the facts that occurred in the instant case as of October 1971 (*infra* paras. 24 to 26), the Tribunal considers that Bolivia has waived its right to claim a temporal limitation to the exercise of the Court’s jurisdiction and, therefore, has accepted the Court’s contentious jurisdiction to examine all the facts of the case at hand and decide on the violations that may be established, as well as their consequences.

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

**IV
PARTIAL ACKNOWLEDGMENT OF INTERNATIONAL RESPONSIBILITY**

23. In the answer to the application, the State made a partial acknowledgment of international responsibility (*supra* para. 5). It indicated that “[a]s to the facts, the Plurinational State of Bolivia fully ascribe[d] to that expressed by the Inter-American Commission [...].”

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

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

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

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

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

27. However, the State contested the arguments of the Commission that “the remains of Rainer Ibsen Cárdenas were found, identified, and delivered by the State to his next of kin nearly 37 years after his disappearance.” It explained that “[i]n 1983, the National Commission for the Investigation of Persons Forcibly Disappeared publicly announced the discovery of a mass grave that contained the remains of Rainer Ibsen Cárdenas[;] as of that moment, [...] the facts committed against him [...] were known by the public and by his family,” “who did not take any action until [the year] 2003 [...] to claim the remains found.” The State also affirmed that “at no time did it hide [those] remains [but], on the contrary[,] assisted in the identification of the bodies as of 1983[,] the year in which the

whereabouts of the remains were [made] known [and] and the forced disappearance of the victim concluded [...]."

28. On the other hand, the State expressly indicated in its answer to the application that "it d[id] not acquiesce to the Commission's application and [to] the brief containing pleadings[,] motions, and evidence of the next of kin regarding the request for reparations presented." It stated that "there is no controversy as to the beneficiaries;" however, it brought to the Tribunal's attention "its objection to the extremely elevated [requests] of the [representatives]." On this latter point, it requested the Court "to consider the will and disposition of the State with respect to the measures of reparations that it has been implementing," referred to in the answer to the application, during the public hearing, and in its final arguments (*supra* paras. 5, 8, and 10).

29. In addition, it should be noted that during the processing of the instant case, and in the answer to the application in particular, the State did not refer to the arguments of the representatives regarding the violation of Article 24 (Right to Equal Protection) of the American Convention to the detriment of the next of kin of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña. The violation of this right was not alleged by the Commission in the application.

30. The Inter-American Commission stated that it valued the act of acknowledgment of international responsibility made by the Bolivian State on December 10, 2008, during the processing of the instant case before that body, an act repeated in the answer to the application and at the public hearing, as it "constitute[d] a positive contribution to the development of the proceedings and to the observance of the principles that inspire the American Convention." It considered that "this is a full acknowledgment of the violations of the American Convention on Human Rights and the Inter-American Convention on Forced Disappearance of Persons alleged by the Commission in its application[. Thus,] it underst[ood] that the controversy as to those violations h[ad] ceased." The Commission requested that the Tribunal "accepts the State's acquiescence and, as a result, to declare the international responsibility of the Bolivian State [and] includes in the corresponding judgment a detailed narrative of the facts, given their effectiveness in repairing and their contribution to establishing the truth."

31. The Commission also noted that the "issue raised by the State regarding the date on which the forced disappearance of Rainer Ibsen Cárdenas concluded is a question of fact that the Court must determine in its judgment; however, it has no effect on the acknowledgment of responsibility for the violations alleged, nor does it imply in any way a repudiation of the Court's jurisdiction to rule on all of the facts of the present case."

32. The representatives supported the arguments of the Inter-American Commission in the application and at the public hearing. They noted, however, that "the State[,] far from assuming a clear willingness to acknowledge its international commitments, [has instead] been assuming [all] kinds of contradictory positions." Furthermore, they indicated that "an apology was offered [to the alleged victims at the public hearing], but afterwards, [the latter were] accused of having [committed] an immoral act for having presented a request for reparations."

33. In accordance with Articles 56(2) and 58 of the Rules of Procedure, and in exercise of its powers of international legal protection of human rights, the Court may determine whether an acknowledgment of international responsibility made by a respondent State offers sufficient grounds, under the American Convention, for continuing with the adjudication of the merits of the case and, if applicable, awarding reparations, costs, and

expenses.⁶ Moreover, the Court notes that the evolution of the system for the protection of human rights allows that, nowadays, alleged victims or their next of kin may autonomously present their brief containing pleadings, motions, and evidence and submit claims that may or may not coincide with those of the Commission. Therefore, when it submits a statement of acquiescence, the State must clearly express whether it also accepts the claims presented by the alleged victims or their next of kin.⁷

34. Given that the proceedings before this Court relate to the protection of human rights, a matter of international public order that transcends the will of the parties, the Tribunal must ensure that acts of acquiescence are acceptable for the purposes the Inter-American system of human rights seeks to fulfill. In doing so, the Court must not only verify the formal conditions of those acts, but also examine them in relation to the nature and gravity of the violations alleged, the requirements and interests of justice, the specific circumstances surrounding a particular case, and the attitude and position of the parties.⁸

35. For the determination of the legal effects of the acquiescence and acknowledgment of responsibility made by the State, the Court takes into account, in particular, that the State admitted the facts presented in the Commission's application (*supra* paras. 5 and 24 to 26), although it: 1) denied that the location and identification of the remains of Rainer Ibsen Cárdenas had taken almost 37 years; 2) did not acquiesce to the claims of reparation presented in this case; and 3) did not refer to the alleged violation of the right to equal protection recognized in Article 24 of the American Convention to the detriment of the next of kin of Rainer Ibsen Cárdenas and José Luis Ibsen Peña or to the facts related to those allegations (*supra* paras. 27 to 29).

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

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

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

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

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

38. However, having examined the acknowledgment of responsibility of the State and taking into account the arguments of the Commission and the representatives, as well as the nature and gravity of the facts alleged and the violations incurred, the Tribunal finds it necessary to deliver a Judgment establishing the facts and determining the merits of the case, as well as the corresponding consequences regarding reparations.¹¹

V EVIDENCE

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

A. *Documentary, testimonial, and expert evidence*

40. The Court admitted affidavits rendered by the following alleged victims, witnesses, and expert witnesses:

a) *Raquel Ibsen Castro and Martha Castro Mendoza*. Alleged victims. Declarations proposed by the Inter-American Commission and the representatives. Rendered statements regarding the alleged forced disappearance of Messrs. Rainer

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

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

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

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

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

Ibsen Cárdenas and José Luis Ibsen Peña; the measures carried out to determine their whereabouts; the alleged lack of will on the part of the State to investigate the alleged disappearances; and the consequences of these situations, among other things.

b) *Rebeca Ibsen Castro*. Alleged victim. Declaration proposed by the representatives. Rendered a statement regarding, the alleged disappearance of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña; the measures carried out to determine their whereabouts; the alleged lack of will on the part of the State to investigate the alleged disappearances; the obstacles that she allegedly faced in her search for the truth regarding the alleged disappearances and the punishment of those responsible; and the consequences of these situations, among other things.

c) *Renato Estevan Díaz Matta*. Witness. Declaration proposed by the Inter-American Commission and the representatives. Rendered a statement on Rainer Ibsen Cárdenas's experiences in a detention center of La Paz, Bolivia; José Luis Ibsen Peña's experiences in a detention center of Santa Cruz, Bolivia; and the dialogue the witness allegedly sustained with both alleged victims, among other things.

d) *Hilda Saavedra Serrano and Ledy Catoira Moreno*. Witnesses. Declarations proposed by the representatives. Rendered statements on the alleged deprivation of Rainer Ibsen Cárdenas's liberty at different detention centers of La Paz; the alleged acts of torture committed by agents of the State; the circumstances and events surrounding Rainer Ibsen Cárdenas's alleged murder and subsequent forced disappearance; and the alleged bad faith in the handling of public reports, among other things.

e) *Juan Cristóbal Soruco Quiroga*. Expert witness. Licensed in Social Communication and Director of *Los Tiempos de Cochabamba* newspaper. Expert opinion proposed by the Inter-American Commission. Referred to the context in which the facts of the case occurred and, in particular, to the human rights situation during the military dictatorship of Hugo Banzer Suárez, among other things.

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

a) *Tito Ibsen Castro*. Alleged victim. Declaration proposed by the Inter-American Commission and the representatives. Rendered a statement regarding the alleged forced disappearance of Rainer Ibsen Cárdenas and José Luis Ibsen Peña; the measures carried out to determine their whereabouts; the alleged lack of will on the part of the State to investigate the alleged disappearances; and the consequences of these situations, among other things.

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

c) *Waldo Albarracín*. Expert witness. Former Ombudsman of Bolivia. Expert opinion proposed by the Inter-American Commission. Referred to the difficulties in the judicial investigation of the human rights violations committed during the military dictatorship of Hugo Banzer Suárez and to the prospects for achieving justice in the present case, among other things.

d) *Claribel Ramírez Hurtado*. Expert witness. Forensic Psychiatrist. Expert opinion proposed by the representatives. She gave her expert opinion *inter alia*, on the alleged psychological damage suffered by Rebeca Ibsen Castro, Tito Ibsen Castro, Raquel Ibsen Castro, and Martha Castro Mendoza, which was allegedly caused by the human rights violations claimed in the instant case.

B. Assessment of the evidence

42. In this case, as in others,¹⁴ the Court admits the evidentiary value of those documents timely submitted by the parties that have been neither disputed nor challenged, nor have had their authenticity questioned. The Court admits into the body of evidence those documents requested by the Tribunal and submitted by the parties as evidence to facilitate adjudication of the case (*supra* paras. 8, 12 and 16), pursuant to the provisions of Article 47(2) of the Rules of Procedure.

43. In relation to the press documents timely submitted by the parties, this Tribunal considers that they may be assessed insofar as they refer to public and notorious facts or statements made by State officials, which have not been rectified, or when they corroborate aspects related to the case. Therefore, in the present case, the Court will consider those documents that are complete or in which, at least, the source and date of the publication can be verified.¹⁵

44. In their final written arguments, the representatives submitted several “supervening documents and photographs that, on one hand, refute the documentary evidence [...] presented by the [...] State of Bolivia with its final oral arguments and, on the other hand, demonstrate the inconsistency, precipitation, and improvisation of the State [...] in taking compensatory measures [...].” On one hand, the Court establishes that some of the submitted documents refer to supervening events that occurred after the representatives’ presentation of the brief containing pleadings and motions (*supra* para. 4).¹⁶ However, the

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

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

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

Court also notes that the submission of some of those documents is extemporaneous¹⁷ in accordance with Article 46(1) of the Court's Rules of Procedure.

45. Additionally, during the public hearing and as annexes to their final written arguments, the State submitted several documents to the Tribunal (*supra* paras. 8 and 10). In this regard, the Court observes that some of those documents had already been incorporated into the case file,¹⁸ that others were requested by the Tribunal¹⁹ (*supra* paras. 8 and 9) and that most of them refer to events that occurred after the submission of the answer to the application²⁰ (*supra* para. 5). However, the State also submitted

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

¹⁸ These documents include: the "Report: Human Rights Violations in Bolivia," of the Bolivian Labor Headquarters, 1976, identified as "Exhibit 12" and submitted by the State during the public hearing and as an annex to its final written arguments; copy of a "newspaper of the year 2000 [...] in which [Mr.] Tito Ibsen indicated in an interview that he knew the location of Rainer Ibsen Cárdenas's remains [...]" as well as other press releases; a copy of the plaque over the alleged tomb of Rainer Ibsen Cárdenas, which was handed over during the public hearing as well as it was attached to the final written arguments, and "Exhibit 2," which was a brief dated December 12, 2008 of the representatives addressed to the Inter-American Commission on Human Rights that "Grounded the submission of the case to the Inter-American Court of Human Rights."

¹⁹ Such documents are: copy of the document "Abstentions and Challenge occurred within the Criminal Proceeding No. 000014222", and copy of the Final Report of the Argentinian Team on Forensic Anthropology.

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

some documents extemporaneously²¹ in accordance with Article 46(1) of the Court's Rules of Procedure. In this regard, the State did not allege the existence of any of the situations in that Article to justify its untimely submission of those documents. Finally, the State submitted a copy of the "Report on the mortal remains found in 1983 by the National Commission of Investigation of Forced Disappearances," which was requested by the Court during the public hearing (*supra* para. 8) as evidence to facilitate the adjudication of the case. However, the Tribunal notes that the State submitted some documents as "annexes that accompany and support" the abovementioned report, which were not requested by the Court,²² and that, due to their dates, are extemporaneous.

46. The Court admits and shall assess those documents submitted by the State that had already been incorporated into the case file, as well as those documents submitted by the State and the representatives that relate to supervening events, in application of Article 46(3) of the Rules of Procedure. Additionally, because the Court finds them to be useful to adjudicate this case, the Tribunal admits and shall assess as evidence to facilitate the adjudication of the case, most of those documents submitted extemporaneously by the State and all of those documents submitted extemporaneously by the representatives, in accordance with Article 47(2) of the Rules of Procedure.²³ All of these documents will be evaluated together with body of evidence and in accordance with the rules of sound judgment.

47. With respect to the testimonies and expert opinions, the Court considers that they are relevant inasmuch as they adhere to the purpose defined by the President in the Order requesting them (*supra* para. 6). These shall be assessed in the corresponding chapter together with the body of evidence, taking into account the observations made by the parties.²⁴ According to the jurisprudence of this Tribunal, statements rendered by the alleged victims cannot be assessed separately, but rather, must be evaluated along with

and nomination of the 'Ibsen family' roundabout; Municipal Order G-M-L-P- No. 085/2010, issued on April 8, 2010; and Modifications to the Criminal Regulations System Act, Act No. 007, May 18, 2010.

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

²² Press release of the newspaper *Presencia*, on February 19, 1983; "Information statement rendered by [...] Luis Gómez Casaz [*sic*]" on February 22, 1983; "Police information statement redered by Mr. Lizandro Romero" on April 13, 1983; "Police information statement rendered by Mr. Bernardino Hernán Ibáñez Ríos" on April 13, 1983.

²³ The Court shall not assess "Exhibit 1," which consists of the certification of the Attorney General attached to the Economic and Financial Division of the Public Prosecutor's Office of La Paz, dated April 9, 2020; the order CITE: I.D.IF.-094/04 of the National Director of the Institute of Forensic Investigation of the Office of the Attorney General of the Republic, dated February 7, 2002; and a letter of resignation subscribed by Mrs. Claribel Ramírez Hurtado and submitted to the Attorney General of the Republic, dated October 22, 2004.

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

the rest of the body of evidence, as they are useful and may provide further information on the alleged violations and the consequences thereof.²⁵

48. The Tribunal notes that at the public hearing held in the present case, regarding expert witness Claribel Ramirez, the State indicated that this person “is criminally accused” of the crime of fraud at the domestic level, and handed over, among others, a document that allegedly “certifies” the existence of such criminal accusation. The State pointed out that this fact “doubts about her fitness to make a psychological assessment [...].” The Tribunal notes that the appropriate procedural moment for objecting to the submission of expert opinions, among other things, was upon the submission of the observations requested from the parties when they ratified the offering of such evidence. For that reason, and given that the State did not object in a timely fashion, the President of the Tribunal ordered Ms. Claribel Ramírez to render her expert opinion at the public hearing (*supra* para. 6). Thus, the Court decides to admit and to grant proof value to Ms. Claribel Ramírez’s expert opinion because the State did not object to it at the appropriate procedural time. In this regard, it is not necessary for the Court to declare on whether the existence of the alleged criminal accusation. Like the other expert opinions, the Tribunal shall opportunely assess this one.

VI

FORCED DISAPPEARANCE OF MESSRS. RAINER IBSEN CÁRDENAS AND JOSÉ LUIS IBSEN PEÑA (ARTICLES 7, 5, 4, AND 3 OF THE AMERICAN CONVENTION, IN RELATION TO ARTICLE 1(1) THEREOF AND ARTICLES I AND XI OF THE CONVENTION ON FORCED DISAPPEARANCE)

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

A. Context in which the facts of the instant case occurred.

50. For the analysis of the arguments on the alleged forced disappearances of Messrs. Ibsen Cárdenas and Ibsen Peña, the Court deems it is necessary to take into account the context in which those events apparently occurred, as it may determine the juridical consequences related both to the nature of the alleged human rights violations as well as to the possible reparations.²⁶

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

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

51. On August 21, 1971, Hugo Banzer Suárez, a colonel at the time, led a *coup d'état* in Bolivia and established a military dictatorship that lasted approximately 6 years and 11 months.²⁷

52. During the dictatorship of Hugo Banzer, the Department for Political Order (*Dirección de Orden Político*) was created, *inter alia*, to repress his political opponents.²⁸ Additionally, “constitutional guarantees” were suspended, actions were taken against leftist political parties and the Bolivian Labor Headquarters (*Central Obrera Boliviana*); and, in general, several opponent groups were persecuted. Likewise, various universities were closed. During this period, the judiciary and the Public Prosecutor's Office were under the control of the *de facto* government.²⁹

53. During this period of time, numerous human rights violations were committed in the context of a policy of repression against groups and individuals identified by the government as enemies or opponents of the regime. During the public hearing held in the instant case, the State indicated that the dictatorship of Hugo Banzer “marked a dark past in the history of Bolivia.” Illegal and arbitrary detentions were conducted, and people were deprived of their liberty in detention centers used to interrogate and torture political prisoners, many of who disappeared.³⁰ Among these detentions centers were the center of

²⁷ Cf. Declaration rendered before public notary (*affidavit*) of expert witness Juan Cristóbal Soruco (case file of the merits, volume III, folios 657 and 660), and Barcelona International Studies and Documentation Center (CIDOB), Biography of Hugo Banzer Suárez (case file of appendixes to the application, appendix 3, folios 1554 to 1555), available at: http://www.cidob.org/es/documentacion/biografias_lideres_politicos/americadel_sur/bolivia/hugo_banzer_suar ez (Last visit: August 2, 2010). This was also mentioned by the State of Bolivia during the public hearing (*supra* para. 8).

²⁸ The Political Order Direction (POD) was created through Supreme Decree No. 10108 on January 25, 1972. Cf. Official Gazette of the Plurinational State of Bolivia, Edition 596, available at: <http://gacetaoficialdebolivia.gob.bo/normas/verGratis/4773> (Last visit: July 6, 2010). According to Article 3 of said Decree: “The Department for Political Order (DPO), will be in charge of keeping Political Order and public peace, preventing political and criminal activities, that may attack domestic security and stability of the Government.” See, also, Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Labour Headquarters (COB). *Banzer: Genius and figure... Not to be forgotten. Never again.* [Banzer: Genio y figura... Para que no se olvide. Nunca más.] Crear Impresiones Publishing House, La Paz, 2008 (case file of appendixes to the application, appendix 5, folios 1603 to 1604), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (Last visit: August 2, 2010). This document can also be found at *Report: Human Rights violation in Bolivia* – Bolivian Labour Office, 1976, handed over by the State during the public hearing (*supra* para. 8) and as appendix to its final written arguments (case file on the merits, volume III, folios 1109 to 1110).

²⁹ Cf. Barcelona International Studies and Documentation Center (CIDOB), Biography of Hugo Banzer Suárez (case file of appendixes to the application, appendix 3, folios 1554 to 1555), available at: http://www.cidob.org/es/documentacion/biografias_lideres_politicos/americadel_sur/bolivia/hugo_banzer_suar ez (Last visit: August 2, 2010); Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation in Bolivia (ASOFAMD) and Bolivian Labour Headquarters (COB), *Banzer: Genius and figure... Not to be forgotten. Never again.* [Banzer: Genio y figura... Para que no se olvide. Nunca más.] Crear Impresiones Publishing House, La Paz, 2008 (case file of appendixes to the application, appendix 5, folios 1580, 1583, 1668 and 1674 to 1675), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (Last visit: August 2, 2010), and declaration of expert witness Waldo Albarracín rendered at the public hearing (*supra* para. 8).

³⁰ Cf. Declaration of expert witness Juan Cristóbal Soruco rendered before public notary (*affidavit*) (case file on the merits, volume III, folios 658 to 660); declaration of Mrs. Ledy Catoira Moreno rendered before public notary (*affidavit*) (case file on the merits, volume III, folios 669 to 671); declaration of Mrs. Hilda Saavedra Serrano rendered before public notary (*affidavit*) (case file on the merits, volume III, folios 665 to 666); Press release published on May 26, 1996 in *La Razón*, “There are around 240 cases of forced disappearances in Bolivia to be clarified” [En Bolivia existen unos 240 casos de desapariciones forzadas por aclarar] (case file of

Achocalla, located near La Paz, and the center of El Pari, located in the city of Santa Cruz,³¹ where the alleged victims in this case were allegedly deprived of their liberty (*infra* paras. 74, 77, 94, 107 to 109 and 115). During the dictatorship of Hugo Banzer Suárez both detention centers were under control of the Department for Political Order.³²

54. The types of torture usually inflicted were, *inter alia*, closed fist beatings in the body; cigarette burns; the placement of needles and wooden splinters under prisoners' fingernails; beatings with belts; clubbing with two inch planks; hot iron branding and electric shocks; simulated execution by firing squad; and threats that family members would be arrested. Rapes were also committed; cells were flooded with water where prisoners were left overnight; women were disrobed; and prisoners were constantly transferred from their "residences" but not told where they might be taken.³³ Between

appendixes to the application, appendix 29, folio 2456, and case file of appendixes to the brief of pleadings and motions, PD-117, folio 2324); Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation in Bolivia (ASOFAMD) y Bolivian Labour Headquarters (COB), *Banzer: Genius and figure... Not to be forgotten. Never again. [Banzer: Genio y figura... Para que no se olvide. Nunca más.] Crear Impresiones Publishing House, La Paz, 2008* (case file of appendixes to the application, appendix 5, folios 1603, 1609 to 1610, 1622 and 1634 to 1637), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (Last visit: August 2, 2010), and Christian Democrat Organization of America. *Human Rights violations in Bolivia: Report of "SELADEH"*, year 4, no. 43, May, 1977 (case file of appendixes to the brief of pleadings and motions, PD-58, folios 1844 and 1886 to 1890).

³¹ Cf. Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation in Bolivia (ASOFAMD) and Bolivian Labour Headquarters (COB), *Banzer: Genius and figure... Not to be forgotten. Never again. [Banzer: Genio y figura... Para que no se olvide. Nunca más.] Crear Impresiones Publishing House, La Paz, 2008* (case file of appendixes to the application, appendix 5, folios 1609 to 1610, 1622, 1634 to 1637), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (last visita: August 2, 2010). See also, the press release published on May 1, 2004 in "El Deber" *Witnesses identified perpetrators of disappeared persons* ["Testigos identificaron a autores materiales de los desaparecidos" (case file of appendixes to the brief of pleadings and motions, PD-169, folio 2564); declaration rendered before public notary (*affidavit*) by Mr. Estevan Renato Díaz Matta (case file on the merits, volume III, folios 650-653); declaration rendered before public notary (*affidavit*) by Mrs. Ledy Catoira Moreno (case file on the merits, volume III, folios 669-671), and declaration rendered before public notary (*affidavit*) by Mrs. Hilda Saavedra Serrano (case file on the merits, volume III, folios 665-666).

³² Cf. Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Labour Headquarters (COB). *Banzer: Genius and figure... Not to be forgotten. Never again. [Banzer: Genio y figura... Para que no se olvide. Nunca más.] Crear Impresiones Publishing House, La Paz, 2008* (case file of appendixes to the application, appendix 5, folios 1603 to 1604, 1609 to 1610, 1622, 1624 to 1625 and 1628), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (last visit: August 2, 2010), and Press release published on October 15, 2000 in "El Deber" *Former police officers of the dictatorship may be trialed for murder* (case file of appendixes to the brief of pleadings and motions, PD-125, folio 2403). See also, the declaration rendered before public notary (*affidavit*) of Mr. Estevan Renato Díaz Matta (case file on the merits, volume III, folios 650 a 651); the declaration rendered before public notary (*affidavit*) of Mrs. Hilda Saavedra Serrano (case file on the merits, volume III, folios 665 to 666), and Press release published on February 18, 2000 in "La Nación", *Justo Sarmiento lies, he tortured me in "El Pari"* ["Justo Sarmiento miente, él me torturó en El Pari"] (case file of appendixes to the brief of pleadings and motions, PD-120, folio 2379).

³³ Cf. Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Labour Headquarters (COB), *Banzer: Genius and figure... Not to be forgotten. Never again. [Banzer: Genio y figura... Para que no se olvide. Nunca más.] Crear Impresiones Publishing House. La Paz, 2008* (case file of appendixes to the application, appendix 5, folios 1603, 1609 to 1610, 1622, 1634 to 1637), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (last visit: August 2, 2010).

1971 and 1973, illegal detentions, violent entries into homes, torture as a “softening” tool in order to gather information, and subsequent exile if freedom was granted were all regular practices. Moreover, after an individual was arrested, his or her next of kin were commonly asked to go to the facility where the individual was confined, usually after he or she had already been seriously injured. Therefore, on many occasions, repressive practices also affected the next of kin of detained individuals.³⁴

55. There is no certainty regarding the approximate number of victims of political violence during this period. However, according to information of the Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation [*Asociación de Familiares de Detenidos, Desaparecidos y Mártires por la Liberación Nacional*] (hereinafter ASOFAMD, according to its initials in Spanish), a civil society organization in Bolivia,³⁵ during the regime of Hugo Banzer, in addition to the torture committed and the mass exile of hundreds of political and union leaders, at least 68 persons were forcibly disappeared, 35 of these under “Operation Condor,” and 78 persons suffered extrajudicial executions.³⁶

56. In 1979, after the *coup d'état* that overthrew Hugo Banzer and brought about the return of presidential elections, the Legislature of the National Congress initiated a trial against former President Hugo Banzer Suárez, among others.³⁷ Within the framework of these proceedings, on September 5, 1979, the ASOFAMD sent “a partial list of the victims of General Hugo B[a]nzer Suáre[z] who were sacrificed in prison, tortured, or persecuted”; Rainer Ibsen Cárdenas was among those named in that list.³⁸ Said list refers to 89 people

³⁴ Cf. Declaration rendered before public notary by expert witness Juan Cristóbal Soruco Quiroga (case file on the merits, volume III, folio 658).

³⁵ Cf. Declaration rendered during the public hearing (*supra* para. 8) of witness Delia Cortez.

³⁶ Cf. ASOFAMD. Report of August, 2997. *35 Years After the Dictatorship of Hugo B[a]nzer Suárez 1971-2006* (case file of appendixes to the application, appendix 4, folios 1561 to 1566). Also, the State mentioned during the public hearing (*supra* para. 8) that “the *Plan Condor* event [...] consisted of systematic human right violations.”

³⁷ Cf. Sections of the impeachment trial against Hugo Banzer Suárez (case file of appendixes to the application, appendix 20, folios 1801 to 1806, and case file of appendixes to the brief of pleadings and motions, PD-24, folios 1597 to 1712); declaration of expert witness Waldo Albarracín Sánchez rendered at the public hearing held on April 13, 2010, in Lima, Peru and Barcelona International Studies and Documentation Center (CIDOB), *Biography of Hugo Banzer Suárez* (case file of appendixes to the application, appendix 3, folios 1536 to 1537), available at: http://www.cidob.org/es/documentacion/biografias_lideres_politicos/america_del_sur/bolivia/hugo_banzer_suar ez (last visit: August 2, 2010).

³⁸ Cf. Sections of the impeachment trial against Hugo Banzer Suárez (case file of appendixes to the application, appendix 20, folios 1802 to 1803, and case file of appendixes to the brief of pleadings and motions, PD-24, folios 1698 to 1699).

murdered or disappeared.³⁹ However, these proceedings were not successful,⁴⁰ and the crimes committed during that period were never resolved.⁴¹

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

57. The phenomenon of forced disappearances of persons requires a systematic and comprehensive analysis; for that reason, this Tribunal considers it appropriate to reiterate the legal grounds that substantiate the need for a comprehensive perspective of forced disappearance due to the plurality of behaviors that, as long as they go on, joined together for a single purpose, permanently violate legal interests protected by the Convention.⁴²

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

59. In international law, this Tribunal's jurisprudence has been a precursor to the consolidation of a comprehensive perspective of the gravity and the continuous or permanent and autonomous nature of the figure of forced disappearance of persons, in which the act of disappearance and its execution begin with a person's deprivation of freedom and the subsequent lack of information on that person's whereabouts and continues until the whereabouts of the disappeared person are known and his or her identity is established. Based on the foregoing, the Court has reiterated that the forced disappearance of persons constitutes a multiple violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, giving

³⁹ Cf. Sections of the impeachment trial against Hugo Banzer Suárez (case file of appendixes to the application, appendix 20, folios 1802 to 1804, and case file of appendixes to the brief of pleadings and motions, PD-24, folios 1698 to 1700).

⁴⁰ Cf. Barcelona International Studies and Documentation Center (CIDOB). *Biography of Hugo Banzer Suárez* (case file of appendixes to the application, appendix 3, folio 1555), available at: http://www.cidob.org/es/documentacion/biografias_lideres_politicos/america_del_sur/bolivia/hugo_banzer_suar ez (last visit: August 2, 2010) and declaration of expert witness Waldo Albarracín Sánchez rendered at the public hearing held on April 13, 2010 in Lima, Peru.

⁴¹ Cf. Declaration rendered during the public hearing (*supra* para. 8) by expert witness Waldo Albarracín Sánchez; Press release published on December 28, 2001 at BBCmundo.com, "*Banzer: Bolivia will analyze extradition*" (case file of appendixes to the application, appendix 29, folios 2460 to 2461) available at: http://news.bbc.co.uk/hi/spanish/latin_america/newsid_1731000/1731160.stm (last visit: August, 2010); Press release published on January 9, 2002 at *El País*, "*Extradition: Tuto leaves Banzer in hands of the Supreme Court*" (case file of appendixes to the application, appendix 29, folio 2462), and Press release published on January 13, 2002 at *La Prensa*, "*Tyrannies in Latin America*" (case file of appendixes to the brief of pleadings and motions, PD-150, folio 2513).

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

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

rise to other related violations, and is particularly serious when it is framed within a systematic pattern or practice applied or tolerated by the State.⁴⁴

60. The characterization of forced disappearance as multiply offensive and continuing or permanent is reflected in the jurisprudence of this Tribunal⁴⁵ and can be inferred not only from the definition of Article II of the Inter-American Convention on Forced Disappearance,⁴⁶ to which the Bolivian state is party (*supra* para. 19), its *travaux préparatoires*,⁴⁷ its preamble and regulation,⁴⁸ but also from other definitions included in different international instruments⁴⁹ that similarly mention the following as concurring and constitutive elements of forced disappearance: a) the deprivation of liberty; b) the direct intervention of state agents or their acquiescence; and c) the refusal to acknowledge the detention and reveal the fate or whereabouts of the affected person.⁵⁰ On previous occasions, this Tribunal has mentioned that, additionally, the jurisprudence of the European Human Rights System,⁵¹ the decisions of different bodies of the United Nations⁵² and several Constitutional Courts and high national courts of the American States⁵³ agree with the indicated characterization.⁵⁴

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

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

⁴⁶ In its pertinent part, said article provides that: “forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.”

⁴⁷ Cf. Annual Report of the Inter-American Commission on Human Rights 1987-1988, Chapter V.II. This crime “is permanent since it is perpetrated not instantly but permanently and it extends during the time that the person remains disappeared” (OEA/CP-CAJP, Report of the President of the Working Group in charge of analyzing the Project of IACFDP, doc. OEA/Ser.G/CP/CAJP-925/93 rev.1, of 25.01(1)1(1)1(1)994, p. 10).

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

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

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

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

⁵² Cf. United Nations Human Rights Committee, *Case of Ivan Somers v. Hungría*, Communication No. 566/1993, 57th period of sessions, CCPR/C/57/D/566/1993 (1996), July, 23 1996, para. 6.3; *Case of E. y A.K. v.*

61. The Court has verified the international consolidation in the analysis of this crime, which constitutes a serious human rights violation given the particular gravity of the offenses it entails and the nature of the rights infringed.⁵⁵ For this reason, it is a flagrant disavowal of the essential principles on which the Inter-American system on human rights is based⁵⁶ and the prohibition thereof has attained the status of *jus cogens*.⁵⁷

62. Pursuant to Article I, subsections a) and b), of the Inter-American Convention on Forced Disappearance of Persons, States Parties undertake to not practice or tolerate the forced disappearance of persons under any circumstances and to punish those responsible under their jurisdiction. This is in accordance with the State's obligation under in Article 1(1) of the American Convention to respect and guarantee rights, which, as has been established by this Court, can be fulfilled in different ways, according to the specific right the State must guarantee and of the specific needs of protection.⁵⁸ This obligation implies the duty of States Parties to organize all the structures through which public power is exercised in such a way that they are capable of legally guaranteeing the free and full exercise of human rights.⁵⁹ As part of that obligation, the State has the juridical duty to "[r]easonably prevent human rights violations and to seriously investigate, with the means

Hungría, Communication No. 520/1992, 50th period of sessions, CCPR/C/50/D/520/1992 (1994), May 5, 1994, para. 6.4, and *Case of Solorzano v. Venezuela*, Communication No. 156/1983, 27th period of sessions, CCPR/C/27/D/156/1983 (1986), March 26, 1986, para. 5.6.

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

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

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

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

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

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

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

available, the violations committed within its jurisdiction in order to identify those responsible, impose appropriate punishments upon them, and guarantee the victim adequate reparation.”⁶⁰

63. This duty to prevent includes all those measures of a legal, political, administrative, and cultural nature that promote the protection of human rights.⁶¹ Hence, the deprivation of liberty in legally recognized centers and the existence of detainee records constitute fundamental safeguards, *inter alia*, against forced disappearances. On the contrary, the implementation and maintenance of clandestine detention centers constitutes *per se* a breach of the obligation to guarantee insofar as it directly affects the rights to personal liberty, humane treatment [personal integrity], life⁶² and juridical personality.

64. Hence, since one of the objectives of forced disappearance is to prevent the exercise of the appropriate legal recourses and procedural guarantees, when a person is kidnapped, detained, or otherwise deprived of his or her liberty so that he or she may be forcibly disappeared, if the victim cannot access the recourses available, it is fundamental that his or her next-of-kin or others close to him or her are able to access prompt and effective proceedings or judicial recourses in order to determine the victim’s whereabouts or health condition, or to identify the authority that ordered his or her deprivation of freedom or brought it about.⁶³

65. In sum, where there are reasonable grounds for believing that a person has been subjected to forced disappearance, State authorities must undertake an investigation.⁶⁴ This obligation exists regardless of whether a complaint is filed, given that in cases of forced disappearance, international law and the general duty to guarantee impose the obligation to investigate the case *ex officio*, without delay, and in a serious, impartial, and effective manner. This is a fundamental and determining element for the protection of the rights affected by these situations.⁶⁵ In any case, all State authorities, public officials, or individuals who have received news about acts directed toward the forced disappearance of persons must denounce them immediately.⁶⁶

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

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

⁶² Cf. *Case of Anzaldo Castro v. Peru*, *supra* note 44, para. 63.

⁶³ Cf. *Case of Anzaldo Castro v. Peru*, *supra* note 44, para. 64 and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 141. Article X of the Convention on Forced Disappearance refers to this obligation.

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

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

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

66. For an investigation to be effective, States must establish an adequate regulatory framework for the development of the investigation, which implies regulating the forced disappearance of persons as an autonomous crime in their domestic legislation, since criminal prosecution is an adequate instrument for preventing future violations of human rights⁶⁷ of this nature (*infra* para. 193).

67. From the foregoing, it can be concluded that the acts that constitute a forced disappearance have a permanent nature and lead to multiple violations of the rights acknowledged in the American Convention while the whereabouts of the victim are unknown or their remains have not been located; therefore, States have a corollary duty to investigate such acts and punish those responsible, as appropriate, in accordance with the obligations derived from the American Convention and, in particular, from the Inter-American Convention on Forced Disappearance of Persons.⁶⁸

68. Thus, the analysis of forced disappearances must include the totality of the facts presented for the Tribunal's consideration in the present case.⁶⁹ Only in this manner will the legal analysis of this phenomenon be consistent with the complex violations of human rights it entails,⁷⁰ with its continued or permanent nature and the need to consider the context in which the facts occurred in order to analyze its effects prolonged in time and focus comprehensively on its consequences,⁷¹ taking into consideration both the Inter-American and international *corpus juris* of protection.

C. On the alleged disappearance of Messrs. Rainer Ibsen Cárdenas and Jose Luis Ibsen Peña

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

70. It is worth repeating that even though the claimant bears the burden of proof of the facts on which his or her argument is based, in proceedings on violations of human rights, the State's defense cannot rest upon the claimant's inability to provide certain evidence when it is the State who has control of the means necessary to bring events that occurred within its territory to light. Below, the Court will carry out an examination of the evidence

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

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

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

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

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

that takes this into account and that, without prejudice to the foregoing, is capable of supporting a conviction as to the veracity of the facts alleged.⁷² The facts mentioned below have been determined based on the evidence provided to the Tribunal and on the parties' assertions that were not disproved or disputed.

C.1. Regarding the Ibsen family

71. Mr. José Luís Ibsen Peña was born in Chile on October 7, 1925, and became a Bolivian citizen in 1947.⁷³ The following year, he married Mrs. Asunta Isaura Cárdenas,⁷⁴ and Rainer Ibsen Cárdenas was born of this union.⁷⁵ After the death of Mrs. Cardenas in 1959, Mr. Ibsen Peña married Mrs. Martha Castro Mendoza,⁷⁶ and they had three children, namely: Rebeca, Tito and Raquel, all of them Ibsen Castro.⁷⁷

72. By May 1972, Mr. José Luis Ibsen Peña lived in the city of Camiri, Santa Cruz, where he established his law office.⁷⁸ During those years, Mr. Ibsen Peña was linked to the Bolivian Labour Headquarters (*Central Obrera Boliviana*).⁷⁹ In the instant case, it has been alleged that in 1973 Mr. Ibsen Peña was arrested in Santa Cruz and that, to date, his whereabouts remain unknown (*infra* paras. 106 to 109).

73. On the other hand, the Inter-American Commission and the representatives allege that Mr. Rainer Ibsen Cárdenas was a university student in 1971, and that in that year he was arrested and his relatives had no knowledge of his whereabouts over a significant period of time (*infra* paras. 74 to 75 and 263 to 264).

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

⁷³ Cf. Copy of the birth certificate of Mr. José Luis Ibsen Peña, (case file of appendixes to the application, appendix 12, folio 1757, and Copy of the Ruling of the Ministry of Government, Justice and Immigration No. E-34-47 of March 26, 1947 (case file of appendixes to the application, appendix 12, folio 1759).

⁷⁴ Cf. Copy of marriage certificate of José Luis Ibsen Peña and Asunta Isaura Cárdenas (case file of appendixes to the brief of pleadings and motions, PD-3, folios 1539 and 1540).

⁷⁵ Cf. Copy of the birth certificate of Rainer Ibsen Cárdenas (case file of appendixes to the brief of pleadings and motions, PD-4, folio 1542).

⁷⁶ Cf. Copy of marriage certificate of José Luis Ibsen Peña and Martha Castro Mendoza (case file of appendixes to the brief of pleadings and motions, PD-6, folio 1547), and copy of death certificate of Asunta Isaura Cárdenas (case file of appendixes to the brief of pleadings and motions, PD-5, folio 1545).

⁷⁷ *Cfr.* Copy of the birth certificates of each one of them (case file of appendixes to the brief of pleadings and motions, PD-7 to PD-9, folios 1549, 1551 and 1553).

⁷⁸ Cf. Manuscript of José Luis Ibsen Peña of May 16, 1972 (case file of appendixes to the brief of pleadings and motions, PD-19, folios 1578 to 1580), and receipt of commercial registration, Local Mayor's Office of Camiri, Bolivia (case file of appendixes to the brief of pleadings and motions, PD-10, folios 1556 and 1557).

⁷⁹ Cf. Declaration rendered during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro, and declaration rendered before public notary (affidavit) by Mrs. Martha Castro Mendoza (case file on the merits, tomo III, folio 635). See also, Minute of the Hearing of Testimonies proposed by Elias Moreno, testimony of Susano Campos Araúz, May 3, 2007 (Case file 37/2000, Volume 22, folios 9301 and 18099); Minute of the public hearing, confession of the accused Elias Moreno Caballero, on September 9, 2004 (Case file 37/2000, Volume 13, folios 6301 and 15064), and Minute of Investigation Hearing, October 20, 2003, (Case file 37/2000, Volume 10, folios 5382 to 5383 and 14143 to 14144).

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

74. In October 1971, Rainer Ibsen Cardenas, at approximately 22 years of age, was arrested in the city of Santa Cruz, Bolivia, and taken to a facility of the Department for Political Order in the city of La Paz. He was later taken to the detention center of Achocalla.⁸⁰ Mr. Ibsen Cárdenas was deprived of liberty for approximately nine months.⁸¹ According to statements rendered by some who were confined in that center, not disputed by the State, in June 1972, at least three people detained in that center were victims of extrajudicial executions. Among the people mentioned was Mr. Rainer Ibsen Cárdenas.⁸²

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

⁸⁰ Cf. Declaration rendered before public notary (*affidavit*) by Mrs. Ledy Catoira Moreno (case file on the merits, volume III, folios 669 to 671); declaration rendered before public notary (*affidavit*) by Mrs. Hilda Saavedra Serrano (case file on the merits, volume III, folio 666); declaration rendered before public notary (*affidavit*) by Mr. Estevan Renato Díaz Matta (case file on the merits, volume III, folios 651 to 652); manuscript death certificate of Rainer Ibsen Cárdenas, June 21, 1972 (case file of appendixes to the application, appendix 16, folio 1793); Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Labour Headquarters (COB), *Banzer: Genius and figure... Not to be forgotten. Never again. [Banzer: Genio y figura... Para que no se olvide. Nunca más.]* Crear Impresiones Publishing House. La Paz, 2008 (case file of appendixes to the application, appendix 5, folios 1570, 1610 and 1625 to 1626), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (last visit: August 2, 2010), and press release published on June 22, 1972 in the morning paper *Presencia*, "Three activists of the National Liberation Army (NLA) died in an attempt of escape" (case file of appendixes to the application, appendix 29, folio 2453, and case file on the merits, volume III, folio 1068). At the public hearing (*supra* párr. 8), Tito Ibsen Castro declared that his brother "disappear[ed] when he was going to the university only with his materiales and a shirt. Subsequently, [in] 1972[, ...] the press releases [mentioned] that he had died in an alleged attempt of escape [...]"

⁸¹ Cf. Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Labour Headquarters (COB). *Banzer: Genius and figure... Not to be forgotten. Never again.* La Paz, Crear Publishing House, 2008 (case file of appendixes to the application, appendix 5, folio 1570 and 1625).

⁸² Cf. Declaration rendered before public notary (*affidavit*) by Mr. Estevan Renato Díaz Matta (case file on the merits, volume III, folio 652); declaration rendered before public notary (*affidavit*) by Mrs. Hilda Saavedra Serrano (case file on the merits, volume III, folio 666), and declaration rendered before public notary (*affidavit*) by Mrs. Ledy Catoira Moreno (case file on the merits, volume III, folios 670 to 671). See also, Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Labour Headquarters (COB). *Banzer: Genius and figure... Not to be forgotten. Never again.* La Paz, Crear Publishing House, 2008 (case file of appendixes to the application, anexo 5, folios 1570, 1610 and 1625 to 1626), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (last visit: August 2, 2010); press release published on May, 1996 in newspaper *La Razón*, "In Bolivia, there are about 240 cases of forced disappearance to be solved" (case file of appendixes to the application, appendix 29, folio 2456), and press release published on February 18, in newspaper *La Nación*, "*Justo Sarmiento lies, he tortured me in El Pari*" (case file of appendixes to the brief of pleadings and motions, PD-120, folio 2379). The interviewee stated that: his son, Rainer Ibsen Cárdenas, was detained, because at that time the young people that are now mirista militants were known as National Liberation Army (NLA) members. This young man was killed at La Paz when I was imprisoned there, he was given fugitive law and then he was killed."

guards were wounded.”⁸³ Another version of the events indicates that he was “shot” in La Paz.”⁸⁴ According to the testimony rendered by Tito Ibsen Castro at the public hearing (*supra* para. 8), Mr. José Luis Ibsen Peña knew of the publication in the *Presencia* morning newspaper, after which he took several actions in an attempt to confirm its veracity.⁸⁵ This particular point shall be addressed later in the pertinent part of this Judgment (*infra* paras. 104 and 105). However, from the foregoing, the Court considers proven that as of his arrest and until his death, Rainer Ibsen Cárdenas was in custody of the security forces of the Department for Political Order at the detention center mentioned above, allegedly as a member of the National Liberation Army.⁸⁶

C.3. Rights to personal liberty, humane treatment [personal integrity], life, and juridical personality of Mr. Rainer Ibsen Cardenas

76. Regarding the State's allegation that Mr. Rainer Ibsen Cardenas's whereabouts were known in 1983 (*supra* para. 27), the Inter-American Commission indicated that Mr. Ibsen Cardenas's next of kin were not aware of this, as “no forensic exam was conducted to establish the identity of the remains that were found [until] 25 years later.” On this point, the Commission indicated in its final written arguments that “what was presented in 1983

⁸³ Cf. Press release published on June 22, 1972 in the morning newspaper *Presencia*, “Three activists of the National Liberation Army (NLA) died in an attempt of escape” (case file of appendixes to the application, appendix 29, folio 2453, and case file on the merits, volume III, folio 1068). See also, declaration rendered before public notary (*affidavit*) by Mr. Estevan Renato Diaz Matta (case file on the merits, volume III, folio 652), and Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Labour Headquarters (COB). *Banzer: Genius and figure... Not to be forgotten. Never again*. La Paz, Crear Publishing House, 2008 (case file of appendixes to the application, appendix 5, folios 1570 and 1625), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (last visit: August 2, 2010).

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

⁸⁵ During the public hearing, Tito Ibsen Castro affirmed that Rainer Ibsen's family “hear[ed] the communication on the radio, and [that his] father knew of the publication in the newspaper “Presencia” and [that his] mother saved it, but they were not certain whether it was really him, since [they] were not asked, nor was [his] father allowed to travel to the city of La Paz.” Additionally, he indicated that upon learning of the abovementioned communiqué, his father “communicate[d] [...] first with the Departmental Headquarters of the Police on *Independencia* street and trie[d] to obtain a permit and, afterward, that authority [...] warn[ed] him to leave in exile [...].”

⁸⁶ Cf. Declaration rendered before public notary (*affidavit*) by Mrs. Ledy Catoira Moreno (case file on the merits, volume III, folios 669 to 671); declaration rendered before public notary (*affidavit*) by Mrs. Hilda Saavedra Serrano (case file on the merits, volume III, folios 665 to 666); declaration rendered before public notary (*affidavit*) by Mr. Estevan Renato Díaz Matta (case file on the merits, volume III, folio 652); Manuscript death certificate of Rainer Ibsen Cárdenas, of June 21, 1972 (case file of appendixes to the application, appendix 16, folio 1793); Association of Relatives of the Detainees, Disappeared Persons and Martyrs for National Liberation (ASOFAMD) and Bolivian Labour Headquarters (COB). *Banzer: Genius and figure... Not to be forgotten. Never again*. La Paz, Crear Publishing House, 2008 (case file of appendixes to the application, appendix 5, folios 1570 and 1625 to 1626), available at: <http://www.somosunoradio.org/wp-content/uploads/2008/06/1-dictadura-de-hugo-banzer-suarez-para-que-no-se-olvide-violacion-al-derecho-de-asociacion-y-trabajo-2.doc> (last visit: August 2, 2010), and press release published on June 22, 1972 in the morning newspaper *Presencia*, “Three activists of the National Liberation Army (NLA) died in an attempt of escape” (case file of appendixes to the application, appendix 29, folio 2453, and case file on the merits, volume III, folio 1068).

were mere indicators that one of the cadavers found belonged to Rainer Ibsen Cárdenas.⁸⁷ Moreover, the Commission alleged that State authorities had presented “a series of versions on [the] fate and whereabouts” of Mr. Rainer Ibsen that “had the purpose of misinforming on the truth” [...],” and that, afterwards, they delivered “[his] remains to a civil society organization without giving his next of kin an official explanation” in that regard. According to the Commission, Mr. Ibsen Cardenas’s next of kin still have no information as to the events that occurred and do not know the exact date and circumstances surrounding his death. Therefore, it requested the Court to declare that the State violated Articles I and XI of the Convention on Forced Disappearance to the detriment of Mr. Rainer Ibsen Cárdenas.

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

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

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

⁸⁷ The Commission indicated that, “[t]he documentation submitted by the State to ground its interpretation of the facts is a 2008 report by [... ASOFAMD] to the Ministry of Justice and news articles.” According to the Commission, “the evidence in the case file indicates that the names of the persons allegedly found were made public without any explanation as to how they were identified over a decade after they had disappeared.” In this regard, it specified that “[t]he news articles submitted by the State referred to irregularities in the lists and names and publicized that some of the registries had been found in pieces.” Likewise, the Commission stated that according to the testimony of Mrs. Delia Cortez, witness proposed by the State, “we have no knowledge of protocols to ensure that the integrity of the remains were being preserved in that process so as to facilitate their subsequent identification.” Thus, “the only criterion considered in order to state that one of the persons found was Rainer Ibsen Cárdenas was the name that appeared on the alleged individualized grave found next to a mass grave.”

80. As to the arguments of the State, this Judgment has already referred to the partial acknowledgment of responsibility made in the instant case (*supra* paras. 5, 23 to 27 and 35 to 38). Regarding the alleged facts with respect to Mr. Rainer Ibsen Cárdenas, in the answer to the application the State acknowledged his forced disappearance and contested only the Inter-American Commission's contention that his remains were not identified until 2008, indicating that the remains were found in 1983 when this fact was allegedly made known to the public at that time. The State concluded that, therefore, the forced disappearance ceased in that year (*supra* para. 27). However, the Tribunal notes that in its final written arguments, the State sustained that in light of the evidence presented to the Tribunal during the proceedings, "it [was] not possible to declare an international violation [for the] forced disappearance of [Mr.] Rainer Ibsen Cárdenas."⁸⁸

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

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

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

⁸⁹ Cf. *Case of La Cantuta v. Peru. Merits, Reparations, and Costs*. Judgment of November 29, 2006. Serie C No. 162, para. 114; *Case of Heliodoro Portugal v. Panama, supra*. note 1, para. 34. The "Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions," approved by the Economic and Social Council of the United Nations in its resolution 1989/65/ of May 24, 1989, were drafted

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

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

along these lines. See also, the "Model Protocol for Disinterment and Analysis of Skeletal Remains" in the United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, U.N. Doc. E/ST/CSDHA/.12 (1991).

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

⁹¹ Minute of the press conference held by the National Commission for the Investigation of Forcibly Disappeared Citizens, of February 18, 1983 (case file of appendixes to the application, appendix 5, folio 11081). See also, the declaration of witness Delia Cortez rendered during the public hearing (*supra* para. 8).

⁹² Cf. Press release published on February 19, 1983 in *El Diario*, "Corpses of 14 'disappeared persons' were found in La Paz" (case file of appendixes to the answer to the application, appendix 7, folio 11083), and press release published on February 19, 1983 at *Presencia*, "Graves of fourteen 'disappeared persons' were identified at the Cemetery of La Paz" (case file of appendixes to the answer to the application, appendix 7, folios 11084 to 11085). In this regard, the press release published at *El Diario* states that: "[a] report submitted to the press by the mentioned commission, mentions that the identified corpses correspond to the following persons that disappeared after the *coup d'État* on 1971 [...] Rayner Ibsen Cárdenas [*sic*] [...]". Likewise, the press release of the newspaper *Presencia* states that date of detention of Mr. "Ipsen Cardenas Rayner [*sic*]" was October, 1971 in Santa Cruz, [his] disappearance date on June 18, 1972, y that [he] was murdered on June 19, 1972. Also, it stated that this person had suffered a "traumatic brain injury on June 19, 1972 and internal bleeding by a bullet.

during the dictatorship of Hugo Bánzer. According to the weekly publication, the remains of Mr. Ibsen Cárdenas were among the remains identified.⁹³

85. On February 22, 1983, the administrator of the General Cemetery of La Paz at the time in which the abovementioned remains were first buried presented an "Informative Statement" before the Ministry of the Interior, Migration, and Justice of Bolivia, indicating that the bodies which had been discovered reached the cemetery "in vehicles belonging to the Clinical Hospital (*Hospital de Clínicas*) with their respective Death Certificate[s], [which were] allegedly signed by [a] forensic doctor [named] Sales." He also stated that cemetery personnel established the identity of the bodies delivered "[a]ccording to the certificates that came with" each one.⁹⁴ However, a press release furnished by the State indicates that the National Commission for Investigation found "irregularities in the death and registration certificates." That press release states that "[a]ccording to the members of the [National] Commission [of Investigation], the edges of the certificates were deliberately cut[, and that] those pieces contained the names of the people who delivered the bodies to cemetery personnel."⁹⁵ On the other hand, according to statements rendered by persons who worked at the General Cemetery of La Paz, also provided by the State, the bodies found by the National Commission of Investigation arrived at the Cemetery on different dates⁹⁶ and without "death certificate[s] issued by the Civil Registrar."⁹⁷ Furthermore, the statements indicate that no visual inspection was carried out on the bodies before being buried, given that "in accordance with the law, a judicial order is necessary to establish such a situation."⁹⁸

⁹³ Cf. Press release published at the weekly newspaper *Aquí* of April 30 to May 6, 1983, "Identity of disappeared persons is being verified" (case file of appendixes to the brief of pleadings and motions, PD-114, folios 2317 and 2318).

⁹⁴ Cf. "Information Testimony rendered by Col. Luis Gomez Casaz" on February 22, 1983 before the Ministry of the Interior, Immigration and Justice (case file on the merits, volume V, folios 1736 to 1737) .

⁹⁵ Cf. Press release published on February 19, 1983 at *Presencia*, "Graves of fourteen 'disappeared persons' were identified at the Cemetery of La Paz" (case file of appendixes to the answer to the application, appendix 7, folios 11084 to 11085).

⁹⁶ Cf. "Police Information Testimony rendered by Mr. Lizandro Romero Ortiz" on April 13, 1983 ante la División de Homicidios de Criminalística (case file on the merits, volume V, folio 1738), y "Police Information Testimony rendered by Mr. Bernardino Hernán Ibáñez Ríos" el 13 de abril de 1983 ante la División de Homicidios de Criminalística (case file on the merits, volume V, folio 1741). According to Mr. Romero Ortiz, los "entierros seguramente fuer[o]n en varias oportunidades [...]" .En este mismo sentido, el señor Ibáñez Ríos declaró que "evidently th[ese] corpses were registered in different dates in the book[,] registrado[s] tal cual como consta actualmente en el respectivo libro de inhumaciones y tal como se puede deducir de los certificados de defunción [actualmente] existentes en el archivo".

⁹⁷ "Police Information Testimony rendered by Mr. Lizandro Romero Ortiz" on April 13, 1983 before the Criminology Division of Murders (case file on the merits, volume V, folio 1739), and "Police Information Testimony rendered by Mr. Bernardino Hernán Ibáñez Ríos" on April 13, 1983 before the Criminology Division of Murders (case file on the merits, volume V, folio 1741). On this regard, Mr. Romero Ortiz mentioned that the registry of the buried corpses "was made according to the forensic death certificate at the time [...] Any entries were not registered, since any death certificates issued by the Officer of the Civil Registrar were showed[;] [...] currently, those certificates exist in the statistics section of the cemetery [*sic*]" . In the same token, Mr. Ibáñez Ríos declared that "these registries were carried out in a normal manner, just like it is made nowadays and always accordingly to the book of existing statistics registries, that, in this case, it could be established that the burials of this investigation did not have the corresponding authorization issued by the Officer of the Civil Registrar, and in the mentioned cases only existed the forensic physician certificate."

⁹⁸ "Police Information Testimony rendered by Mr. Bernardino Hernán Ibáñez Ríos" on April 13, 1983 before the Criminology Division of Murders (case file on the merits, volume V, folio 1742), and "Police Information Testimony rendered by Mr. Lizandro Romero Ortiz" on April 13, 1983 before the Criminology Division of Murders (case file on the merits, volume V, folio 1739). According to Mr. Romero Ortiz, he "he could not observe the [corpses] since the four of them [...] that he had to bury were [h]ermetically sealed and they addressed

86. In relation to Rainer Ibsen Cárdenas, the Tribunal notes that the case file contains a hand-written document dated June 21, 1972, and stamped with the seal of the Administration of the General Cemetery of La Paz, presented as Rainer Ibsen Cárdenas's "Death Certificate," which indicates that he died on June 19, 1972, and that the cause of his death was "internal hemorrhage caused by a bullet."⁹⁹ The supposed death certificate apparently contains two illegible signatures that do not permit to identify the names of the persons who signed it.

87. The Tribunal also notes that on February 28, 1983, the National Commission for Investigation requested the Public Prosecutor's Office to exhume and perform necropsies on 6 people, including "Ipsen Rainer Cárdenas [*sic*]."¹⁰⁰ However, necropsies requested were never carried out. In 1985, the said Commission was dissolved and its files were given to ASOFAMD together with the remains found two years before, which were transferred to that organization's Mausoleum at the General Cemetery of La Paz,¹⁰¹ including those that allegedly belonged to Mr. Ibsen Cárdenas. In relation to that delivery, at the public hearing (*supra* para. 8) Mrs. Delia Cortez stated that according to the information of ASOFAMD, the only elements used by the National Commission of Investigation to establish that some of the transferred remains belonged to Mr. Rainer Ibsen Cardenas were the name and date of his death that appeared over one of three identified graves next to a common grave and a death certificate of unknown authorship allegedly issued by the administration of the General Cemetery of La Paz (*supra* para. 86). There is no information in the record before the Tribunal information that clarifies the manner in which the exhumation and transfer were carried out, or whether they were carried out using methods that permitted the proper handling and preservation of the bodies until they were reburied. Likewise, at that time, no forensic examination was conducted in order to corroborate whether those remains belonged to Rainer Ibsen Cárdenas. From this, the Court notes that the remains that apparently belonged to Mr. Ibsen Cardenas were delivered to a civil institution and not to his next of kin, and that they were exhumed and transferred to another place, where they were buried again without having been previously identified.

88. Based on the foregoing, the Court considers proven that various initial irregularities existed that do not permit a conviction that the remains of Rainer Ibsen Cárdenas were found in 1983, as alleged by the State. Therefore, it is not possible to establish that the forced disappearance of Mr. Ibsen Cárdenas ceased on that date, and the Court finds it unnecessary to rule upon the State's allegations regarding the publicity given to the discovery of the illegal burials and the knowledge that his next of kin allegedly had about that discovery. However, in order to establish the date on which Rainer Ibsen's whereabouts were later determined, it is necessary that the Court refer to other facts that were proven in the instant case.

themselves to bury them". Likewise, Mr. Ibáñez Ríos declared "in none of the cases that kind of verifications was made".

⁹⁹ Cf. Manuscript death certificate of Rainer Ibsen Cárdenas, issued on June 21, 1972 (case file of appendixes to the application, appendix 16, folio 1793, and case file on the merits, volume V, folio 1734).

¹⁰⁰ Cf. Request of the National Commission for the Investigation of Disappeared Citizens to the Public Prosecutor's Office on February 23, 1983 (case file of appendixes to the application, appendix 19, folio 1799).

¹⁰¹ Cf. Declaration rendered during the public hearing (*supra* para. 8) by witness Delia Cortez Flores.

89. On March 21, 2007, within the framework of the criminal proceeding conducted at the domestic level (*infra* paras. 137 to 150), the skeletal remains that apparently belonged to Rainer Ibsen Cárdenas were exhumed.¹⁰² It should be mentioned that during the domestic criminal proceedings, Messrs. Rebeca and Tito Ibsen Castro requested this exhumation on at least five occasions since 2003.¹⁰³ On March 23, 2007, the expert witnesses in charge of the exhumation delivered a “preliminary report” to the Prosecutor with subject-matter jurisdiction of the District of La Paz, indicating that none of the skeletal remains exhumed matched the characteristics of Mr. Rainer Ibsen Cárdenas.¹⁰⁴ The report also indicated that “the remains of Rainer Ibsen Cárdenas had been interred at the General Cemetery of La Paz, along with other persons, in the so-called Pantheon of ASOFAMD after having been previously exhum[ed] from a grave in the same cemetery.”¹⁰⁵

90. On May 10, 2007, the expert witnesses issued “Final Reports” confirming that “[t]he biological profile [...] of the remains [exhumed on March 21, 2007, was] not consistent with the *premortem* data corresponding to [Mr.] Rainer Ibsen Cárdenas.”¹⁰⁶ In its final written arguments, the State indicated that the reason for this was that “at that time, it was understood that the mortal remains of Rainer Ibsen Cárdenas were located in grave number 7, [but that] due to the decision of those who were present at the excavation, and with the acquiescence of Mr. Tito Ibsen (who did not object to the decision taken), the graves were counted backwards. Therefore, it was not possible to identify the mortal remains of [Mr. Ibsen Cardenas] from this first excavation[;] this occurs later on, when the count to grave [number] 7 is inverted and the remains are exhumed [...]” The Court considers that it is irrelevant whether Mr. Tito Ibsen Castro made no observations to the manner in which the remains were to be exhumed. The Court notes that the exhumation was conducted as part of the domestic criminal proceedings, and was therefore under the

¹⁰² Cf. Report of the Investigator Officer addressed to the Chief of the Homicides Division, on March 27, 2007 (case file of appendixes to the application, appendix 24, folios 2290 a 2291), and “Preliminary Report on the Exhumation Works and Forensic Anthropology Analysis, in relation to the search and identification of the remains of Rainer Ibsen Cárdenas,” submitted Silvana Turner and Mariana A. Segura to the Matters Attorney of the Office of the Attorney General of the District of La Paz on March 23, 2007 (case file of appendixes to the application, appendix 25, folios 2299 to 2300).

¹⁰³ Cf. Brief of Rebeca Ibsen Castro addressed to the First Instance Judge of Warnes, on October 7, 2003 (Case file 37/2000, Volume 10, folios 5321 to 5322 and 14080 to 14082); Brief of Rebeca Ibsen Castro addressed to the Seventh First Instance Civil and Commercial of La Paz, on October 20, 2006 (Case file 37/2000, Volume 21, folios 9094 to 9095), and brief of Tito Ibsen Castro addressed to the Matters Attorney of the Office of the Attorney General of the District of La Paz, on January 25, 2007 (case file of appendixes to the application, appendix 24, folios 2276 to 2278). See also, the briefs addressed to the Matters Attorney of the Office of the Attorney General of the District of La Paz submitted by Tito Ibsen Castro, on December 13, 2006 and January 9, 2007 (case file of appendixes to the application, appendix 24, folios 2263 to 2264). Both documents are apparently incomplete, nevertheless, the State did not challenge their authenticity.

¹⁰⁴ Cf. “Preliminary Report on the Exhumation Works and Forensic Anthropology Analysis, in relation to the search and identification of the remains of Rainer Ibsen Cárdenas,” submitted by Silvana Turner and Mariana A. Segura to the Matters Attorney of the Office of the Attorney General of the District of La Paz on March 23, 2007 (case file of appendixes to the application, appendix 25, folios 2299 to 2300 and 2302). See also, Report of the Investigator Officer addressed to the Chief of the Homicides Division, on March 27, 2007 (case file of appendixes to the application, appendix 24, folios 2290 to 2291).

¹⁰⁵ Cf. Preliminary Report on the Exhumation Works and Forensic Anthropology Analysis, in relation to the search and identification of the remains of Rainer Ibsen Cárdenas,” submitted by Silvana Turner and Mariana A. Segura to the Matters Attorney of the Office of the Attorney General of the District of La Paz on March 23, 2007 (case file of appendixes to the application, appendix 25, folio 2300).

¹⁰⁶ Cf. Final report of the Argentinian Team on Forensic Anthropology, “Anthropological report on remains LP-A1,” of May 10, 2007 (case file of appendixes to the application, appendix 25, folios 2303 and 2309).

control of the State at all times. In addition, throughout the procedure on the instant case, the State asserted that it knew, at all times, where the remains of Mr. Rainer Ibsen Cardenas were located. Therefore, an unsuccessful procedure such as this verifies the lack of certainty regarding his whereabouts up to that point (*supra* paras. 82 and 83). In this respect, the Court considers that the State cannot argue, on one hand, that the remains of Rainer Ibsen were absolutely located, with a plaque on the grave in which he was supposedly buried to boot, and, on the other hand, that the remains exhumed in March 2007 did not turn out to be those of Mr. Rainer Ibsen Cárdenas because the persons in charge of the exhumation counted the graves incorrectly.

91. On the other hand, on February 20, 2008, other bodies in the mausoleum of ASOFAMD were exhumed.¹⁰⁷ The case file before the Court contains a "preliminary report" on the DNA profile of the remains of one of those bodies dated July 15, 2008, and issued by the experts in charge of the exhumation. The report established that one of the bodies exhumed had a 99.7% probability of belonging to Rainer Ibsen Cardenas.¹⁰⁸ On July 28, 2008, the expert witnesses presented to the District Prosecutor of La Paz a "Forensic Anthropology Final Report" on the exhumations of February 20 of that year.¹⁰⁹ This remains were delivered to Mr. Ibsen Cárdenas' next of kin on November 11, 2008.¹¹⁰ On that same day, the Forensic Research Institute of the Attorney General Office of the Republic issued a "Death Certificate" which indicated that Mr. Rainer Ibsen Cárdenas died on June 22, 1972, in La Paz, due to "[c]ranio-encephalic trauma and [m]ultiple [t]raumas." Under the heading "Observations," the document reads: "Skeletal remains that were exhumed at the Mausoleum of ASOFAM [*sic*] of the city of La Paz, which were later identified through genetic testing [...], upon the order of exhumation issued by the [...] District Prosecutor of La Paz."¹¹¹ The Tribunal notes that these reports were not disputed.

92. Given the lack of certainty as to whether the remains found in the year 1983 at the Mausoleum of ASOFAMD belonged to Rainer Ibsen Cardenas, the Court considers that those remains were identified, in this case, by means of the DNA profile report of July 15, 2008, on the remains exhumed on February 20, of that same year, within the framework

¹⁰⁷ Cf. "Final Report on the Works of Exhumation and Anthropological Analysis of the Buried Remains in the ASOFAMD Cemetery, Sector B, General Cemetery of La Paz" (Case file 37/2000, Cuerpo 25, folios 10106 y 18907).

¹⁰⁸ Cf. DNA Profil Preliminary Report, of July 15, 2008 (Case file 37/2000, Volume 25, folios 10094, 10104, 18897 and 18905), and Delia Cortez Flores statement rendered during the public hearing.

¹⁰⁹ Cf. Note signed by Silvana Turner of the Argentinian Team on Forensic Anthropology addressed to the Office of the Attorney General of the District of La Paz, on July 28, 2008 (Case file 37/2000, Volume 25, folios 10105 to 10106 and 18906 to 18907).

¹¹⁰ Cf. "Minute of delivery of evidence and/or samples", of November 11, 2008 (Case file 37/2000, Volume 27, folios 10626 and 19126); Brief of Rebeca Ibsen Castro addressed to the Seventh First Instance Civil and Commercial Judge of La Paz, on November 12, 2008 (Case file 37/2000, Volume 27, folios 10628 y 19428); note CITE: F.G.R. Stria. N° 1433/2008 of the Attorney General of the Republic addressed to the Foreign Relations and and Worship Ministry, November 24, 2008 (case file of appendixes to the answer to the application, appendix 13, folios 11309); note CITE: JENAMEF 690 /08 of the Forensic Investigations Institute addressed to the Attorney General of the Republic (case file of appendixes to the answer to the application, appendix 13, folio 11311), and press release published on November 12, 2008 in *La Razón*, "They give back Rainer's remains" ["Devuelven los restos de Rainer"] (case file of appendixes to the brief of pleadings and motions, PD-191, folio 2621).

¹¹¹ Death Certificate of Rainer Ibsen Cárdenas issued by the Forensic Investigations Institute of the Office of the Attorney General of the Republic, on November 11, 2008 (Case file 37/2000, Volume 27, folios 10627 and 19427).

of the mentioned legal proceedings (*infra* paras. 137 to 150). It is as from the issuance of this report that the whereabouts of Mr. Rainer Ibsen Cardenas were finally established.

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93. The Tribunal shall analyze the Commission's arguments as to Ibsen Cardenas' alleged forced disappearance until the date on which his remains were identified, when the alleged violation would have ceased.

94. The Court has verified that Mr. Rainer Ibsen Cardenas was arrested and later finally transferred to the detention center of Achocalla, in the city of La Paz. He was deprived of liberty for approximately nine months after which he was deprived of life as a result of several gunshot wounds to the head,¹¹² all this while in the custody of the State. From the pattern of violations committed during that time, the context of which was expressly acknowledged by the State, it is possible to sustain that the arrest and subsequent disappearance of Mr. Ibsen Cárdenas was not only contrary to the right to personal liberty, but also put him in a grave situation of risk of suffering irreparable damage to his personal integrity.¹¹³ The determination of the specific parties who made the arrest, of what happened to him during the time he was deprived of liberty, and of the circumstances surrounding his death have still not been judicially determined (*infra* paras. 161, 174, 211, 225 and 226). The Court emphasizes that the alleged death certificate issued in 1972 indicated that Mr. Ibsen Cárdenas had died due to "internal hemorrhage caused by a bullet" (*supra* para. 86), while the certificate issued in 2008 based on the genetic and anthropological examinations indicated that he died as a result of a "cranio-encephalic trauma" and "multiple traumas" (*supra* para. 91).

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

¹¹² Cf. "Final Report on the Works of Exhumation and Anthropological Analysis of the Buried Remains in the ASOFAMD Cemetery, Sector B, General Cemetery of La Paz" (Case file 37/2000, Volume 25, folios 10173 to 10174 and 18974 to 18975).

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

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

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

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

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

[t]o be recognized everywhere as a person having rights and obligations, and to enjoy the basic civil rights, [which] implies the capacity of being the holder of rights (capacity and enjoyment) and obligations; the violation of this recognition means absolutely negating the possibility of being a holder of civil and fundamental rights and obligations.¹¹⁷

97. This right represents a parameter for the determination of whether a person is a holder of the rights in question and whether he or she can exercise those rights;¹¹⁸ for that reason, the violation of that acknowledgment makes the individual vulnerable before the State and individuals.¹¹⁹ In this way, the right to juridical personality entails a general duty of the State to provide the legal means and conditions so that this right may be freely and fully exercised by individuals¹²⁰ or the obligation not to violate that right.¹²¹

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

99. Based on the foregoing, though this Court had established in previous cases that said definition did not expressly include the recognition of juridical personality among the elements classifying this complex crime,¹²³ it is worth noting that, pursuant to the principle of effectiveness and the needs of protection in cases of people or groups in vulnerable

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

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

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

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

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

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

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

situations, this Tribunal, in accordance with the evolution of the international *corpus juris* on this matter,¹²⁴ has interpreted Article II of the Inter-American Convention on Forced Disappearance of Persons in broad terms, allowing it to conclude that the result of the refusal to acknowledge the deprivation of liberty or the whereabouts of a disappeared person is, together with other elements of forced disappearance, what takes the person "outside the protection of the law;"¹²⁵ that is, the violation of the personal and juridical protection of the individual, which directly impedes the recognition of juridical personality.¹²⁶

100. Moreover, this consequence is evidenced when a deliberate intention can be gathered from the *modus operandi*, not only to impede the exercise of legal recourses and procedural guarantees to the individual, but also to impede the exercise of other rights, civil or political, and to take the individual away from his or her community and his or her family group,¹²⁷ as occurred in the instant case (*infra* para. 122).

101. Therefore, the State must respect and provide the legal means and conditions necessary so that the right to juridical personality may be freely and fully exercised by individuals.¹²⁸ That recognition establishes a person's effective existence before society and the State, permitting one to be entitled to rights and obligations, to exercise them, and to have the capacity to act, which are inherent rights of the human being that cannot be repealed at any time by the State according to the American Convention.¹²⁹

102. In the case at hand, Rainer Ibsen Cárdenas was placed in a situation of legal uncertainty that annulled his possibilities of being effectively entitled to and exercising his rights in general, which constitutes one of the most serious forms of non-compliance with the State's obligations to respect and guarantee human rights.¹³⁰ This resulted in the violation of Mr. Ibsen Cárdenas's right to juridical personality.

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103. Based on the foregoing, the Court concludes that the State is responsible for the detention and subsequent forced disappearance of Mr. Rainer Ibsen Cárdenas and, therefore, for the violation of the rights to juridical personality, life, humane treatment

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

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

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

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

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

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

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

[personal integrity], and personal liberty. The Court shall analyze the issues related to the State's duty to investigate in Chapter VII of this Judgment.

C.4. Arrest and subsequent disappearance of Mr. Jose Luis Ibsen Peña

104. At the public hearing, Mr. Tito Ibsen Castro declared that after the arrest of Rainer Ibsen Cardenas, his father, José Luis Ibsen Peña, took action in order to gain access to the detention center of Achocalla, the place “[where] his son was allegedly confined,” without success. Likewise, he stated that once the Ibsen family learned about the press release of June 22, 1972, stating that Mr. Ibsen Cardenas had apparently died in an escape attempt (*supra* para. 75), Mr. Ibsen Peña communicated with the representatives of the Departmental Police Headquarters in the city of Santa Cruz without obtaining any answer.¹³¹ The State did not contest these points; therefore, the Court considers these events as proven.

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

106. On February 10, 1973, José Luis Ibsen Peña, of 47 years of age (*supra* para. 71), and his son Tito Ibsen Castro, of approximately 8 years of age¹³⁴ were buying school supplies in the city of Santa Cruz. While walking on *Independencia* Street, Mr. Ibsen Peña was detained by State security officials, who ordered him to accompany them. Mr. Ibsen Peña expressed his concern that it would be the first time his son Tito would return home alone.¹³⁵ That

¹³¹ Cf. Declaration rendered during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro.

¹³² Cf. Declaration during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro; declaration rendered before public notary (*affidavit*) by Mrs. Martha Castro Mendoza (case file on the merits, volume III, folio 634), and declaration rendered before public notary (*affidavit*) by Mrs. Rebeca Ibsen Castro (case file on the merits, volume III, folio 739).

¹³³ Cf. Passport of José Luis Ibsen Peña (case file of appendixes to the application, appendix 14, folios 1785 and 1788 to 1789).

¹³⁴ Cf. Birth certificate of Mr. Tito Ibsen Castro (case file of appendixes to the application, appendix 12, folio 1767).

¹³⁵ Cf. Declaration during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro; declaration rendered before public notary (*affidavit*) by Mrs. Martha Castro Mendoza (case file on the merits volume III, folio 636), and declaration rendered before public notary (*affidavit*) by Mrs. Rebeca Ibsen Castro (case file on the merits, volume III, folio 739).

night, Mr. Ibsen Peña returned home accompanied by the same agents in order to retrieve some personal objects and was again taken without showing an arrest warrant.¹³⁶

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

108. There is evidence in the case file that Jose Luis Ibsen Peña was seen at the El Pari detention center with signs of physical ill-treatment. In that respect, Mr. Sandalio Terceros declared before the Magistrate's Court of the Province of Warnes that he had been confined

¹³⁶ Cf. Declaration rendered during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro, and declaration rendered before public notary (*affidavit*) by Mrs. Martha Castro Mendoza (case file on the merits, volume III, folio 636). The Court states that from the body of proof it can be learned that Mr. Ibsen Peña was deprived of liberty several times before 1973 and taken to the detention center of El Pari, although it is not possible to determine with certainty the dates of such detentions. Cf. Declaration rendered before public notary (*affidavit*) by Mrs. Rebeca Ibsen Castro (case file on the merits, volume III, folio 738 to 739); declaration rendered before public notary (*affidavit*) by Mrs. Martha Castro Mendoza (case file on the merits, volume III, folio 635 to 636), and declaration rendered before public notary (*affidavit*) by Mr. Estevan Renato Díaz Matta (case file on the merits, volume III, folio 650 and 654). See also, Minute of the Hearing of Testimonies proposed by Elias Moreno, declaration of Susano Campos Araúz, on May 3, 2007 (Case file 37/2000, Volume 22, folios 9301 and 18099); minutes of public hearing, declaration of Juany Alcira Osinaga Ríos, April 19, 2003 and February 8, 2006 (case file of appendixes to the brief of pleadings and motions, Case file 37/2000, Seventh First Instance Civil and Commercial Court, Volume 12, folios 5873 to 5877, and Volume 21, folios 8783 to 8797), minute of public confession hearing and minute of investigation hearing of Elías Moreno Caballero, on September 9, 2004 and October 21, 2003, respectively (case file of appendixes to the application, appendix 21, folios 1910 to 1935, and case file of appendixes to the brief of pleadings and motions, Case file 37/2000, Seventh First Instance Civil and Commercial Court, Volume 13, folios 6299 to 6324 and Volume 10, folios 5380 to 5690). See also interview to Rebeca Ibsen. Cf. Press release of newspaper *El Deber*, August 17, 2003 (case file of appendixes to the brief of pleadings and motions, PD-159, folio 2543), and press release published on February 18, 2000 in *La Nación*, "Justo Sarmiento lies, he tortured me in El Pari", (case file of appendixes to the application, appendix 29, folio 2457, and case file of appendixes to the brief of pleadings and motions, PD-120, folio 2379).

¹³⁷ Cf. Declaration rendered during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro; declaration rendered before public notary (*affidavit*) by Mrs. Martha Castro Mendoza on March 22, 2010 (case file on the merits, volume III, folios 634 to 640), and declaration rendered before public notary (*affidavit*) by Mrs. Rebeca Ibsen Castro on April 24, 2010 (case file on the merits, volume III, folios 735 to 746).

¹³⁸ Cf. Birth certificate of Rebeca Ibsen Castro (case file of appendixes to the application, appendix 12, folio 1765).

¹³⁹ Cf. Birth certificate of Raquel Ibsen Castro (case file of appendixes to the application, appendix 12, folio 1769).

¹⁴⁰ Cf. Declaración rendered by Mr. Tito Ibsen Castro during the public hearing (*supra* para. 8). Although these are not facts that they are certain of, these was also mentioned by Mrs. Martha Castro Mendoza in her declaration rendered before public notary (*affidavit*) on March 22, 2010 (case file on the merits, volume III, folios 634 to 640), and by Mrs. Rebeca Ibsen Castro in her declaration rendered before public notary (*affidavit*) el 24 de abril de 2010 (case file on the merits, volume III, folios 735 to 746).

¹⁴¹ Cf. Declaración rendered by Mr. Tito Ibsen Castro durante la audiencia pública (*supra* para. 8).

in one of the cells of that detention center and that he had met Mr. Ibsen Peña there, indicating that the latter “had bruises all over because they beat him very much.”¹⁴² Likewise, in a declaration rendered before the Ninth Trial Court for Criminal Matters, Mr. Elías Moreno Caballero indicated that he found José Luis Ibsen Peña being beaten with a stick by an official of El Pari, who hit him once more in his presence until he fell to the ground. He also stated that he later heard Mr. Ibsen Peña snoring and saw him be covered with a blanket and that, according to another employee, he had been taken to a cemetery.¹⁴³

109. During the public hearing (*supra* para. 8), Tito Ibsen Castro declared that on February 28, 1973, he and Martha Castro Mendoza were informed by “authorities” that Jose Luis Ibsen Peña had been “removed for exile” to Brazil.¹⁴⁴ Martha Castro Mendoza later went to the embassy of that State in Bolivia, where she was informed that “no political prisoner ha[d] gone to [that country].”¹⁴⁵ Mr. Ibsen Peña’s family members have had no knowledge of his whereabouts since that date.¹⁴⁶

110. During the time Jose Luis Ibsen Peña was arrested and after his disappearance, his wife, Martha Castro Mendoza, accompanied always by Tito Ibsen Castro, took several steps to secure his release and, later on, to find his whereabouts. On April 15, 1973, [Ms. Martha Castro] went to the Bar Association of Santa Cruz, asking that steps be taken to secure the release of Mr. José Luis Ibsen Peña, or at least to find out where he was.¹⁴⁷ However, his next of kin have stated that due to the threats issued against them and the conditions at the time of the events, acknowledged by the State (*supra* para. 26), they refrained from filing formal complaints on the facts. In that respect, on April 26, 2000, upon filing a petition to join and expand a complaint due to the facts allegedly committed against her father and brother (*infra* para. 140), Ms. Rebeca Ibsen Castro indicated that “[t]he

¹⁴² Cf. “Acta de audiencia de inspección judicial y reconstrucción de los hechos en la ex-comisaría El Pari (actualmente oficinas del GES)”, de 30 de abril de 2004 (Case file 37/2000, Cuerpo 12, folios 5935 y 5952 y 14691 y 14708).

¹⁴³ Cf. Acta de audiencia pública de ampliación de confesión del procesado Elías Moreno Caballero, de 28 de diciembre de 2004 (Case file 37/2000, Cuerpo 16, folios 7356 a 7357 y 16118 a 16119).

¹⁴⁴ Cf. Declaration rendered during the public hearing (*supra* párr. 8) by Mr. Tito Ibsen Castro.

¹⁴⁵ Cf. Declaration rendered before public notary (*affidavit*) by Mrs. Martha Castro Mendoza (case file on the merits, volume III, folio 637), and brief of “Petition to join, appear personally in the proceeding, complaint and expansion of initial order No. 97/2000, civil matter constitution, precautionary measures” by Rebeca Ibsen Castro, April 26, 2000 (case file of appendixes to the application, appendix 21, folio 1809).

¹⁴⁶ In this regard, in the following documents, José Luis Ibsen Peña is included as one of the disappeared persons during the dictatorship of Hugo Banzer Suárez: ASOFAMD. Bulletin of August, 2007. *35 Years After the Dictatorship of Hugo B[a]nzer Suárez 1971-2006* (case file of appendixes to the application, appendix 4, folio 1565); press release published on February 18, 2000 in *La Nación*, “Renato Díaz Matta: Justo Sarmiento lies, he tortured me in El Pari” (case file of appendixes to the brief of pleadings and motions, PD-120, folio 2379); public invitation of ASOFAMD, “Tribue of the People to its Martyrs”, August 21, 1979 (case file of appendixes to the application, appendix 7, folio 1736, and case file of appendixes to the brief of pleadings and motions, PD-112, folio 2311), and press release published on June 4, 2000 in *Reportajes en Presencia*, “I never knew again of my father or my brother” [“Nunca más supe de mi padre ni de mi hermano”] (case file of appendixes to the brief of pleadings and motions, PD-121, folio 2391).

¹⁴⁷ Cf. Communication of Martha Castro addressed to the “President and Member of the Executive Board and Deliberative Council of the Santa Cruz Bar Association”, on April 15, 1973 (case file of appendixes to the application, appendix 17, folio 1795; declaration rendered before public notary (*affidavit*) by Mrs. Martha Castro Mendoza (case file on the merits, volume III, folio 637), and declaration rendered during the public hearing (*supra* para. 8) by Mr. Tito Ibsen Castro.

repression, terror, forced absence, and restrictions of State agents [denied them of] their right to formulate claims [...], beco[ming] silent accomplices due to the grief for the unfair, the inhumane and the irreparable [*sic*]."¹⁴⁸

111. Under the framework of the search for the remains of Mr. José Luis Ibsen Peña, on April 19, 2006, a visual inspection was conducted at the site where, according to a statement of Mr. Elías Moreno Caballero, a defendant in the criminal proceeding currently conducted in relation to the facts of the instant case¹⁴⁹ (*infra* paras. 138 to 150), the mortal remains of Mr. Ibsen Peña were located. However, it was concluded that the description of the place "[was] very vague [and] uncl[ear], making it impossible to determine its exact location,] and [that it was] practically impossible to locate the remains due to the time elapse[d] and [because] a flood ha[d] modified the topography of the area."¹⁵⁰ Furthermore, on August 22, 2006, a skull, kneecap, humerus, femur bones and part of a lower jaw with four teeth were found during a search for his remains at La Cuchilla cemetery in the city of Santa Cruz. The procedure was done using the mechanical arm of a toothed backhoe.¹⁵¹ On September 5, 2006, the Seventh Civil Court was informed that the mentioned bones were being studied at the Forensic Research Institute to confirm their identity.¹⁵² The Court notes that there is no further information in the case file regarding the procedures taken in the search for the whereabouts of Mr. Jose Luis Ibsen Peña.

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

112. The Commission argued, in separate sections, that the State was responsible for the deprivation of liberty of Mr. Jose Luis Ibsen Peña through "through the use of force," such detention was "not ordered by a competent authority," and its purpose "was not to hand him over to a judge or other official authorized by the law to decide the legality of their detention, but to interrogate him, torture him, execute him, and/or forcibly make him disappear." Furthermore, it indicated that such detention took place "under a dictatorship, outside constitutional protections, and within a state of permanent suspension of fundamental rights and constitutional guarantees," in which Mr. José Luis Ibsen Peña was arrested "as a political prisoner, apparently for his links to the Bolivian Labour Headquarters," "after months of public complaints and a tireless search for the whereabouts of his son [Rainer Ibsen Cárdenas]." It added that, given that "36 years have

¹⁴⁸ Cf. Brief of "Petition to join, appear personally in the proceeding, complaint and expansion of initial order No. 97/2000, civil matter constitution, precautionary measures" by Rebeca Ibsen Castro, April 26, 2000 (case file of appendixes to the application, appendix 21, folio 1809).

¹⁴⁹ On October 21, 2008 Mr. Elías Moreno Caballero lawyer informed to the Seventh First Instance Civil and Commercial Judge of the capital city on the death of the prosecuted due to a Myocardial infarction. Cf. Death Certificate of Elías Moreno Caballero and brief of October 21, 2008 (Case file 37/2000, Volume 27, folios 10593 to 10594 and 19394 to 19395).

¹⁵⁰ Cf. "Minute of the public hearing to verify the place and location where the mortal remains of José Luis Ibsen Peña were allegedly located" (Case file 37/2000, Appendix 21, folios 8956, 8960, 17752 and 17756).

¹⁵¹ Cf. Press release published on August 23, 2006 in *La Prensa*, "They found the remains of a victim" ["Hallan restos de un victimado"] (case file of appendixes to the brief of pleadings and motions, PD-182, folio 2597), and press release published on August 23, 2006 in *El Deber*, "Skeletal remains of a possible victim of the dictatorship were found" ["Hallaron restos óseos de una posible víctima de la dictadura"] (case file of appendixes to the application, appendix 29, folio 2468).

¹⁵² Cf. Brief of the Public Prosecutor of Santa Cruz de la Sierra addressed to the Seventh First Instance Civil and Commercial Court of Santa Cruz, on September 1, 2006 (case file of appendixes to the application, appendix 24, folios 2251 to 2252).

elapsed without his whereabouts having been established or his remains found and identified," there is sufficient indications to conclude that he was deprived of his life. In addition, it argued that the forced disappearance of the alleged victim had the objective to deprive him of his juridical personality, thus leaving him outside the legal and institutional order. In this way, "his perpetrators sought impunity for their acts, as it was guaranteed that it would be impossible for the victim and his next of kin to seek judicial protection, in view of the constant and systematic lack of any investigation related to his whereabouts, since this information was denied and/or distorted by the authorities."

113. The representatives agreed with the arguments put forward by the Commission. Moreover, they indicated that Jose Luis Ibsen Peña, since the arbitrary arrest of his son Rainer, had assumed his search for the whereabouts and location of his son, "bothering authorities and rulers of the respondent State, to the extreme point of receiving threats [...that he would] suffer the same fate as [his son], that is, to be arbitrarily deprived of liberty by state agents [...] and then disappeared."

114. In turn, the State acknowledged its international responsibility for the violation of the rights enshrined in Articles 3, 4, 5, and 7 of the American Convention in relation to the obligations contained in Article 1(1) therein, and the violation the obligations established in Articles I and XI of the Inter-American Convention on Forced Disappearance, in relation to Mr. Jose Luis Ibsen Peña. In addition, the State acknowledged the facts mentioned by the Commission in relation to the arrest and subsequent disappearance of [Mr. Jose Luis Ibsen Peña] (*supra* paras. 5 and 23 to 26). The State also expressed its willingness to shed light on the cases of "disappeared persons during the dictatorship of Hugo Banzer Suárez" and especially, "to give priority [...to the case of] Jose Luis Ibsen Peña."

115. The Tribunal deems that there is sufficient evidence regarding the fact that Mr. Jose Luis Ibsen Peña was arrested on February 10, 1973 by state agents dressed as civilians and, later on, transferred to the premises of detention center El Pari, located in the city of Santa Cruz, where torture was commonly practiced by the officers of the Department for Political Order (*supra* para. 53). He was held there for several days, where he was seen with signs of physical mistreatment, and as of February 28, 1973, his next of kin have had no knowledge of his whereabouts (*supra* para. 109). 37 years have elapsed since his arrest and the State has still not given a response regarding his whereabouts.

116. From the information available in this case and the pattern of the detentions conducted during the time of the events, it is possible to conclude that Mr. Jose Luis Ibsen Peña was possibly arrested due to his connection with the Bolivian Labour Headquarters and also for the actions taken in order to locate his son Rainer Ibsen Cárdenas (*supra* paras. 52, 72 and 104 to 105).

117. In this respect, the Tribunal reiterates what it has previously mentioned in this Judgment regarding the State's duty to guarantee the protection of the rights of those who are deprived of liberty while in custody of the State (*supra* paras. 63 to 64 and 95).

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

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

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120. In turn, in relation to the arguments of the Commission regarding the non-compliance with the obligations established in several Articles of the Convention on Forced Disappearance (*supra* paras. 3 and 76), the Tribunal notes that subparagraph a) of Article I thereof provides that the States Parties undertake "[n]ot to practice, permit, or tolerate the forced disappearance of persons, even in a state of emergency, exception status or suspension of individual guarantees, [...]." Furthermore, Article XI of said Convention stipulates that "[e]very person deprived of liberty shall be held in an officially recognized place of detention and be brought before a competent judicial authority without delay, in accordance with applicable domestic law." According to the Tribunal, it is clear that, in the instant case, based on the facts that have been established in this Chapter and in the forced disappearance to which Messrs. Rainer Ibsen Cárdenas and Jose Luis Ibsen Peña were subjected, the State failed to comply with the duties established in those provisions.

121. On the other hand, in the application the Inter-American Commission requested the Tribunal, among others, to declare the violation of Articles 7.1, 7.2, 7.3, 7.4, and 7.5 of the American Convention, to the detriment of Messrs. Rainer Ibsen Cárdenas and Jose Luis Ibsen Peña. Regarding the rights these provisions referred to and based on the jurisprudence of the Tribunal, it is unnecessary in the instant case to determine whether the victims were informed of the reason for their detentions; whether the arrests were effected under the motivations and conditions established by the Bolivian legislation in force at the time of the events; and let alone, to establish whether the acts of the detention were unreasonable, unpredictable, or disproportionate. According to the context of the time of the events, it is evident that the detention of said persons were acts of abuse of power, that they were not ordered by a competent authority, and that their purpose was not to hand them over to a judge or other official authorized by law to decide regarding the legality of their detention, but to execute them or make them disappear.¹⁵³ That is to say, their detention was manifestly illegal.

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

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

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

123. The Commission argued that the Bolivian State is responsible for the violation of the right to humane treatment [personal integrity] of Marta Castro Mendoza and Tito, Rebeca, and Raquel, all bearing the surname Ibsen Castro, given their suffering as a result of the facts of the instant case. As to Marta Castro Mendoza and Tito Ibsen Castro, the Commission emphasized that "they visited Mr. Ibsen Peña in the *El Pari* detention center, [...] where they found him to have been beaten and whose demeanor indicated that he presaged his fate." In addition, it mentioned that after the disappearance of her husband, Mrs. Marta Castro "went to the Bar Association [...] to ask for help," and the children of Mr. Ibsen Peña carried out a "search campaign" for clues as to the whereabouts of their brother and father before several State institutions. Additionally, the Commission indicated that the next of kin of Messrs. Ibsen Cárdenas and Ibsen Peña "have had the burden of proving [their] [...] disappearance, and of moving forward the search for their remains, [and...] they have had to face the lack of will on the part of the judiciary to investigate such facts." In this respect, it emphasized that "Rebeca Ibsen Castro [,] in representation of her family, filed a request for a joinder to the criminal complaint which had prompted the investigation of the forced disappearance of José Carlos Trujillo Oroza, [...];" however, the Ibsen family "remains in a state of uncertainty regarding the events, and impunity continues to prevail with regard to the facts, adding to the pain already felt due to the loss of their loved ones."

124. The representatives agreed with the arguments mentioned by the Commission and argued, in addition, that in view of the facts of the instant case, Tito, Rebeca and Raquel Ibsen Castro experienced a "lack of access to health and education" and that the latter had "changes" in her life which "were a determining factor for her to be a frightened person." Furthermore, they alleged that both Tito and Rebeca Ibsen were subjected to "persecution, threats and [...] attacks against their [...] life and personal integrity" in their search for justice for the disappearances of their father and brother, and that the Ibsen family had the "need to hide within [the] country." Finally, they argued that, "due to the fact he has worked since he was a boy," Tito Ibsen Castro "suffered a physical injury that caused him to lose a finger from the left hand."

125. In turn, the State acknowledged its international responsibility for the violation of Article 5 of the Convention to the detriment of the next of kin of Rainer Ibsen Cárdenas and José Luis Ibsen Peña (supra paras. 5 and 24).

126. The Court has considered in numerous cases that the next of kin of the victims of violations of human rights can be, at the same time, victims.¹⁵⁴ Specifically, in cases that involve the forced disappearance of persons, it is possible to understand that the violation of the right to psychic and moral integrity of the next of kin of the victim is a direct consequence of that phenomenon, which causes them severe suffering due to the same act, which is increased, among other factors, by the constant failure of the state authorities to provide information regarding the whereabouts of the victim or to start an effective

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

investigation in order to clarify what occurred.¹⁵⁵

127. In this regard, this Tribunal has considered that it can presume injury to the psychological and moral integrity of the next of kin of the victims of certain violations of human rights applying a *iuris tantum* presumption regarding mothers and fathers, sons and daughters, spouses, and permanent life partners (hereinafter “direct relatives”), as long as this responds to the specific circumstances of the case. In the case of those direct relatives, it is the State who shall invalidate said presumption.¹⁵⁶ In all other cases, the Tribunal must analyze if the evidence in the case file shows some affectation on the personal integrity of the alleged victim, regardless of whether he or she is a next of kin of another victim in the case or not. Regarding those persons in respect of whom the Court does not presume injury to personal integrity because they are not direct next of kin, the Court must assess, for example, whether there is a particularly close relationship between them and the victims in the case that would enable the Court to establish an affectation on their personal integrity and, therefore, a violation of Article 5 of the Convention. The Court may also assess whether the alleged victims have been involved in seeking justice in the specific case,¹⁵⁷ or whether they have suffered as a result of the facts of the case or of subsequent acts or omissions on the part of the State authorities in relation to the facts.¹⁵⁸

128. In this way, the Tribunal presumes the suffering of Mrs. Martha Castro Mendoza for the forced disappearance of his husband, Jose Luis Ibsen Peña, and the suffering of Tito, Rebeca and Raquel Ibsen Castro, as his children. The State did not disprove said presumption (*supra* para. 125). Furthermore, the affidavits rendered and the statements rendered at the public hearing by the next of kin of José Luis Ibsen Peña reveal the suffering they endured due to the violations committed against him.¹⁵⁹ The Court shall take

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

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

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

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

¹⁵⁹ In that regard, Ms. Martha Castro affirmed that: “while [her husband] was detained, [she] was not allowed to see him[.] [O]nly the child, Tito, entered a few times to leave him some clothes [and] food[.] [S]ometimes Tito would go by himself from the house to the prison in order to try to see his father[.] [O]n one of these occasions, Tito brought back Jose Luis’s bloody socks[;] that is how [she] became convinced that they tortured and beat prisoners in there, as a woman had told [her]. [Her] suffering was terrible and what hurts [her] the most is that [her] children also suffered. Cf. Declaration rendered before public notary (*affidavit*) by Mrs. Martha Castro Ibsen (case file on the merits, volume III, folios 637 and 639). During the public hearing (*supra* para. 8), Tito Ibsen Castro indicated that he was the only one allowed to see his father while he was detained in EL Pari. He also stated that his father was kept in solitary confinement for three days and that when he entered for the first time to bring him food he suffered “fasting and hunger.” Mr. Tito Ibsen also received from his father his passport, ring, dental plaques and a watch, with the instruction to give them to his mother. Next day, his father told him to take care of his mother and his sisters, because this would possibly be the last time he would see him. On the other hand, Rebeca Ibsen Castro declared that at the time that his father was arrested she “was 10 years old and would go to the detention center and cried because she was not allowed to get in to see [her] dad[;] [...] and that she continuously suffered very much because she could not understand [why] there was so much cruelty with the person [...] she loved so much [...]”. Cf. Declaration rendered before public notary (*affidavit*) by Mrs. Rebeca Ibsen Castro (case file on the merits, volume III, folio 739). Finally, Raquel Ibsen Castro declared that “[her] greatest wish in this life is to bury [her] father[.] She wants to see [him] within a

into account the foregoing upon the determination of the corresponding reparations (*infra* Chapter IX).

129. Regarding Rainer Ibsen Cardenas, the Tribunal notes that Mrs. Martha Castro Mendoza raised him since he was nine years old (*supra* para. 71). Given that this familial relationship has not been questioned and that the State has made a broad acknowledgment of responsibility that includes the violation of Article 5 regarding all the next of kin without exception or limitation as to the facts alleged in the application (*supra* paras. 5 and 24), the Tribunal presumes the suffering of Mrs. Martha Castro Mendoza for the events that occurred to the detriment of Rainer Ibsen. The foregoing is also applicable to Tito, Rebeca, and Raquel Ibsen Castro, siblings of Mr. Ibsen Cárdenas on their father's side. In this respect, the Tribunal notes that all of them constitute a single family group.

130. On the other hand, the Court recalls that in other cases, the continued denial of the truth regarding the fate of a disappeared person constitutes cruel, inhumane, and degrading treatment of close next of kin.¹⁶⁰ Likewise, the Court has indicated that in the face of acts of forced disappearance of persons, the State has the obligation to ensure the right to humane treatment [personal integrity] of the next of kin through effective investigations. Furthermore, the lack of effective remedies has been regarded by the Court as an additional source of suffering and anguish for the victims and their family members.¹⁶¹

131. In the instant case, the Court considers that the link between the suffering of Marta Castro Mendoza, Tito Ibsen Castro, and Rebeca Ibsen Castro and the State's denial to inform them of the truth on what happened to their next of kin (*infra* Chapter IX) is clear. Regarding Mrs. Marta Castro Mendoza, the Tribunal notes that in her statement, she referred to her frustration in the search for her husband and her son, Rainer Ibsen Cárdenas, in the following terms:

"I was from here to there without accomplishing anything [...], I could not do anything as I was powerless and desperate, [...]. The [State] authorities, neither in democracy and especially nor in dictatorships, helped us ever to know the fate and [what] happened to our loved ones."¹⁶²

132. In this way, this Tribunal has already noted the actions taken by Rebeca and Tito Ibsen Castro before different institutions and agencies of the State to seek justice for the disappearance of their father and brother and to learn of their whereabouts (*supra* paras. 89 and 110 and *infra* paras. 140 to 141, 143, 146, 205, 216 and 223). They, in turn, have

tomb, and to stop thinking that his remains are lost[;] she wants to see him resting in a coffin." Cf. Declaration rendered before public notary (*affidavit*) by Mrs. Raquel Ibsen Castro (case file on the merits, volume III, folio 649).

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

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

¹⁶² Cf. Declaration rendered before public notary (*affidavit*) by Mrs. Martha Castro Mendoza (case file on the merits, volume III, folio 637 to 639).

expressed feelings of uncertainty, anxiety, and frustration before the alleged delay and inefficiency of the State institutions in this regard.¹⁶³

133. Consequently, the Tribunal considers that the State violated the right to humane treatment [personal integrity] established in Articles 5(1) and 5(2) of the American Convention, in relation to Article 1(1) of that instrument, to the detriment of Martha Castro Mendoza, Tito Ibsen Castro, Rebeca Ibsen Castro, and Raquel Ibsen Castro, for the forced disappearances to which Rainer Ibsen Cardenas and Jose Luis Ibsen Peña were subjected.

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134. As to the allegations of the representatives regarding the alleged threats and acts of harassment suffered by the Ibsen family, as well as the injury that Mr. Tito Ibsen Castro allegedly sustained during his childhood, the Tribunal reiterates what it has established in its jurisprudence, to the effect that "the alleged victim, his next of kin, or his representatives may invoke rights other than those asserted in the Commission's application on the basis of the facts presented by the latter."¹⁶⁴ The Court notes that the alleged facts are not within the factual framework brought before the Tribunal by the Inter-American Commission and are not supervening, nor do they explain, clarify, or dismiss the facts that have been mentioned in the application.¹⁶⁵ Therefore, the Court shall not rule on those events.

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

135. The Inter-American Commission referred to a variety of facts on which it based its argument that the right to due process has been allegedly violated in the instant case. In general, the Commission indicated, that: the criminal proceeding was not conducted within a reasonable time; "the Ibsen family had the right to count on an investigation into what happened to the victims by [...] a criminal court, that would reflect suitability guarantees to conduct of the proceedings"; the State did not initiate an investigation *ex officio* in the detention and subsequent disappearance of Messrs. Rainer Ibsen Cárdenas and José Luis

¹⁶³ In relation with the mentioned procedures, Mrs. Rebeca Ibsen Castro mentioned that "she tried through all possible human means to find out something about the truth and their whereabouts, the criminal proceeding only delayed the mourning, the uncertainty and the verification of the perpetrators[,] as 'the dictatorship spoiled individuals', they committed such unimaginable bloodshed, humiliation and tortures [...]." Declaration rendered before public notary (*affidavit*) by Mrs. Rebeca Ibsen Castro (case file on the merits, volume III, folio 740). In the same token, at the public hearing held in the present case (*supra* para. 8), Mr. Tito Ibsen described the answer of the state authorities to the procedures undertaken by the Ibsen Family as "world record in justice denial." He mentioned that, to his family, the last four decades have been "an endless search of knocking doors that were always closed, bearing permanent and constant anxiety, [... which have even caused] [the] family unit to fracture [...]"

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

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

Ibsen Peña; the Ibsen family has been in charge of expediting the proceeding; there was not any diligence in the gathering of evidence; the investigation has been obstructed by the judiciary; the criminal definition of forced disappearance has not been applied to the criminal proceeding; and, no action has been taken to locate the remains of Rainer Ibsen Cárdenas or to determine the whereabouts of José Luis Ibsen Peña. The representatives basically concurred with the arguments of the Commission.

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

A. Criminal record 37/2000

137. The Tribunal notes that in said criminal case, Rebeca Ibsen Castro appears as plaintiff, for what happened to his father and brother, José Luis Ibsen Peña and Rainer Ibsen Cárdenas, respectively, along with Antonia Gladys Oroza, in relation to her son José Carlos Trujillo Oroza.¹⁶⁶ To such end, the Court notes that whenever necessary, reference shall be made to some actions taken by Mrs. Oroza that had general effects on the entire criminal proceeding; however, the analysis of the violations alleged in the instant case shall be limited to the facts related to Rainer Ibsen Cárdenas and José Luis Ibsen Peña.

A.1. Investigative Phase

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

139. On March 27, 2000, the Fifth Criminal Examining Magistrate's Court of Santa Cruz (hereinafter "the Fifth Criminal Court") issued a preliminary investigation order against some individuals for the crimes of deprivation of liberty, abuse and torture committed against José Carlos Trujillo Oroza.¹⁶⁸ In this respect, on April 6, 2000, Antonia Gladys Oroza, mother of José Carlos Trujillo Oroza, filed suit before said court against the same

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

¹⁶⁷ *Cf.* Brief of the Public Defense District Coordinator of the Ministry of Justice and Human Rights of Bolivia addressed to the Attorney General of Santa Cruz, January 9, 1999 (Case file 37/2000, Volume 1, folios 2883 to 2885, and 11630 to 11631*bis*).

¹⁶⁸ *Cf.* Order of the Fifth First Instance Criminal Judge of Santa Cruz (Case file 37/2000, Volume 2, folios 3044 to 3045, and 11788 to 11789).

accused persons and, also, against other individuals, and requested the expansion of the preliminary proceedings to include the crime of murder.¹⁶⁹

140. On April 26, 2000 Rebeca Ibsen Castro filed a complaint to join and broaden the complaint in that same proceeding (*supra* para. 139) for the crimes of genocide, murder, and abuse allegedly committed by some of the defendants previously mentioned against Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña.¹⁷⁰ This petition was rejected on May 20, 2000,¹⁷¹ after which Rebeca Ibsen Castro filed a motion of appeal on June 2, 2000.¹⁷² On October 4, 2000, the first Criminal Chamber of the Supreme Court of Justice of Santa Cruz ordered to broaden the requested complaint.¹⁷³

141. On October 18, 2000, the accused invoked the statute of limitations,¹⁷⁴ which was granted by the Fifth Criminal First Instance Court on November 10, 2000.¹⁷⁵ This decision was appealed by Rebeca Ibsen Castro on November 17, 2000.¹⁷⁶ On January 12, 2001, the First Criminal Chamber of the Superior Court of Justice of the District of Santa Cruz confirmed the appealed order.¹⁷⁷

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

¹⁶⁹ Cf. Complaint filed by Antonia Gladys Oroza, on April 6, 2000 (Case File 37/2000, Volume 2, folios 3122 to 3132 and 11865 to 11875).

¹⁷⁰ Cf. Request for extension and adhesion to criminal complaint of April 26, 2000 (Case File 37/2000, Volume 2, folios 3236 to 3239 and 11975 to 11978).

¹⁷¹ Cf. Ruling of the Fifth First Instance Criminal Judge of Santa Cruz, May 20, 2000 (Case file 37/2000, Volume 3, folios 3263 to 3264 and 11999 to 12000). This Court mentioned that the detention and subsequent death of Rainer Ibsen Cárdenas had occurred in La Paz, therefore it lacked jurisdiction to know matters of another territory. It also determined that the facts related to the detention and subsequent death of Mr. José Luis Ibsen Peña did not frame within the provisions of article 35 of the Criminal Procedure Code because, even if some of the accused coincide, the facts had occurred in a different way, therefore the complainant should “addressed separately in order to exercise her rights.”

¹⁷² Cf. Brief of appeal submitted by Rebeca Ibsen Castro, on June 2, 2000 (Case File 37/2000, Volume 3, folios 3279 to 3283 and 12014 to 12018).

¹⁷³ Cf. Ruling of the First Criminal Chamber of the Supreme Court of Justice of Santa Cruz, on October 4, 2000 (Case File 37/2000, Volume 3, folios 3399 to 3402 and 12136 to 12139).

¹⁷⁴ Cf. Brief submitted by Elías Moreno Caballero, Antonio Elio Rivero, Justo Sarmiento Alanes, Pedro Percy Gonzales Monasterio, Ernesto Morant Lijerón, on October 18, 2000 (Case file 37/2000, Volume 3, folios 3403 to 3408 and 12140 to 12144).

¹⁷⁵ Cf. Decision of November 10, 2000 of the Fifth First Instance Criminal Court of the Judicial District of Santa Cruz (Case file 37/2000, Volume 3, folios 3501 to 3506 and 12240 to 12245).

¹⁷⁶ Cf. Brief of appeal submitted by Rebeca Ibsen Castro, on November 17, 2000 (Case file 37/2000, Volume 3, folio 3530 and 12269).

¹⁷⁷ Cf. Ruling of the First Criminal Chamber of the Superior Court of Justice of the District of Santa Cruz on January 12, 2001 (Case file 37/2000, Volume 3, folios 3547 to 3549 and 12286 to 12288).

¹⁷⁸ Cf. Constitutional Tribunal Order of November 12, 2001 (Case file 37/2000, Volume 3 and 4, folios 3590 to 3601 and 12333 to 12343).

143. On August 13, 2002, the Eighth Investigative Magistrate's Court in Criminal Matters issued a final decision closing the investigative phase and ordering the prosecution of the accused for the alleged commission of the crimes of privation of liberty, abuse, and torture, excluding the crime of murder, and it ordered to send the case file to the Criminal Court in turn to continue the oral and adversarial proceedings.¹⁷⁹ On August 23, 2002, Mrs. Rebeca Ibsen Castro filed an appeal against the final investigation order.¹⁸⁰

144. On June 7, 2004, the Warnes Examining Magistrate's Court issued the final order to prosecute against the accused for the crimes of deprivation of liberty, abuse and torture, criminal association, criminal organization, and murder, as well as concealment and crime of concealment amounting to complicity, respectively.¹⁸¹

¹⁷⁹ *Cf.* Final Order of Prosecution issued by the Eighth First Instance Criminal Court of the Judicial District of Santa Cruz, issued on August 13, (Case file 37/2000, Volume 4, folios 3698 to 3703 and 12443 to 12448).

¹⁸⁰ *Cf.* Brief of appeal submitted by Rebeca Ibsen Castro, on August 23, 2002 (Case File 37/2000, Volume 4, folios 3710 to 3711 and 12455 to 12456).

¹⁸¹ *Cf.* Final Order of prosecution issued by the First Instance Court of the City of Warnes, on June 7, 2004 (Case File 37/2000, Volume 12, folios 6000 to 6014 and 14755 to 14769).

A.2. Plenary and Appeal Stage

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

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

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

148. On December 6, 2008, the Seventh First Instance Court in Civil and Commercial Matters handed down a first instance judgment declaring that the statute of limitations barred penal action for the crimes of abuse and torture, criminal association, criminal organization, murder and concealment, for which only some of the accused were convicted for illegal deprivation of liberty against José Luis Ibsen Peña, among others. One of the accused was convicted of the crime of accomplice in the crime of unlawful deprivation of liberty. Furthermore, in said decision it was declared the perpetration of the crime of illegal deprivation of liberty regarding Rainer Ibsen Cárdenas.¹⁸⁷

149. On September 28, 2009, the Superior District Court of Santa Cruz upheld, in part, the first instance judgment (*supra* para. 148) and ratified the sentences imposed on all the

¹⁸² Cf. Briefs submitted by Oscar Menacho Vaca, Pedro Percy Gonzales Monasterio and Juan Antonio Elio Rivero, on September 23 and 29, 2004, respectively (Case file 37/2000, Volume 14, folios 6647 to 6649, 6663 to 6664, 15411 to 15413 and 15428 to 15429).

¹⁸³ Cf. Brief submitted by Pedro Percy Gonzales Monasterio and Juan Antonio Elio Rivero, on January 13, 2005 (Case file 37/2000, Volume 17, folios 7389*ter* to 7393 and 16153 to 16157). The case file had been sent by the Ninth First Instance Criminal Court of Santa Cruz to the Fifth First Instance Criminal Court of Santa Cruz in compliance with “Circular no. 89/2004 of November 20, 2004” and “Circular No. 113/04, of December 20, 2004” of the President of the Superior Court of Justice of the District of Santa Cruz (Case file 37/2000, Volume 17, folios 7374 to 7375 and 16136 to 16137).

¹⁸⁴ Cf. Ruling of the Fifth First Instance Criminal Court of Santa Cruz of January 19, 2005 (Case file 37/2000, Volume 17, folios 7401 to 7443 and 16165 to 16207).

¹⁸⁵ Cf. Briefs of appeal submitted by Rebeca Ibsen Castro and Antonia Gladys Oroza on January 25 and 27, 2005, respectively (Case file 37/2000, Volume 17, folios 7454 to 7455, 7465 to 7480, 16218 to 16219 and 16229 to 16244).

¹⁸⁶ Cf. Ruling of the First Civil Chamber of the Superior Court of Justice of Santa Cruz, issued on April 18, 2005 (Case File 37/2000, Volume 17, folios 7582 to 7586 and 16344 to 16348).

¹⁸⁷ Cf. Judgment of the Seventh First Instance Civil and Commercial Court of Santa Cruz of December 6, 2008. The reading of this judgment was carried out during the public hearing held on December 13, 2008 (Case file 27/2000, Volumes 27 and 28, folios 10770 to 10832).

accused, except for that of Mr. Juan Antonio Elio Rivero, who benefited from a lighter sentence.¹⁸⁸

A.3. Appeal: nullity of the statute of limitation and penalty

150. Due to the submission of various remedies in cassation, on June 2, 2010, the Second Criminal Chamber of the Supreme Court of Justice of the Nation of Bolivia issued a judgment annulling the statute of limitation declared previously¹⁸⁹ (*supra* para. 148). Subsequently, on August 16, 2010 that same Chamber issued a judgment convicting two of the defendants for the crime of forced disappearance and another defendant for complicity in the commission of said crime, and confirming the absolution of another defendant,¹⁹⁰ regarding the facts occurred only to José Luis Ibsen Peña.

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

151. The Court has established that States are obligated to provide effective judicial remedies to individuals who allege being victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1.1).¹⁹¹

152. The right to access justice implies the effective determination of the facts under investigation and, if applicable, of the corresponding criminal responsibilities within a reasonable time. Therefore, considering the need to guarantee the rights of the injured parties, a prolonged delay may constitute in itself a violation to the right to a fair trial.¹⁹² In addition, when dealing with a forced disappearance, the right to access justice entails that the investigation into the facts seeks to determine the fate or whereabouts of the victims (*supra* paras. 64 and 65).

153. Even though the Court has established that the duty to investigate is one of means and not results,¹⁹³ this does not mean, however, that the investigation may be carried out

¹⁸⁸ Cf. Ruling of the First Civil Chamber of the Superior Court of the District of Santa Cruz, issued on September 28, 2009 (case files of appendixes to the answer to the application, appendix 15, folios 11328 to 11343).

¹⁸⁹ Cf. Judgment of the Second Criminal Chamber of the Supreme Court of Justice of the Nation, issued on June 2, 2010 (case file on the merits, volumen V, folios 1960 to 1968).

¹⁹⁰ Cf. Judgment of the Second Criminal Chamber of the Supreme Court of Justice of the Nation, issued on August 16, 2010 (case file on the merits, volume V, folios 1997 to 2006).

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

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

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

as “a mere formality condemned beforehand to be unsuccessful.”¹⁹⁴ In this regard, the Tribunal has established that “each state action in the investigation process, as well as the investigation in its totality, shall be oriented toward a specific purpose, the determination of the truth and the investigation, persecution, capture, trial, and if it were the case, the punishment of those responsible for the acts.”¹⁹⁵

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

154. The Inter-American Commission argued that “the investigation into the [alleged] forced disappearance of Rainer Ibsen Cárdenas and José Luís Ibsen Peña begun on April 26, 2000, as the result of a request filed by Rebeca Ibsen Castro in representation of her family, added to a criminal complaint regarding the disappearance of José Carlos Trujillo Oroza” (*supra* para. 140). According to the Commission, “this means that for approximately 28 years, the State [...] did not initiate an *ex officio* investigation of the facts, despite the fact that the victims appeared on the list of disappeared persons attached to the impeachment trial against Hugo Banzer in 1979.”

155. The Court has already indicated and developed in this Judgment that whenever there are reasonable grounds for believing that a person has been subjected to a forced disappearance, an investigation *ex officio* shall be undertaken, without delay, in a serious, impartial and effective manner (*supra* para. 65). This investigation must be carried out by all available legal means and must be oriented to determine the truth, as well as the persecution, apprehension, prosecution and punishment of all intellectual and material perpetrators, especially when state agents are or may be involved. However, the investigation and the proceeding must have an objective and be assumed by the States as their own juridical duty and not as a simple step taken by private interests.¹⁹⁶ In cases of forced disappearance of persons, the formal complaint regarding the facts does not fall exclusively on the next of kin of the victims.¹⁹⁷

156. The Tribunal considers it to be convenient to point out, prior to analyzing the State’s compliance with the duty to initiate an investigation *ex officio*, that in the State’s answer to the application it referred to several activities carried out by the “National Commission for Investigation of Forced Disappearances”¹⁹⁸ between 1982 y 1984 directed to, among other things, search for the remains of Mr. Rainer Ibsen Cárdenas. Based on the foregoing, the State maintained that the statements of the representatives regarding the State’s

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

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

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

¹⁹⁷ Cf. *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 197.

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

reluctance to locate and scientifically identify the remains of Rainer Ibsen Cárdenas "were false and groundless."

157. The Court notes that the "National Commission for Investigation of Forced Disappearance" was composed of different representatives of the public branches as well as of civil society. It had the power to "analyze, investigate, and determine the situation of citizens who disappeared in the National Territory." In a document presented by the State before the Inter-American Commission during the processing of the case before it, the State asserted that said Commission "received 155 complaints of [f]orced [d]isappearances committed between 1967 and 1982, [and that] even though the remains of some of the disappeared persons could be located, the cases were not conclusively investigated." Said document also indicates that this Commission "performed its duties from 1982 to 1984 and was dissolved without achieving conclusive investigations or issuing a Final Report."¹⁹⁹ In this Judgment, it has been mentioned that during 1983 the National Commission for Investigation of Forced Disappearances announced the discovery of a common grave which apparently contained the remains of Rainer Ibsen Cárdenas and another fourteen disappeared persons (*supra* para. 84).

158. In this respect, the Court considers it is appropriate to reiterate, as it has done in other cases, that the "historical truth" documented in special reports, or tasks, activities and recommendations issued by special commissions, like the one in the instant case, do not complete or substitute the State's obligation to establish the truth and investigate crimes through judicial proceedings.²⁰⁰ This Tribunal has established that the obligation to investigate the facts, prosecute, and, if applicable, punish those responsible for a crime that constitutes a human rights violation, is an obligation that derives from the American Convention, and that criminal liability must be determined by the competent judicial authorities, following strictly the rules of due process established in Article 8 of the American Convention.²⁰¹

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

160. In this respect, this Judgment has already established the international responsibility of the State for the human rights violations committed against Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña (*supra* para. 122), who were deprived of liberty and transferred to different detention centers in Bolivia where they were allegedly subjected to torture, among other things, and then to forced disappearance, while in the State's custody. Based on the foregoing, it is reasonable to sustain that the State, at all times, was aware of these facts. However, the investigation into such facts was not initiated until the year 2000, as the result of the request filed by Rebeca Ibsen Castro to join an existing

¹⁹⁹ Cf. Summary of the presentation for the hearing of the Inter-American Commission on Human Rights on Forced Disappearances, prepared by the Ministry of Justice, on July 9, 2007 (case file of appendixes to the application, appendix 11, folio 1751).

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

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

criminal complaint (*supra* para. 140), in which other facts were being investigated. The Court emphasizes that the analysis of this argument does not refer to the actions that the next of kin of Messrs. Ibsen Cárdenas and Ibsen Peña should have or should not have taken, but in view of the State's obligation *ex officio*, the Tribunal shall analyze the steps taken by the State in that regard.

161. In relation to the situation of Mr. Rainer Ibsen Cárdenas, the Tribunal highlights that it has already been established in this Judgment that at the end of the dictatorship of Hugo Banzer Suarez in 1979, the National Congress Legislature had initiated an impeachment trial against, among others, the former president. As part of said process, on September 5, 1979, the ASOFAMD presented a list of the people who had been murdered or disappeared at the time of the events. This process was not carried on, however, the Court notes that in that list there appears the name of Rainer Ibsen Cárdenas (*supra* para. 56). On the other hand, at least since 1983, the State had evidence of what seemed to be the remains of Rainer Ibsen Cárdenas (*supra* para. 84), as the State itself asserted during the processing of this case. To that end, the State was fully aware of the fact that, apparently, a person had disappeared during the dictatorship of Hugo Banzer Suarez. However, it did not initiate an investigation into what happened to Rainer Ibsen Cárdenas. The State neither conducted the corresponding tests to corroborate his identity when in 1983 were found what it said to be his remains. Furthermore, the Tribunal must point out that the State has not effectively investigated what happened to Rainer Ibsen Cárdenas, given that the domestic criminal proceeding was only conducted regarding the facts that occurred to José Luis Ibsen Peña, despite the request to join the complaint filed by Ms. Rebeca Ibsen Castro (*infra* paras. 140 and 150).

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

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

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

164. The Inter-American Commission indicated that "in the few months devoted to collecting evidence, only [confessions] from the accused and testimonies from other persons were taken," and that "the [a]vailable information does not show the existence of any other actions tending to refute the veracity of the official versions regarding the death of Rainer Ibsen in a "firefight," nor of the alleged exile of José Luis Ibsen to Brazil." The Commission asserted that the evidence available "demonstrates that the steps taken to clarify the facts with regard to Rainer Ibsen Cárdenas were minimal."

165. The Tribunal considers that this aspect is closely related to the previous one. In that respect, the Court repeats its jurisprudence in the sense that the application of the guarantees of Article 8(1) of the American Convention is not limited to judicial activity. In particular, in relation to the investigations carried out by prosecution authorities, the Tribunal has established that, depending on the circumstances of the case, the Court may need to analyze the related proceedings and those that constitute procedural prerequisites, particularly the investigation tasks, the results of which will be important for the initiation

and progress of the procedure.²⁰² In the instant case, given the analysis of the effectiveness of the investigations carried out, the Court takes into account the context in which the detention and subsequent disappearance of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña are framed. To this end, at the public hearing (*supra* para. 8), the State indicated that “[i]t had to assume the responsibility of acknowledging the human rights violations committed by a dictatorial regime that marked a dark past in the history of Bolivia [,] which lasted from the coup d’état led by then Colonel Hugo Banzer Suárez in 1971, to the year 1982, in which the [State of Bolivia] returned to democracy.”

166. In this line of thought, the Court considers, in this type of cases, that the authorities in charge of the investigations had the duty to guarantee that throughout the course of the same the systematic patterns that permitted the perpetration of serious human rights violations in the present case would be assessed.²⁰³ In seeking to guarantee its effectiveness, the investigation should have been carried out taking into account the complexity of this type of facts and the structure in which the people probably involved are located, pursuant to the context in which they occurred, thus avoiding omissions in the gathering of evidence and in the follow-up of the logical lines of investigation.²⁰⁴

167. This Tribunal has already indicated that in cases of forced disappearance, it is essential that the judicial authorities and the Public Prosecutor’s Office take prompt and immediate action through timely and necessary measures to determine the victim’s whereabouts.²⁰⁵ Likewise, the Court reiterates that the passage of time holds a directly proportional relation to the limitation –and in some cases, the impossibility– to obtain evidence and/or testimonies, hindering and even voiding or making ineffective the evidentiary procedures aimed to clarify the central facts of investigation,²⁰⁶ to identify possible perpetrators and participants, and to determine the possible criminal liabilities. Without detriment of the aforementioned, the national authorities are not exempt from making all efforts necessary to comply with their obligation to investigate.²⁰⁷ The Court has also observed that such obligation is maintained “whoever the agent to whom the violation may eventually be attributed is, even private persons, since, if their acts are not investigated seriously, they would turn out, in some way, assisted by the public power, which would compromise the State’s international responsibility.”²⁰⁸

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

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

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

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

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

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

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

168. On the other hand, the Court also considers it pertinent to indicate that States shall provide the corresponding authorities with the logistical and scientific resources necessary for gathering and processing the evidence, as well as, specifically, the power to access the appropriate documents and information for the investigation of the acts complained of and to obtain indicia or evidence of the location of the victims.²⁰⁹ In this regard, the Court considers that, without detriment to the need to obtain and assess other evidence, the authorities in charge of the investigation shall pay special attention to the circumstantial evidence, the indicia, and the presumptions,²¹⁰ which are particularly important when dealing with cases of forced disappearance, "since this form of repression is characterized by the effort to suppress any element that allows to prove the kidnapping, whereabouts, and fate of the victims."²¹¹

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

170. As a result, the procedure for taking evidence carried out by the Public Prosecutor's Office has neither been relevant nor decisive during most of the criminal proceeding. This had led to the burden of proof having been wrongfully placed on the plaintiffs. This can be verified throughout the entire domestic case file. Most of the evidence presented, mostly, testimonial and documentary evidence and depositions, have been submitted by the accused and the plaintiffs.²¹² This can be corroborated, specifically, from the conclusions presented by the Public Prosecutor's Office before the Seventh First Instance Civil Court at the end of the evidentiary stage of the proceeding, for which the prosecuting authority exclusively based the proceeding on evidence furnished by the other parties.²¹³

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

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

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

²¹² In volumes 21 to 28 of the case file 37/2000 in this Court, there are several declarations of the accused Justo Sarmiento Alanes, Pedro Percy Gonzales Monasterios, Elías Moreno Caballero, Juan Antonio Elio Rivero, Ernesto Morant Lijerón and Oscar Menacho Vaca; the declaration of complainant Antonia Gladys Oroza, and declarations of several witnesses proposed by her, the accused and Rebeca Ibsen Castro: Giselle Bruun Sciaroni, Adhemar Rider Suárez Salas; Luis Sandoval Morón, Yalile Facusse Chain, Estevan Renato Díaz Matta, Adid Curi Herrera, Hugo Jaime Otero Arrien, Freddy Méndez Rojas, Armando Campos Justiniano, Walter Weber Camacho, Rosmery Weber Camacho, Carmen Raquel Ruiz Pizarro, Dardo Suárez Justiniano, Víctor Fernández Pereira, Ledy Catoira Moreno, Buenaventura Carrillo Caisedo, Jorge Rodríguez Rueda, Pedro Rojas Pachi, Carlos Melquíades Valverde Barberly, Manuel Jesús Eguez Ruiz, Luciano Alberto Velasco Araoz, Walter Pérez Ribera, Emilio Peña Paz, Freddy Méndez Rojas, Susano Campos Arauz, Betty Spinatto Pérez, Carlos Fernández Gonzáles, Esperanza Solís de Aguilar and Ciro Nery Sandoval.

²¹³ Cf. Report on the merits of the Public Prosecutor's Office of Santa Cruz, November 23, 2007 (Case file 37/2000, volumes 22 and 23, folios 9474 to 9500 and 18282 to 18308).

171. Furthermore, the Public Prosecutor's Office has not taken into account the context of the facts, their complexity, or the special position of those people who could have been responsible within the state structure during that time. Therefore, the criminal cas file neither shows that the prosecuting authority had followed clear and logical lines of investigation that would have taken into account those elements. In this respect, as it has been already mentioned in this Judgment (*supra* para. 166), in regard to acts like the ones argued in the instant case, given the context and their complexity, it is reasonable to consider that there are different degrees of responsibility at different levels of criminal liability. The investigation does not reflect any of the above levels. In this sense, the Court considers that the State has not complied with this obligation in a diligent manner.

172. The Court considers that, in addition, another consequence of the lack of diligence in the instant case is that, as time goes by, the possibility of collecting and presenting evidence in order to shed light on the facts and determine the corresponding responsibilities is unduly limited, thus the State fosters impunity. The Tribunal has defined [impunity] as an overall lack of investigation, persecution, arrest, prosecution, and conviction of those responsible for violations of the rights protected by the American Convention.²¹⁴

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

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

B.3. Undue delay and hindering of the course of the proceeding

²¹⁴ Cf. *Case of the "White Van" (Paniagua-Morales et al.) v. Guatemala. Preliminary Objections.* Judgment of January 25, 1996. Series C No. 23. para. 173; *Case of the "Las Dos Erres" Massacre v. Guatemala*, *supra* note 7, para. 234, and *Case of Manuel Cepeda Vargas v. Colombia*, *supra* note 6, para. 130, note 184.

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

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

175. The Inter-American Commission argued that “another aspect that hindered the course of the investigation was the abstention of no less than 34 judges and two prosecutors from examining the case.” Specifically, the Commission expressed that “[w]ithout raising the issue of whether these abstentions were legitimate or not, the Commission request[ed] the Court to examine the dilatory and obstructionist effects that they had in the domestic proceedings.” Moreover, the Commission indicated that the abstentions themselves brought about delays in the proceedings. In addition, in its final written arguments, the State indicated that there have been “37 abstentions and 1 challenge” in the domestic criminal proceeding.

176. It is pertinent to point out that the Inter-American Commission made no specific reference to the claimed abstentions and made, in a general manner, it mentioned that “at least, 34 judges and 2 prosecutors” abstained from examining the criminal proceeding. In addition, also in general terms, the Commission requested the Court to analyze “the dilatory and obstructionist effects” such abstentions had. In this sense, the Tribunal considers that a serious examination of this issue implies verifying the effect each one of the abstentions had on the criminal proceeding in order to conclude whether or not they hindered or delayed the proceeding. Given the dimension of the possible implications, the Court shall now only refer to the judicial abstentions.

177. The effective exercise of due process is one of the main principles of justice, and it carries with it the presupposition that the judge who intervenes in a particular dispute approaches the facts of the case in an impartial manner. This means the judge must subjectively lack any personal prejudice and offer sufficient objective guarantees that allow for the elimination of all doubt that the persons demanding justice or the community may hold with regard to the lack of impartiality.²¹⁷ In this respect, one way of guaranteeing the impartial conduct of a proceeding is by means of the procedural precept of the abstention, which a judge may exercise whenever he considers that he will be prevented from hearing certain matter, due to the appearance of some ground stipulated by the law, because his impartiality could be jeopardized.

178. This Court has already indicated that Article 8 of the American Convention recognizes the concept of “due process of law,” which includes the prerequisites necessary to ensure the adequate protection of those persons whose rights or obligations are pending judicial determination.²¹⁸ In that respect, paragraph 1 of said provision establishes that “[e]very person has the right to a hearing, [...] by a [...] impartial tribunal, [...] in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.” Therefore, the right to judicial disqualification is an issue that necessarily has a bearing on the criminal due process, under the terms of the American Convention.

179. Having established the foregoing, before entering into the analysis of the issue put forward before the Court in this separate section, the Tribunal deems necessary to indicate that it is not appropriate to rule on the admissibility or inadmissibility of the judicial absentions referred to by the Commission and that the analysis is limited to the alleged

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

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

dilatory and obstructionist effects that, according to the Commission, had on the domestic criminal proceeding.

180. It appears in the case file before the Tribunal that, during 9 years of the procedures of the domestic criminal case,²¹⁹ approximately 111 different judges with different hierarchies and jurisdiction have tendered abstentions. In that respect, the Court notes that several groups of abstentions have, indeed, delayed the processing of the case. From that total, 59 abstentions suspended the preliminary stage, the deliberation and the processing of the case.²²⁰ However, the Tribunal also notes that there is another group of abstentions that did not delay the processing of the case given that they did not prevent the preliminary stage or the trial from continuing.²²¹ Though not all the abstentions had

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

²²⁰ The following footnotes correspond to Case file 37/2000. a) From August 13 to 17, 2001, 7 abstentions were filed by: 2 Members of the First Criminal Chamber, 2 Members of the Second Criminal Chamber, and 3 Members of the First Civil Chamber (Volume 5, folios 3864 to 3865, 3867 to 3868, 3873 to 3874). These abstentions were filed in relation to the constitutional appeal for legal protection filed by Antonia Gladys Oroza on July 27, 2001, in order to annul the ruling of January 12, 2001 of the First Criminal Chamber of the Superior Court of Justice of the District of Santa Cruz that confirmed an order that declared the application of the statute of limitations to the criminal action. These abstentions caused the delay in the procedure within the proceeding, because the Members of the District Superior Court were compelled to solve the matter on the discontinuance of the proceeding because of the declaration on the applicability of the statute of limitations. b) From March 15 to 25, 2002, 2 abstentions were filed by the Fifth First Instance Criminal Judge of Santa Cruz and the Seventh First Instance Criminal Judge of Santa Cruz (volume 4, folios 3616 and 3634). They abstained from solving the principal *litis* once the Constitutional Court annulled the application of the statute of limitations declared previously and ordered to continue with the proceeding. Said abstentions caused the delay in the procedure within the proceeding since the investigative phase was suspended. c) From April 9 to August 30, 2003, 20 abstentions were filed by the following judges: Eighth, Ninth and Tenth First Instance Criminal Judges of Santa Cruz; judges First to Fourth of First Instance of Santa Cruz; judges Second to Tenth of First Instance Civil and Commercial Courts of Santa Cruz; judges First to Third of First Instance on Family Matters of Santa Cruz, and First Instance Judge of Cotoca, City Andrés Ibáñez of the Department of Santa Cruz (volume 8, folio 4896, and volume 9, folios 4941, 4945, 4952, 4963, 4970, 4976, 4986, 4996, 4998, 5000, 5005, 5010, 5018, 5024, 5028, 5034, 5042, 5057 and 5060). These abstentions caused delay in the proceeding since the investigative phase paralyzed. d) From February 19 to March 1, 2005 5 abstentions were filed by 3 and 2 Members, respectively, of the First and Second Criminal Chambers of the Superior Court of the District of Santa Cruz (volume 17, folios 7536 to 7537 and 7546). These abstentions caused a delay in the proceeding since the members of the criminal chambers were compelled to solve an appeal submitted against a decision that ordered the application of the statute of limitations to the criminal action and the case file. e) From June 6 to August 16, 2006, 6 abstentions were filed by the judges of the First to Sixth First Instance Civil and Commercial Court (volume 21, folios 9049, 9063, 9068, 9071, 9075, 9078). These abstentions delayed the procedures within the proceeding since the latter was in the debate phase. f) From September 29 to October 14, 2006 6 abstentions were filed by 3 Members of the First Criminal Chamber and 3 Members of the Second Criminal Chamber, both at the Superior Court of District (volume 21, folios 9158 and 9173). These abstentions caused delay in the proceeding since the Members of the criminal chambers should solve on the lawfulness of the abstentions filed by the first instance civil and commercial judges (*supra* subsection c). In this regard, the debates of the proceeding were cancelled. g) From June 10 to August 1, 2009, 13 abstentions were filed by 3 Members of the First Criminal Chamber, 3 Members of the Second Criminal Chamber, 2 Members of the First Civil Chamber, 2 Members of the Second Civil Chamber, and 3 Members of the Social and Administrative Chamber (appendixes to the brief of pleadings and motions, volume 28, folios 10965, 10968, 10984, and appendixes to the answer to the application, volume 28, folios 19844 to 19845, 19848 and 19850). These abstentions were filed in relation to the appeals filed by Mesdames Rebeca Ibsen Castro, Antonia Gladys Oroza, Oscar Menacho Vaca and Juan Antonio Elio Rivero against the first instance judgment of December 6, 2008. These abstentions caused delay to the proceeding since they had suspensive effects.

²²¹ These footnotes correspond to Case file 37/2000. a) On January 2, 2001 a member of the First Criminal Chamber of the Superior Court of the District of Santa Cruz abstained from solving a remedy of appeal filed by Antonia Gladys Oroza on November 16, 2001 against the ruling of November 10, 2000 by which the Fifth First Instance Court declared the application of the statute of limitations to the criminal action (volume 1, folio 2819). b) On January 10, 2001, a member of the First Criminal Chamber of the Superior Court of the District of Santa Cruz abstained from solving a remedy of appeal filed by Rebeca Ibsen Castro por la denegación de ampliación del first investigation order (volume 3, folio 3560). c) From April 18 to July 17, 2002, 3 abstentions were filed by 2 Members of the Second Criminal Chamber y un member of the First Criminal Chamber of the Superior Court of

“dilatatory and obstructionist” effects, the 59 abstentions before mentioned did cause a delay of approximately 310 days, that is to say, almost 11 months, which, according to the Court, is a notable period of delay given that, during that time, the proceeding was brought to a halt.

181. Hence, apart from the foregoing, the Tribunal deems that it is appropriate also to analyze the general phenomena that represent the filing of approximately 111 abstentions in just one criminal proceeding. Specifically, the Court requested the State to present, to facilitate adjudication of the case, general information related to the domestic processing of the abstentions filed by the judges as well as the legal provisions applicable to this issue. In its final written arguments, the State referred to the provisions applicable to the criminal proceeding, which corresponds to an old Criminal Code, and explained that the Code of Criminal Procedure of 1972, together with the *Ley de Abreviación Civil y de Asistencia Familiar* (Law To Shorten Periods in Civil Proceedings and Family Assistance) (Law 1760) of February 28, 1997, were applicable.

District of Santa Cruz (volume 8, folios 4783, 4785 and 4796). These abstentions referred to the presentation of a remedy of appeal against an order that rejected a request of expansion of the initial order of investigation of June 1, 2002. d) From October 19 to 30, 2004, 3 Members of the First Criminal Chamber and 3 Members of the Second Criminal Chamber of the Superior Court of the District of Santa Cruz abstained from solving 3 appeal remedies filed by Rebeca Ibsen Castro, among others, on September 9, 2004, against an order of the Ninth First Instance Criminal Judge of Santa Cruz of September 8, 2004, that annulled an order of formal detention previously ordered by the Judge of the Province of Warnes against one of the accused and, instead, [the Ninth First Instance Criminal Judge of Santa Cruz] ordered to maintain the precautionary measures previously ordered by another judge with some modifications (volume 15, folios 7023, 7029, 7124 and 7125). e) From October 19 to 30, 2004, 3 Members of the First Criminal Chamber and 3 Members of the Second Criminal Chamber of the Superior Court of District of Santa Cruz abstained. These abstentions were filed regarding a remedy of appeal filed by Rebeca Ibsen Castro on September 9, 2004, against an order of Ninth First Instance Criminal Judge of the Capital Santa Cruz issued on September 7, 2004, that maintained the substitute measures to detention declared and the amount of the bail imposed to each one of the accused (volume 15, folios 7124 to 7125 and 7239, 7243). f) From October 19 to 30, 2004 3 Members of the First Criminal Chamber and 3 Members of the Second Criminal Chamber of the Superior Court of District of Santa Cruz abstained from solving the remedies of appeal filed by the accused and Rebeca Ibsen Castro against the order of prosecution issued on June 7, 2004, by the First Instance Judge of Warnes (volume 20, folios 8461, 8467, 8473 to 8474). g) From October 21 to November 4, 2004 6 abstentions were filed in total by 3 Members of the First Criminal Chamber and 3 Members of the Second Criminal Chamber of the Superior Court of District of Santa Cruz (volume 15, folios 7014, 7015, 7023 and 7029). These abstentions were filed regarding two remedies of appeal filed by Rebeca Ibsen Castro, among other, on September 4, 2004 against the order of the Ninth First Instance Criminal Judge of the Capital Santa Cruz issued on September 1, 2004, that annulled an order of formal detention issued by the Judge of the Province of Warnes against one of the accused, instead [the Ninth First Instance Criminal Judge of the Capital Santa Cruz] ordered the subsistence of an precautionary measures order previously issued. h) From November 12 to 22, 2004, 3 Members of the First Criminal Chamber and 3 Members of the Second Criminal Chamber of the Superior Court of District of Santa Cruz abstained from solving a remedy of appeal filed by one of the accused against a decision of the Ninth First Instance Criminal Judge issued on October 25, 2004, that rejected a request of cessation of a preventive detention previously declared (volume 19, folios 8072, 8078 and 8089). i) On February 25, 2005, 3 Members of the First Criminal Chamber of the Superior Court of District abstained from solving an elevation to consultation on the lawfulness of some of the abstentions, which was filed by the First First Instance Civil Judge of the Capital before the Superior Court of District of Santa Cruz (volume 18, folio 7800). j) From August 17 to October 28, 2005 8 abstentions were filed by 3 Members of the Second Criminal Chamber, 2 Members of the Social Administrative Chamber and 3 co-judges of the Superior Court of District, respectively (appendixes to the answer to the application, volume 28, folios 19823, 19832, 19835, 19837 and 19841). These abstentions were filed regarding a remedy of appeal for legal protection filed by the accused against the ruling of April 18, 2005, of the First Civil Chamber of the Superior Court of Justice of Santa Cruz that reversed an order of extinction of the criminal action on January 19, 2005. k) From July 4 to 28, 2007, 3 abstentions were filed by Members of the First Criminal Chamber and 3 Members of the Second Criminal Chamber of the Superior Court of District of Santa Cruz (volume 24, folios 9807 and 9809). These abstentions were filed regarding a remedy of appeal filed by Mrs. Rebeca Ibsen Castro, among other, on June 18, 2007 against the ruling of the Seventh First Instance Civil and Commercial Judge on June 15, 2007, that ordered the del Juez Séptimo de Partido en Materia Civil y Comercial de 15 de junio de 2007 that ordered the cessation of the preventive detention of one of the accused.

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

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

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

185. In the instant case, the Court shall not analyze whether the abstentions were declared illegal or not, given that it is not the main issue in the following analysis. However, the Tribunal highlights that the State forwarded information regarding different disciplinary proceedings against several judges, in which some of the abstentions were declared illegal. Nevertheless, in relation to what was mentioned in the foregoing paragraph, from the case file before the Tribunal it observed that, from the 111 recusals in total, only on three occasions several judges referred the recusals for consultation.²²²

186. The Court pays attention to the following series of facts. Previously, the Court has referred to a variety of abstentions presented by the judges of the First, Second, Third,

²²² The First Instance Judge of Warnes filed a consultation on all the existing abstentions in the case file, following instructions of the Superior Court of the District of Santa Cruz, decree of September 10, 2003 (Case file 37/2000, Volume 9, folios 5067 and 13825); the Fifth First Instance Criminal Judge of Santa Cruz acquiesced to a challenge filed by Antonia Gladys Oroza and Rebeca Ibsen Castro, after this, he sent the case file to the First First Instance Civil Judge of the Capital, who sent the consultation to the Superior Court of District of Santa Cruz, where it was sent to the First Criminal Chamber (Case file 37/2000, Volume 18, folios 7799 and 16559), and the Seventh First Instance Civil and Commercial Judge of Santa Cruz raised to consultation the abstentions presented by the First, Second, Third, Fourth, Fifth and Sixth First Instance Civil and Commercial Judges of Santa Cruz (Case file 37/2000, Volume 21, folios 9080 and 17880).

Fourth, Fifth, and Sixth Civil and Commercial First Instance Courts of Santa Cruz, between June 6 and August 16, 2006 (*supra* para. 180, note 220). In that respect, the judge of the Seventh Civil and Commercial First Instance Court referred these abstentions for consultation before the Superior District Court of Santa Cruz. Based on the assignment, it corresponded to the First Civil Chamber to hear the inquiry; however, its members disqualified themselves given that since “[i]t was a criminal case, it corresponded to the superior tribunal with *ratione materiae* jurisdiction to hear the question of abstention.”²²³ Afterwards, all the members of the First and Second Criminal Chambers of the Superior District Court abstained from hearing the question on the lawfulness of the abstentions presented by the first instance judges (*supra* para. 189 note 220). Therefore, the question was referred, again, to the First Civil Chamber, who finally declared the illegality of the abstentions presented by the first instance judges of the first to sixth courts.²²⁴

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

²²³ Cf. Order of the Seventh First Instance Civil and Commercial Judge of Santa Cruz of August 24, 2006; decree of the First Civil Chamber of the Superior Court of District of Santa Cruz of August 24, 2006 and order of the latter by which it sent the case file to the First Criminal Chamber, of September 4, 2006 (Case file 37/2000, Cuerpo 21, folios 9152 to 9156, and 17950 to 17955).

²²⁴ Cf. Order of the First Civil Chamber of the Superior Court of District of Santa Cruz, of October 30, 2006 (Case file 37/2000, Volume 21, folios 9176 to 9177, and 17974 to 17975). The abstention of the First Instance Civil and Commercial Judge was caused by a challenge filed by Rebeca Ibsen Castro.

²²⁵ Cf. Decree of the Seventh First Instance Civil Judge of Santa Cruz of December 13, 2006 and order of this same Judge by which he sent the case file to the Second First Instance Civil and Commercial Judge (Case file 37/2000, Volume 21, folios 9187 to 9188 and 17985 to 17986).

²²⁶ Cf. Decree of the Second First Instance Civil and Commercial Judge of Santa Cruz of December 16, 2006 (Case file 37/2000, Volume 21, folios 9190 and 17988).

²²⁷ Cf. Order of the Seventh First Instance Civil Judge of Santa Cruz of December 19, 2006 (Case file 37/2000, Volume 22, folios 9196 to 9197 and 17991 to 17992).

²²⁸ Cf. Order of the Full Chamber of the Superior Court of District of Santa Cruz of January 15, 2007 (Case file 37/2000, Volume 22, folios 9224 to 9227 and 18019 to 18022).

²²⁹ Cf. Order of the Superior Court of Justice of Santa Cruz of February 12, 2007 (Case file 37/2000, Volume 22, folios 9234 to 9235 and 18029 to 18030).

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

189. The Court takes into account that in its final written arguments, the State indicated that the law applicable to the abstention procedure has been amended and that, to that end, "it established a regime of abstentions and challenges for judges and criminal courts, which provided more specific grounds for abstentions and challenges. It also defined who could present abstentions and challenges to avoid the wrongful practice by which anybody (even witnesses) could request challenges, and provided its own procedures to add expediency to the regime." The State transcribed the corresponding provisions, which are not the subject matter of the analysis in the instant case given that they were not applied.

190. Based on the foregoing, the Court concludes that the constant presentation of abstentions affected the seriousness of the conduct of the domestic criminal proceedings. And that those abstentions affected the processing of this case due to the delays brought as a result of the judicial system's minimal control, which, as a consequence of the legislation applied, left to the judges' discretion the referral of abstentions to superior authorities for consultation as to their legality, all of this while threatened with a penalty if the abstentions were declared legal.

191. Therefore, the Court deems that, regarding this aspect, there was not only a violation of Article 8(1) of the Convention but also of Article 2 therein, since the corresponding legislation hindered the correct conduct of the proceeding.

B.4. About the classification of forced disappearance

192. The Commission alleged that at the moment of the facts of the case, the crime of forced disappearance was not classified under Bolivian law. [The Commission] mentioned that the State ratified the Inter-American Convention on Forced Disappearance on May 5, 1999, but that it classified this crime recently, on January 18, 2006. Therefore, it considered that between May 5, 1999, and January 18, 2006, the State failed to comply with the obligation established in Article III of the Convention on Forced Disappearance, in relation to Article IV therein.

193. The Court has already referred to the general obligation of the States to adapt its domestic law to the norms of the American Convention. This is also applicable when dealing with the enactment of the Convention on Forced Disappearance, since it derives from the rule of customary law according to which a State, who has entered into an international covenant, must include within its domestic law the necessary changes to ensure its compliance with the obligations undertaken.

194. In the judgment of the case of *Ticona Estrada v. Bolivia*, the Tribunal already declared the State's non-compliance with the obligations established in Articles 1.d) and III of the Convention on Forced Disappearance, and in Article 2 of the American Convention, since it was not until January 18, 2006, that Bolivia incorporated the crime of forced disappearance into its legislation. In this respect, the Court considers that a new

declaration on Bolivia's non-compliance with said obligations is unnecessary because the previous declaration has general effects that transcend the specific case.

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

B.5. About the non-applicability of statutory limitations to serious human rights violations

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

197. This Court has held that that the prohibition of forced disappearance of persons and the correlative duty to investigate and punish those responsible for it are regulations that "have reached a nature of *jus cogens*."²³⁰ Likewise, the jurisprudence of this Court, the orders of other international bodies and organizations, as well as other international instruments and treaties, such as the Declaration on the Protection of All Persons from Forced Disappearance of 1992, the Inter-American Convention on Forced Disappearance of Persons of 1994, and the International Convention for the Protection of All Persons against Forced Disappearance of 2006, provide for certain standards applicable to the investigation and the prosecution of this type of crimes.²³¹

198. Given the urgent need to prevent forced disappearance cases from remaining unpunished, this Court recalls that it is imperative to use all criminal resources available in furtherance of protecting the fundamental rights that might have been infringed in those cases.²³² In light of the foregoing, the Court considers it convenient to highlight that in its first rulings,²³³ it has identified the forced disappearance of persons as an illegal act of a continuous and permanent nature, consisting of multiple human rights violations.

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

²³¹ Cf. *Case of Bámaca-Velásquez v. Guatemala. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of January 27, 2009. Considering Clause 27, and *Case of Trujillo-Oroza v. Bolivia. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 16, 2009, Considering Clause 36.

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

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

199. The Court recalls that the purpose of its mandate is the application of the American Convention and other treaties that grant it jurisdiction. It is not for the Court to establish individual responsibilities,²³⁴ determination of which falls under the jurisdiction of the domestic or the international criminal courts; rather its mandate is to assess the facts submitted to it and to assess them in the exercise of its contentious jurisdiction based on the evidence presented by the parties.²³⁵

200. Nevertheless, the Court deems that an incorrect assessment at the domestic level regarding the juridical contents of the forced disappearance of persons hinders the effective conduct of the criminal proceeding to the prejudice of the obligation of the State to investigate and the right to access to justice in favor of the victims. In this respect, crimes such as the unlawful deprivation of liberty do not satisfy the State's duty to punish a pluri-offensive conduct of rights like the forced disappearance of persons.²³⁶

201. Likewise, the Court has established in another case against the State of Bolivia, that, because it dealt with a crime of permanent execution, namely, that its termination is prolonged in time, when the codification of the crime of forced disappearance of persons enters into force, because the criminal conduct is maintained, the new law results applicable, without it representing its retroactive application.²³⁷ In this same sense, rulings have been ordered by several courts of the highest branches of the States of the continent of the Americas, such as the Supreme Court of Justice of Peru, the Constitutional Tribunal of Peru, the Supreme Court of Justice of Mexico, the Supreme Court of Justice of Venezuela and the Constitutional Court of Colombia,²³⁸ States that, as Bolivia, have ratified the Convention on Forced Disappearance.

202. On the other hand, the Court deems it is pertinent to repeat that with regard to judicial practices, this Tribunal has established in its jurisprudence, that it is aware that the domestic judges and tribunals are subject to the rule of law and that, therefore, they are compelled to apply the regulations in force within the legal system.²³⁹ But, once a State has ratified an international treaty such as the American Convention, its judges, as part of the State's apparatus, are also submitted to it, which compels them to make sure that the

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

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

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

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

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

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

effects of the provisions of the Convention are not affected by the application of laws contrary to its object and purpose, and that they do not lack legal effects from their creation. In other words, the Judiciary shall exercise a “control of conventionality” *ex officio* between domestic regulations and the American Convention, evidently under the framework of its respective competences and the corresponding procedural regulations. Within this task, the Judiciary shall take into consideration not only the treaty but also the interpretation the Inter-American Court, final interpreter of the American Convention, has made of it.²⁴⁰

203. In the instant case, the Court notes that by means of the lower court judgment delivered by the Seventh Civil and Commercial First Instance Court of Santa Cruz on December 6, 2008 (*supra* para. 148) some of the accused were sentenced to two years and eight months in prison and a fine equivalent to 100 days for the crime of aggravated unlawful deprivation of liberty against José Luis Ibsen Peña, among other; one of the accused was sentenced to imprisonment, as an accomplice in the crime of unlawful deprivation of liberty of José Luis Ibsen Peña; an accused was acquitted of the crime of unlawful deprivation of liberty on the grounds of incomplete evidence, and all the accused were acquitted of the crimes of degrading treatment and torture, criminal association, criminal organization, murder and concealment, because “the fact object of the accusation d[id] not constitute a crime pursuant to the statute of limitations of the action, provided for by Article 29 of Law 1970, and because of the principle prohibiting retroactive application of the law.” Regarding Rainer Ibsen Cárdenas, the judgment indicates that “the night of June 19, 1972, the commission of the crime of deprivation of liberty in relation to this citizen ceased, [...] or when it was announced the place where his mortal remains were located, that is, on February 19, 1983; therefore, there is no doubt about the extinguishment of the action in relation to the time elapsed since the public identification of the place where his remains were located, in the city of La Paz on February 19, 1983 and the filing of the first complaint or legal action on January 11, 1999, given that more than fifteen years have elapsed.”²⁴¹

204. On the other hand, the Tribunal emphasizes that in the appeal judgment to the previous ruling, of September 28, 2009, the First Civil Chamber of the Superior District Court of Justice of Santa Cruz considered that given that the proceeding was initiated in 1999, it was not appropriate to classify the crime as forced disappearance of persons, “since the law [is] not retroactive,” and said crime was classified by means of its incorporation into the “Criminal Code in force by Law 3326 of [...] January 18, 2006; thereby complying with the requirements of the judgment delivered by the Inter-American Court [...].” In said decision of the Civil Chamber, it was also mentioned that the proceeding “deals with complaints about crimes of deprivation of liberty, degrading treatment and torture, criminal organization, murder and concealment[,] and complicity [...].”²⁴² As a result, said Chamber upheld the decision by which the dismissed criminal action was declared as time barred regarding the crimes of degrading treatment and tortures, criminal association, criminal organization, murder and concealment, and the

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

²⁴¹ Cf. Judgment of the Seventh First Instance Civil and Commercial Court of Santa Cruz of December 6, 2008 (Case file 37/2000, Volume 27, folios 10695 to 10755 and 19507 to 19567).

²⁴² Cf. Decision of the First Civil Chamber of the Superior Court of District of Santa Cruz of September 2008, 2009 (case file of appendixes to the answer to the application, anexo 15, folio 11338).

conviction of some of the persons accused for the crimes of unlawful deprivation of liberty and complicity in that crime.

B.5.1. Ruling of the Second Criminal Chamber of the Supreme Court of Justice of the Nation

205. On June 2, 2010, the Second Criminal Chamber of the Supreme Court of Justice of the Nation (hereinafter, "Second Criminal Chamber") pronounced a preliminary decision, within the framework of the substantiation of several appeal remedies filed, among others, by Ms. Rebeca Ibsen Castro, by which the court annulled the previously decreed prescriptions (*supra* paras. 203 and 204). In said decision it is observed that the Second Criminal Chamber ordered the processing of the action "until the corresponding final resolution was issued," and that, among other considerations, it establishes that "[t]he judgment, specifically related to the case, [...] of February 2, 2000, ordered by the Inter-American Court of Human Rights, [expresses] that the State has the obligation to eliminate the obstacle of the statute of limitation of the criminal action aiming at the criminal sanction of those responsible of the crime of forced disappearance of persons."²⁴³

206. Likewise, on August 16, 2010, the Second Criminal Chamber issued a judgment condemning two of the individuals accused of the crime of forced disappearance, and another one accused of complicity in the perpetration of said crime. From the judgment it is concluded that said Chamber confirmed the acquittal of another of the defendants due to lack of "full proof beyond any reasonable doubt." Nevertheless, this Court observes that said judgment establishes that "in relation to the murder of Rainer Ibsen Cárdenas, because of the violent manner leading to his death in which it occurred, and the circumstances under which his liberty was deprived, as well as the accusations of inhumane treatment and torture of José Luis Ibsen Peña [...], is not feasible to apply the statute of limitations given that such acts are classified as crimes against humanity within [...] the Statute of Rome [...] due to the form and circumstances under which they occurred, the perpetrators of the crimes and the ruling government at that time, characterized by the judicial disrespect for rights and liberties [...], it is not possible to apply the [Statute of Rome] because the *ratione temporis* jurisdiction to prosecute applies only for crimes committed after July 17, 1998, [and Bolivia] ratified that instrument [...] on June 27, 2002 [, ...]. Hence, the dispositions of the Statute of Rome" cannot be applied in the murder of Rainer Ibsen Cárdenas and in the degrading treatment and tortures "suffered by José Luis Ibsen Peña."²⁴⁴

207. The Court emphasizes that the recent ruling by the Second Criminal Chamber regarding the application of the crime of forced disappearance to the acts suffered by Mr. José Luis Ibsen Peña is in accordance with the jurisprudence of this Tribunal. However, regarding those acts related to the torture and inhumane treatment to which by Mr. José Luis Ibsen Peña was subjected to, or the murder of Mr. Rainer Ibsen Cárdenas, this Court considers it convenient to recall that it has already indicated that in criminal matters, the statute of limitations determines the termination of the punitive claims by the passage of time, and that, generally, it limits the punitive power of the State to prosecute illegal

²⁴³ Cf. Judgment of the Second Criminal Chamber of the Supreme Court of Justice of the Nation of June 2, 2010 (case file on the merits, volume V, folios 1967 to 1968). De la lectura de esta decisión se infiere que hace referencia a la Sentencia de la Corte Interamericana en el caso *Trujillo Oroza Vs. Bolivia*. Reparaciones y Costas. Sentencia de 27 de febrero de 2002. Serie C No. 92.

²⁴⁴ Cf. Judgment of the Second Criminal Chamber of the Supreme Court of Justice of the Nation on August 16, 2010 (case file on the merits, volume V, folios 2000 to 2001 and 2005 to 2006).

conduct and to sanction its authors.²⁴⁵ Still, in certain circumstances, international law considers statutes of limitations to be inadmissible and inapplicable,²⁴⁶ as well as amnesty laws and the establishment of exemptions of responsibility,²⁴⁷ in order to maintain in force the punitive power of the State on conducts that, because of their seriousness and to avoid their repetition, need to be repressed.

208. In the present case, this Court finds that, independently of whether or not a conduct is determined as a crime against humanity by a domestic court, to analyze the application of the statute of limitations to conducts such as torture or murder committed within a political and social context of massive and systematic human rights violations, as it has already been established in this Judgment and recognized by the State, the special duty of the State, regarding such conducts, to carry out necessary investigations and determine those responsible so that these crimes do not remain in impunity should be taken into account.

209. In this regard, the Court recognizes the decision of the Second Criminal Chamber regarding the application of the crime of forced disappearance. Nevertheless, given the remaining impunity of other responsibilities in Mr. Rainer Ibsen Cárdenas murder and torture of Mr. José Luis Ibsen Peña, this Court considers that the State violated Article 8(1) of the American Convention.

210. Likewise, the Court recalls that, as it has been mentioned in this Judgment, given the facts and context in which they occurred, it is reasonable to assume that there remain other perpetrators in the present case. In this sense, the State's responsibility to continue the investigation and to determine the corresponding criminal responsibility persists." In the investigations and in the criminal proceedings that might be initiated in this respect, if applicable, and in addition to other crimes that may be applicable, the crime of forced disappearance of persons should also be considered, pursuant to Bolivian legislation and the jurisprudence of this Court.

211. Moreover, given that, according to that established in this Judgment, the forced disappearance of Mr. Rainer Ibsen Cárdenas formally ceased in 2008 (*supra* para. 92), the aforementioned criminal codification is applicable, from a criminal law perspective, given that it was executed from 2006, year in which such crime was classified within Bolivian legislation, and until 2008. The Tribunal notes, as it had already done it in this Judgment (*supra* paras. 161, 203, 204 and 206) that the facts happened to Mr. Ibsen Cárdenas had not been formally investigated, and that in the domestic criminal proceeding, only some responsibilities have been determined regarding the facts of Mr. José Luis Ibsen Peña, and not regarding his son Rainer Ibsen Cárdenas. In this sense, the State has the duty to impel the corresponding criminal investigation of the forced disappearance of Mr. Rainer Ibsen Cárdenas, without detriment to other crimes that may be appropriate [to investigate], according to Bolivian legislation and that mentioned by the Court in this Judgment, and it must ensure that, in the criminal proceedings that may be initiated, the crime of forced disappearance of persons and the consequences established by the domestic law are

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

²⁴⁶ Cf. *Case of Albán Cornejo et al. v. Ecuador.*, *supra* nota 245, para. 111.

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

applied. The Tribunal recalls that the duty to investigate, prosecute and, if applicable, punish those responsible for the forced disappearance of a person is an obligation that the States must comply *ex officio*.

212. Based on the foregoing, the Court considers that, because of the facts taken into account in this chapter regarding the forced disappearance of Mr. Rainer Ibsen Cárdenas, the State also violated Article 8(1) of the American Convention.

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

213. Regarding the procedures to discover the victims' whereabouts, the Commission observed that the available evidence indicates that it was only in 2007, and as a result of repeated requests by the complainant, that the State ordered the exhumation of the bodies, probably among the one of Rainer Ibsen Cárdenas, despite that since 1983 the State had indications of the possible location of what were alleged to be his remains. Likewise, the Commission stated that the identification of the remains of Mr. Ibsen Cárdenas have had no effect on the criminal proceeding and that no more detailed tests were ordered, in order to verify the complaints of torture against him. It also stated that, even though the discovery of the body demonstrated the falseness of the official version that he was killed to avoid an attempted escape –since at least three shot wounds were found in the osseous remains that corresponded to the victim's head– the individuals responsible for security in the Achocalla detention center at the time Rainer Ibsen was deprived of liberty were not either summoned to testify. Regarding the search for the whereabouts of Mr. José Luis Ibsen Peña, the Commission alleged that, based on the testimony of one of the accused, only one procedure was performed during which no measures were adopted to ensure the adequate safeguard of the evidence and it was carried out using a backhoe, a method that jeopardized the integrity of the material collected. Finally, it indicated that there had been no progress in the identification of what could be his remains, which means that Mr. Ibsen Peña remains disappeared.

214. In this respect, the Court has established that as part of the obligation to investigate, the State must carry out a reliable search, making all possible efforts aimed at finding for the whereabouts of the victim, because the right of the next of kin to know the fate or whereabouts of the disappeared victim²⁴⁸ constitutes a measure of reparation and, therefore, an expectation of the latter that the State must satisfy.²⁴⁹ Clarification of the whereabouts or fate of the disappeared victim is extremely important for the next of kin, because it alleviates their anguish and suffering caused by the uncertainty of the whereabouts and fate of their disappeared next of kin.²⁵⁰

215. The obligation to investigate the whereabouts persists until the person deprived of liberty is found, until his or her remains appear²⁵¹ or, at any case, until there is certainty

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

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

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

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

about his or her fate. In this regard, the Court emphasizes that the obligation of the States to investigate cases of enforced disappearance is not only limited to the simple determination of the whereabouts or fate of the disappeared persons or to clarification of what happened, neither to the mere investigation leading to determination of the corresponding responsibilities and the eventual punishment of those responsible. Both aspects are correlated and must be present at any investigation of acts such as those of the instant case.

216. Regarding that mentioned in the preceding paragraph, the Court observes with concern that, in the domestic sphere, the scope and content of the general obligation to investigate the forced disappearance of persons is not taken into account. Thus, the Court highlights that, at the public hearing held during the processing of the criminal proceeding, Rebeca Ibsen asked the corresponding judge to “require the office of the Public Prosecutor to hand over the evidence found in [La Cuchilla cemetery], [because] it was in the hands of the Prosecutor’s office [and not] in the case file so that the Judiciary could examine it. Mrs. Rebeca Ibsen referred to remains that probably belonged to the body of Mr. José Luis Ibsen Peña. In this regard, the representative of the Public Prosecutor’s Office stated that “in [the] proceeding what [they] w[ere] trying to determine was the identity of those who were allegedly guilty of the murder of the persons who were the object of the investigation and [that] the purpose of the excavations [carried out] in La Cuchilla was to discover if they [were] really these persons, [and that] this became part of the proceedings because [...], according to doctrine and law, [this was necessary] so that, after DNA testing, the remains could be returned to the next of kin to be given Christian burial, because the interest of the Public Prosecutor’s office lay in discovering the relationship between the accused and the events that occurred[and therefore] it was investigating the situation.”²⁵²

217. In this regard, this Court has established that, in the context of the obligation to investigate a death, efforts to determine the truth effectively must be demonstrated diligently starting with the first measures.²⁵³ In this regard, the Court has outlined the guiding principles that must be observed when investigating a violent death. At the very least, the State authorities who conduct an investigation of this type must try, *inter alia*: (i) to identify the victim; (ii) to recover and preserve the body of evidence related to the death in order to assist any possible criminal investigation of the authors; (iii) to identify possible witnesses and obtain their testimony concerning the death under investigation; (iv) to determine the cause, manner, place and time of death, as well as any pattern or practice that could have caused the death, and (v) to distinguish between natural death, accidental death, suicide and murder. In addition, the scene of the crime must be examined thoroughly, and any human remains must undergo meticulous autopsies and analyses by competent professionals using the most appropriate procedures.²⁵⁴

²⁵² Cf. Minute of the hearing to receive evidence from the parties, on June 17, 2007 (Case file 37/2000, Volume 22, folios 9469 to 9470 and 18277 to 18278).

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

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

218. In this respect, regarding the search for the whereabouts of Mr. José Luis Ibsen Peña, it has already been established (*supra* para. 111) that, on August 22, 2006, in the La Cuchilla cemetery in Santa Cruz, some osseous remains of a cranium, rotulae, humeri, femur and part of the lower jaw with four teeth were found, from an extraction carried out with a backhoe with a mechanical arm. On September 5, 2006, the Seventh Civil Court was informed that the said osseous remains were being examined in the Forensic Investigations Institute in order to confirm identification. To date, four years later, the Court has not received any information from the parties about whether the said remains have finally been identified.

219. In another case against Bolivia, the Court has already indicated that the method used to locate remains that are presumably human is crucial. Also, that the proper collection and preservation of such remains are essential conditions for determining what happened to the victims and, consequently, for the investigation, prosecution and eventual punishment of those responsible and that the passage of time can have irreversible effects on the remains when they are not conserved adequately. In this regard, the State should carry out as soon as possible the necessary expert tests to identify the said remains.²⁵⁵

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

221. In this regard, the Court takes into account that during the processing of this case, the State informed that the Inter-Institutional Council for the Clarification of Forced Disappearances ("Council for the Clarification of Disappearances") is currently implementing a project aimed at clarifying the cases of forced disappearance over the period of 1964-1982. Said project commenced on February 20, 2008, and is divided into three phases, the second of which includes the search for those who disappeared during the government of Hugo Banzer Suárez. The State also specified that this project has been approved by authorities of the Council for the Clarification of Disappearances and that its funding is guaranteed, among others, by international cooperation.

222. As previously indicated in relation to another case against the Bolivian State, the Court positively assesses the general measures adopted by the State regarding the discovering of the remains of the victims of the forced disappearances occurred in Bolivia during the 1970s.²⁵⁶ Nevertheless, in the instant case, the effective search for the remains of Mr. José Luis Ibsen Peña cannot depend only on the actions of the said Inter-Institutional Council, because the State's obligation subsists for the whole procedure. This means that the State must continue the search for José Luis Ibsen Peña in the most expedient and effective manner.

223. On the other hand, in this judgment it has already been stated that the case file reveals that, since February 28, 1983, the National Commission for Investigation requested

²⁵⁵ Cf. *Case of Trujillo Oroza v. Bolivia. Monitoring Compliance with Judgment*, *supra* nota 231, Considering clauses 15 and 16.

²⁵⁶ *Case of Trujillo Oroza v. Bolivia. Monitoring Compliance with Judgment*, *supra* nota 231, Considering clause 19.

the Public Prosecutor's Office to exhume and perform autopsies on six corpses, among whom Mr. Rainer Ibsen Cárdenas was mentioned (*supra* para. 87). However, the requested examinations were never performed. Likewise, the Court observes that, several years later, the remains of Rainer Ibsen Cárdenas were exhumed, mostly, because of the insistence of his next of kin, particularly because of Mrs. Rebeca Ibsen Castro. Precisely, the case file shows that, on October 9, 2003, April 1, 2004, and October 20, 2006, Mrs. Rebeca Ibsen Castro requested the First Instance Court of Warnes and the Seventh Civil Court, respectively, to order and proceed with the autopsy of the remains allegedly corresponding to Rainer Ibsen Cárdenas which, at that time, were in the mausoleum of ASOFAMD in the General Cemetery of La Paz (*supra* para. 89). In addition, she requested that paleontological, forensic, and genetic testing be carried out on these remains.²⁵⁷ Also, it appears in documents of December 13, 2006, and January 9, 2007, that Mr. Tito Ibsen Castro requested the Prosecutor with subject-matter jurisdiction of the District of La Paz to set a date for the exhumation and verification of the remains that presumably corresponded to Rainer Ibsen Cárdenas.²⁵⁸ Finally, as already indicated in this Judgment, after remains that did not correspond to Mr. Ibsen Cárdenas were excavated in 2007 (*supra* paras. 89 to 92), another exhumation was performed on February 20, 2008, of the remains of other bodies located in the ASOFAMD mausoleum²⁵⁹ and, following genetic testing, one of these was found to be that of Mr. Ibsen Cárdenas.

224. From the foregoing, the Court observes that even though there was a request for an "autopsy" to be performed on the remains that apparently belonged to Mr. Rainer Ibsen Cárdenas since 1983, it was not only until 2007 that the State carried out the first exhumation.

225. In this regard, the Court emphasizes that, when carrying out the investigation and for the prosecution and eventual punishment of those responsible, it is essential to have proved irrefutably that the remains excavated in 2008 belong to Rainer Ibsen Cárdenas. However, the Court notes that, even though genetic and anthropological tests were performed, the location and subsequent identification of the remains of Mr. Ibsen Cárdenas were overwhelmingly aimed at their return to the next of kin and not to performing other tests whose results would provide elements to clarify what happened. As already mentioned in this judgment, the remains were handed over to Tito Ibsen Castro on November 11, 2008 (*supra* para. 91). Consequently, although indications exist about the manner and circumstances in which Mr. Rainer Ibsen Cárdenas could have lost his life, to date it has not been possible to establish this reliably, which adversely affects the determination of the corresponding criminal responsibilities and the right to truth. Precisely, the criminal investigation should be channeled in this direction and, thus, this

²⁵⁷ Cf. Brief submitted by Rebeca Ibsen Castro addressed to the First Instance Judge of the province of Warnes, on October 9, 2003 (Case File 37/2000, Volume 10, folios 5321 to 5322 and 14080 to 14081); brief submitted by Rebeca Ibsen Castro addressed to the First Instance Judge of the province of Warnes, on April, 2004 (Case File 37/2000, Volume 12, folio 5856), and brief submitted by Rebeca Ibsen Castro addressed to the Seventh Civil and Commercial First Instance Judge, on October 20, 2006 (Case File 37/2000, Volume 21, folios 9094 to 9095 and 17894 to 17895).

²⁵⁸ Cf. Brief addressed to the "representative of the Office of the Public Prosecutor" by Tito Ibsen Castro, on December 13, 2006 and January 9, 2007 (case file on the appendixes to the application, appendix 24, folios 2263 to 2264). Both documents are apparently incomplete, notwithstanding, the State did not challenge its authenticity.

²⁵⁹ Cf. Final Report on the Exhumation Works and Forensic Anthropological Analysis of the Remains buried at the ASOFAMD Cemetery, B Sector, General Cemetery of La Paz (case file of appendixes to the final written arguments of the State, volume II, folios 20221 to 20421, and Case file 37/2000, Volume 25, folios 10106 to 10036 and 18897 to 19108).

obligation subsists until the circumstances of the death of Mr. Ibsen Cárdenas are judiciary determined. This should also result in the investigation being aimed also at determining the corresponding responsibilities, taking into account the specific context in which the facts occurred. The Court has already referred to this extensively in this judgment (*supra* para. 171). Given that no investigation has been carried out into what happened to Rainer Ibsen Cárdenas based on the analysis of his remains, or those possibly responsible, the Court finds that the State violated Article 8(1) of the American Convention.

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* *

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

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

227. The representatives alleged that they had not received any support and advisory assistance from the Bolivian Ombudsman and stressed that he had sponsored another case before the Inter-American system. They also indicated that the Senate of the Republic had granted a pension for life to the widows of the Mirista leaders who were murdered on January 15, 1981. Lastly, they alleged that, in *Trujillo Oroza v. Bolivia*, the State "from the outset" acknowledged its international responsibility, while in the instant case, it withdrew from the friendly settlement procedure and continued opposing the processing of the case, causing greater pain, anguish and desperation to the petitioner family.

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

229. Nevertheless, regarding the argument concerning the lack of support and advice from the Ombudsman, the Court observes that, in the application, the Commission indicated in general that, on December 20, 2002 "Mr. Tito Ibsen Castro addressed the

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

Ombudsman's Office in order to report the lack of response from the different authorities to which he had resorted in his search for justice for what happened to his brother and his father." However, the Commission did not make any allegation in this regard.

230. The Court considers that the representatives' allegation is too general and lacks of enough foundation as to allow the Court to rule on the alleged violation. Consequently, the Court will not rule on this issue.

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

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

A. Injured party

232. Under Article 63(1) of the American Convention, the injured party is considered to be the person who has been declared a victim of the violation of any right embodied therein. As established in the preceding chapters, in the instant case the victims are: Messrs. Rainer Ibsen Cárdenas, José Luis Ibsen Peña, Martha Castro Mendoza, Rebeca Ibsen Castro, Tito Ibsen Castro and Raquel Ibsen Castro (*supra* paras. 122, 133 and 226); consequently, they will be considered beneficiaries of the reparations ordered by this Court.

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

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

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

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

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

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

236. In Chapter VII of this judgment, the Court established, *inter alia*, the State’s delay in opening the investigation into the facts of this case; the absence of an investigation into what happened to Rainer Ibsen Cárdenas; the transfer of the burden of proof to the complainants in the criminal proceeding for the acts perpetrated against José Luis Ibsen Peña, and the impunity of the acts of torture and inhumane treatment committed against the latter and the murder of Mr. Rainer Ibsen Cárdenas (*supra* paras. 160 to 163, 169 to 174 and 208 to 212). The foregoing has led to the ineffectiveness of the investigations and proceeding to clarify the facts in this case, and to prosecute and, as appropriate, to punish all those responsible, within a reasonable time, consequently examining completely and thoroughly the many damages caused to the victims.²⁶³

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

- (a) Initiate the pertinent investigations in relation to the facts that occurred to Mr. Ibsen Cárdenas and Mr. Ibsen Peña, taking into account the systematic

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

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

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

pattern of human rights violations at the time, in order to ensure that the pertinent proceedings and investigations are conducted taking into consideration the complexity of these facts and the context in which they occurred, avoiding omissions in gathering evidence and in following up on logical lines of investigation;

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

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

238. Lastly, based on its case law,²⁶⁶ the Court considers that the State must ensure the victim's next of kin full access and capacity to act at all stages of the investigation and prosecution of those responsible, in accordance with domestic law and the provisions of the American Convention. In addition, the results of the corresponding proceedings must be publicized so that Bolivian society may know the facts of this case, as well as those responsible.²⁶⁷

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

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

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

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

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

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

241. In this regard, the State indicated that the Inter-Institutional Council for the Clarification of Forced Disappearances (hereinafter "CIEDEF") "is concluding the second phase" of the project entitled "Contribution to the Full Exercise of Human Rights and Enhancement of Democracy: Clarification of the cases of forced disappearances during the period 1964-1982." According to the State, one of the objectives of this project "in 2010 is to seek the remains of José Luis Ibsen Peña"; nevertheless "in its 2010 Annual Plan of Operations, besides the project to clarify forced disappearances, CIEDEF has proposed [...] a short-term plan to search and identify the remains of the victims whose cases are being examined by international organizations," among them, that of José Luis Ibsen Peña. Therefore, the State asked that the Court "to assess positively the State's intention to find the remains [of Mr. José Luis Ibsen Peña]."

242. On this point, the Court assesses positively that the State has decided to accord priority to the search for Mr. José Luis Ibsen Peña. In this regard, it is necessary that the State conducts a reliable search, in which it displays its best efforts to clarify his whereabouts as soon as possible. The Court emphasizes that Mr. Ibsen Peña disappeared almost 37 years ago, so that it is a fair expectation of his next of kin that the State undertake effective measures to discover his whereabouts. If it is the case that the measures carried out by the State establish that Mr. Peña has passed away, his remains, previously identified, must be delivered to his family as soon as possible and without any cost. Also, the State must cover the costs of the funeral, if applicable, as agreed with the next of kin.²⁶⁸

C.2 Publication of the pertinent parts of this judgment and public dissemination

243. The Inter-American Commission requested the Court to order the publication of the judgment in a national circulation media. Likewise, the representatives requested the Court to order the State to "publish and disseminate" this judgment "in different media." For its part, the State "indicate[d] that [it] will publicize the judgment delivered by [this] Court in a newspaper with national circulation."

244. The Court assesses positively the State's offer regarding this form of reparation. However, as it has ordered on other occasions,²⁶⁹ the Court considers that the State must publish, once, in the Official Gazette paragraphs 1 to 5, 23 to 29, 33, 34, 36 to 38, 50 to 57, 67, 68, 71 to 75, 80 to 82, 84 to 92, 94, 102 to 111, 115, 116, 118, 119, 122, 126, 128 to 133, 155 to 163, 165 to 174, 177, 178, 180 to 184, 189 to 191, 193 to 195, 197 to 202, 205 to 212, 214 to 226, 231 and 232; all of them including the titles of each chapter and the respective section, without the footnotes, together with the operative paragraphs of this judgment. Also, it must publish in another newspaper with widespread national circulation, the official summary of the judgment issued by this Court.²⁷⁰ In addition, as the Court has ordered on previous occasions,²⁷¹ this judgment must be published in its entirety

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

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

²⁷⁰ Cf. *Case of Chitay Nech*, *supra* note 6, para. 244.

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

in an appropriate official web site, taking into account the characteristics of the publication that the State is ordered to make, and must remain available for one year. The publications in the newspapers and on the Internet must be made within six and two months, respectively, as of the date of which this judgment is notified.

C.3 Measures to commemorate Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña

245. The Inter-American Commission requested the Court to order the State “to execute a project to recover the historical memory” on Messrs. Ibsen Cárdenas and Ibsen Peña.

245. The representatives requested the Court to order the State to “undertake significant projects, of sufficient importance to recover the historical memory” on the said victims. Also, regarding the act of reparation and the State’s designation of a roundabout in which a plaque was placed in commemoration of the Ibsen family (*infra* paras. 247 and 249), the representatives indicated that the State named the said roundabout without consulting the family, and that “the name [...] ‘Ibsen Family’ nullifies the essence of the act of recognition and reparation, because it includes the family’s living members.” They also alleged that the said roundabout is “marginal” and will never be visited, because it is “at the foot of a hill,” not far from rubbish dumps, and “only permits vehicular traffic.” Consequently, they requested that the State names “a significant urban [structure],” such as “an avenue, a monument [or] a square,” after the two disappeared victims, and also installs “a plaque explaining” the historical context in which the facts of the case took place. Regarding the commemorative postal stamp offered by the State (*infra* paras. 247 to 248), the representatives expressed their disagreement based on the absence of references to the complete names of the disappeared victims and the dates on which they disappeared.

247. The State asked the Court to assess positively the public act of partial acknowledgement of international responsibility carried out while the case was under proceedings before the Inter-American Commission (*supra* para. 30); the public apology made by the Vice Minister of Justice and Fundamental Rights at the hearing held on April 13, 2010 (*supra* para. 8); the public act of reparation held on May 21, 2010, to officially name the “Ibsen Family” roundabout; and also the naming of the “30th Street in Alto Calacoto Huayña Jahuira [... as] ‘Rainer Ibsen’ Street and [of] E2nd Street in the same area [... as] ‘José Luis Ibsen’ Street” in La Paz city, made by request of the representatives. The State referred that although Mr. Tito Ibsen Castro was invited to the “delivery” of the roundabout, he “did not attend to this apology act [...].” Similarly, it underscored the issuance of a “commemorative postal stamp” of Messrs. Ibsen Cárdenas and Ibsen Peña, which had been submitted to Tito Ibsen Castro on May 18, 2010, for him to choose the design. To this respect, the State referred that on August 20, 2010, a public act that was attended by Messrs. Tito Ibsen Castro, Martha Castro Mendoza and Raquel Ibsen Castro, among others, where the delivery of said postal stamp took place. The State submitted to the Tribunal, among others, a copy of the postal stamp as well as photographs of said public act. Finally, and based on all the above, the State considered that the representatives’ claim for a memorial to be erected in memory of the disappeared victims was excessive.

248. On previous occasions, the Court has assessed favorably those acts carried out by States that result in the recovery on the victims’ memory, recognition of their dignity, and consolation for their next of kin.²⁷² In the instant case, the Court assesses positively and

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

accepts the acts of acknowledgement of international responsibility carried out by the State and the denomination of two streets of La Paz city after Mr. Ibsen Cárdenas and Mr. Ibsen Peña. On the other hand, from the information of the files it is inferred that the State and the representatives, in particular, Mr. Tito Ibsen Castro, had already taken some steps with respect to the issuance of a postal stamp to commemorate Mr. Rainer Ibsen Cárdenas and Mr. José Luis Ibsen Peña.²⁷³ Likewise, from the information submitted to the Tribunal it is proved that the State in fact has delivered the postal stamp to Messrs. Tito Ibsen Castro and Martha Castro Mendoza. In that regard, the Court takes note of said act and finds that the issuance of the postal stamp contributes to establishing the historical memory in a democratic society and to the satisfaction of the victims.

249. As it has been previously mentioned (*supra* paras. 246 to 247) to State informed that it has already executed a public act of reparation in which it officially named a roundabout as "Ibsen Family." The Court assesses positively the efforts made by the State in this matter. Without detriment of this, as it has ordered in other cases,²⁷⁴ this Court finds that, as measures of satisfaction, initiatives designed to preserve the memory of victims of human rights violations must be implemented in coordination with their next of kin. In that respect, the Court takes into account that the representatives stated that said act was carried out without consulting the family and without their consent. Thus, according to the Court's jurisprudence, in order to raise public awareness so as to avoid the repetition of acts such as those that occurred in the instant case and to conserve the memory of Messrs. Ibsen Cárdenas and Ibsen Peña, the Court considers that the State must reach an agreement with their next of kin on the designation of a public place after them in which a commemorative plaque that mentions this judgment, the facts of the case, and the circumstances in which they occurred must be placed. This must be done within one year from the notification of this judgment.

C.4 Rehabilitation measures

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

251. The representatives asked that, in general, the Court order the State "[t]o adopt measures of rehabilitation in favor of the victims' next of kin." In addition, they indicated that the Ministry of Health and Sports and the Petroleum Company Health Fund had signed an agreement to provide medical services to the Ibsen family "without [their] legal representative awareness" (*infra* para. 252). Furthermore, they indicated that the said contract contained errors and inconsistencies in relation to the personal information of the beneficiary family, which could result in failure to comply with it.

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

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

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

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

254. The Court assesses positively the actions that the State has taken in order to provide medical care to the victims in this case (*supra* para. 252). In relation to the said "Inter-Institutional Agreement," the Court has verified that this is a document in which the Ministry of Health and Sports agrees with the Petroleum Company Health Fund to provide medical services to the members of the Ibsen family. In this regard, referring to the arguments of the representatives (*supra* para. 251), the Court considers that any possible errors in the said "Agreement" must be rectified to avoid problems in its execution that might represent an unnecessary burden for the beneficiaries of the respective medical services. Furthermore, despite the willingness of the State expressed by the signature of the said "Agreement," the Court considers that the agreement may not limit or modify the measures ordered in this judgment, and cannot impose a disproportionate burden on the beneficiaries. At any case, the State's obligation to comply with this measure of reparation in the terms ordered subsists regardless of the said "Agreement."

C.5 Training for justice administrators and education on human rights

255. The Commission and the representatives asked the Court to order the State "to undertake the legal, administrative and any other measures necessary to avoid repetition of similar facts, specially, measures to avoid any lack of diligence in the investigations and to eliminate the legal or other obstacles that have prevented the clarification, identification and punishment of those responsible for the serious human rights violations that occurred during the military dictatorships." Furthermore, in their final written arguments, the representatives asked the Court to order training on "human rights principles for public officials, members of the Armed Forces and National Police," and that the courses offered should "allude to [this] case, among others."

256. Meanwhile, the State indicated that it had made "significant progress" with regard to guarantees of non-repetition. In particular, it maintained that the State's new Constitution, promulgated on February 7, 2009, establishes "an extensive list of fundamental rights that reflects the principal universal and regional human rights instruments [...]."²⁷⁶ It also emphasized that, on September 26, 2008, it ratified the

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

²⁷⁶ In this token, the State expressed: a) article 256 of said Constitution has established that international human rights treaties and covenants are part of the constitutional body and that said treaties and covenants are

International Convention for the Protection of All Persons from Enforced Disappearance. In addition, during the public hearing held in this case (*supra* para. 8), the State indicated that it “will hold a seminar explaining the State’s international responsibility in this case and in others of enforced disappearance.”

257. The Court assesses positively the progress made to date by the State with regard to guarantees of non-repetition, as well as the proposal to hold a seminar on forced disappearance (*supra* para. 256). However, the Court observes that, in its offer, the State did not specify the scope of the said seminar or the persons who would be benefited by it. Given the particular circumstances of this case, this Court considers it important to strengthen the State’s institutional capacities by training public officials in order to avoid repetition of acts such as those analyzed in this judgment. Regarding the training on human rights protection, in its case law, the Court has found that this is a way of providing public officials with new knowledge, enhancing their capabilities, allowing them to specialize in certain innovative areas, preparing them to occupy different posts, and adapting their capacities so as to improve their performance of the tasks assigned to them.²⁷⁷

258. Consequently, notwithstanding the human rights training programs for public officials that already exist in Bolivia, the Court orders that the State must implement, within a reasonable time and with the corresponding budget, a training program on the due investigation and prosecution of acts that constitute enforced disappearance of persons, targeted to agents of the Public Prosecutor’s Office and judges of the Bolivian Judiciary with jurisdiction on such events, so that the said officials have the required legal, technical and scientific elements to evaluate integrally the phenomenon of enforced disappearance. In particular, in this type of cases, the authorities responsible for the investigation must be trained in the use of circumstantial evidence, *indicia* and presumptions, the assessment of the systematic patterns that can give rise to the facts investigated and the discovery of the whereabouts of those who have suffered enforced disappearance (*supra* paras. 82, 166 to 168, 217 and 219).

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

D. Indemnifications, compensations, costs, and expenses

D.1 Pecuniary damage

260. The Court has developed the concept of pecuniary damage in its case law and the hypotheses in which it must be compensated. This Tribunal has established that pecuniary damages assume “the loss or detriment of the income of the victims, the expenses made

applied preferably regarding the contrary dispositions of the Constitution; b) article 13 of said Constitution has established “the direct application” of the Inter-American Court jurisprudence; c) article 111 of the Constitution forbids the application of the statute of limitations to the crimes of genocide, against humanity and war crimes, and d) article 114 forbids all forms of torture and forced disappearance.

²⁷⁷ Cf. *Case of Claude-Reyes et al. v. Chile. Monitoring Compliance with Judgment*. Order of the Inter-American Court of Human Rights of November 24, 2008, Considering Clause nineteenth; *Case of Escher et al. Vs. Brasil Preliminary Objections, Merits, Reparations and Costs*. Judgment of July 6, 2009. Series C No. 200. para. 251, and *Case of Radilla Pacheco v. Mexico*, *supra* note 8, para. 346.

due to the facts and the pecuniary consequences that have a causal relationship with the facts of the case."²⁷⁸

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

262. As the Court has established previously, reparations must bear a relationship to the facts of the case, the violations declared, the damage proved, and with the measures requested to repair the respective harm. Therefore, the Court must observe the concurrence of these elements in order to make an appropriate ruling in keeping with the law.²⁷⁹

a) Rainer Ibsen Cárdenas

263. With regard to a compensatory payment for the sum that Rainer Ibsen Cárdenas would have earned during his professional life, the representatives indicated that he was in the third year of engineering studies at the time of his enforced disappearance. Consequently, they indicated that the State should pay the sum of US\$263,250.00 (two hundred and sixty-three thousand two hundred and fifty United States dollars), calculated on the basis of "the [approximately] 32.5 years [that he would have worked ...] as a professional," receiving an "average monthly salary" of US\$900.00 (nine hundred United States dollars) as a probable engineer, and subtracting from this sum "25% for his personal expenses."

264. Before such claims, the State indicated that, at an initial procedural opportunity, the representatives had never "proved that Rainer Ibsen Cárdenas had been a third-year engineering student" at the time of his enforced disappearance and that it was unaware of the source used to establish the amount indicated by the representatives as an average monthly salary. However, in its answer to the application, the State projected the amount that Mr. Ibsen Cárdenas would have earned as a probable engineer during 36 years of work, based, among others, on a salary of US\$450,00 (four hundred and fifty United States dollars); in other words, 50% of the amount claimed by the representatives. According to the State, this reduction is closer to the reality, because a recently graduated engineer would not earn the same as one with broad experience. On this basis, the State proposed a payment of US\$157,950.00 (one hundred and fifty-seven thousand nine hundred and fifty United States dollars) for loss of earnings.

265. On the contrary, in its final written arguments, the State indicated that Mr. Rainer Ibsen was "a first-year law student" at the date of his enforced disappearance. Thus, "since it was not possible to establish how much he would have earned as a lawyer," the State

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

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

indicated that the national minimum wage shall be used to determine the amount that Mr. Ibsen Cárdenas would have earned during a working life of 32.5 years, “deducting 25% for personal expenses.” In this way, it proposed the payment of the sum of US\$29,057.00 (twenty-nine thousand and fifty-seven United States dollars) for the loss of earnings in favor of Mr. Rainer Ibsen Cárdenas.

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

267. Consequently, and taking into account that Mr. Rainer Ibsen Cárdenas was 22 years of age at the date of his forced disappearance (*supra* para. 74), this Court decides to establish, in equity, the sum of US\$130,000.00 (one hundred and thirty thousand United States dollars) or the equivalent in bolivianos, for pecuniary damage, which should be distributed in equal parts among the rightful claimants of Mr. Ibsen Cárdenas. This amount shall be paid within the term established by the Court (*infra* para. 292).

b) José Luis Ibsen Peña

268. With regard to José Luis Ibsen Peña’s loss of earnings, the representatives argued that a payment of US\$300,150.00 (three hundred thousand one hundred and fifty United States dollars) is according to law, calculated on the basis of the approximately 14.5 years “remaining of his professional life,” and taking into account that 25% of his income shall be used in personal expenses. Thus, they indicated that Mr. Ibsen Peña was a lawyer with a monthly income of US\$1,300.00 (one thousand three hundred United States dollars) from the company Bolivian Fiscal Oilfields [*Yacimientos Petrolíferos Fiscales Bolivianos*] (hereinafter “YPFB”), company where he allegedly worked at the time of his detention, and US \$1,000.00 (one thousand United States dollars) from the “legal advisory services” that he provided to the Bolivian Labour Headquarters [*Central Obrera Boliviana*] (hereinafter “COB”).

269. The State contested the representatives’ affirmation that Mr. José Luis Ibsen worked as a lawyer for YPFB and COB at the time of his enforced disappearance, because on May,

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

1972, the said victim “was in Camiri, Santa Cruz, where he registered his lawyer’s office; namely, he worked as an independent lawyer.” In this regard, in its final written arguments, the State alleged that Mr. Ibsen Peña never received a salary from COB, because all the legal advisers of this organization “provide their services *ad honorem*.” Also, it indicated that, in YPF, Mr. Ibsen Peña occupied the posts of “auxiliary, Responsible for Benefits and Responsible for Medical Benefits” and was remunerated in Bolivian pesos, not in United States dollars. Consequently, the State alleged on an initial procedural occasion, that the sum corresponding to Mr. Ibsen Peña for loss of earnings was US\$12,865.12 (twelve thousand eight hundred and sixty five United States dollars and twelve cents), calculated on the basis of the minimum national wage of Bs. 647 (six hundred and forty-seven bolivianos) and the 14.5 years that remained of his working life, taking into account his personal expenses by deducting 25% of the total amount. Subsequently, the State modified this sum, and offered the amount of US\$13,572.00 (thirteen thousand five hundred and seventy-two United States dollars) owing to the increase of the national minimum wage in force, established at Bs. 679 (six hundred and seventy-nine bolivianos) at the date of the submission of its final written arguments.

270. This Court has established that, on May 1972, Mr. Ibsen Peña registered his lawyer’s office²⁸¹ in Camiri, Santa Cruz, and that he was 47 years of age at the time of his unlawful detention on February 1973 (*supra* para. 106). However, the Court observes that the representatives have not provided documentary evidence that would allow the Court to verify the salary or fees that Mr. José Luis Ibsen earned at that time. Regarding the monthly salary allegedly received from the *Bolivian Labour Headquarters*, the case file contains a certification issued by the Executive Committee of the “*Departmental Labour Headquarters*” which reveals that the said victim “provided his services as a legal adviser [to said organization] from the end of the 1960s to the beginning of the 1970s.” However, “the specific dates and conditions [...] of his advisory services” are not available, owing to the “numerous occasions [...] on which the] offices [of the organization] were intervened and searched by the current totalitarian governments.”²⁸² Likewise, the case file contains an order of April, 2010 of the National Executive Committee of the *Bolivian Labour Headquarters* stating that said organization “has never paid its legal advisers, [...] because they have all worked *ad honorem*.”²⁸³ On the other hand, the Court does not have sufficient elements to establish the salary that Mr. Ibsen Peña would have received from YPF for his legal advice services. The evidence provided to the Court merely reveals that he occupied different posts in this company from 1964 to 1968, as well as in 1971; none of a legal nature.²⁸⁴

271. Consequently, this Court decides to establish, in equity, the sum of US\$75,000.00 (seventy-five thousand United States dollars) or its equivalent in bolivianos, for pecuniary

²⁸¹ On September 10, 1970, José Luis Ibsen Peña received the Law, Political and Social Sciences Degree by the “Gabriel René Moreno” Autonomous University, in Bolivia. *Cf.* Copy of the Law, Political and Social Sciences Degree of José Luis Ibsen Peña, issued by the “Gabriel René Moreno” Autonomous University, on September 10, 1970 (case file of appendixes to the application, appendix 13, folio 1782, and case file of appendixes to the brief of pleadings and motions, PD-16, folio 1570).

²⁸² *Cf.* Certification of the Departmental Labour Headquarters Attached to the C.O.B, on May 24, 2010 (case file on the merits, volume IV, folio 1503).

²⁸³ *Cf.* Order of the National Executive Committee of the Bolivian Labour Headquarters addressed to the Foreign Relations Minister (case file on the merits, volume III, folio 915).

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

damage corresponding to the income that Mr. José Luis Ibsen Peña would have earned during his probable working life, which must be distributed in equal parts among the rightful claimants. This amount must be paid within the term established by the Court (*infra* para. 292).

* *

272. Regarding the disbursements made by the Ibsen family owing to the search for the disappeared victims in this case, the representatives requested a sum of US\$70,000.00 (seventy thousand United States dollars), to cover four decades of measures taken before different public authorities and entities, accommodation, food, travel, payments for telephone calls and others. It would also cover the loss of the "family home, which had to be sold." Furthermore, the representatives requested the sum of US\$40,000.00 (forty thousand United States dollars) for the expenses incurred owing to the damage to the physical and mental health of the members of the Ibsen family, suffered as a result of the facts of this case. The representatives also requested several amounts as compensatory payments for alleged damage caused to the "life projects" of the direct victims and their next of kin.

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

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

275. Regarding the alleged expenditure for medical and psychological care incurred by the victims in this case, the Court notes that the representatives did not present evidence such as vouchers, medical records or certifications, among others, from which it could be established that the members of the Ibsen family in fact did receive this care for ailments related to the facts of the case and that expenses had been incurred in this regard. Even though the Court has established that, owing to the nature and seriousness of the facts that constitute enforced disappearance, the victims in this cases have suffered serious psychological effects (*supra* paras. 128, 129, 131 to 133), for the Court to be able to order the reimbursement of expenses under this item, they must be proved. Owing to the foregoing, in this case it is not appropriate to establish a sum in this regard.

276. Consequently, the Court establishes, in equity, a compensation of US\$5,000.00 (five thousand United States dollars) for the expenses incurred owing to the violations declared in the instant case. This amount must be delivered in equal parts to Rebeca, Tito and Raquel Ibsen Castro and must be paid within the term established by the Court (*infra* para. 292).

*
* *

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

D.2 Non-pecuniary damage

278. The Court has developed in its case law the concept of non-pecuniary damage and the hypotheses in which it must be compensated. The Tribunal has established that non-pecuniary damage “may include both the suffering and the afflictions caused to the direct victim and his next of kin, the damage to values that are very important to the persons, as well as the alterations, of a non-pecuniary nature, in the conditions of existence of the victim or his next of kin.”²⁸⁶

279. The Commission requested the Court, if it found it pertinent, to establish, in equity, an amount of compensation for non-pecuniary damage.

280. The representatives referred to the anguish, pain, despair and uncertainty suffered by the Ibsen family owing to the arbitrary detention and the enforced disappearance of Rainer Ibsen Cárdenas and José Luis Ibsen Peña. They also indicated that the threats and harassment that obliged the family to flee within their own country and the lack of information about the whereabouts of Messrs. Ibsen Cárdenas and Ibsen Peña caused irreparable and traumatic non-pecuniary damage to the victims. Consequently, based on the forced disappearance of Mr. Rainer Ibsen Cárdenas, they requested the Court to order the payment of symbolic compensation of US\$700,000.00 (seven hundred thousand United States dollars) to Mrs. Martha Castro Mendoza. For the forced disappearance of Mr. José Luis Ibsen Peña, they requested compensation for the family with a “symbolic value” of US\$900,000.00 (nine hundred thousand United States dollars). In addition, with regard to the suffering and pain of the Ibsen family for the “process suffered” by Rainer Ibsen Cárdenas, they called for compensation of US\$250,000.00 (two hundred and fifty thousand United States dollars) for his stepmother, Martha Castro Mendoza, and of US\$100,000.00 (one hundred thousand United States dollars) for each of his paternal siblings, Rebeca, Tito and Raquel Ibsen Castro. Finally, for the pain suffered by the family owing to what happened to José Luis Ibsen Peña, they requested a payment of US\$500,000.00 (five hundred thousand United States dollars) for Martha Castro Mendoza, and payments of US\$300,000.00 (three hundred thousand United States dollars) for each of his children, Rebeca, Tito y Raquel Ibsen Castro.

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

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

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

282. International case law has repeatedly established that the judgment can constitute *per se* a form of reparation.²⁸⁷ Nevertheless, considering the circumstances of the case *sub judice*, the sufferings that the perpetrated violations caused to the victims, as well as the change in the living conditions and the other consequences of an immaterial and non-pecuniary nature that the latter suffered, the Court finds it pertinent to establish an amount, in equity, as compensation for non-pecuniary damage.²⁸⁸

283. Considering the compensation ordered by the Court in other cases of enforced disappearances of persons, the circumstances of this case, the significance, nature and seriousness of the violations committed, which relate to the enforced disappearance of two members of the same family, the sufferings caused to the victims and the treatment they have received, the time that has elapsed since the disappearance commenced, the denial of justice, as well as the change in living conditions and other non-pecuniary consequences they suffered, the Court finds it pertinent to establish, in equity, the sum of US\$80,000.00 (eighty thousand United States dollars) each for Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña, as compensation for non-pecuniary damages. Also, for the same concept, the Court establishes, in equity, compensation of US\$50,000.00 (fifty thousand United States dollars) for Martha Castro Mendoza, as well as compensation of US\$40,000.00 (forty thousand United States dollars) each for Messrs. Rebeca Ibsen Castro, Tito Ibsen Castro and Raquel Ibsen Castro, because the damage to them arises from the violations committed against two members of the same family group. When establishing these sums, the Court is not considering the alleged threats against the Ibsen family, because these are not included in the factual framework of the instant case (*supra* para. 228).

D.3 Costs and expenses

284. As the Court has indicated on previous occasions, costs and expenses are included in the concept of reparations embodied in Article 63(1) of the American Convention.²⁸⁹

285. The Commission requested the Court to order the State to pay the reasonable and necessary costs and expenses that are duly proved, already incurred, and to be incurred in the future, in processing this case in the domestic sphere and before Inter-American System of Human Rights.

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

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

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

286. For their part, the representatives indicated that the domestic proceeding, which has taken place over approximately nine years, was sponsored by Rebeca Ibsen Castro from the joinder to the Trujillo Oroza case (*supra* para. 140) to date. Therefore, they requested an amount of US\$70,000.00 (seventy thousand United States dollars) for costs in her favor. Also, they indicated that the expenses that correspond to the international proceedings before the Inter-American System were paid for by the "Ressini Enriquez & Asoc." lawyer's office and include the transfer of three people -two lawyers and one of the victims- to the seat of the Commission in Washington, D.C., "the continuing work of the proceedings, the logistic expenses for the travel, accommodation and food of the parties between La Paz and Santa Cruz, the costs of expert reports [and] copies, messenger services and others." Thus, they requested the sum of US\$90,000.00 (ninety thousand United States dollars) for this item.

287. The State contested the claim of the injured party and indicated that it is not in keeping with the tariff of the Bar Association of La Paz. In this regard, in its final written arguments, the State indicated that the tariffs of the Bar Association "for 2005 and 2009 [...] establish as [professional fees] for a criminal proceeding a maximum of 12,000 bolivianos," equivalent to US\$1,697.00 (one thousand six hundred and ninety-seven United States dollars). Furthermore, it argued that from the analysis of all the case files reveals that "the expenses incurred by the family before the domestic system of justice arise from the approximately 200 petitions submitted by Mrs. Rebeca Ibsen during the criminal proceedings held in Santa Cruz de la Sierra," and amount to around US\$3,000.00 (three thousand United States dollars).

288. Regarding the reimbursement of costs and expenses, the Court must assess their scope prudently, which includes the expenses generated 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 carried out based on the equity principle and taking into account the expenses indicated by the parties, provided that the *quantum* is reasonable.²⁹⁰

289. The Court observes that the representatives have not provided evidence to support their claims concerning the supposed expenses incurred by them and by the Ibsen family during the processing of this case. However, this Court has indicated previously that "[t]he *quantum* for this item can be established [...] based on the principle of equity, even in the absence of probative elements regarding the precise amount of the expenses that have been incurred by the parties, provided that the amounts respond to criteria of reasonableness and proportionality."²⁹¹

290. The Court finds it evident that the Ibsen family and their representatives incurred expenses during the domestic and international proceeding in this case. In particular, the Court notes that Mrs. Rebeca Ibsen Castro took responsibility for promoting the case at the domestic level for more than ten years. Thus, with regard to the objections put forward by

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

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

the State, the Court observes that the tariff of the Bar Association of La Paz mentioned by the State (*supra* para. 287) establishes, for 2005, the minimum, but not the maximum professional fees, that lawyers working on different matters, including criminal matters, should charge.²⁹² Consequently, this document is of no use to inform the Court about the amount that should be established for this item. On the other hand, the Court has no information to confirm how the State calculated the sum of US\$3,000.00 (three thousand United States dollars) in expenditure allegedly incurred by Mrs. Rebeca Ibsen during the domestic criminal proceedings.

291. Based on the foregoing, the Court determines, in equity and given the particular circumstances of the instant case that the State must award the sum of US \$15,000.00 (fifteen thousand United States dollars) to Rebeca Ibsen Castro for costs and expenses incurred during the domestic criminal proceedings (*infra* para. 292). Also, the State must deliver the sum of US\$10,000.00 (ten thousand United States dollars) to Tito Ibsen Castro for costs and expenses, who must deliver the amount he considers appropriate to those who represented the Ibsen family in the proceeding before the Inter-American System, in accordance with the assistance they have provided. These amounts must be handed over within one year from the notification of this judgment (*infra* para 292). During the supervision of compliance with this judgment, the Tribunal may order the State the reimbursement to the victims or their representatives of the reasonable and duly proved expenditures.

E. Method of compliance with the payments ordered

292. The State must pay the compensation for pecuniary and non-pecuniary damage directly to the beneficiaries, and the payment for costs and expenses directly to Messrs. Rebeca Ibsen Castro and Tito Ibsen Castro, within one year from notification of this judgment, in accordance with the terms of the following paragraphs.

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

294. Should any of the beneficiaries die before they have received the respective compensation, this shall be delivered directly to their rightful claimants, in accordance with the applicable domestic laws.

295. The State must comply with its obligations by payment in Dollars of the United States of America or the equivalent amount in the Bolivian currency, using the exchange rate in force in the New York exchange the day before the payment to make the respective calculation.

296. If, for reasons that can be attributed to the beneficiaries of the compensation or to their rightful claimants, it is not possible to pay the amounts established within the indicated term, the State shall deposit the amount in their favor in an account or a deposit certificate in a solvent Bolivian financial institution in Dollars of the United States of America and in the most favorable financial conditions permitted by law and banking practice. If, after 10 years, the compensation has not been claimed, the amounts shall revert to the State with the accrued interest.

²⁹² Cf. "Minimum Tariff of Professional Fees" - Distinguished Bar Association of La Paz (case file on the merits, volume III, folios 1054 to 1063).

297. The amounts allocated in this judgment as compensation and for reimbursement of costs and expenses shall be delivered to the mentioned victims completely, as established in this judgment, without any deductions arising from possible taxes.

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

X

OPERATIVE PARAGRAPHS

Therefore,

THE COURT

DECIDES,

unanimously

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

DECLARES,

unanimously that,

3. The State is responsible for the violation of the rights to personal liberty, humane treatment [personal integrity], right to juridical personality, and right to life, enshrined in articles 7(1), 5(1), 5(2), 3 and 4(1) of the American Convention on Human Rights, in relation with article 1(1) thereof and with articles I(a) and XI of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña, in the terms of paragraphs 49 to 122 of this Judgment.
4. The State is responsible for the violation of the right to humane treatment [personal integrity] enshrined in articles 5.1 and 5.2 of the American Convention on Human Rights, in relation with article 1(1) thereof, to the detriment of Mrs. Martha Castro Mendoza and Messrs. Rebeca, Tito and Raquel, all bearing the surname Ibsen Castro, in the terms of paragraphs 123 to 133 of this Judgment.
5. The State is responsible for the violation of the rights to a fair trial and to judicial protection, enshrined in articles 8(1) and 25(1) of the American Convention on Human Rights, in relation with articles 1(1) and 2 thereof and article I(b) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of

Mrs. Martha Castro Mendoza and Messrs. Rebeca, Tito and Raquel, all bearing the surname Ibsen Castro, in the terms of paragraphs 135 to 226 of this Judgment.

AND ORDERS,

unanimously that,

6. This judgment constitutes *per se* a form of reparation.
7. In compliance with its obligation to remove all *de facto* and *de jure* obstacles that maintain the impunity regarding the torture and inhumane treatment suffered by José Luis Ibsen Peña, the State shall start the necessary investigations to determine, within a reasonable period of time, all the corresponding responsibilities for his deprivation of liberty and subsequent disappearance, in the terms of paragraph 237 to 238 of this Judgment.
8. In compliance with its obligation to remove all *de facto* and *de jure* obstacles that maintain the impunity regarding the murder and forced disappearance of Rainer Ibsen Cárdenas, the State shall commence all necessary investigations to determine what happened and to apply effectively the corresponding sanctions and consequences, within a reasonable period of time, in terms of paragraphs 237 to 238 of this Judgment.
9. The State shall continue with the effective search of the whereabouts of Mr. José Luis Ibsen Peña, in the terms of paragraph 242 of this Judgment.
10. The State shall publish, once in the Official Gazette, paragraphs, 1 to 5, 23 to 29, 33, 34, 36 to 38, 50 to 57, 67, 68, 71 to 75, 80 to 82, 84 to 92, 94, 102 to 111, 115, 116, 118, 119, 122, 126, 128 to 133, 155 to 163, 165 to 174, 177, 178, 180 to 184, 189 to 191, 193 to 195, 197 to 202, 205 to 212, 214 to 226, 231 and 232 of this Judgment, including the names of each chapter and the corresponding section, without the footnotes, and the operative paragraphs of the same; publish the official summary of this Judgment in a widespread circulation newspaper; and publish the complete Judgment in an appropriate web site, in the terms of paragraph 244 herein.
11. The State shall agree with Messrs. Rainer Ibsen Cárdenas and José Luis Ibsen Peña's next of kin, the designation of a public place name after both, where a plaque shall be placed in which this Judgment is mentioned, the facts of the case and the circumstance under which they occurred, in terms of paragraph 249 of this Judgment.
12. The State shall provide free medical and psychological or psychiatric care, immediately, appropriately and effectively, through its specialized public health institutions, to the persons declared as victims in this Judgment that request so, in the terms of paragraphs 253 and 254 herein.

13. The State shall implement, within a reasonable term and with the corresponding budgetary resources, a training program on due investigation and prosecution of facts which constitute forced disappearance of persons, addressed to Public Prosecutor's Office agents, judges of the Judiciary Power of Bolivia with jurisdiction in the investigation and prosecution of facts such as those of the present case, in order to give such officers legal, technical and scientific elements to fully assess the practice of forced disappearance, in terms of paragraphs 257 to 259 of this Judgment
14. The State shall pay the amounts ordered in paragraphs 267, 271, 276, 283 and 291 of this Judgment, as compensation for pecuniary and non-pecuniary damage and reimbursement of costs and expenses, as corresponding, within one year, from the notification of this Judgment, in the terms of paragraphs 266, 270, 274, 275, 282 and 288 to 290 herein.
15. The Court shall monitor full compliance with this Judgment, in exercise of its powers and in compliance with its obligations under the American Convention, and will consider this case closed when the State has fully complied with all the provisions herein. Within one year from the notification of this Judgment, the State shall provide the Court with a report on the measure adopted to comply with it.

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

Diego García-Sayán
President

Leonardo A. Franco

Manuel Ventura Robles

Margarette May Macaulay

Rhadys Abreu Blondet

Alberto Pérez Pérez

Eduardo Vio Grossi

Pablo Saavedra Alessandri
Secretary

So ordered,

Diego García-Sayán
President

Pablo Saavedra Alessandri
Secretary