

**APPLICATION FILED BY THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS WITH THE INTER-AMERICAN COURT OF HUMAN RIGHTS AGAINST THE STATE OF BOLIVIA**

**CASE 12,527  
RENATO TICONA ESTRADA *ET AL.***

**I. INTRODUCTION**

1. The Inter-American Commission on Human Rights (hereinafter “the Inter-American Commission,” “the Commission” or “the IACHR”) hereby files this application with the Honorable Inter-American Court of Human Rights (hereinafter “the Inter-American Court” or “the Court”) in case 12,527, Renato Ticona Estrada *et al.* The case is brought against the Republic of Bolivia (hereinafter “the Bolivian State,” “the State” or “Bolivia”) for the forced disappearance of Renato Ticona Estrada as of July 22, 1980, the date on which he was arrested by an Army Patrol in the vicinity of the Cala-Cala gate in Oruro, Bolivia; and for the fact that more than 27 years after the events, the crimes in this case have not been punished and the victim’s next of kin have not been compensated either for the damages caused or for the many years that they have been denied justice.

2. The Inter-American Commission is requesting that it may please the Court to adjudge and declare the international responsibility of the Bolivian State for its failure to comply with its international obligations by its violations of articles 3 (Right to Juridical Personality); 4 (Right to Life); 5 (Right to Humane Treatment); 7 (Right to Personal Liberty); 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), and articles I, III and XI of the Inter-American Convention on Forced Disappearance of Persons, all to the detriment of Renato Ticona Estrada.

3. Moreover, the Bolivian State has violated articles 5 (Right to Humane Treatment), 8 (Right to a Fair Trial), and 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof, to the detriment of Renato Ticona Estrada’s next of kin: his parents César Ticona Olivares and Honoria Estrada de Ticona, and his siblings Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada.

4. The State also failed to comply with its obligation under Article 2 (Domestic Legal Effects) of the American Convention and articles I and III of the Inter-American Convention on Forced Disappearance of Persons, by its failure to criminalize the forced disappearance of persons until 2006.

5. The procedure required under the American Convention has been followed in processing the instant case, which is filed with the Inter-American Court in accordance with Article 33 of the Court’s Rules of Procedure. A copy of Report 112/06, prepared pursuant to Article 50 of the Convention, is affixed to this application as an appendix.<sup>1</sup> The Commission adopted the report on October 26, 2006 and forwarded it to

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<sup>1</sup> See appendix 2, Report 112/06, Case 12,527, Merits, Renato Ticona Estrada, Bolivia, October 26, 2006.

the State on December 8, 2006. The State was given two months in which to act on the recommendations contained in the report.

6. On March 8, 2007, the State requested an extension from the Inter-American Commission for the purpose of complying with the recommendations contained in the report. The extension was granted until June 8, 2007. On June 6, 2007, the Commission received another extension request, which was granted until August 8, 2007. On July 27, 2007, during its 128<sup>th</sup> regular session, the Inter-American Commission examined the information supplied by the parties. The Commission recognized the State's May 31, 2007 act of atonement -staged during the week in which Bolivia remembers those disappeared- when a square on Avenida Dehene, at the entrance to the grounds of the University in Oruro, was named after Renato Ticona Estrada ("Plaza del Universitario Renato Ticona Estrada"). Nonetheless, the Commission concluded that the State had not fully adopted its recommendations and therefore decided, pursuant to articles 51(1) of the Convention and 44 of the Rules of Procedure of the IACHR, to refer the present case to the Inter-American Court.

7. Forced disappearance of persons is an unlawful act that gives rise to a multiple and continuous violation of a number of essential, nonderogable human rights. The violation is continuous so long as the State has not established the whereabouts of the victim or discovered his remains, has not prosecuted and punished those responsible for the victim's forced disappearance, and has not given the victim's next of kin assurances of adequate reparation. The absolute impunity that attends the disappearance of Renato Ticona Estrada serves to prolong the suffering that the violation of his basic rights has caused. It is the State's duty to provide an adequate judicial response that identifies and punishes those responsible for Renato Ticona Estrada's forced disappearance, to locate the victim's mortal remains and to adequately compensate his next of kin.

## **II. STATEMENT OF THE OBJECT OF THE APPLICATION**

8. The object of the present application is to request that it may please the Court to adjudge and declare that:

a. The Bolivian State has, since July 22, 1980, been in continuous violation of articles 3 (Right to Juridical Personality); 4 (Right to Life); 5 (Right to Humane Treatment); 7 (Right to Personal Liberty); 8 (Right to a Fair Trial) and 25 (Right to Judicial Protection) in relation to Article 1(1) (Obligation to Respect Rights) of the American Convention on Human Rights and articles I, III and XI of the Inter-American Convention on Forced Disappearance of Persons, all to the detriment of Renato Ticona Estrada and by virtue of acts attributable to the Bolivian State.

b. The Bolivian State has violated Article 5 (Right to Humane Treatment) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of Renato Ticona Estrada, his parents César Ticona Olivares and Honoria Estrada de Ticona, and his siblings Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada by virtue of the suffering and anguish that Renato Ticona Estrada's forced disappearance has caused to them.

- c. The Bolivian State has violated articles 8 (right to a fair trial) and 25 (right to judicial protection) of the American Convention, in relation to Article 1(1) thereof, to the detriment of the next of kin of Renato Ticona Estrada, his parents César Ticona Olivares and Honoria Estrada de Ticona, and his siblings Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada because they have been denied justice with respect to Renato Ticona Estrada's forced disappearance and his unlawful detention and torture.
- d. The State has failed to fulfill the obligation undertaken in Article 2 (Domestic Legal Effects) of the American Convention and the obligations contained in articles I and III of the Inter-American Convention on Forced Disappearance of Persons, by failing to make forced disappearance a crime under its domestic laws until 2006.
9. As a consequence of the above, the Inter-American Commission is asking the Court to order that the Bolivian State shall:
- a. Acknowledge its international responsibility for the facts established in case 12,527, Renato Ticona Estrada *et al. v. Bolivia*.
- b. Conduct a thorough, impartial, effective and prompt investigation of the facts with a view to identifying, prosecuting, and punishing all intellectual and material authors who had a hand in the abduction, inhuman or degrading treatment of Renato Ticona Estrada and Hugo Ticona, and the former's subsequent disappearance.
- c. Conduct a thorough, impartial, effective and prompt investigation into the persons involved in the obstructionist conduct on the part of various State agencies and in the failed investigations and inquiries into the facts of the present case, with a view to identifying those responsible for the failure to investigate that has allowed the crimes to go unpunished to this day.
- d. Locate Renato Ticona Estrada's mortal remains and deliver them to his next of kin.
- e. Provide medical care to Renato Ticona Estrada's next of kin.
- f. Adequately compensate Renato Ticona Estrada's next of kin, including pecuniary and non-pecuniary damages, for the violations of their human rights.
- g. Pay the legal costs and expenses that Renato Ticona Estrada's next of kin have incurred in pursuing the case at the domestic level and in bringing the present case to the inter-American system.

### **III. REPRESENTATION**

10. In accordance with articles 22 and 33 of the Court's Rules of Procedure, the Commission has designated Commissioner Florentín Meléndez and its Executive Secretary, Santiago A. Canton, as its delegates in this case. The Deputy Executive Secretary, Elizabeth Abi-Mershed, and the specialists from the Secretariat, Débora Benchoam, Manuela Cuvi Rodríguez and Silvia Serrano, have been designated to serve as legal advisors.

#### IV. JURISDICTION OF THE COURT

11. The Court has jurisdiction vis-à-vis the present case. The Bolivian State ratified the American Convention on Human Rights on July 19, 1979, and accepted the contentious jurisdiction of the Court on July 27, 1993. Under Article 62(3) of the American Convention on Human Rights, the Inter-American Court has jurisdiction vis-à-vis any case submitted to it concerning the interpretation and application of the provisions of the Convention, provided that the States Parties to the case recognize or have recognized such jurisdiction.

12. The Court has classified the phenomenon of forced disappearance as a continuous violation, writing that it

implies the violation of various human rights recognized in international human rights treaties, including the American Convention, and that the effects of such infringements -even though some may have been completed, as in the instant case- may be prolonged continuously or permanently until such time as the victim's fate or whereabouts are established.<sup>2</sup>

13. The Court also has jurisdiction vis-à-vis the present case inasmuch as the Bolivian State ratified the Inter-American Convention on Forced Disappearance of Persons (hereinafter the "Convention on Forced Disappearance") on May 5, 1999. Article III of that Convention provides that forced disappearance "shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined," while Article VII states that criminal prosecution for the forced disappearance of persons and the penalty judicially imposed on its perpetrators shall not be subject to statutes of limitations.

14. Because the fate or whereabouts of Renato Ticona Estrada has not been established in the present case, the Court has jurisdiction *ratione temporis* to take up his forced disappearance, inasmuch as the case involves a continuous or permanent violation whose effects and commission have been prolonged beyond the date on which the State accepted the Court's contentious jurisdiction.<sup>3</sup>

15. Renato Ticona Estrada was arrested while in the company of his brother, Hugo Ticona Estrada, which is why, in its merits report, the Commission established that he, too, had been unlawfully and arbitrarily detained and tortured. The Commission concluded that the State is responsible for violation of Hugo Ticona Estrada's rights to personal liberty and to humane treatment, protected under articles 7 and 5 of the American Convention. The Commission concluded further that by failing to properly identify and prosecute those responsible, the State had denied Hugo Ticona Estrada justice, thereby violating his rights to due guarantees and to judicial protection.<sup>4</sup> The Court, however, does not have jurisdiction *ratione temporis* to take up the unlawful and arbitrary detention and torture of Hugo Ticona Estrada in 1980. Accordingly, those violations are not being alleged in this application. Nevertheless, the statement of the

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<sup>2</sup> I/A Court H.R., *Blake Case, Preliminary Objections*, Judgment of July 2, 1996. Series C No. 27, par. 39.

<sup>3</sup> *Idem.* paragraphs 39-40.

<sup>4</sup> See appendix 2, Report 112/06, Case 12,527, Merits, Renato Ticona Estrada, Bolivia, October 26, 2006, conclusions par. 165.

object of the Commission's application does include the fact that Hugo Ticona Estrada has been denied justice since July 27, 1993, the date on which the State accepted the contentious jurisdiction of the Court. The justice denied is not only with respect to the violations of his brother's rights, but his own rights as well, inasmuch as the violations of both their rights are continuous in nature.

## **V. PROCESSING WITH THE INTER-AMERICAN COMMISSION**

16. On August 9, 2004, the Commission received a petition lodged by the Ombudsman of Bolivia (hereinafter "the petitioner") against the Republic of Bolivia (hereinafter "the State") alleging human rights violations committed to the detriment of Renato Ticona Estrada and his next of kin César Ticona Olivares, Honoria Estrada de Ticona, Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada. On November 30, 2004, the IACHR began to process the petition; it registered it as number 712/04, and transmitted the pertinent parts to the State, giving it two months to submit its observations.

17. On February 9, 2005, the State requested that the Commission extend the period; on March 31, 2005, an extension for an additional 30 days was granted. On February 9, March 18, and May 10, 2005, the Commission received communications from the petitioner requesting that the case be admitted and objecting to the State's procedural delay in submitting its observations within the time periods prescribed in the Commission's Rules of Procedure. The first two communications were forwarded to the State on March 31; the third was sent on June 13, 2005.

18. On June 23, 2005, the IACHR received observations from the Bolivian State. It forwarded them to the petitioner on June 28, 2005, giving the latter one month to submit observations. On July 29, 2005, the Commission received the petitioner's observations on the State's response. In that communication, the petitioner requested that the following names be added as victims of violations of articles 5, 8, and 25 of the American Convention: Rodo Ticona Estrada and Betzy Ticona Estrada, brother and sister of Renato Ticona Estrada. The Commission sent the pertinent parts of this communication to the State on August 1, 2005, giving it one month to submit any observations it deemed appropriate.

19. On September 21, 2005, the Commission received a communication from the State in which it expressed an interest in initiating a friendly settlement process. On September 22, 2005, the Commission placed itself at the disposal of the parties and offered its good offices pursuant to Article 48(1)(f) of the American Convention. On October 7, 2005, the Commission received a communication from the petitioner in which he stated that he was not interested in pursuing a friendly settlement and, accordingly, asked the Commission to continue processing the case. The Commission forwarded the petitioner's communication to the State that same day, October 7, 2005.

20. On October 12, 2005, the Commission adopted Report 45/05, in which it declared the case admissible.<sup>5</sup> On November 3, 2005, the IACHR notified the parties that said report had been adopted, advised them that they had two months in which to

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<sup>5</sup> See appendix 1, IACHR, Report 45/05, Petition 712/04, Admissibility, Renato Ticona Estrada *et al.*, Bolivia, October 12, 2005.

present any observations they might have on the merits of the case, and placed itself at their disposal to explore the possibility of arriving at a friendly settlement agreement.

21. On October 25, the Commission received a communication from the petitioner wherein he stated that “a friendly settlement agreement is out of the question inasmuch as the Bolivian State has not given any clear signals that would allow one to suppose that it had any real interest in seeing justice done in the present case.”

22. On March 1, 2006, during its 124<sup>th</sup> regular session, the Commission scheduled a working meeting of the parties which was canceled when the petitioner failed to appear. In a communication dated March 3, 2006, the petitioner underscored his decision not to pursue a friendly settlement and his preference that the Commission should move on to the merits phase of the case.

23. On March 31, 2006, the Commission received a communication from the petitioner containing his observations on the merits of the case. The Commission forwarded that communication to the State on April 5, 2006, which was given two months in which to present its observations.

24. On March 3, 2006, the State sent the Commission a copy of Law 3326, which makes Forced Disappearance of Persons, “an unresolved matter in case 12,527 Renato Ticona Estrada,” a punishable criminal offense under the Bolivian Penal Code.

25. On April 18, 2006, the Commission sent a communication to the parties informing them that, pursuant to Article 41(4) and (6) of its Rules of Procedure, it was terminating its intervention in the friendly settlement procedure and that it had decided to continue processing the petition.

26. On June 27 and July 5, 2006, the Commission received additional information from the petitioner, which it forwarded to the State on July 10 and August 1, 2006. On each of these occasions it gave the State one month in which to submit its observations. A communication was received from the State on July 25, 2006, and then forwarded to the petitioner on August 15, 2006.

27. The Commission received additional information from the petitioner on August 4, 2006, which it forwarded to the State on August 15, 2006. The Commission received information from the State on August 31, 2006, which it forwarded to the petitioner on September 26, 2006.

28. On October 26, 2006, during its 126<sup>th</sup> regular session, the Commission examined the parties' positions and approved Report 112/06, Merits, pursuant to, *inter alia*, articles 50 of the American Convention and 42 of the Commission's Rules of Procedure. In that report the Commission arrives at the following conclusions with respect to the merits of the petition:

Based on the above analysis, the Commission concludes that the Bolivian State is responsible for violation of the right to juridical personality, the right to humane treatment, the right to life, the right to a fair trial and the right to judicial protection, recognized in articles 3, 7, 5, 4, 8 and 25 of the American Convention, and for violation of articles I, III, IV and IX of the Inter-American Convention on Forced Disappearance of Persons, for the detention and forced disappearance of

Renato Ticona Estrada; the State is responsible for violation of the right to personal liberty and the right to human treatment, recognized in articles 5 and 7 of the American Convention, to the detriment of Hugo Ticona Estrada. The Commission concludes further that the State is responsible for violation of the right to humane treatment and the rights to a fair trial and to judicial protection, recognized in articles 5, 8 and 25 of the American Convention, to the detriment of the next of kin of the disappeared victim, Renato Ticona Estrada.

The Commission finds further that the State failed to fully comply with its duty under Article 2 of the Convention, which is to adopt the domestic measures necessary to give effect to the rights and freedoms protected under the Convention. It finds that the State also failed to fulfill its obligation under Article 1(1) of the Convention, which is to respect and ensure the above-named persons' Convention-recognized rights and freedoms.<sup>6</sup>

29. Based on its analysis of the merits and the conclusions it reached, the Inter-American Commission recommended that the Bolivian State take the following measures:

1. Acknowledge its international responsibility for the facts denounced in case 12,527, Renato Ticona Estrada *et al. v. Bolivia*.
2. Conduct a thorough, impartial, effective and prompt investigation of the facts in order to identify, prosecute and punish all those culpably involved, either as material and/or intellectual authors, in the abduction and inhuman or degrading treatment of Renato Ticona Estrada and Hugo Ticona and the subsequent forced disappearance of Renato Ticona Estrada.
3. Conduct a thorough, impartial, effective and prompt investigation into the persons involved in the obstructionist conduct on the part of various State agencies and in the failed investigations and inquiries into the facts of the present case, with a view to identifying those responsible for the failure to investigate that has allowed the crimes to go unpunished.
4. Stage a public ceremony to acknowledge its responsibility for the events in this case and make a formal apology to the victims and their next of kin and, as part of the recovery of the historic memory, to name a plaza or street in Oruro in Renato Ticona Estrada's name.
5. Locate the mortal remains of the victim Renato Ticona Estrada and deliver them to his next of kin.
6. Provide medical treatment to the next of kin.
7. Make adequate compensation to the victims' next of kin for the violations of their human rights, which shall include both pecuniary and non-pecuniary damages.<sup>7</sup>

30. In accordance with Article 43(2) of its Rules of Procedure, on December 8, 2006 the Inter-American Commission forwarded the report on admissibility and merits

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<sup>6</sup> See appendix 2, Report 112/06, Case 12,527, Merits, Renato Ticona Estrada, Bolivia, October 26, 2006, paragraphs 165-166.

<sup>7</sup> *Idem.* par. 168.

to the State, giving it two months to report on the measures taken to comply with the recommendations made in the report. That same day, pursuant to Article 43(3) of its Rules of Procedure, the Commission notified the petitioners that a report had been adopted and forwarded to the State. It also asked for their position as to whether the case should be submitted to the Inter-American Court.

31. By communications dated January 5, January 31, February 13, March 6, May 17, June 21 and July 19, 2007, the petitioners indicated their preference that the case be submitted to the Court, and offered additional evidence to that end. They also provided a copy of the power of attorney granted by Renato Ticona Estrada's next of kin.

32. On March 8, 2007, the State requested a one-month extension to comply with the recommendations made in the Commission's report. The extension was granted, making the new deadline June 8, 2007. By a communication dated May 29, 2007, the State informed the Commission of the measures being taken to comply with the latter's recommendations.

33. Then, in a noted dated June 5, 2007, the State informed the Commission of the act of atonement conducted on May 31, 2007, during the week in which Bolivia's disappeared were memorialized. At the ceremony, a square on Avenida Dehene, at the entrance to the grounds of the University in Oruro, was named after Renato Ticona Estrada ("Plaza del Universitario Renato Ticona Estrada").<sup>8</sup> The State reported that the following officials were present for the ceremony: the Deputy Secretary for Justice and Human Rights, Dr. Renato Pardo; a representative from the Ministry of Foreign Affairs and Worship; a representative for the Governor of the Department of Oruro; the Mayor of Oruro; the Chair of the Municipal Council; a representative for the Ombudsman and the next of kin of Renato Ticona Estrada (although according to information supplied by the representatives of the next of kin, Rodo, Betzy and Hugo Ticona Estrada, brothers and sister of Renato Ticona Estrada, were unable to attend<sup>9</sup>).

34. The Commission appreciates the fact that the State performed this act of atonement, evidence of its commitment to take concrete steps to redress the violations that its agents committed in the past against Renato Ticona Estrada and his next of kin.

35. In that report, the State noted that the ceremony to acknowledge international responsibility could be held on June 20, 2007, and that the National Commission for Compensation of Victims of Political Violence (CONREVIP), charged with reviewing, evaluating and deciding applications received from victims of the political violence, "is in the process of evaluating the victims' files [...], and has found an indemnifiable act of Forced Disappearance. File 378 on Mr. Renato Ticona Estrada is one of the first on which a Technical-Legal Report has been prepared."

36. On these grounds, the State requested another extension, which was granted. The new deadline was August 8, 2007.

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<sup>8</sup> See appendix 3, attached to the June 4 report sent by note of June 8, 2007, which contains Municipal Ordinance No. 18/07, wherein the Oruro Municipal Council declares on May 18, 2007, that "the State acknowledges its responsibility for the disappearance of Renato Ticona Estrada, a student at the University of Oruro, during the dictatorship of Luis García Mesa."

<sup>9</sup> See appendix 3, communication of July 19, 2007, p. 5.



37. On July 12, 2007, the State submitted a report in which it pointed out that by Administrative Resolution 1/2007 of June 12, 2007, Renato Ticona Estrada was declared a “victim of political violence under unconstitutional governments, by virtue of the indemnifiable act of ‘forced disappearance,’ his name was entered on the official list of beneficiaries to receive the exceptional, one-time reparation and on the official list to be submitted to the National Congress, consisting of those persons slated to receive Public Honors under the terms of Law 2640 and Supreme Decree 28015.”<sup>10</sup>

38. On July 27, 2007, during its 128<sup>th</sup> regular session, the Inter-American Commission acknowledged the importance of the State’s act of atonement, but nonetheless decided to submit the present case to the jurisdiction of the Inter-American Court because, in the Commission’s view, the State had failed to adopt all its recommendations.

## **VI. THE FACTS**

### **A. No contest as to the facts**

39. The Commission appreciates and wants to underscore the fact that in the Commission’s proceedings on this case, the Bolivian State never contested the facts that are the subject of the present application. To the contrary, the State’s communications describe the State’s various policy initiatives aimed at solving the forced disappearance of persons during past dictatorships and Renato Ticona Estrada is named as one of the victims.<sup>11</sup>

40. Furthermore, in the domestic courts the State has acknowledged that the detention of Renato Ticona Estrada and his brother Hugo, and the former’s subsequent disappearance, were the work of officials who, acting with the acquiescence and full knowledge of the *de facto* government of García Meza, were pursuing a State policy of identifying, policing, detaining and torturing those persons whom it suspected of belonging to the MIR or to opposition groups.<sup>12</sup>

41. While the Commission understands that the facts of the case are not in dispute, it nonetheless will recount those facts as they constitute the factual grounds of

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<sup>10</sup> The petitions explained the reasons why Renato Ticona Estrada’s next of kin believe that any compensation they might receive through this mechanism, the amount and timing of which have not been determined, will not in any case constitute full compensation according to the standards of the Inter-American system for the protection of human rights. See appendix 3, communication of July 19, 2007.

<sup>11</sup> In effect, in its August 31, 2006 communication OEA/CIDH-140-06, the State wrote that:

The Public Prosecutor’s Office is aware that the disappearance of Renato Ticona is a crime against humanity and as such is not subject to any statute of limitations so long as the fate or whereabouts of the victims has not been established; it is therefore obligated to pursue the law until the crime has been fully solved and the guilty parties punished.

<sup>12</sup> Supreme Court of Justice of the Nation, Judgment delivered in the “Juicios de Responsabilidades,” prosecuted in the cases brought by the Public Prosecutor’s Office and third parties against Luis García Meza and his collaborators. II.- THE FIRST TRIAL. *CONSIDERANDA*: 3. April 21, 1993, Sucre – Bolivia.

the application being filed with the Court. A judgment confirming these facts will serve to establish the truth in the present case.

## **B. Political context**

42. In the months leading up to the general elections slated for June 29, 1980, the prevailing climate in Bolivia could best be described as one of instability, pockets of violence and, above all, a deep uncertainty as to whether the Armed Forces would allow the democratic process initiated two years earlier to go forward.

43. Given the outlook, and especially mindful of what had happened with the military coup led by General Natusch in November, a number of civilian groups agreed to create the National Committee for Defense of Democracy [Comité Nacional de Defensa de la Democracia] "CONADE", basically composed of the Bolivian Federation of Labor [Central Obrera Boliviana] (COB), various political parties, religious organizations, the Permanent Assembly of Human Rights and other grassroots civilian organizations. CONADE's basic objective was to alert the citizenry and to prepare it for peaceful resistance through a general strike<sup>13</sup> and a blockade of roads should the process of restoring the institutions of democratic government be disrupted.

44. However, the democratic process was disrupted on July 17, 1980, when, in a military coup headed by Army General Luis García Meza, military forces took over the Presidential Palace and the Constitutional Interim President, Mrs. Lidia Gueiler Tejada, was forced to resign and seek asylum in the Apostolic Nunciature. The headquarters of the *Central Obrera Boliviana*, where CONADE was meeting to prepare a statement declaring a work stoppage and a blockade of roads, came under attack. Its leaders were arrested and the Socialist Party's presidential candidate, Marcelo Quiroga Santa Cruz, was executed by agents of the *de facto* government. Media offices were seized, sacked or destroyed in some cases. The media were placed under complete government control.<sup>14</sup>

45. In its 1981 Report on the Situation of Human Rights in Bolivia, the Inter-American Commission observed that with the military takeover, the political organization of the State was dismantled through the proclamation entitled "Participation of the Armed

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<sup>13</sup> IACHR, Report on the Situation of Human Rights in Bolivia, OEA/Ser.L/V/II.53 doc.6 rev.2, October 13, 1981, [hereinafter "1981 Report of the IACHR on the Situation of Human Rights in Bolivia"], CHAPTER I: THE POLITICAL AND LEGAL SYSTEM IN BOLIVIA, C. The Current Legal System and Restrictions on Individual Rights and Guarantees, par. 11.

<sup>14</sup> International Seminar: "Impunity and Its Effects on Democratic Processes." Santiago, Chile, December 14, 1996: Impunity and Democracy: IMPUNITY IN BOLIVIA: Democratic systems in Latin America and Impunity. By Waldo Albarracín of the Permanent Assembly of Human Rights of Bolivia. In the Supreme Court's ruling, it also wrote that:

[...] paramilitary groups took the Government House by force, seizing the President and her ministers. The President was taken to the Presidential Residence. They also attacked the Bolivian Federation of Labor, a criminal act in which Marcelo Quiroga Santa Cruz, Deputy Carlos Flores Bedregal and the leader of the F.S.T.M.B., Gualberto Bega Yapura, were killed. They then seized everyone else in the building, where a meeting was in progress to find a way to avert a coup d'état. After perpetrating these crimes, these traitors returned to General Headquarters, taking their prisoners with them, including the leaders of CONADE, ministers of State, journalists and radio and television personnel, as well the bodies of those who had been killed and the wounded.

Forces in the Current Political Process.” Through this proclamation, measures such as the following were adopted:

- a) The results of the June 29 elections were thrown out, on the grounds that they were fraudulent;
- b) The proceedings of Congress and any measures it had adopted were declared unconstitutional;
- c) The National Reconstruction Government was placed in the hands of a Junta composed of the commanders of the three branches of the Bolivian armed forces, which was to name one of its members President of the Republic;
- d) All international pacts and agreements signed by Bolivia were to be honored and diplomatic ties with all those countries that respected Bolivian sovereignty and its right to self-determination were to be preserved;
- e) Statutes were to be drafted to govern the political parties;
- f) The appropriate laws on labor and union matters were to be enacted so as to normalize their activities;
- g) Martial law was declared throughout the entire national territory, and military ordinances were put into full effect, and
- h) The 1967 Constitution was kept in force in all respects not at variance with the purposes and objectives of the new Government.<sup>15</sup>

46. The IACHR confirmed that the military junta claimed executive, legislative and judicial authority, usurping constituent authority by discarding the results of the elections that had voted into office the new members of the National Congress. That new Congress was to have performed its constitutional mandate of electing the new President of the Nation, since the candidate who had garnered the most votes in the election had not received the majority required under the Constitution.<sup>16</sup>

47. The dictatorship of Luis García Meza deployed a pre-planned policy of intimidation, harassment and extermination, targeted at members of the National Leftist Movement [Movimiento de Izquierda Nacional] (MIR) and other members of the opposition, and used groups of armed irregulars or paramilitary to implement that policy.<sup>17</sup> The Permanent Assembly of Human Rights denounced the following:

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<sup>15</sup> IACHR, 1981 Report on the Situation of Human Rights in Bolivia, Chapter I: The Political and Legal System in Bolivia. C. The current legal system and restrictions on individual rights and guarantees, par. 2.

<sup>16</sup> *Ibid.*

<sup>17</sup> In a 1993 ruling, the Supreme Court of Bolivia wrote that:

The armed groups committed these crimes on the defendants' orders, as clearly revealed by confidential memorandum No. 689/80 of August 14, 1980, which Luis Arce Gómez addressed to Luis García Meza. The text of the memorandum reads as follows: "Enclosed for Your Excellency's information and approval are the organization chart and work program of the groups made possible by the Armed Forces' victory over international extremism," at 7023 of text No. 32 in the case file. This memorandum makes clear that defendants Luis García Meza and Luis Arce Gómez organized and directed the paramilitary groups that committed the crimes described.

Supreme Court of Bolivia. Ruling delivered in the "juicios de responsabilidades" in the cases that the Public Prosecutor's Office and third parties brought against Luis García Meza and his collaborators. April 21, 1993. Sucre – Bolivia. Annex 3.

The government of this military officer was the living incarnation of State terrorism. More than a half million killings and forced disappearances; nearly 4,000 detainees; thousands living in exile, and routine arbitrary arrests: this was the hallmark of this military government. Drawing its inspiration from the famous doctrine of national security, from the imperative of 'eradicating any vestiges of Communism' and of imposing what they called 'order,' they implemented a policy involving blatant violations of human rights, physically eliminating those who opposed the regime. A clear example of that policy in action was the January 15, 1981 massacre in the Sopocachi district of the city of La Paz in which any member of the national leadership of the National Leftist Movement was eliminated. Only one person was left alive to be history's witness to this inhumanity: the massacres in the mines, the closing of the universities, the censorship of the press, the "national chains." But civil society was not the only victim that the regime of Garcia Meza claimed: the State itself became the victim of his policies, as corruption and unlawful enrichment thrived, as did direct ties to international drug trafficking rings, an association that drew the attention of the international community.<sup>18</sup>

48. On July 25, 1980, the Permanent Council of the Organization of American States approved a resolution on solidarity with the Bolivian People, which reads as follows:

Resolution of the Permanent Council on solidarity with the Bolivian people. The Permanent Council of the Organization of American States, Considering: The principles established in the Charter of the Organization, especially those expressed in Article 3, paragraph d) and j); the American Declaration of the Rights and Duties of Man; and the Declaration of La Paz, adopted by consensus at the ninth regular session of the General Assembly; and Bearing in mind: That each state has the right to develop its cultural, political, and economic life freely and spontaneously and that in this free development, the state shall respect the rights of the individual and the principles of universal morality, as set forth in Article 16 of the Charter of the Organization; That this precept has been violated by the military coup that has taken place in Bolivia in disregard of the elections recently held in that country; and with respect for the principle of nonintervention, Resolves: 1. To deplore the military coup, which indefinitely suspends the process of democratic institutionalization that was culminating in the Sister Republic of Bolivia. 2. To express its deepest concern over the loss of human life and the serious violations of the human rights of the Bolivian people, as a direct consequence of the coup d'état. 3. To request that, in the shortest time possible, the Inter-American Commission on Human Rights examines the situation of human rights in Bolivia. 4. To express its solidarity with the Bolivian people and its confidence that they will find the most suitable means to maintain the viability of their democratic institutions and their freedoms.<sup>19</sup>

49. In its 1981 Report on the Situation of Human Rights in Bolivia, the Commission established that during the *de facto* government of García Meza the right to life was in serious peril and that the lawlessness of police and paramilitary groups, acting

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<sup>18</sup> International Seminar: "Impunity and Its Effects on Democratic Processes." Santiago, Chile, December 14, 1996: Impunity and Democracy: IMPUNITY IN BOLIVIA: Democratic systems in Latin America and Impunity. By Waldo Albarracín of the Permanent Assembly of Human Rights of Bolivia.

<sup>19</sup> Resolution of the Permanent Council of the Organization of American States, July 25, 1980, CP/RES. 308 (432/80), cited in the IACHR's 1981 Report on the Situation of Human Rights in Bolivia, footnote on p. 1.

on orders from the Ministry of the Interior and by its authority, had caused violations of this fundamental right. It also reported having received information alleging that these groups were acting with absolute impunity in making arrests, conducting searches and questioning the victims and that the impunity appeared to be the result of a decision on the part of high-ranking government officials to persecute any group of persons, political or labor organization that could constitute opposition, albeit peaceful, to the purposes of the Military Junta.<sup>20</sup>

50. Amidst this repression, thousands of arrests were made without following the procedures prescribed in the Constitution, such as the required arrest warrant issued by a competent authority and the requirement that the person being arrested be advised of the charges against him. The testimony and statements given by survivors and persons living in exile portray this period of Bolivian history as one in which unlawful abuse and torture were common practice and particularly common during the interrogations of detainees in the days following the July 17, 1980 coup. The methods most often employed involved blindfolding and beating prisoners; electric shock; intimidation of prisoners or their next of kin; mock executions; cigarette burns; psychological pressure and sexual abuse. These unlawful abuses were said to have occurred on the premises of the Army Intelligence Services (Miraflores Headquarters), at the headquarters of the Department of Political Order (DOP),<sup>21</sup> in the offices of the Ministry of the Interior,<sup>22</sup> and elsewhere.

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<sup>20</sup> IACHR, 1981 Report on the Situation of Human Rights in Bolivia, CHAPTER II: THE RIGHT TO LIFE.

<sup>21</sup> In its 1981 Report on the Situation of Human Rights in Bolivia, the Commission transcribed portions of the testimony of a person living in exile, who had also been subjected to mistreatment. It was the case of Juan Antonio Solano, born January 27, 1955, in Llallagua, Bolivia. He was a metallurgy student at the University of Oruro and a member of the University Federation. Detained in 1977 during the Banzer Government and again in 1980 after the coup d'état, he had been in exile in Switzerland since November 22, 1980, having been forced to leave his country, Bolivia. What makes his case relevant is his description of the unlawful abuse and treatment at the DOP, the place where the Ticona brothers had been seen. The account reads as follows:

Arrested on July 18, 1980 in the university cafeteria of the University of Oruro by the Armed Forces and the police, along with 250 other students. He was first taken into detention in a military post in Vinto (Oruro), and then to the Oruro DOP, where he remained for 45 days and was later transferred to the Ministry of the Interior in La Paz. During the entire period of his detention, he was mistreated and was forced to sign false statements. The interrogations were conducted by agents of the Intelligence Service. Since he was considered to be a "dangerous element" he was to be sent to Argentina. The intervention of the church (CIME)<sup>12</sup> and the United Nations prevented Bolivian political prisoners from being sent to Argentina. He was taken to Viacha, where CIME officials interviewed him and facilitated his exile in Switzerland.

***Tortures and ill-treatment***

Immediately after his arrest along with 250 other students, they were taken to a military post in Vinto (Oruro) where they underwent a mock burial, being forced to get into a trench where they were sprayed with tear gas and covered with earth and water. They were then beaten with sticks and were put through mock executions. They were then taken to the DOP in Oruro, where prison conditions were very bad. They were forced to sign statements under duress; there was neither water nor food. There were between 30 and 40 detainees in cells measuring 2 x 3 meters. The detainees' families took them food. Since there were a number of detainees from the interior of the country, they had no one to take food to them. During the 45 days he was in the DOP, he survived basically on the food that other prisoners shared with him. His next transfer was to the Minister of the Interior in La Paz, where there were a large number of detainees who would later be taken to the concentration camps in the east of Bolivia. (Madidi, San Joaquín, Puerto Rico, Exiomas). For the first days, they shut him up in a small room and took him out to interrogate him late at night. During the first stage of interrogations, they did not use violence, but when he did not confess, they

51. With the restoration of democracy in 1982, a consensus favored an investigation of the crimes committed by the *de facto* regime of General Luis García Meza. Contemptuous of life, his regime had detained members of the political opposition, conducted forced disappearances, practiced torture and unlawfully expelled individuals from the country. The investigations culminated with the indictment that the National Congress referred to the Supreme Court on February 25, 1986, for prosecution of a “trial of responsibilities” [*juicio de responsabilidades*] against General Luis García Meza, Colonel Luis Arce Gómez and their collaborators. The Supreme Court found them guilty and convicted them of eight crimes: 1. Sedition; 2. Armed insurrection; 3.- Organization of groups of armed irregulars; 4.- Usurping the rights of the people, 5.- Unconstitutional and unlawful decisions, 6.- Deprivation of freedom, 7.- Attacks upon freedom of the press, 8.- Graft and corruption, and 9.- Violation of university autonomy.<sup>23</sup>

52. In that ruling the Supreme Court found that the testimony and other evidence proved that the activities of the *de facto* regime were “preparatory [and] planned” in nature. The disappeared Renato Ticona Estrada was among the victims named in the judgment.<sup>24</sup>

### C. The forced disappearance of Renato Ticona Estrada

53. Renato Ticona Estrada was born in Sacaca, Potosí, Bolivia, on November 12, 1954.<sup>25</sup> He had a degree in humanities from the *Universidad Boliviana Técnica de Oruro* and was a music teacher. At the time of his disappearance, he was taking courses at the School of Agricultural and Livestock Sciences of the *Universidad Técnica de Oruro*.<sup>26</sup>

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beat him until he lost consciousness. He was left for two days in a dark room without anything to eat or to drink, and was then taken out to be interrogated again. He was again beaten, and then taken to a cell which contained all his companions who were in the same physical condition he was. In cells measuring 3 x 4 meters, there were up to 60 people, and no sanitation facilities. Juan was classified as a “dangerous element” and together with other detainees, was on the list of deportees. On October 25, they were given safe-conducts to be deported to Argentina as members of extreme leftist groups. When they were at the airport, they heard the news that CIME, the church and the United Nations were intervening to prevent political prisoners from being sent to Argentina, Chile, and Paraguay. They were taken to Viacha, where CIME officials helped Juan to leave for Switzerland.

During the whole time he was detained, Juan had no meeting with his family and no opportunity to tell them where he was and in what condition. He had to leave Bolivia without contacting anyone in his family.

IACHR, 1981 Report on the Situation of Human Rights in Bolivia, CHAPTER III: The Right to Liberty, Humane Treatment, and Personal Integrity: B. Arbitrary Arrest and Unlawful Duress, Case 7823, Juan Antonio Solano, par. 7.

<sup>22</sup> IACHR, 1981 Report on the Situation of Human Rights in Bolivia, CHAPTER III: The Right to Liberty, Humane Treatment, and Personal Integrity: B. Arbitrary Arrest and Unlawful Duress.

<sup>23</sup> Supreme Court of Bolivia. Ruling delivered in the trials that the Public Prosecutor’s Office and third parties prosecuted against Luis García Meza and his collaborators. April 21, 1993. Sucre – Bolivia. Annex 3.

<sup>24</sup> Id.

<sup>25</sup> See annex 1, birth certificate.

<sup>26</sup> See annexes 2, 3 and 4 of the original petition on file with the IACHR, appendix 3.

54. On July 22, 1980, while on their way to Sacaca, Potosí, to visit their ailing grandfather, Renato Ticona Estrada and his elder brother Hugo Ticona Estrada<sup>27</sup> were stopped by an Army patrol in the vicinity of the Cala-Cala control gate in Oruro.

55. The Army patrol that detained Hugo<sup>28</sup> and Renato Ticona Estrada and caused the latter's disappearance was acting on orders from Lieutenant René Veizaga Vargas, Sergeant Willy Valdivia and Colonel Roberto Melean. These people were with Armored Battalion Topater No. 2, headquartered in Vinto, Oruro.

56. In his testimony before the National Commission of Enquiry into Forced Disappearances and then before the La Paz District Superior Court, Hugo Ticona stated that:

[...] my brother and I were detained by an Army patrol at around nine thirty on the night of July 22, 1980 and brought before a lieutenant whose name we later learned was Lieutenant Rene Veizaga Vargas. It was Sergeant Wyly Valdivia who brought us to the Lieutenant. They took all our belongings and began to beat us when they realized that we had no propaganda or anything to tell them. As I say, we just happened to be passing through, and not for any purpose that they wanted to attribute to us. When they noticed that my answers were evasive and that my brother said nothing at all -being a teacher, he had no knowledge of any political activities- they became even more violent, beating my brother even harder until he lost consciousness. In the meantime, thinking that I had information, Lieutenant Veizaga Vargas tried to force it out of me by beating and torturing me. Other soldiers joined in. However, when they realized that we were in very serious condition as a result of the beating, they turned us over to Colonel Roberto Melean and other soldiers to take us to Vinto. We were boarded onto an Army truck. Although they did allow us anywhere near each other, I could see that my brother was unable to move [...]

[...] They were from the Topater Regiment, in Vinto district, which was in Cala-Cala. The persons who held us in custody and tortured us were civilian agents of the DOP.<sup>29</sup>

57. For his part, Erasmo Calvimontes Calvimontes, a military conscript in Oruro's Topater Regiment in 1980, stated the following:

In June I was enlisted into military service in Topater Regiment in the city of Oruro. In July 1980, I and other soldiers were posted to do guard duty at the Cala-Cala control gate, under the command of Major Roberto Melean, Lieutenant Rene Veizaga Vargas and also Sergeant Willy Valdivia. On July 23, 1980, while we were on guard duty at the Cala- Cala gate, two young men appeared. On orders from our superiors, two soldiers detained the young men and brought

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<sup>27</sup> Hugo Ticona Estrada stated that by 1978 he was a leader of the "Federación Universitaria Local FUL" and in 1979 Secretary of Relations of the "Syndicate by Law ENAF" and a delegate of the Departmental Workers' Federation. See Annex 2, National Commission case file against René Veizaga *et al.*, at 1.

<sup>28</sup> See Annex 5, newspaper article: "*Ultima Hora*: List of Political Detainees in the Country," September 9, 1980, which lists the arrest of Hugo Ticona Estrada.

<sup>29</sup> See annex 2, Statement made by Hugo Ticona before the La Paz District Superior Court, May 13, 2005, at 145-152.

them over to the place where we were [illegible] to question them using force. One gave his name as Renato, the other Hugo. They also said that they were brothers [...]. The superior officers kicked them and beat them with clubs. They were both on the ground, half dead [...]. By around 2:30 in the morning, one of the two was no longer breathing. The body was stiff and cold. When the superior officers realized this, they ordered that he be taken to Vinto. On our superiors' orders, we loaded the two onto a truck. One was dead and the other completely unconscious [...] I learned from friends in the section barracks that the one who was unconscious was taken to the URME clinic for treatment [illegible]. I don't know what happened to the young man [...]. All the soldiers posted at the Cala-Cala gate witnessed the two brothers being tortured. Later, the soldiers who buried the body told us that they buried him not far away, on a mountain. I don't know which mountain, because I'm not from Oruro. This was at midnight on the following day. The soldiers who buried the body were people from the interior.<sup>30</sup>

58. After being subjected to hours of torture and abuse,<sup>31</sup> the Ticona brothers were taken, unconscious, to the Vinto garrison and then handed over to the offices of the Special Security Service (SES), also known as the Department of Public Order (DOP). They were handed over to police officer Gumersindo Espinosa Valdivieso, who at the time was chief of that service.

59. In his February 5, 1985 appearance before the National Commission of Enquiry into Forced Disappearances, citizen José Cadima testified that:

As Secretary General of the COMIBOL labor union, I was taken prisoner on July 21, 1980 by military and civilian agents of the DIN and SES. [...] During my detention, I learned that the brothers Hugo and Renato Ticona had been arrested, and one of them was hospitalized at a clinic as a result of the torture he had been subjected to. I later learned that he had disappeared. According to other prisoners, the other brother was being held in custody.<sup>32</sup>

60. Mr. Nelson Céspedes Beltrán, who was also being held in the DOP cells in Oruro, was a witness to the fact that the Ticona brothers were held in custody in that State facility.<sup>33</sup> The testimony given by the prisoners also reveals that at the time, abuse

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<sup>30</sup> See Annex 12, Voluntary deposition by Erasmo Calvimontes Calvimontes, April 12, 1984 in the city of Oruro.

<sup>31</sup> In the complaint that the National Commission of Enquiry into Forced Disappearances filed with the Public Prosecutor's Office, it stated that by the time Hugo Ticona was taken to the URME clinic, the Ticona brothers had undergone more than 10 hours of torture and beatings. See Annex 2, National Commission case file against René Veizaga *et al.*, at 10 *et seq.*

<sup>32</sup> See annex 13, statement that José Cadima Meza made in his appearance before the National Commission of Enquiry into Forced Disappearances, February 5, 1985.

<sup>33</sup> See annex 2, case file, at 4, Voluntary testimony of Nelson Céspedes Beltrán before the National Commission for the Investigation of Forced Disappearances, who states the following:

I was taken into custody on July 17, 1980, and held in the DOP cells in the city of Oruro. On July 23, 1980, we learned that two university students had been taken into custody. This information came from the thugs in whose custody we were being held. At around nine in the morning I noticed that one of these thugs, nicknamed the "Brazilian," was wearing a jacket that I learned belonged to Hugo Ticona. I recognized the jacket because Hugo was a friend of mine. We asked these thugs how they came to have the jacket and they answered that at around four that morning two detainees had been transferred to the



and torture at the DOP were part of a State policy practiced against those who opposed the military government.<sup>34</sup>

61. In an interview that Luis García Meza gave on Radio Panamericana on April 15, 2004, he admits that security personnel under his command were responsible for the detention of the Ticona brothers and the subsequent disappearance of Renato Ticona Estrada.<sup>35</sup> In the interview, García Meza stated the following:

[...Solares] collaborated with Mr. Abel Elías, chief of military intelligence in Oruro [Chief of the Army Intelligence Service] and with the governor, Lieutenant Colonel Gustavo Arrázola, in the Huanuni group. Solares was an informant on the subject of the miners' political activities [...] This Mr. Solares had knowledge of the whereabouts of the Ticona Estrada brothers and would have reported it. The Ticona Estrada brothers were taken into custody and one disappeared. Solares was quoted in the Oruro edition of the newspaper *La Razón* as demanding to know where the remains of this Mr. Ticona were. But this gentleman was our informant the entire time he was in Oruro. Like I say, he was working with Major Abel Elías and with Lieutenant Colonel Gustavo Arrázola. So this is irrefutable [...]. I have here some documents these gentlemen sent to me about this disappeared person, Renato Ticona, and the statements that they make in the newspaper. If I remember correctly it was *La Nación*.

INTERVIEWER: So, in other words, Colonel Elías and Colonel Gustavo Arrázola sent you the document; they sent you all that information?

García Meza: Yes, of course, in order to find out whether the second intelligence department, etc., whether we knew everything about the activities of this Mr. Solares, who was the informant for everything happening both at the Huanuni mine and at the COB, where he is now Executive Secretary [...]

62. At the time of their arrest, the Ticona brothers were not advised of the charges against them, nor were they brought before a competent judicial authority.

63. When they learned that their sons had been arrested, Mrs. Honoria Estrada de Ticona and Mr. Cesar Ticona Olivares went to various State institutions seeking information about their sons' situation, but got no answers.<sup>36</sup> A social worker,

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DOP cells. One was unconscious, and taken to the URME clinic in Oruro. Both were in very bad physical condition [...].

<sup>34</sup> See IACHR, 1981 Report on the Situation of Human Rights in Bolivia, CHAPTER III: The Right to Liberty, Humane Treatment and Personal Integrity: B. Arbitrary Arrest and Unlawful Duress, Section E, Case 7823, Juan Antonio Solano, par. 7.

<sup>35</sup> See annex 6, *Radio Panamericana's* April 2004 interview with Luis García Meza, currently being held Chonchocorro prison, where he talks about Jaime Solares' role as a paramilitary in the arrest of the Ticona brothers. See also annex 5, *La Razón*, "More accusations come forward concerning Solares' paramilitary past," April 20, 2004, which describes interview sessions with García Meza and which states that: "The former dictator –now serving a 30-year sentence in Chonchocorro prison with no possibility of pardon or parole as he was convicted on 32 charges, murder among them- was emphatic in his assertion that it was Solares who buried Renato Ticona. With the accusations being made from Chonchocorro prison, Solares demanded proof, not just from García Meza but from other people as well."

<sup>36</sup> See annex 2, court record, at 4, Voluntary testimony of Nelson Céspedes Beltrán before the National Commission of Enquiry into Forced Disappearances. The deponent was in custody at the DOP at the time of the events in this case:

Mrs. Ruth Sánchez García de Jordán, gave the next of kin an article of clothing belonging to Hugo Ticona. They learned that he was alive but badly wounded, and had been taken to the URME clinic. The parents went to the clinic to find out about their sons.<sup>37</sup>

64. On February 19, 1985, Mrs. Sánchez García de Jordán told the National Commission of Enquiry into Forced Disappearances the following:

At the time of the July 17, 1980 coup I was a social worker at the Universidad Técnica de Oruro. About two or three days later they entered the dormitory for the School of Engineering and the university dining halls, and arrested many university students. The Ticona brothers were not among them. On orders from officials at the University and with clearance from the departmental government, as part of my job I made daily visits to the police stations to see which university students were there, provide them with support and be their link to their families. During this period, the parents of the Ticona brothers were in great distress. Police officials flatly denied having arrested them. At the request of the Ticona parents, on each of my visits I asked the other detainees whether they had seen the Ticona brothers brought in. I did this for a number of days. Finally, about fifteen days later, a young Brazilian boy took me aside. He was probably about 17 years old and was incarcerated with common criminals. He handed me a bloodied jacket that he had gotten that night at around two in the morning, when he was taken from his cell to move detainees who had been tortured and were in very serious condition. They were brought in aboard Army trucks and then taken elsewhere in another vehicle. He had no idea where they were taken. According to the young Brazilian, Hugo Ticona had given him the jacket and asked him to get it to his family somehow. The jacket was taken out of the DOP facility in an empty lunch pail and then turned over to the Ticona parents, who recognized it as their son's jacket [...]. While the delivery of the jacket ultimately led them to their son Hugo, the same was not true of Renato.<sup>38</sup>

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[...] the family of Hugo and Renato Ticona came to the offices of the DOP to inquire about their sons. The authorities, however, denied that they had ever had their sons in custody at the DOP. Through Mrs. Ruth Jordán, a social worker from the university, those of us in custody at the time arranged to get Hugo's jacket to his next of kin. That was how they learned that the Ticona brothers had been jailed there. We paid a price for this, which was solitary confinement, and which explains why I never learned any more details about the Ticona brothers' arrest.

Question.= Do you have anything else to add?

Answer.= What I would add is this: the head of the DOP at that time, Mr. Gumersindo Espinoza, has to know everything about the arrest of the Ticona brothers and the subsequent disappearance of one of the brothers, RENATO. It was this Mr. Gumersindo Espinoza who ordered common criminals to do the work in the DOP units. One was nicknamed "Marquitos" and the other "el brasilero." These two were transferred to the observation center "Mi Casa" which is part of the DIRME. [...]

<sup>37</sup> See annex 14, February 19, 1986 testimony of social worker Ruth Sánchez García before the La Paz Second Criminal Examining Court. See also the testimony that César Ticona Olivares gave before the National Commission of Enquiry into Forced Disappearances; the May 13, 2005 testimony of Rodo Corsino Ticona Estrada, brother of Hugo and Renato Ticona, before the District Superior Court, annex 2, at 141-143 where he states that: "[...] in July 1980, my uncle Napoleón Estrada told me that my brothers Renato and Hugo had been arrested [...] we went to police headquarters but they didn't want to give names; they were not sure where they were. I went to the hospital, pretending to be someone else because no one was allowed in. It was the URBE hospital on Cochabamba Street. I got within three meters of my brother Hugo. Doctors were carrying him because he couldn't walk. I made inquiries to find out where Renato was, because I never saw him. All I got was rumors.

<sup>38</sup> Statement made by Mrs. Sánchez García de Jordán before the National Commission of Enquiry into Forced Disappearances, February 19, 1985.

65. Neither the military nor the SES police kept a public record with the particulars on arrests, specifying place, time, circumstances and arresting officers, much less the complete data on the officials who had final custody of the victim Renato Ticona Estrada. In order to establish the whereabouts of Renato Ticona, the National Commission of Enquiry into Forced Disappearances requested that the Public Prosecutor's Office provide "certified photocopies of the lists made of persons detained on political grounds –illegible- for the years 1980 to 1981." In response, the Secretary General of the Departmental Government reported the following:

By order of the authorities of the departmental government under the previous *de facto* regime, these lists were burned. Therefore, the requested material no longer exists in the files of this departmental government.<sup>39</sup>

66. When Hugo Ticona Estrada was taken to the URME clinic, he was in very bad physical condition as a result of being torture. He was then taken to the COSSMIL military hospital in La Paz, and kept in isolation for two weeks. After that, he was sent to the La Paz DOP, where he was held until September 12, 1980. He was allowed to see his parents only once. From there he was transferred to Cobija, in the department of Pando, where he spent one night. He was then taken to Puerto Cavinás, in the department of Beni, where he was held prisoner in the barracks. He was allowed out only once a week, under guard, until the day of his release on November 4, 1980.<sup>40</sup>

67. In addition to the criminal case described below, the next of kin of Renato Ticona Estrada took a number of measures to establish his whereabouts. Yet despite all the efforts they have made to locate him since July 23, 1980, the last time he was seen alive, his next of kin have been unable to obtain any information as to his whereabouts or recover his remains.

68. When the next of kin learned that Hugo and Renato Ticona had been arrested, they went to police headquarters to inquire about their sons' whereabouts, but got no answer.<sup>41</sup>

69. On August 30, 1980, the parents sent a note to Colonel Hernán Ferrel Lobo, Commander of the First Army Corps, asking for information about their two sons' whereabouts.<sup>42</sup>

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<sup>39</sup> Report in the files of the Commission, appendix 3, with a note sent to the Deputy Minister of the Office of the President to the effect that the list of detainees could not be provided because the files had been incinerated under the previous *de facto* regime. Communication dated April 12, 1983.

<sup>40</sup> See annex 2, at 145-152, Statement of Hugo Ticona before the La Paz District Superior Court, May 13, 2005. "JUDGE: Please tell the court how you were treated while in the custody of the DOP [illegible] in Riberalta in the Ministry of the Interior in La Paz. R.: The same treatment everyone else got. They beat all of us. They took us to the bathroom when they wanted; we were not allowed out and no one was allowed to see us."

<sup>41</sup> See Annex 2, at 141-143, Statement made by Rodo Ticona before the La Paz District Superior Court, Bolivia, May 13, 2005. See also the copy of the note sent to the Governor of the Department of Oruro, dated July 25, 1980. Annex 27 of the original complaint that the petitioners filed with the IACHR.

<sup>42</sup> Communication sent to Mr. Echenique, Governor of the Department of Oruro, December 27, 1982.

70. When he learned through private sources that Hugo Ticona and presumably Renato Ticona had been taken to the URME clinic, Rodo Ticona, the two arrested men's younger brother, went to the clinic pretending to be someone else, since entrance to the place was prohibited. He did see his brother Hugo, but only from a distance. He was unable to speak with him.<sup>43</sup>

71. Renato Ticona's next of kin went to Military Region 2 in Oruro and to various officials in Oruro. They also filed briefs with the governor, but got no answer as to their son's whereabouts.<sup>44</sup>

72. In December 1980, the parents of Renato Ticona went to La Paz after hearing a rumor that their son Renato was now paralyzed and had been taken to Military Headquarters. In La Paz, they reported the situation to the Archdiocesan Commission on which Father Nino served and he promised to contact Minister Arce Gómez. The latter supposedly promised that on "Friday" Renato Ticona would be handed over to the Archdiocese of Oruro and that the parents should wait for him there.

73. When no reply was forthcoming and Renato Ticona never appeared, his parents went to La Paz on January 22, 1981, to speak with Rico Toro, Under Secretary at the Ministry of Foreign Affairs and Worship, to inquire about the whereabouts of their son and deliver a brief to him personally. In that communication, they stated that "absolutely no information had been forthcoming from the authorities in Oruro and La Paz, despite the cooperation of the International Red Cross, the Church, and so on [...] after knocking on every door possible, we have found them all closed [...]"<sup>45</sup> In the course of the meeting, the Under Secretary of the Ministry of Foreign Affairs purportedly stated that Renato Ticona was at Military Headquarters and that "his treatment was not yet complete and that once it was, they would bring him back to Oruro."<sup>46</sup>

74. When Renato Ticona never appeared, his next of kin and the Archdiocesan Commission made "a hundred trips" to meet with the Under Secretary of the Ministry of Foreign Affairs and Worship until eventually they were thrown out. They never got any answers.

75. On July 24, 1981, they wrote to the President of the Republic, General Luis García Meza Tejada, requesting that he order an investigation to solve the disappearance of their son Renato.<sup>47</sup>

76. On August 25, 1981, they filed another claim concerning their son's disappearance, this one with the Junta of Commanders of the Armed Forces, composed of former President Celso Torrelio and Generals Oscar Pammo and Waldo Bernal.<sup>48</sup>

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<sup>43</sup> *Idem.*

<sup>44</sup> See Annex 2, at 139-141, Statement made by César Ticona Olivares, Renato Ticona's father, before the La Paz District Superior Court, May 13, 2005.

<sup>45</sup> See letter sent to the Ministry of Foreign Affairs and Worship in La Paz, dated January 22, 1981. Annex 4 of the application.

<sup>46</sup> Statement that César Ticona Olivares gave before the National Commission of Enquiry into Forced Disappearances, March 25, 1983, in Annex 2.

<sup>47</sup> Note dated July 24, 1981, from César and Honoria Ticona to General Luis García Meza Tejada. Annex 28 of the original complaint that the petitioners filed with the IACHR. Annex 4 of the application.

77. On December 27, 1982, they appealed to the Governor of Oruro, Javier Echenique, to order an investigation into their son's disappearance.<sup>49</sup>

78. On October 28, 1983, Renato Ticona Estrada's parents asked the Commander in Chief of the Armed Forces, General Simón Cejas Tordoya, for an explanation of their son's disappearance. In their letter they wrote the following: "We have it on very good authority that our son Renato is alive, but in very poor condition, in some security facility or on a military base in the eastern part of the country. We keep asking ourselves, how long they will keep him? What crimes did he commit?"<sup>50</sup>

79. On July 28, 1984, they asked the Minister of the Interior, Immigration and Justice, Federico Álvarez Plata, to clear up the matter of their son's disappearance.<sup>51</sup>

80. On May 16, 1986, the Local University Federation of Oruro asked General Raúl López Leytón, Commander in Chief of the Armed Forces, to expedite the investigation and hand over Renato Ticona Estrada's mortal remains.<sup>52</sup>

81. On November 19, 1986, Renato Ticona's next of kin went to the offices of the Commander in Chief of the Army to find out what had happened to their son. There they met with Captain Freddy Macay, who gave them an address to locate Colonel Roberto Melean, who presumably had information about the ultimate fate of their son Renato Ticona. Later, Renato Ticona's next of kin went to Hospital No. 1 where Lieutenant Colonel Roberto Melean Rendon was director. Lieutenant Colonel Melean told the parents that he "had nothing to do with the disappearance" of their son and said that the people in the Regiment were the following: Commander of the Army's First Corps, General Hernán Farrel Lobo; Chief of Staff, Colonel Rafael Tapia Montaña; Chief of Section II, Oscar Roca Elio; and "Topater" Regiment Commander Julio Loayza Valda. In a note to the National Commission of Enquiry into Forced Disappearances, Renato Ticona's father explained that he had not gone to the courts because they were not to be trusted.<sup>53</sup> As described below, Lieutenant Colonel Roberto Melean Rendón was notified of the criminal case brought against him and other military and police officers, for the crimes committed against Renato Ticona Estrada.

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<sup>48</sup> Note dated August 25, 1981, from Honoria Ticona to the Military Junta. Annex 29 of the original complaint that the petitioners filed with the IACHR. Annex 4 of the application.

<sup>49</sup> Note dated December 27, 1982, from César and Honoria Ticona to the Governor of the Department of Oruro. Annex 30 of the original complaint that the petitioners filed with the Commission.

<sup>50</sup> Note dated October 28, 1983, from César and Honoria Ticona to the Commander in Chief of the Armed Forces of Bolivia. Annex 31 of the original complaint that the petitioners filed with the Commission. Annex 4 of the application.

<sup>51</sup> Note dated July 28, 1984, from César and Honoria Ticona to the Minister of the Interior, Immigration and Justice. Annex 32 of the original complaint that the petitioners filed with the Commission. Annex 4 of the application.

<sup>52</sup> Note dated May 16, 1986, from the Local University Federation of Oruro to the Commander in Chief of the Armed Forces of the Nation. Annex 34 of the original complaint that the petitioners filed with the Commission. Annex 4 of the application.

<sup>53</sup> Note that César Ticona sent to the National Commission of Enquiry into Forced Disappearances, dated November 19, 1986, and reporting the meetings he had had with the Commander in Chief of the Army and Lieutenant Colonel Roberto Melean Rendón.

82. On September 3, 1997, National Deputy Raúl Araoz Velasco asked Minister of Government Guido Nayar to prepare a written report. In the request, he asked for information about the forced disappearance of Renato Ticona Estrada and about the status of the investigations.<sup>54</sup>

83. On January 26, 2003, Hugo Ticona Estrada requested the Human Rights Commission of the Chamber of Deputies to order the inquiries into the forced disappearance of his brother Renato Ticona Estrada be continued.<sup>55</sup>

84. Since Renato Ticona's disappearance, his parents have given press interviews to denounce the lack of response to their son's disappearance.<sup>56</sup>

#### **D. The criminal case in connection with the forced disappearance of Renato Ticona Estrada**

85. On April 7, 1983 the National Commission of Enquiry into Forced Disappearances<sup>57</sup> filed a complaint with the Public Prosecutor's Office in La Paz, seeking investigation of the events surrounding the forced disappearance of Renato Ticona Estrada.<sup>58</sup> The complaint asked that the investigation be conducted for the offenses criminalized in articles 252 (murder), 292 (deprivation of freedom), 293 (threats) and 334 (abduction) of the Criminal Code then in force since forced disappearance had not yet been criminalized under Bolivian law at that time.

86. On June 4, 1983, the Third Criminal Examining Judge of La Paz ordered the preliminary investigation against Roberto Melean, Willy Valdivia Gumucio, René Veizaga Vargas and Gumersindo Espinoza Valdivieso for the offenses criminalized in articles 252, 292, 293 and 334 of the Criminal Code then in force.<sup>59</sup>

87. On December 2, 1983, the Executive Secretary of the National Commission of Enquiry into Forced Disappearances asked the Armed Forces Command to send a memorandum requesting that Colonel Roberto Melean, Sergeant Willy Valdivia Gumucio and Lieutenant René Veizaga Vargas, all members of the Bolivian Armed Forces, appear to make their statements answering the charges against them.<sup>60</sup> The memorandum was sent on December 8 of that year. However, there is nothing in the record to show that the Armed Forces Command received any reply to the memorandum.

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<sup>54</sup> September 3, 1997 note from Deputy Velasco to the Minister of Government. Annex 35 of the original complaint that the petitioners filed with the IACHR. Annex 4 of the application.

<sup>55</sup> January 26, 2003 note from Hugo Ticona to the Chair of the Human Rights Commission of the Chamber of Deputies. Annex 37 of the original complaint that the petitioners filed with the IACHR. Annex 4 of the application.

<sup>56</sup> Communications contained in annexes 38-38-7 of the original complaint that the petitioners filed with the IACHR.

<sup>57</sup> The National Commission of Enquiry into Forced Disappearances was created on October 28, 1982, by Supreme Decree No. 241.

<sup>58</sup> Complaint brought by the National Commission of Enquiry into Forced Disappearances, April 7, 1983, in Annex 2, National Commission case file against René Veizaga *et al.*, at 10-11.

<sup>59</sup> See Annex 2, National Commission case file against René Veizaga *et al.*, at 12.

<sup>60</sup> See Annex 2, National Commission case file against René Veizaga *et al.*, at 22.

88. On February 6, 1985, Mr. Gumersindo Espinoza Valdivieso made his statement answering the charges against him, all of which he denied. He claimed that he did not know Renato Ticona Estrada.<sup>61</sup>

89. On February 28, 1985, Honoria Estrada de Ticona and Hugo Ticona Estrada filed a criminal complaint against Gumersindo Espinoza Valdivieso and others for the crimes committed against Renato Ticona Estrada.<sup>62</sup>

90. On May 15, 1985, the presiding judge notified, summoned, called and issued subpoenas ordering co-defendants Melean, Valdivia Gumucio and Veizaga Vargas to appear for trial. However, none of the co-defendants appeared for the proceedings and none was taken into custody.<sup>63</sup>

91. On July 5, 1985, Gumersindo Espinoza Valdivieso entered an objection alleging that the charge did not constitute a criminal offense under Bolivian law.<sup>64</sup> The objection was allowed on September 2, 1985.<sup>65</sup> The court ordered the case against him closed. Then, in 1986, the court ordered the case against all the defendants closed, without even completing the preliminary inquiry or examining phase.<sup>66</sup>

92. Before the case was closed, however, statements were taken from witnesses Ruth Sánchez García de Jordán and José Cadima Meza.<sup>67</sup>

93. The case remained closed for 19 years. Then, on March 8, 2005, the Prosecutor's Office asked the Chief Judge of the La Paz Superior Court to reopen the case.<sup>68</sup> Thus reopened, the case was sent to a La Paz Criminal Examining Court, which is currently seized of the case.

94. On March 18, 2005, the Public Prosecutor's Office asked the court to declare Messrs. Melean, Valdivia Gumucio and Veizaga Vargas in contempt of court and to issue the corresponding warrants for their arrest. It also asked that a number of witnesses be summoned to testify.

95. Although the preliminary proceedings that ensued were not without omissions and errors, the examining phase was completed, whereupon the case was sent for trial before the First Criminal Judge of La Paz. However, on July 24, 2006, the trial judge ordered that all proceedings up to and including 117 be vacated because the

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<sup>61</sup> See Annex 2, National Commission case file against René Veizaga *et al.*, at 31-33.

<sup>62</sup> Criminal case brought by Honoria Estrada de Ticona and Hugo Ticona Estrada, February 28, 1985, in Annex 2, National Commission case file against René Veizaga *et al.*, at 66-67.

<sup>63</sup> See Annex 2, National Commission case file against René Veizaga *et al.*, at 86.

<sup>64</sup> See Annex 2, National Commission case file against René Veizaga *et al.*, at 98.

<sup>65</sup> See Annex 2, National Commission case file against René Veizaga *et al.*, at 107-108.

<sup>66</sup> See Annex 6 of the petitioners' June 26, 2006 communication, in Appendix 3 of the application.

<sup>67</sup> See Annex 14 of the original complaint.

<sup>68</sup> See Annex 2, National Commission case file against René Veizaga *et al.*, at 115.

examining court had not issued a decision on the issue of the statute of limitations.<sup>69</sup> And even though on September 11, 2006, the examining court dismissed the motion to apply the statute of limitations in the present case,<sup>70</sup> because the trial court had already vacated the proceedings up to 117 inclusive, those proceedings will not have to be repeated.

96. Thus, more than 25 years since the forced disappearance of Renato Ticona Estrada, the proceedings on his case are still in the preliminary or examining phase.

#### **E. The family of Renato Ticona Estrada**

97. Renato Ticona Estrada's mother is Mrs. María Honoria Estrada de Ticona. His father is Mr. César Ticona Olivares. His siblings are: Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada.

#### **F. Domestic law on the subject of forced disappearance**

98. Forced disappearance was not yet a criminal offense in Bolivia on July 22, 1980, the date on which Renato Ticona Estrada's forced disappearance began.

99. Law 3326, enacted on January 18, 2006, added the crime of forced disappearance to Bolivia's Penal Code, under Chapter I of Title X. The provision reads as follows:

Article 292 Bis (Forced Disappearance of Persons):

Anyone who, with the authorization, support or acquiescence of any State body or agency, deprives one or more persons of their freedom and deliberately conceals or refuses information that would acknowledge the deprivation of freedom or the whereabouts of the person, thereby preventing the exercise of the procedural remedies and guarantees, shall be subject to a penalty of imprisonment for a period of five to fifteen years.

If as a consequence of this act the victim sustains grave physical and psychological harm, then the penalty shall be imprisonment for fifteen to twenty years.

If the author of the offense is a public official, then the maximum penalty shall be increased by one third.

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<sup>69</sup> See Annex 2, National Commission case file against René Veizaga *et al.*, at 294 "WHEREAS Constitutional Ruling 0101/2004 was delivered on September 14, 2004; and WHEREAS the circulars issued by the Honorable Supreme Court of Justice advise that when presiding over cases every judicial authority is required to comply with the rule imposed by said Constitutional Ruling: specifically, prior to moving ahead with any further proceedings in a case, every judicial authority is to determine whether a case is time-barred by the statute of limitations based on procedural precedent; judicial authorities are instructed to comply with the court ruling and decide the statute of limitations question where grounds exist and at the request of a party or *ex officio*. This did not happen in the instant case. Therefore, the decision at 291 means that all proceedings up to and including 117 are vacated; the case is hereby remanded to the court of origin with a courtesy note."

<sup>70</sup> See Resolution 86/06 of September 11, 2006, in Annex 2, National Commission case file against René Veizaga *et al.*, at 326.



If the victim dies as a consequence of this act, the penalty shall be imprisonment for a period of thirty years.<sup>71</sup>

## VII. THE LAW

### A. General comments on forced disappearance

100. The Court addressed the practice of enforced or forced disappearances in some of its first cases, and wrote the following:

Forced or involuntary disappearance is one of the most serious and cruel human rights violations, in that it not only produces arbitrary deprivation of freedom but places the physical integrity, security and the very life of the detainee in danger. It also leaves the detainee utterly defenseless, bringing related crimes in its wake. Hence, it is important for the State to take all measures as may be necessary to avoid such acts, to investigate them and to sanction those responsible, as well as to inform the next of kin of the disappeared person's whereabouts and to make reparations where appropriate.<sup>72</sup>

101. In other cases of forced disappearance, the Court has held that forced disappearance of persons is an unlawful act that gives rise to a multiple and continuing violation of a number of rights protected by the Convention. Forced disappearance also presupposes a complete disregard for the State's obligation to organize the apparatus of State in such a way that the rights recognized in the Convention are guaranteed.<sup>73</sup> The State violates its duty to respect the rights recognized in the American Convention and to ensure their free and full exercise to all persons subject to its jurisdiction when it directly engages in or tolerates actions aimed at effecting forced or involuntary disappearances and when it fails to investigate them properly and, where appropriate, to punish those responsible.<sup>74</sup>

102. As the Court has held, forced disappearance is a crime against humanity.<sup>75</sup> The Inter-American Convention on Forced Disappearance of Persons, adopted on June 9, 1994, states that when forced disappearance becomes systematic practice it becomes a crime against humanity. The Convention on Forced Disappearance specifies the characteristics that distinguish forced disappearance from other crimes like abduction, unlawful detention or abuse of authority. Article II reads as follows:

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<sup>71</sup> See Annex 11, Law 3326 of January 18, 2006.

<sup>72</sup> I/A Court H.R., *Blake Case*, *supra*, par. 66.

<sup>73</sup> I/A Court H.R., *Case of the 19 Merchants*, Judgment of July 5, 2004, Series C No. 109, par. 142 citing *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, paragraphs 128 and 129; *Blake Case*, Judgment of January 24, 1998, Series C No. 36, par. 65; and *Fairén Garbi and Solís Corrales Case*. Judgment of March 15, 1989. Series C No. 6, paragraphs 147 and 152.

<sup>74</sup> I/A Court H.R., *Paniagua Morales et al. Case*, Judgment of March 8, 1998, Series C No. 37, par. 90; *Fairén Garbi and Solís Corrales Case*. Judgment of March 15, 1989. Series C No. 6, par. 152; I/A Court H.R., *Godínez Cruz Case*. Judgment of January 20, 1989. Series C No. 5, paragraphs 168-191; and I/A Court H.R., *Velásquez Rodríguez Case*, Merits, Judgment of July 29, 1988, Series C No. 4, paragraphs 159-181.

<sup>75</sup> I/A Court H.R., *Case of the 19 Merchants*, *supra*, par. 142.

forced disappearance is considered to be the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.<sup>76</sup>

103. In Article I of the Inter-American Convention on Forced Disappearance of Persons, the States parties undertake the international obligation:

- b. To punish within their jurisdictions, those persons who commit or attempt to commit the crime of forced disappearance of persons and their accomplices and accessories;  
[...]
- d. To take legislative, administrative, judicial, and any other measures necessary to comply with the commitments undertaken in this Convention.<sup>77</sup>

104. While these provisions are obligations that the Bolivian State had already committed to as a State Party to the American Convention, they are relevant to the instant case because they underscore the necessity of properly criminalizing the offense, which will be examined below.

#### **B. Failure to comply with the obligations established in articles I, III and XI of the Inter-American Convention on Forced Disappearance of Persons.**

105. When it ratified the Inter-American Convention on Forced Disappearance on May 5, 1999, the Bolivian State undertook the duty set forth in Article I(a) thereof, i.e., “[n]ot to practice, permit, or tolerate the forced disappearance of persons, even in states of emergency or suspension of individual guarantees.”

106. The General Assembly of the Organization of American States has declared that “the practice of forced disappearance of persons in America is an affront to the conscience of the Hemisphere and constitutes a crime against humanity,”<sup>78</sup> describing it as “a cruel and inhuman practice that undermines the rule of law, which weakens those norms that guarantee protection against arbitrary detention and the right to personal safety and security.”

107. At the time of the events in this case, forced disappearance was not a crime under Bolivia’s domestic laws. It was not until January 18, 2006, that the forced disappearance of persons became a punishable offense under Bolivian laws, with the addition of Article 292 bis to Bolivia’s Penal Code.

108. The offense of forced disappearance is continuous and permanent inasmuch as its effects persist over time as long as the fate or the whereabouts of the

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<sup>76</sup> The Inter-American Convention on Forced Disappearance of Persons, adopted at Belém do Pará, Brazil, June 9, 1994, during the twenty-fourth regular session of the OAS General Assembly, entered into force on March 28, 1996.

<sup>77</sup> *Id.*, Article I, subparagraphs b and d.

<sup>78</sup> Resolution 666 (XIII-O/83) of the General Assembly of the Organization of American States.

victim has not been established. This means that the State is in continuous violation of its international obligations. Hence, the Inter-American Convention on Forced Disappearance of Persons applies fully to the instant case.<sup>79</sup>

109. As for the evidence required to establish a forced disappearance, in the *Bámaca Case* the Inter-American Court drew upon its own case law when it wrote that due to the nature of the phenomenon and its probative difficulties, if it has been proved that the State promotes or tolerates the practice of forced disappearance of persons, and the case of a specific person can be linked to this practice, either by circumstantial or indirect evidence or both, or by pertinent logical inference, then this specific disappearance may be considered to have been proven.<sup>80</sup>

110. The Commission will now show that in the instant case, the elements of the definition of forced disappearance set forth in the Inter-American Convention on Forced Disappearance of Persons are present with respect to the victim Renato Ticona Estrada.

111. Article II of the Inter-American Convention on Forced Disappearance of Persons embodies the concept of “forced disappearance” as developed in the jurisprudence of the Inter-American Commission and Inter-American Court of Human Rights, as follows:

For the purposes of this Convention, 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.

**1. Agents of the State participated in the abduction and forced disappearance of Bolivian citizen Renato Ticona Estrada on Bolivian soil**

112. The Commission has shown that agents of the State had a role in the detention and subsequent disappearance of Renato Ticona Estrada.

113. The statement made by his brother Hugo Ticona Estrada, an eyewitness to the events,<sup>81</sup> the voluntary deposition given by military conscript Erasmo Calvimontes Calvimontes and the information drawn from the interview conducted with former *de facto* president Luis García Meza establish that the individuals who arrested Renato Ticona at the Cala-Cala gate were Army personnel acting on orders from above.

114. Based on the statement that Hugo Ticona made to the National Commission of Enquiry into Forced Disappearances (CNIDF), the Commission considers also that the State continued to have knowledge of Renato Ticona’s unlawful abduction and his fate.

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<sup>79</sup> I/A Court H.R., *Case of Trujillo Oroza*. Reparations (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, par. 95.

<sup>80</sup> I/A Court H.R., *Bámaca Velásquez Case*, Judgment of November 25, 2000, par. 130.

<sup>81</sup> Testimony of Hugo Ticona before the La Paz District Superior Court, May 13 (year illegible).

115. In violation of Article XI of the Inter-American Convention on Forced Disappearance of Persons, Renato Ticona was not brought before a competent judicial authority without delay. Furthermore, no official up-to-date record of detainees was kept or no updated list of arrest was made available to relatives, judges, attorneys, or any other authority.

116. Second, based on the complaint that the National Commission of Enquiry into Forced Disappearances filed with the competent judicial authorities, and from the body of testimony that the National Commission assembled, the Commission concluded that Renato Ticona Estrada's detention and subsequent disappearance were attributable to the repressive policy that the State pursued during the *de facto* government of García Meza. In effect, the ruling in the trial against former *de facto* president García Meza names Renato Ticona Estrada among the victims of human rights abuses that occurred and for which the State was directly responsible. The ruling states the following:

The detentions ordered by García Meza and Arce Gómez were not simple arrests; instead, they were followed by psychological and physical intimidation. Although ordered by Luis Arce Gómez, the arrests and subsequent intimidation were carried out with the full knowledge and on orders from Luis García Meza. According to the report at 20 to 23 of Volume No. 3 of the record of the preliminary inquiry, there is evidence that many people were seized and subsequently disappeared, without any explanation being given. The following is a partial list of the disappeared, victims of a crime against humanity and a violation of human rights: Juan de Dios Aramayo Vallejos, detained in October 1980 in La Quiaca and taken to the Chichas Regiment in Tupiza; Julio Cesar Delgado Echenique, an MIR militant detained in La Paz on October 10, 1980; Gregorio Escalera Mendoza, Elías Rafael Flores, Carlos Gutiérrez Gutiérrez, Ernesto Laime Choque, Jose Luis Martinez Machicado, Raquel Pacheco Condori de Vargas, Esther Tita Manzano Coronado, Renato Enrique Ticona Estrada and others.<sup>82</sup> (underlining added)

117. Therefore, the violations were the work of agents of the Bolivian State. Under the principles of international law, the State is responsible for the acts that its agents take in their official capacity.<sup>83</sup>

**b. Absence of records or refusal to acknowledge the deprivation of liberty or to disclose the person's whereabouts**

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<sup>82</sup> See Annex 3, Supreme Court of Justice. Judgment delivered in the "trials of responsibilities" in the cases that the Public Prosecutor's Office and third parties brought against Luis García Meza and his collaborators. April 21, 1993. Sucre – Bolivia. The following excerpt from the Judgment delivered against Luis García Meza describes one of the crimes:

1.- Crimes against the Constitution.- Luis García Meza Tejada, former *de facto* President of the Republic, Luis Arce Gómez, Minister of the Interior, Immigration and Justice and the Ministers designated under Presidential Decree No. 17529 of July 18, 1980, stand accused of sedition, armed insurrection, organization of groups of armed irregulars, usurpation of the people's rights, unconstitutional and unlawful decisions, deprivation of freedom, attacks upon freedom of the press, unlawful privileges for importation of vehicles, and violation of university autonomy.

<sup>83</sup> I/A Court H.R., *Velásquez Rodríguez Case*, Merits, Judgment of July 29, 1988, par. 170.

118. In the instant case, the Commission has established that pursuing a policy that involved multiple and systematic human rights violations under the *de facto* regime of Luis García Meza, agents of the State arrested Renato Ticona and his brother on a public thoroughfare more than 25 years ago; Renato Ticona Estrada has not been seen since. It has also been established that since Renato Ticona Estrada's arrest, State authorities have not given his next of kin any information as to his whereabouts, despite the repeated efforts they have made to find him.

119. When the National Commission filed a complaint with the Public Prosecutor's Office on April 7, 1983, it included the testimony of relatives and of persons who were present when the crimes occurred. It also attached the many notes that relatives of the Ticona brothers had sent to various State agencies and institutions, none of which was ever answered.<sup>84</sup>

**c. Absence of inquiries to establish the whereabouts of Renato Ticona or to find his mortal remains, and impunity in the investigations.**

120. As will be described in the section on the violations of articles 8 and 25 of the American Convention, at no phase during the criminal case were the investigations necessary to establish the facts carried out; in other words, there was no reconstruction of the events, no on-sight inspection and no search for the body of Renato Ticona. Key witnesses, who might have helped clarify the various versions circulating about Renato Ticona's whereabouts and the search for his body, were never called to testify.

121. As for impunity and the State's duty to investigate, the Inter-American Court defined impunity as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention."<sup>85</sup> It also wrote that "the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives."<sup>86</sup>

122. The Commission is therefore requesting the Court to adjudge and declare that by the forced disappearance of Renato Ticona Estrada, the Bolivian State violated articles I, III and XI of the Inter-American Convention on Forced Disappearance of Persons, and the rights embodied in the following articles of the American Convention on Human Rights.

**C. Violation of Article 7 of the American Convention (Right to Personal Liberty) in relation to Article 1(1) thereof**

123. In Article 7, the American Convention provides the guarantees necessary to protect personal liberty. The relevant parts of that article read as follows:

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<sup>84</sup> See Annex 2, complaint that the National Commission of Enquiry into Forced Disappearances filed with the Public Prosecutor's Office, April 7, 1983.

<sup>85</sup> See in this regard, I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 148; I/A Court H.R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, par. 175; I/A Court H.R., *Case of Bámaca Velásquez*. Reparations (Art. 63(1) American Convention on Human Rights), Judgment of February 22, 2002. Series C No. 91, par. 64.

<sup>86</sup> I/A Court H.R., *Loayza Tamayo Case*, Reparations, Judgment of November 27, 1998, Series C, No. 42, paragraphs 169 and 170.

1. Every person has the right to personal liberty and security.
2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.
3. No one shall be subject to arbitrary arrest or imprisonment.
4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.
5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.
6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

[...]

124. The violation of the right to personal liberty is the first of the many violations of the Convention that the forced disappearance of Renato Ticona Estrada involved. A detention is unlawful when done for causes or by procedures not prescribed by a State's law or constitution.<sup>87</sup> Thus, detentions must only be made for the causes and by the methods established by existing law and must not be protracted beyond or exceed the time period within which detained persons are to be brought before a judge. Detained persons are to be held in places intended for that purpose, and shall have all the guarantees necessary to ensure respect for their lives and the integrity of their person. Incarceration for causes or by methods other than those prescribed by law is, *per*

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<sup>87</sup> The Constitution of Bolivia in force at the time of the events in this case included the following articles under its TITLE TWO:

THE INDIVIDUAL'S GUARANTEES

**Art. 9.** The individual's guarantees

No one shall be detained, arrested or imprisoned except for the causes and by the procedures prescribed by law. The respective order must be in writing and issued by the competent authority.

*Incommunicado* detention may only be imposed in the most egregious cases and not for more than 24 hours.

**Art. 10.** Offenses committed "*in flagrante*"

Any person caught "*in flagrante*" may be taken into custody, even in the absence of a warrant; the only requirement is that a person thus apprehended shall be brought before the competent authority or judge, who shall take the person's statement within 24 hours.

se, a form of punishment without trial, which is a violation of one's right to a fair trial. As the Inter-American Court has held, "[t]he kidnapping of a person is an arbitrary deprivation of liberty, an infringement of a detainee's right to be taken without delay before a judge and to invoke the appropriate procedures to review the legality of the arrest, all in violation of Article 7 of the Convention which recognizes the right to personal liberty ..."<sup>88</sup>

125. The Commission has shown that Renato Ticona Estrada was detained in the wake of a coup d'état, amid a climate of political violence that produced multiple violations of human rights that were also violations of the Constitution in effect at the time the events occurred,<sup>89</sup> and violations of the procedures and basic requirements set forth in Article 7 of the American Convention. His arrest on July 22, 1980, in the city of Oruro, was done without a court order issued by a competent authority, spelling out the reasons for the arrest. Nor was he arrested in the commission of a crime. Agents of the State arrested Renato Ticona because they identified him and his brother as opponents of the *de facto* government.

126. The record has established that neither the military nor the SES police kept a public record of the particulars of those arrested, the place, time, circumstances and arresting officers, much less the complete data on the officials who had final custody of the victim Renato Ticona Estrada and who decided his final fate.

127. It has also been established that Renato Ticona was never brought before a judge or any other competent authority. Citing its own case law and that of the European Court of Human Rights, the Inter-American Court has written the following with regard to the guarantee of judicial control:

Both the Inter-American Court and the European Court of Human Rights<sup>90</sup> have attached special importance to judicial control of detentions so as to prevent arbitrariness and illegality. An individual who has been deprived of his liberty with no judicial control, as occurs in some cases of extra-legal executions, must be released or immediately brought before a judge, because the essential content of Article 7 of the Convention is protection of the liberty of the individual against interference by the State. The European Court of Human Rights has affirmed that while the term "immediately" must be interpreted according to the special characteristics of each case, no circumstance, however grave, grants the authorities the power to unduly prolong the detention period without affecting

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<sup>88</sup> I/A Court H.R., *Velásquez Rodríguez Case*, par. 155.

<sup>89</sup> Constitution (1967) TITLE TWO: THE INDIVIDUAL'S GUARANTEES

Art. 11. Restrictions as regards imprisonment

Those in charge of detention facilities and prisons shall not take custody of any detainee, person under arrest or prisoner without entering the corresponding order into their records. They may, however, keep within the confines of the facility those persons who are slated to be brought before the competent judge within the next 24 hours.

<sup>90</sup> Eur. Court HR, *Aksoy v. Turkey*, Judgment of 18 December 1996, Reports of Judgments and Decisions 1996-VI, par. 76; and Eur. Court H.R., *Brogan and Others*, Judgment of 29 November 1988, Series A No. 145-B, par. 58, cited by the I/A Court H.R. in the *Case of Juan Humberto Sánchez vs. Honduras*, *op. cit.*, par. 84.

Article 5(3) of the European Convention.<sup>91</sup> Said Court emphasized “that detention, not recognized by the State, of a person constitutes a complete denial of said guarantees and one of the most serious forms of violation of Article 5.”<sup>92</sup>

128. Based on the above considerations, the Commission is asking the Court to adjudge and declare that the Bolivian State is responsible for violation of Renato Ticona Estrada’s rights to personal liberty and humane treatment, by having subjected him to an unlawful and arbitrary arrest, without any form of judicial control; he was denied access to a competent judge or court for a hearing and for a determination of the lawfulness of his arrest, as required under Article 7 of the American Convention on Human Rights, in relation to Article 1(1) thereof.

**D. Violation of Article 5 of the American Convention (Right to Humane Treatment) in relation to Article 1(1) thereof.**

129. Article 5 of the American Convention provides that:

1. Every person has the right to have his physical, mental, and moral integrity respected.
2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

[...]

130. The case law of the Inter-American Court is that in cases of forced disappearance, the right to humane treatment is violated both with respect to the disappeared victim, in this case Renato Ticona Estrada, and with respect to his next of kin.<sup>93</sup>

**1. With respect to Renato Ticona Estrada:**

131. It has been established that Renato Ticona Estrada was subjected to torture and cruel and inhuman treatment at the time of his arrest, in violation of the domestic laws in force in Bolivia at the time<sup>94</sup> and the standards established in Article 5 of the American Convention.

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<sup>91</sup> Eur. Court HR, *Brogan and Others*, Judgment of 29 November 1988, Series A No. 145-B, par. 58-59, 61-62, en I/A Court H.R., *Bámaca Velásquez Case*, par. 140; *Castillo Petruzzi et al. Case*, par. 108; and *Case of Juan Humberto Sánchez*, par. 84.

<sup>92</sup> Eur. Court HR, *Kurt v. Turkey* judgment of 25 May 1998, Reports of Judgments and Decisions 1998 III, par. 124, en I/A Court H.R., *Bámaca Velásquez Case*, par. 140; *Villagrán Morales et al. Case*, par. 135; and *Case of Juan Humberto Sánchez*, par. 84.

<sup>93</sup> See I/A Court H.R., *Bámaca Velásquez Case*, par. 160. In a number of cases, the Court has held that the next of kin of victims of human rights violations may, in turn, become victims. Cf. I/A Court H.R., *Case of Juan Humberto Sánchez*, *supra*, par. 101 citing, *inter alia*, the *Cantoral Benavides Case*, *supra*, par. 105 and the *Castillo Páez Case*, Reparations (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43, par. 59.

<sup>94</sup> CONSTITUTION OF THE REPUBLIC OF BOLIVIA, enacted February 2, 1967, TITLE TWO, GUARANTEES OF THE INDIVIDUAL, Art. 12. Article 12 of that Constitution read as follows:

Article 12. Prohibition of torture



132. Hugo Ticona told the National Commission of Enquiry into Forced Disappearances that after he and his brother were unlawfully and arbitrarily detained by an Army patrol, which beat them until his brother Renato lost consciousness:

When they noticed that my answers were evasive and that my brother said nothing at all --being a teacher, he had no knowledge of any political activities-- they became even more violent, beating my brother even harder until he lost consciousness. In the meantime, Lieutenant Veizaga Vargas, believing that I had information, tried to force it out of me by beating and torturing me. Other soldiers joined in. However, when they realized that we were in very serious condition as a result of the beating, they turned us over to Colonel Roberto Melean and other soldiers to take us to Vinto. They boarded us onto an Army truck. Although they did allow us anywhere near each other, I could see that my brother was unable to move [...] <sup>95</sup>

133. It has been established that from the time of his arrest, Renato Ticona was tortured and subjected to cruel and inhuman treatment and that as a result of the beating he sustained, he lost consciousness and presumably died. No one knows for certain what happened to Renato Ticona once he was handed over to the SES. However, the fact is that while in the custody of agents of the State, Renato Ticona suffered inhuman treatment, having been subjected to long hours of torture and other forms of cruel, inhuman and degrading treatment, all in violation of the right to physical integrity protected under Article 5 of the Convention.

134. The testimony in the case file reveals that torture was practiced in the institution in which Renato Ticona was last seen and that the treatment of the prisoners there was inhuman and degrading.

135. As for victims of forced disappearance, such as Renato Ticona, the Court has written that:

[...] investigations into the practice of disappearances and the testimony of victims who have regained their liberty show that those who are disappeared are often subjected to merciless treatment, including all types of indignities, torture and other cruel, inhuman and degrading treatment, in violation of the right to physical integrity recognized in Article 5 of the Convention.

The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. <sup>96</sup>

136. The Commission is therefore requesting the Court to adjudge and declare that the Bolivian State has violated Article 5 of the Convention, by its failure to respect

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Any form of torture, coercion, extortion or any form of physical or mental violence is prohibited. The penalty shall be immediate removal, without prejudice to the applicable penalties for those who employ, order, instigate or consent to these practices.

<sup>95</sup> See also the voluntary testimony that Néstor Céspedes Beltrán gave before the National Commission of Enquiry into Forced Disappearances, wherein he states that he had knowledge of the Ticona brothers' arrest.

<sup>96</sup> I/A Court H.R., *Velásquez Rodríguez Case*, Judgment of July 29, 1988, Series C, No. 4, paragraphs 156 and 157.

Renato Ticona Estrada's physical, mental and moral integrity and by its failure to treat him with respect for the inherent dignity of the human person.<sup>97</sup>

137. The Bolivian State's international responsibility has been engaged by its failure to conduct a serious investigation of the violations alleged. The Inter-American Court has held that in light of the general obligation of the States party to respect and ensure the rights of all persons under their jurisdiction, contained in Article 1(1) of the American Convention, the State has the duty to immediately and ex officio undertake an effective investigation to identify, try, and punish those responsible, when there is a complaint or there are grounds to believe that an act of torture has been committed in violation of Article 5 of the American Convention.<sup>98</sup> The procedures taken were ineffective and ineffectual in proving the torture and cruel and inhuman treatment to which Hugo and Renato Ticona were subjected for the duration of their time in custody. In the section devoted to articles 8 and 25 of the American Convention, the Commission will submit its observations regarding the deficiencies in the criminal proceedings on the case.

## **2. With respect to Renato Ticona Estrada's next of kin**

138. The rights protected under Article 5 of the American Convention were also violated with respect to Renato Ticona Estrada's next of kin: his parents and his siblings. The Inter-American Court has held that "the violation of [the] relatives' mental and moral integrity is a direct consequence of [the victim's] forced disappearance. The circumstances of such disappearances generate suffering and anguish, in addition to a sense of insecurity, frustration and impotence in the face of the public authorities' failure to investigate."<sup>99</sup>

139. When the authorities were asked for information regarding Renato Ticona, the officials flatly denied having any knowledge of the facts and declined to provide the information that they obviously had in their possession. State authorities circulated various versions of Renato Ticona's fate, generating greater confusion, expectations and desperation among his next of kin. This situation in itself left Renato Ticona Estrada's next of kin defenseless, in violation of their mental and moral integrity. They suffered because of the ineffectiveness of the State institutions and the deliberate delay on the part of State agents calculated to confuse them and conceal, hide or postpone disclosure of any definitive information.

140. The suffering that the next of kin experienced as a result of Renato Ticona's arrest and subsequent disappearance and the sense of powerlessness and anguish they endured during the years of inactivity on the part of State officials to investigate the facts and punish those responsible, despite repeated requests and complaints to the authorities over a period of 25 years, are the reasons why the next of kin should be considered victims of cruel, inhuman and degrading treatment.<sup>100</sup> In the

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<sup>97</sup> Testimony that Hugo Ticona gave before the National Commission of Enquiry into Forced Disappearances.

<sup>98</sup> I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, par. 159.

<sup>99</sup> I/A Court H.R., *Blake Case*, Judgment of January 24, 1998, par. 114.

<sup>100</sup> I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 101; See also I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 118.

testimony given to the National Commission of Enquiry into Forced Disappearances, Renato Ticona's next of kin stated that the pain has been unrelenting since they have had no information as to the whereabouts of their son and/or brother. And this is due to the fact that thus far the Bolivian justice system has not prosecuted anyone, even though it knows who the responsible parties are.<sup>101</sup> The Court has written that it is reasonable to conclude that the afflictions that the victim suffered extend to the closest members of the victim's family, particularly those who had close affective contact with the victim.<sup>102</sup>

141. Based on the above considerations, the Commission concluded that the Bolivian State violated Article 5 of the American Convention, in relation to Article 1(1) thereof, to the detriment of Renato Ticona Estrada, his parents César Ticona Olivares and Honoria Estrada de Ticona, and his siblings Hugo, Rodo and Betzy Ticona Estrada.

#### **E. Violation of Article 4 of the American Convention (Right to Life) in relation to Article 1(1) thereof**

142. Article 4(1) of the American Convention on Human Rights provides that:

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

[...]

143. The Court has written that

[...] the right to life plays a fundamental role in the American Convention because it is a prior condition for realization of the other rights.<sup>103</sup> When the right to life is not respected, all the other rights lack meaning. The States have the obligation to ensure the creation of such conditions as may be required to avoid violations to this inalienable right and, specifically, the duty of avoiding attempts against it by the agents of the State.<sup>104</sup> Compliance with Article 4 of the American

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<sup>101</sup> See Report of the Public Hearing before the Examining Magistrate of the La Paz District Superior Court, May 13, 2005, which contains the statement made by María Honoria Ticona Olivares, mother of Renato Ticona. She said the following: "Emotionally, I suffer greatly to this day. I weep. I see his picture and begin to cry. I have spent more than I have. I had to build a little room. I spent all my money and I'm still in debt. They made me walk to the Mayor's Office. They've made me walk for everything. I went to the ministry of foreign affairs. They never gave me any information. I've spent a great deal of money, and I continue making inquiries." See also the Report of the Public Hearing held before the Examining Magistrate of the La Paz District Superior Court, May 13, 2005, which contains the statement made by Rodo Ticona, brother of Renato and Hugo Ticona. He states the following: "We have been very depressed since this happened. We want to find his body now and cannot rest until we know the truth."

<sup>102</sup> I/A Court H.R., *Case of Tibi*. Judgment of September 7, 2004. Series C No. 114, par. 160; I/A Court H.R. *Case of the Juvenile Reeducation Institute*. Judgment of September 2, 2004. Series C No. 112, par. 191; I/A Court H.R., *Case of the "19 Merchants"*. Judgment of July 5, 2004. Series C No. 109, par. 249; I/A Court H.R., *Case of Maritza Urrutia*. Judgment of November 27, 2003. Series C No. 103, par. 162; I/A Court H.R., *Case of Bulacio*. Judgment of September 18, 2003. Series C No. 100, par. 98.

<sup>103</sup> I/A Court H.R., *Case of the 19 Merchants*, *supra*, par. 153 citing *Myrna Mack Chang Case*, *supra*, par. 152; *Case of Juan Humberto Sánchez*, *supra*, par. 110; and *The "Street Children" Case (Villagrán Morales et al.)*, *supra*, par. 144.

<sup>104</sup> I/A Court H.R., *Case of the 19 Merchants*, *supra*, par. 153 citing *United Nations Human Rights Committee*, General Comment 6/1982, par 3 in *Compilation of General Recommendations Adopted by Human Rights Treaty Bodies*, U.N.Doc.HRI/GEN/1/Rev 1 at 6 (1994); *United Nations Human Rights*

Convention, in combination with Article 1(1) of that same Convention, requires not only that no person be arbitrarily deprived of his or her life (negative obligation), but also that the States adopt all appropriate measures to protect and preserve the right to life (positive obligation),<sup>105</sup> under their duty to ensure full and free exercise of the rights by all persons under their jurisdiction.<sup>106</sup> This active protection of the right to life by the State involves not only its legislators, but all State institutions, and those who must protect security, be these its police forces or its armed forces.<sup>107</sup> Therefore, the States must adopt all necessary measures, not only to prevent, try, and punish deprivation of life as a consequence of criminal acts, in general, but also to prevent arbitrary executions by its own security agents.<sup>108</sup>

144. The Inter-American Court has written that “The practice of disappearances often involves secret execution without trial, followed by concealment of the body to eliminate any material evidence of the crime and to ensure the impunity of those responsible. This is a flagrant violation of the right to life, recognized in Article 4 of the Convention...”<sup>109</sup>

145. The Court has also held that the fact that a person has been disappeared for some years, amid a context of violence, creates a presumption that the person was killed.<sup>110</sup> Therefore, in the case *sub lite*, the Commission has sufficient evidence to conclude that Renato Ticona Estrada died at the hands of agents of the Bolivian State.<sup>111</sup> Although more than twenty-five years have past, his whereabouts are still unknown and his remains have not been discovered. As long as the State had Renato

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*Committee*, General Comment 14/1984, par 1 in Compilation of General Recommendations Adopted by Human Rights Treaty Bodies, U.N.Doc.HRI/GEN/1/Rev 1 at 18 (1994); Cf. *Myrna Mack Chang Case*, *supra*, par. 152; *Case of Juan Humberto Sánchez*, *supra*, par. 110; and *The “Street Children” Case (Villagrán Morales et al.)*, *supra*, par. 144.

<sup>105</sup> I/A Court H.R., *Case of the 19 Merchants*, *supra*, par. 153 citing *Myrna Mack Chang*, *supra*, par. 153; *Bulacio Case*, *supra*, par. 111; and *Case of Juan Humberto Sánchez*, *supra*, par. 110.

<sup>106</sup> *Id.*

<sup>107</sup> I/A Court H.R., *Case of the 19 Merchants*, *supra*, par. 153, citing U.N.Doc.CCPR/C/SR.443, par. 55.

<sup>108</sup> I/A Court H.R., *Case of the 19 Merchants*, *supra*, par. 153 citing *Case of Myrna Mack Chang*, *supra*, par. 153; *Case of Juan Humberto Sánchez*, *supra*, par. 110; *Bámaca Velásquez Case*, *supra*, par. 172; United Nations Human Rights Committee, *General Comment No. 6 (Sixteenth session, 1982)*, par. 3, *supra*; and United Nations Human Rights Committee, *María Fanny Suárez de Guerrero v. Colombia*. Communication No. R.11/45 (February 5, 1979), U.N.Doc. Supp. No. 40 (A/37/40) at 137 (1982), p. 137.

<sup>109</sup> I/A Court H.R., *Del Caracazo Case*, Judgment of November 11, 1999. Series C No. 58. par. 50(a); Velásquez Rodríguez, Judgment of July 29, 1988, par. 157.

<sup>110</sup> *Ibid.* par. 188.

<sup>111</sup> According to the Commission's case records, Renato Ticona's next of kin were allegedly told various versions of what happened subsequent to July 23, 1980: according to one version, his body was taken back to the Vinto Barracks and at dawn on July 24, eight officers buried the body somewhere in the area. A second version is that Renato died at the SES in Oruro, after which his body was taken to La Paz in a pick-up truck belonging to the Departmental Government. A third version, told to Renato's mother, is that he had been paralyzed and was taken to Military Headquarters in La Paz, given the number 358. In a conversation with the mother, a ministry official, surname Rico Toro, confirmed this version. However, this same Ministry official also promised that Renato would be handed over, which never happened. A fourth version is that Renato was moved to a security facility in the eastern sector of the country. Yet a fifth version, this one from the former *de facto* President Luis García Meza, is that the Ticona Estrada brothers were arrested and that Renato was buried by Jaime Solares. There were also rumors that Renato Ticona had been treated at the URME clinic.

Ticona Estrada in its custody, it had an obligation to ensure his right to life and his right to humane treatment. The Inter-American Court has developed case law in this respect:

[...] although the State has the right and obligation to guarantee its security and maintain public order, its powers are not unlimited, because it has the obligation, at all times, to apply procedures that are in accordance with the law and to respect the fundamental rights of each individual in its jurisdiction. As guarantor of this right, the State must prevent those situations that might lead, by action or omission, to suppression of inviolability of the right to life. In this regard, if a person was detained in good health conditions and subsequently died, the State has the obligation to provide a satisfactory and convincing explanation of what happened and to disprove accusations regarding its responsibility, through valid evidence, because in its role as guarantor the State has the responsibility both of ensuring the rights of the individual under its custody and of providing information and evidence pertaining to what happened to the detainee.<sup>112</sup>

146. On July 22, 1980, Renato Ticona Estrada was in good health, walking with his brother Hugo on a public thoroughfare, when he was unlawfully and arbitrarily detained by military personnel who beat and tortured him until he either lost consciousness or died. Rather than bring the detainee before a competent judge or hand him over to the Public Prosecutor's Office, these military troops took him to the SES. The appeals from the parents of Renato Ticona Estrada fell on deaf ears as neither the military, the SES police nor any other authority in the executive branch provided them with information as to their loved one's whereabouts. Renato Ticona Estrada has not been seen since.

147. The State has not provided a satisfactory and convincing explanation of what happened nor has it disproved, through valid means of evidence, the allegations as to its responsibility in the matter.

148. Furthermore, the Court has written that compliance with the obligations imposed under "Article 4 of the American Convention, in conjunction with Article 1(1) of this same Convention, not only requires that a person not be deprived arbitrarily of his or her life (negative obligation) but also that the States adopt all the appropriate measures to protect and preserve the right to life (positive obligation) as part of their duty to ensure full and free exercise of the rights of all persons under their jurisdiction. This active protection of the right to life on the part of the State does not involve only legislators, but all State institutions and those who must protect security, whether they are police or armed forces of the State."<sup>113</sup> In the words of the Court:

States must adopt the necessary measures, not only at the legislative, administrative and judicial level, by issuing penal norms and establishing a system of justice to prevent, eliminate and punish the deprivation of life as a result of criminal acts, but also to prevent and protect individuals from the criminal acts of other individuals and to investigate these situations effectively.<sup>114</sup>

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<sup>112</sup> I/A Court H.R., *Durand and Ugarte Case*, par. 65; *Cantoral Benavides Case*, par 55; *Bámaca Velásquez Case*, paragraphs 152-153. The European Court of Human Rights has also developed an extensive body of jurisprudence on this subject: Eur. Court H.R., *Aksoy v. Turkey*, par. 61; Eur. Court H.R., *Ribitish v. Austria*, par. 34, and Eur. Court H.R., *Case of Tomasi v. France*, paragraphs 108-111. Cited by the I/A Court H.R., *Case of Juan Humberto Sánchez*, op. cit., par. 111.

<sup>113</sup> I/A Court H.R., *Case of the "Mapiripán Massacre."* Judgment of September 15, 2005. Series C No. 134, par. 232.

<sup>114</sup> I/A Court H.R., *Case of the Massacre of Pueblo Bello.* Judgment of January 31, 2006. Series C No. 140, par. 120.

149. In the instant case, the Commission finds that the State has failed to fulfill its obligation to ensure the right to life by means of a serious, diligent and impartial investigation. Although the State instituted a criminal case, the latter has been flawed by irregularities and delays and has been ineffective.

150. In the proceedings on the case in the Commission, the State asserted that it had acted with due diligence since the criminal inquiry was reopened in March 2005. However, although the case was reopened after lying dormant for 19 years –it is important to note that the last activity on the case had been in 1986- there is no evidence in the case file to suggest that any of the prosecutors with the Public Prosecutor’s Office who were in charge of the investigation, or any of the judges who presided over the case, were summoned to explain the procedural delay or were punished or disciplined for their conduct. Nor is there any evidence in the case file to suggest that each and every member of the military or police who might have had contact with the victim at the time of the events was summoned to make a statement. The criminal case is still in the final stage of the preliminaries.<sup>115</sup>

151. The State’s obligation to protect the right to life, when examined in combination with its obligation under Article 1(1) to respect and ensure the rights recognized in the American Convention, necessarily requires that “an investigation [...] be carried out by all available legal means with the aim of determining the truth and the investigation, pursuit, capture, prosecution and punishment of the masterminds and perpetrators of the facts, particularly when State agents are or may be involved.”<sup>116</sup> The Bolivian State has not undertaken that process of investigation, punishment and reparation in a serious and exhaustive manner, and has thus incurred international responsibility.

152. Based on the above, the Commission is requesting that the Court adjudge and declare that the Bolivian State failed to comply with its obligation to respect and ensure the right to life, to the detriment of the disappeared Renato Ticona Estrada, whose disappearance is attributable to agents of the Bolivian State. Bolivia has also failed to properly investigate the identity of the material and intellectual authors of Renato Ticona’s forced disappearance, has not brought them to trial and has not punished them. It has also been established that the State’s own authorities have engaged in obstruction of justice in the instant case. Bolivia thus violated Article 4 of the American Convention, in combination with Article 1(1) thereof.<sup>117</sup>

**F. Violation of Article 3 (Right to Juridical Personality) of the American Convention, in relation to Article 1(1) thereof**

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<sup>115</sup> The jurisprudence of the Inter-American Court has held, for example, that “Any omission or defect in the investigation that makes it less effective in establishing the cause of death or identifying the material or intellectual authors of the crime, shall imply a failure to comply with the obligation to protect the right to life.” I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006. Series C No. 147, par. 97.

<sup>116</sup> I/A Court H.R., *Case of Baldeón García*. Judgment of April 6, 2006, Series C No. 147, par. 94; *Case of the Massacre of Pueblo Bello*. Judgment of January 31, 2006, Series C No. 140, par. 143.

<sup>117</sup> I/A Court H.R., *Myrna Mack Chang Case*. Judgment of November 25, 2003. Series C No. 101, par. 273; I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 132.

153. Article 3 of the American Convention provides that every person has the right to recognition as a person before the law, a fundamental prerequisite for the enjoyment of all other basic freedoms, as it gives every individual standing before the law. The right to recognition as a person before the law has several dimensions: the capacity to exercise and enjoy rights; to undertake obligations and to bring legal action. In the *travaux préparatoires* of the Universal Declaration of Human Rights (hereinafter the “Universal Declaration”) it was established that this right guarantees “to every human being the right to exercise rights, to enter into contractual obligations, and to be represented in actions at law.”<sup>118</sup> One commentator writes that the phrase *personalité juridique* “covers those fundamental rights relating to the ‘legal capacity’ (legal status) of a person, which are not explicitly mentioned in the subsequent articles of the Declaration.”<sup>119</sup> During the drafting and adoption of the American Convention on Human Rights, one of the delegates observed that implicit in the right to juridical personality is the principle that every human being must be recognized as a person before the law by the various States in which that person functions, moves and lives.<sup>120</sup>

154. Article 3 of the Convention upholds the principle that the individual must be recognized as endowed with juridical personality merely by virtue of being a human person. The Inter-American Court has written that “every human person is endowed with juridical personality, which imposes limits to State power. The juridical capacity varies in virtue of the juridical condition of each one to undertake certain acts. Yet, although such capacity of exercise varies, all individuals are endowed with juridical personality. Human rights reinforce the universal attribute of the human person, given that to all human beings correspond likewise the juridical personality and the protection of the Law, independently of her existential or juridical condition.”<sup>121</sup>

155. The Commission is mindful that in the *Bámaca Velásquez Case*, the Inter-American Court ruled that the Inter-American Convention on Forced Disappearance of Persons does not list juridical personality as among the elements that typify the complex crime of forced disappearance of persons and that “consequently, in these circumstances, it is not in order to invoke an alleged violation of the right to juridical personality or other rights embodied in the American Convention.”<sup>122</sup>

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<sup>118</sup> Cited in Richard B. Lillich, “Civil Rights”, in Theodor Meron, *Human Rights in International Law: Legal and Policy Issues*, Clarendon Press Oxford, 1988, p. 131.

<sup>119</sup> *Ibid.*

<sup>120</sup> General Secretariat of the Organization of American States, Inter-American Specialized Conference on Human Rights, *Actas y Documentos*. OEA/Ser.K/XVI/1.2. San Jose, Costa Rica, November 2-22, 1969, pp. 157-158

<sup>121</sup> I/A Court H.R. Advisory Opinion OC-17/ 2002. *Juridical Condition and Human Rights of the Child*. Equality. Part III, par. 34.

<sup>122</sup> I/A Court H.R., *Bámaca Velásquez Case*. Judgment of November 25, 2000. Series C No. 70, paragraphs 180 and 181. In its Judgment of January 26, 2000, involving a case in which the State had acknowledged the facts, the Inter-American Court held that the State had violated Article 3 of the American Convention in the forced disappearance of José Carlos Trujillo Oroza. It wrote that:

the Court considers that [...], as the State expressly acknowledged, it incurred international responsibility for violating the rights protected by Articles 3 (Right to Juridical Personality), 4 (Right to Life), 5.1 and 5.2 (Right to Humane Treatment), 7 (Right to Personal Liberty), 8.1 (Right to a Fair Trial) and 25 (Right to Judicial Protection), in relation with Article 1.1 (Obligation to Respect Rights) of the Convention, to the detriment of the

156. The Commission understands that the individual's juridical personality is extinguished upon death, since the individual can no longer be a bearer of rights and duties. However, it would contend that juridical personality cannot be extinguished in a case of forced disappearance since there is no way to determine whether the victim of the forced disappearance is alive or dead.

157. The Commission believes that the nexus between forced disappearance and violation of the right to juridical personality is that forced disappearance is intended to deny the individual the protection to which he or she has a rightful claim; those who practice forced disappearance are acting outside the boundaries of the law and beyond the rule of law, concealing any evidence of the crime and trying to evade punishment. Their clear intent is to eliminate any possibility that the person might bring some legal action to assert his or her rights.

158. As a violation of multiple rights, forced disappearance seeks to and achieves the extinguishment of the victim's juridical personality. Forced disappearance says: "You don't exist, you are no longer among the living or the dead; in the eyes of the world, the disappeared person has vanished, and the world has vanished from the eyes of the disappeared."<sup>123</sup> One characteristic of the phenomenon of forced disappearance is that the final fate of the victim is unknown, although the presumption is that the person was executed and his body concealed.

159. From the information it has gathered, the Commission has learned that a variety of methods are used to eliminate the detainee-disappeared. Similarly, various methods have been used to dispose of the remains: clandestine burial; graves marked with "N.N." (no name) in cemeteries; tying weights onto victims' bodies so that they sink to the bottom of a lake or river, or dumping them into the sea from airplanes and helicopters, etc. In all cases, the purpose is to prevent discovery of the remains or, failing that, to make a positive identification impossible. This aspect differentiates forced disappearance of persons from another equally tragic form of human rights violation, which is extrajudicial execution.<sup>124</sup> So long as the victim's whereabouts or the circumstances of his death cannot be determined, the victim must be regarded as "detainee-disappeared," even though the length of time that has passed or the similarity to other cases in the same country may make the victim's death a reasonable presumption. Hence, one of the distinctive features of forced disappearance is that each individual case is part of a deliberate, conscious policy aimed at keeping the detained person out of the institutionalized system and the justice system.<sup>125</sup>

160. The violation of the right to recognition of juridical personality that the phenomenon of forced disappearance involves is such that various States in the region have had to enact specific legislation that distinguishes this phenomenon from extrajudicial execution. The State obstructs the exercise of the rights and obligations of living persons when it denies any knowledge of their whereabouts or fate. For example,

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persons mentioned in paragraph 1 of this judgment, and as set forth in that paragraph. I/A Court H.R., *Trujillo Oroza Case*. Judgment of January 26, 2000. Series C No. 64, par.41.

<sup>123</sup> Kordon, Diana; Edelman, Lucila. Psychological effects of political repression (*Efectos psicológicos de la represión política*). Buenos Aires, Editorial Sudamericana-Planeta, 1988, p. 94.

<sup>124</sup> Inter-American Commission on Human Rights Annual Report 1986-87 Chapter V: II. INTER-AMERICAN CONVENTION ON FORCED DISAPPEARANCE OF PERSONS.

<sup>125</sup> *Idem*.



in the case of the detained-disappeared who are still alive, the State denies them their right to be brought before a judge promptly after being detained; in the case of persons detained-disappeared who have been executed, the consequential rights of the deceased' next of kin, such as inheritance rights, are also obstructed by the legal limbo in which the detained-disappeared is left.

161. As a result, States have had to resort to legal fictions to cope with the effects of past forced disappearances. In a number of countries where forced disappearance was a deliberate, lawless practice of *de facto* governments, the emerging democracies found themselves facing demands from the disappeared' next of kin to produce their loved ones alive and a reluctance to acknowledge that the disappeared were deceased. These emerging democracies determined that their civil codes would have to be amended or specific laws enacted to make special provision for the case of forced disappearance. Thus, for example, the inheritance procedure cannot begin until the State has taken all the measures necessary to establish the whereabouts of the disappeared, provided their disappearance is on record with the commissions investigating forced disappearances, and then only when the next of kin of the disappeared have expressly requested that their loved one be declared dead.<sup>126</sup> Until States adopt legislation of this kind, a disappeared person does not have juridical personality.

162. In the present case, the objective of those who perpetrated Renato Ticona's forced disappearance was to commit an act outside the boundaries of the law, conceal all evidence of their crimes and evade any punishment. The Commission understands that for as long as he remained disappeared, the perpetrators sought to create a "legal limbo" by the State's refusal to acknowledge that Renato Ticona Estrada was in its custody and by providing conflicting information as to his whereabouts. They deliberately made it impossible for the victim to exercise his rights and kept the next of kin in an information vacuum as to his whereabouts or situation. For Renato Ticona Estrada, his forced disappearance denied him the exercise of all the rights inherent in the human person: he was wrenched from the protection of the law by denying him his right to be recognized as a person before the law.<sup>127</sup>

163. In making its case that Renato Ticona Estrada's forced disappearance violated his right to juridical personality, the Commission draws on other international instruments as well. The Declaration on the Protection of All Persons from Enforced Disappearance, which the United Nations General Assembly adopted in 1992, states that "Any act of enforced disappearance places the persons subjected thereto outside the protection of the law [...] It constitutes a violation of the rules of international law guaranteeing, *inter alia*, the right to recognition as a person before the law, [...]"<sup>128</sup>.

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<sup>126</sup> See, Law 24321 Regulation of the Absence of Persons Owing to Forced Disappearance, Buenos Aires, Argentina, May 11, 1994; Amendment of the Civil Code for Legal Recognition of Detainees-Disappeared, Civil Code. Book One: On the Persons, TITLE 8: On Persons Absent and Presumed Dead; and Law No. 17,894, Persons Whose Forced Disappearance Was Confirmed, in Annex 3.1 of the Final Report of the Commission for Peace: Declaration of Absence. Eastern Republic of Uruguay, September 14, 2005.

<sup>127</sup> See IACHR, Report 11/98 (Case 10,606 – Guatemala), par. 57; Report 55/99 (Cases 10,815, 10,905, 10,981, 10,995, 11,042, 11,136 – Peru), par. 111; Report 56/98 (Cases 10,824, 11,044, 11,124, 11,125, 11,175 – Peru), par. 110; Report 3/98 (Case 11,221 – Colombia), par. 64; Report 30/96 (Case 10,897 – Guatemala).

<sup>128</sup> Declaration on the Protection of All Persons from Enforced Disappearance, United Nations General Assembly resolution 47/133, 18 December 1992, Article 1(2).

164. The right to recognition of juridical personality is the foundation of the notion of person before the law, and determines the individual's "effective existence" vis-à-vis society and the State, a being with rights and obligations, the ability to exercise his or her rights and to be represented in actions at law.

165. For all the foregoing reasons, the Commission requests the Court to adjudge and declare that Bolivia violated Renato Ticona Estrada's right to juridical personality, protected under Article 3 of the American Convention.

**G. Violation of Article 8 (Right to a Fair Trial) and Article 25 (Right to Judicial Protection) of the American Convention, in relation to Article 1(1) thereof**

166. Article 8(1) of the Convention provides that:

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

[...]

167. Article 25(1) of the American Convention reads as follows:

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

[...]

168. Article 8 of the American Convention establishes the procedural requirements that are to be observed in the various phases of the proceedings in order to be able to speak of effective and appropriate judicial guarantees under the Convention.<sup>129</sup> That article enunciates various rights and guarantees which stem from the same common value or legally protected right and that, taken together, make up a single right not specifically defined, but whose unmistakable purpose is, in the end, to ensure every person's right to due process.<sup>130</sup> This right basically ensures that the other rights recognized in the Convention will be respected, because it places a constraint on any abuse of power by the State.

169. Both Article 8 and Article 25 of the American Convention on Human Rights "are necessary conditions for the procedural institutions regulated by the

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<sup>129</sup> I/A Court H.R., *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, par. 27.

<sup>130</sup> See European Court of Human Rights, *Golder Case*, Judgment of 21 February 1975, Series A No. 18, paragraph 28, on the subject of Article 6 of the European Convention on Human Rights, which protects substantially the same rights and guarantees as those protected under Article 8 of the American Convention.

Convention to be considered judicial guarantees."<sup>131</sup> It is worth noting that "[g]uarantees are designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof."<sup>132</sup> Article 25(1) of the American Convention incorporates the principle recognized in the international law of human rights of the effectiveness of the procedural instruments or means designed to guarantee such rights.<sup>133</sup> For such a remedy to exist, the Convention requires that it must be truly effective in establishing whether there has been a violation of the Convention-protected rights and in providing redress.<sup>134</sup> The Inter-American Court has written that "[a] remedy which proves illusory because of the general conditions prevailing in the country, or even in the particular circumstances of a given case, cannot be considered effective."<sup>135</sup>

170. The protection that these articles afford is reinforced by the general obligation to respect human rights, as set forth in Article 1(1) of the Convention. The Court has expressly stated that:

Article 25 in relation to Article 1(1) of the American Convention obliges the State to guarantee to every individual access to the administration of justice and, in particular, to simple and prompt recourse, so that, *inter alia*, those responsible for human rights violations may be prosecuted and reparations obtained for the damages suffered... Article 25 "is one of the fundamental pillars not only of the American Convention, but of the very rule of law in a democratic society... That article is closely linked to Article 8(1), which provides that every person has the right to a hearing, with due guarantees [...] for the determination of his rights, whatever their nature."<sup>136</sup>

171. Therefore, the State has an obligation to investigate violations of human rights, to prosecute those responsible and thereby prevent impunity. The Court has defined impunity as "the total lack of investigation, prosecution, capture, trial and conviction of those responsible for violations of the rights protected by the American Convention"<sup>137</sup> and has written that "the State has the obligation to use all the legal means at its disposal to combat situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives."<sup>138</sup>

172. The State's obligation to investigate and punish human rights violations must be undertaken by the States in a serious manner. The Court has written that

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<sup>131</sup> I/A Court H.R., Advisory Opinion OC-9/87, par. 30.

<sup>132</sup> I/A Court H.R., Advisory Opinion OC-8/87 of January 30, 1987, *Habeas Corpus in Emergency Situations* (Arts. 27(2), 25(1) and 7(6)), par. 25.

<sup>133</sup> I/A Court H.R., Advisory Opinion OC-9/87, par. 24.

<sup>134</sup> *Ibid.*

<sup>135</sup> *Ibid.*

<sup>136</sup> I/A Court H.R., *Loayza Tamayo Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, par. 169.

<sup>137</sup> See in this regard, I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment of July 8, 2004. Series C No. 110, par. 148; I/A Court H.R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, par. 175; I/A Court H.R., *Case of Bámaca Velásquez. Reparations* (Art. 63(1) American Convention on Human Rights), Judgment of February 22, 2002. Series C No. 91, par. 64.

<sup>138</sup> I/A Court H.R., *Loayza Tamayo Case, Reparations*, Judgment of November 27, 1998, Series C, No. 42, paragraphs 169 and 170.

[i]n certain circumstances, it may be difficult to investigate acts that violate an individual's rights. The duty to investigate, like the duty to prevent, is not breached merely because the investigation does not produce a satisfactory result. Nevertheless, it must be undertaken in a serious manner and not as a mere formality preordained to be ineffective. An investigation must have an objective and be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government. This is true regardless of what agent is eventually found responsible for the violation. Where the acts of private parties that violate the Convention are not seriously investigated, those parties are aided in a sense by the government, thereby making the State responsible on the international plane.<sup>139</sup>

173. As can be inferred from the above citation, the fact that no one has been convicted in a case or that, despite the efforts made, it was impossible to establish the facts does not necessarily mean that a State has failed to fulfill the obligation to investigate. However, in order to establish in a convincing and credible manner that this result was not the product of a mechanical implementation of certain procedural formalities without the State genuinely seeking the truth, the State must show that it carried out an immediate, exhaustive and impartial investigation.<sup>140</sup>

174. The obligation to investigate any fact that involves a violation of the Convention-protected rights and then punish those responsible requires prosecution and punishment of both material and intellectual authors.<sup>141</sup>

175. The Court has written the following with regard to procedural guarantees:

For true guarantees of fair trial to exist in a proceeding, pursuant to the provisions of Article 8 of the Convention, it is necessary to observe all the requirements that are designed to protect, to ensure or to assert the entitlement to a right or the exercise thereof.<sup>142</sup>

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<sup>139</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, par.177. For its part, the Colombian Constitutional Court has written that "Under international law, compensation of damages to victims and injured parties will not, by itself, be sufficient to effectively protect human rights; instead, truth and justice are essential in a society to avoid a recurrence of the situations that led to egregious human rights violations and because respect for the inherent dignity and equal and inalienable rights of all persons demands that the juridical remedies crafted by States be geared to full restitution to victims and injured parties. Full restitution includes economic compensation and access to the courts to discover the truth of what happened and to seek, through institutional avenues, just punishment of the guilty parties." Judgment C-228/02 of April 3, 2002.

<sup>140</sup> IACHR, Annual Report 1997, Report No. 55/97, Case 11,137 (Juan Carlos Abella *et al.*), Argentina, par. 412. On the same question, see also: IACHR, Annual Report 1997, Report No. 52/97, Case 11,218 (Arges Sequeira Mangas), Nicaragua, paragraphs 96 and 97.

<sup>141</sup> The Court has written, for example, that "the American Convention guarantees everyone access to justice to enforce their rights, and the States Parties have the obligation to prevent, investigate, identify and punish the masterminds and accessories of human rights violations." I/A Court H.R., *Case of the Constitutional Court*. Judgment of September 29, 1999. Series C No. 71, par. 123. See also I/A Court H.R., *Myrna Mack Chang Case*. Judgment of November 25, 2003. Series C No. 101, par. 275; *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003, Series C No. 99, par. 186; *Blake Case*, Reparations, Judgment of January 22, 1999, Series C No. 48, par. 65.

<sup>142</sup> I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 124.

176. In the instant case, justice has been denied with respect to the forced disappearance of Renato Ticona Estrada and with respect to the arbitrary deprivation of freedom and torture of his brother Hugo Ticona Estrada.

177. In the investigation into the forced disappearance of Renato Ticona Estrada, the judicial authorities were grossly negligent in gathering evidence and steering the proceedings; it was particularly negligent because of the unwarranted delay in the judicial process.

178. Bolivia's judicial authorities blatantly disregarded the most fundamental principles that must steer inquiries into forced disappearances. The Commission contends that the Bolivian judicial branch of government failed to take all the necessary discovery measures and to be expeditious in ordering and taking evidence. The Commission finds no reasonable explanation for the fact that the judicial authorities have, for more than twenty-five years, delayed their examination of the materials that the investigation produced.

179. The fact that in 1986 the Bolivian State closed the criminal case against all the accused, reopened it 19 years later, and has still not moved it beyond the preliminary phase,<sup>143</sup> betrays an unwillingness to conduct a serious investigation of the

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<sup>143</sup> In accordance with the law in force at the time of the events and that was followed in processing the case (1973 Code of Criminal Procedure), a criminal trial has two phases: 1) the pretrial or examining phase, and 2) the trial phase or oral argument. The pretrial phase is in the investigative phase. Under Article 120 of the Code of Criminal Procedure its purpose is "to investigate the facts of the causes of action, ensure the presence of the accused and his/her civil responsibility. The preliminary phase determines whether there is probable cause to bind the accused over for trial, or whether the case should be dismissed." The preliminary phase begins with a complaint, a police report, at the judge's own initiative or at the request of the public prosecutor (Art. 121). The initial order to commence summary proceedings is issued by the examining judge on the day the case history is received (166). The judge has discretion to determine whether the facts in the case constitute crimes and if so which crimes they are (167). Since the judge directs the examining phase of the case, he or she has broad authority to investigate the crimes alleged: "The judge has an obligation to clarify the facts and establish the circumstances as regards time, place and manner; he or she must also acquire knowledge about the accused, his or her background, degree of education, the social environment in which he or she grew up and the one in which he or she is living at the time the examining phase begins" (168). The examining phase must be completed within 20 days, which shall begin as of the date on which the accused was notified of the commencement of the preliminary proceedings. Said notification shall be made as soon as the accused has made his/her pre-trial statement (171). Discovery at this pre-trial phase and in the trial phase includes: inspection and reconstruction; testing and expert reports; witnesses; documentary evidence and confessions. "Once the 20-day time period for the examining phase is over, the judge shall declare the pre-trial phase closed, irrespective of the status of the proceedings. The judge shall so notify the parties and send the case file to the public prosecutor to prepare his requests to the court within five days." (219). After examining the prosecutor's request, the judge shall issue one of the following orders within five days: 1) definitive dismissal; 2) provisional dismissal; 2) order binding the case over for trial; 4) referral of the case file to the legally competent court if the presiding judge does not have jurisdiction ... (art. 220). "The court shall send notice of the order binding the case over for trial to the prosecutor, to the victim party, to the injured party and to the defendant. Once this formality has been performed, the case will be sent to the trial judge within three days of the date of the most recent notification for prosecution of the accused" (art. 223). So ends the examining or preliminary phase.

As for the trial or oral argument phase, the law provides that:

The trial is the most essential phase of the process. It is conducted on the basis of an order to stand trial, which trial shall be an adversarial process whose proceedings shall be oral, public and continuous to prove the facts assembled in the pre-trial phase, receive other pertinent and useful evidence, and establish, in a judgment, the guilt or innocence of the accused (art. 225). Once oral arguments have

material evidence and testimony produced in the case. The evidence offered by the next of kin, former detainees and other witnesses has shown that agents of the State were involved in the arbitrary arrest and subsequent forced disappearance of Renato Ticona Estrada. Furthermore, the evidence in the Commission's records on the case shows that at no stage in the process were the steps necessary to shed light on the facts taken; in other words, there was no reconstruction of the facts, no on-site inspection, and no search for the body of Renato Ticona. People like Luis García Meza, Jaime Solares, the governors of Oruro in office at the time, the police and other SES personnel on duty at the time the Ticona brothers were brought into that establishment, members of the Topater Regiment in active service at the time of the events, the medical personnel and military officials who had custody of Hugo Ticona during the various transfers he was subjected to between July 23 and November 4, 1980, and who might have been able to shed some light on the various versions circulating in connection with the whereabouts of Renato Ticona: none of these was ever called to give a deposition or testify.

180. Thus, the investigations conducted by the State and its judicial branch were riddled with negligence in the gathering of evidence, obstruction of justice and procedural delay.

#### **1. Obstruction and inefficacy in the investigations**

181. The records of the criminal case reveal that the military and police did not cooperate; they did not provide information relevant to the forced disappearance and ultimate fate of Renato Ticona subsequent to his arrest. It is important to recall that when the first criminal inquiry was conducted in 1983, three of the defendants were military in active service, and that the Armed Forces' cooperation for purpose of notifying them and taking their pretrial statement was requested. Yet no reply was forthcoming. Further, in 1986 the case against all the defendants was dropped, even though the case was ordered closed only with respect to one defendant, and despite the fact that the court had been asked to order a number of measures, including the summoning of various witnesses to testify. When the case was closed the court had not yet subpoenaed those witnesses.

182. Even though the case was reopened in 2005, it is again being plagued by a lack of due diligence and procedural delays.

183. Within the inter-American system for the protection of human rights, the duty to investigate with due diligence includes the obligation to take all necessary

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commenced, the proceedings shall continue uninterrupted. The trial shall convene every working day until a judgment is delivered and may only be suspended for a period not to exceed eight days..." (225). The constituent parts of the proceedings are the formalities and opening statements (Article 229); statement of confession (231); examination of witnesses (232), opening of argument (234), argument (235), statement of witnesses (236), documentary evidence, etc. "If the judge deems that all the evidence has been introduced, he or she shall open the conclusions phase of the trial. He will recognize, in the order indicated, the following: the prosecutor, the attorney representing the plaintiff, and the attorney representing the defendant..." (240). The representative of the Public Prosecutor's Office, the attorneys representing the plaintiff and the attorneys representing the defendant shall have eight days in which to present their concluding arguments (241). The judgment is then delivered, which may be for acquittal, conviction or a finding of innocence.

measures to try and obtain results within a reasonable period of time.<sup>144</sup> Three basic criteria have been established to judge the reasonableness of the length of the proceedings: a) the complexity of the case, b) the procedural activity of the interested party, and c) the conduct of the judicial authorities.<sup>145</sup>

184. In the *Case of the 19 Merchants v. Colombia*, the Court held that it is up to the State to explain and prove why it has required more time than would be reasonable, in principle, to deliver a final judgment in a given case, based on the three criteria listed above.<sup>146</sup> In the case of *Gómez Palomino*, where the investigation of the victim's forced disappearance remained in the examining phase for more than 13 years, the Court wrote that "the delay, which was excessive, is *per se* a violation of the judicial guarantees, for which the State has not provided a justification."<sup>147</sup>

185. In the instant case, the Bolivian State has not provided reasonable explanations that would justify a procedural delay of more than 25 years; in cases such as this, the authorities are required to act on their own motion, and cannot leave this burden to the initiative of the next of kin.<sup>148</sup>

186. The Inter-American Court has written that "actions or omissions that abridge fundamental rights may be committed by any public authority, whether [in] the Executive, the Legislative, or the Judiciary, as has been established in the case law of this Court."<sup>149</sup> Under Article 8(1) of the Convention, the State has an obligation to recognize the right of every person within its jurisdiction to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, for a determination of his rights. In this regard, the Court has held that "the Convention should be interpreted broadly,"<sup>150</sup> which means that in observance of Article 8 of the American Convention, the criminal proceedings are to guarantee the right to a fair trial of the accused (the direct beneficiary of specific guarantees) and the right of the victims and their next of kin to "substantial possibilities of being heard and acting in the

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<sup>144</sup> I/A Court H.R., *Case of the Serrano Cruz Sisters*. Judgment of March 1, 2005. Series C No. 120, par. 65.

<sup>145</sup> I/A Court H.R., *Case of the Moiwana Community*. Judgment of June 15, 2005. Series C No. 124, par. 160. See also European Court of Human Rights. *Wimmer v. Germany*, No. 60534/00, § 23, 24 May 2005; *Panchenko v. Russia*, No. 45100/98, § 129, 8 February 2005, and *Todorov v. Bulgaria*, No. 39832/98, § 45, 18 January 2005.

<sup>146</sup> I/A Court H.R., *Case of the 19 Merchants*. Judgment of July 5, 2005. Series C No. 109, par. 191.

<sup>147</sup> I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136, par. 85 [The Commission's translation, since no official translation in English of this judgment exists as of this time].

<sup>148</sup> I/A Court H.R., *Case of Juan Humberto Sánchez*. Judgment of June 7, 2003. Series C No. 99, par. 132.

<sup>149</sup> I/A Court H.R., *Case of the Five Pensioners*; I/A Court H.R., *Case of the Mayagna (Sumo) Awas Tingni Community Case*; I/A Court H.R., *Ivcher Bronstein Case*, Judgment of February 6, 2001. Series C No. 74, par. 168; I/A Court H.R., *Baena Ricardo et al. Case*, and I/A Court H.R., *Case of Juan Humberto Sánchez*, Judgment of June 7, 2003. Series C No. 99, par. 131.

<sup>150</sup> I/A Court H.R. *Case of the 19 Merchants*, par. 185; *Las Palmeras Case*, par. 58; *Durand and Ugarte Case*, par. 128.

respective proceedings, in order to clarify the facts and punish those responsible, and to seek due reparation.”<sup>151</sup>

187. In the Commission’s proceedings on this case the State asserted that it had acted with due diligence since the criminal investigation was reopened in March 2005. However, during the proceedings on the case in the domestic courts, judges Rolando Sarmiento and Romery Pabón –the two judges who have been the presiding judges since March 10, 2005- have taken no action to enlist the help of the General Command of the Armed Forces in notifying the accused military or former military.

188. Judge<sup>152</sup> Sarmiento did not call José Cadima, Leonor López, Leoncio Conchari, Edgar Alcocer and Ruth Sánchez de Jordán to testify, as prosecutor William Alave had requested on March 18, 2005. The other presiding judge and the prosecutor assigned to the case also failed to summon witnesses Luis García Meza, former *de facto* President of Bolivia,<sup>153</sup> and Jaime Solares.

189. At no point in the proceedings were measures taken to shed light on the facts of this case: there was no reconstruction of the facts, no on-site inspection, no search for the body of Renato Ticona; no statements were taken from individuals like Luis García Meza, Jaime Solares, the governors of Oruro at the time, police and other SES personnel on duty when the Ticona brothers were brought into the SES facility, no one from Topater Regiment who was in active service at the time of the events, none of the medical or military personnel who took custody of Hugo Ticona each time he was moved between July 23 and November 4, 1980.

190. Even though the crime in this case was forced disappearance for which there is no statute of limitations, on July 24, 2006 the First Judge of the Local Criminal Court ordered that the case be returned to the examining court for a determination as to whether or not criminal action was time barred by the statute of limitations. The Judge also ordered that proceedings up to 117 inclusive be vacated on the grounds that the examining court had not decided the statute of limitations question. On March 18, 2005, the Office of the Public Prosecutor had filed a motion asking the Court to declare Messrs. Melean, Valdivia Gumucio and Veizaga Vargas in contempt of court and to issue the corresponding arrest warrants and subpoenas for various witnesses.

191. As a result, the Court vacated any proceedings conducted subsequent to March 18, 2005, just 10 days after the inquiry was reopened after lying dormant for more than 19 years. Although beset by problems and omissions, the examining phase had finally come to a close and the case had been bound over for trial before the First Local Criminal Court of La Paz. Although the Examining Court denied the statute-of-

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<sup>151</sup> I/A Court H.R. *Case of the 19 Merchants*, par. 186; *Las Palmeras Case*, par. 59; *Durand and Ugarte Case*, par. 129.

<sup>152</sup> Under the Public Prosecutor’s Act (Article 5) and the 1973 Code of Criminal Procedure (Art. 168) by which the proceedings were conducted, both the examining magistrate (who presides over the preliminary phase of the proceedings) and the prosecutor (who represents the State) have express functions and authorities to investigate the crimes reported, promote criminal action, oversee and control the unfolding of the trial, propose any measures necessary for the proceedings to move swiftly and ultimately conclude.

<sup>153</sup> In a radio interview given from Chonchocorro prison, Luis García Meza claimed that Jaime Solares had a hand in the disappearance of the Ticona brothers and in the subsequent fate of Renato Ticona. He claimed that Jaime Solares was acting on orders.



limitations motion on September 11, 2006, the trial court's decision to vacate proceedings up to and including 117 meant that they will now have to be repeated.

192. To this day, the case is still in the pre-trial phase, which the 1973 Code of Criminal Procedure, the applicable law, stipulates shall last no more than 20 days. Until the preliminaries are completed the trial cannot begin.

193. The procedural delay is self-evident. More than 25 years have passed and none of those responsible has been prosecuted and punished, even though the evidence to convict is there. This is a violation of the right to a fair trial within a reasonable period.

194. As for the complexity of the present case, the Commission considers that the arrest and subsequent forced disappearance of Renato Ticona is not so complex a case as to warrant the kind of delay that has happened. After the fall of the government of García Meza, the victim's next of kin and the National Commission of Enquiry into Forced Disappearances went to the competent authorities virtually immediately to report the facts. In doing so, they identified the suspects. Nevertheless, as previously noted, the State did not take the necessary steps to effectively advance the investigation. As for identification of those responsible, the Commission considers that the State had in its possession the evidence needed to make that identification and cannot, therefore, attempt to justify the delay in identification of the responsible parties by asserting the supposed complexity of the matter.

195. As has already been established, the petitioners took an active position from the time when the first complaint was filed in April 1983. From the testimony contained in the record of the case initiated by the National Commission of Enquiry into Forced Disappearances and the testimony gathered once the case was reopened in 2005, Renato Ticona's next of kin actively supplied all the information they could to identify those responsible for the arrest and subsequent forced disappearance of Renato Ticona. The Commission does not believe that either the petitioner or the victim's next of kin has in any way obstructed the investigations; quite the contrary, they have supplied all the evidence they had and have continued to file complaints and demand justice and clarification of the truth about what happened; they have also turned to various institutions and agencies to appeal for a search for Renato Ticona's body, so that they might give him a proper burial.

196. The denial of justice has also been continuous with respect to the violations committed against Hugo Ticona Estrada, who was unlawfully and arbitrarily deprived of his freedom together with his brother Renato. He was also the victim of torture. These crimes have been brought to the attention of State authorities since Hugo Ticona and his next of kin made statements in the respective investigation, despite which the State has not investigated the crime on its own motion, as it should have.

197. Finally, the Commission considers that neither Renato Ticona nor his next of kin were given access to a simple, prompt and effective remedy for protection against violation of their human rights. First, although the Constitution in effect at the time provided for the remedy of *habeas corpus* to establish an individual's whereabouts,<sup>154</sup> under the *de*

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<sup>154</sup> Article 18 of the Constitution reads as follows: "Any person who believes that he is being unduly or unlawfully prosecuted, detained, tried or imprisoned may appear, in person or through anyone acting in his name, with or without a notarized power of attorney, before the District High Court or before any local

*facto* government constitutional guarantees had been suspended, making any remedy of *habeas corpus* illusory. This was the Commission's finding in its 1981 Report on the Situation of Human Rights in Bolivia on the question of *amparo* and *habeas corpus*:

Not only has the Military Government of Bolivia disregarded the constitutional rules for abnormal situations and the rules on international protection of human rights, it has also made judicial guarantees for protection of those rights into a dead letter.

These recourses in Bolivian legislation are constitutional provisions that seek to protect individuals from arbitrary detention—*habeas corpus*—and against illegal acts or undue omissions by public officials and private individuals who restrict, deny or threaten to restrict or deny the rights and guarantees of the individual upheld in the constitution and the law (*amparo*).

In light of the background information [...] and all the information that has come to the Commission's attention, particularly information on the way in which the authorities have proceeded in the individual and mass detentions and the circumstances surrounding them. It must be concluded that these legal guarantees of Bolivians' right to life, personal freedom and safety have been frustrated and have become an ineffective tool with which to control illegal acts by the authorities: in practice, exercise of those rights does not obtain the expected results, given the military government's refusal to report the whereabouts of detainees, the reasons or charges against them and generally, because there is no communication with the victims, who are deprived of their freedom for longer periods than permitted by the Constitution, even during a state of siege.<sup>155</sup>

198. Secondly, the criminal complaints brought by the victim's next of kin and the National Commission of Enquiry into Forced Disappearances were equally ineffective since the whereabouts of Renato Ticona is still unknown and those responsible for his forced disappearance have never been punished. Nor has there

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court (*Juez de Partido*) of his choice to demand that legal formalities be followed. At places where there is no *Juez de Partido* this may be done before an examining magistrate (*Juez Instructor*)."

Article 19 of the Constitution provides that: "In addition to the right of *habeas corpus* referred to in the preceding article, it is hereby established that there shall be a recourse of *amparo* against illegal acts or undue omissions by public officials or private individuals that restrict, deny or threaten to restrict or deny the rights and guarantees of persons recognized in this Constitution and in the laws. A petition of *amparo* may be entered by the person believing himself to be aggrieved or by another person on his behalf, with sufficient power of attorney, before the Supreme Courts in the departmental capitals and the local court in the provinces, in very summary form. In addition, the Ministry of the Interior may *ex officio* file a petition of *amparo* when the affected individual has not or cannot do so. The authority or person against whom the petition is filed shall be summoned in the form specified in the preceding article in order to provide information and present, if applicable, the action taken on the alleged event, within a maximum of 48 hours. The final ruling shall be handed down at a public hearing immediately upon receipt of the testimony of the person accused, and failing that, it shall be given on the basis of evidence offered by the petitioner. The judicial authority shall examine the competency of the public official or the acts of the private individual, and should he find the accusation to be true, shall grant the *amparo* requested, provided there is no other means or legal recourse for immediate protection of the rights and guarantees restricted, suppressed or threatened. He shall, *ex officio*, submit his ruling to the Supreme Court of Justice within 24 hours, for review. The prior rulings of the judicial authority and the final decision granting *amparo* shall be carried out immediately and without objection, and in case of resistance, the provisions of the preceding article shall apply."

<sup>155</sup> IACHR, 1981 Report on the Situation of Human Rights in Bolivia. CHAPTER III: THE RIGHT TO LIBERTY, HUMANE TREATMENT, AND PERSONAL INTEGRITY. Section F. *Habeas Corpus* and *Amparo*, paragraphs 1, 2 and 3 OEA/Ser.L/V/II.53, doc.6 rev.2, October 13, 1981.

been any effective remedy to correct a judicial system that has become virtually inactive and that, by its own omission and failure to conduct a serious and effective investigation, has in practice covered up the violations of the victim's basic rights and those of his next of kin. In the end, the only possible conclusion in the present case is that the existing remedies to protect against the violations denounced have proven to be illusory.

## **2. Right to the truth and persistence of impunity**

199. The Court has reiterated that every person, including the next of kin of victims of grave human rights violations, has the right to know the truth. Consequently, the next of kin of the victims and society as a whole must be informed of everything that happened concerning such violations.<sup>156</sup> This right is based on the conviction that knowledge of the truth is one of the most effective means of preventing a recurrence of serious human rights violations and of building a democratic system in a State governed by the rule of law. Further, the State has an obligation to make available to the victims, their next of kin and society as whole, any information that sheds light on the truth. This obligation includes the duty to make available or disclose any information that the State has in its possession and to use every means possible to produce that information.

200. By virtue of the obligations and duties undertaken as a State party to the American Convention, Bolivia has an obligation to respect the right that the victim's next of kin and Bolivian society as a whole have to know the truth. Those obligations basically stem from articles 1(1), 8, and 25 of the American Convention, and from Article 13, inasmuch as the right to the truth is subsumed in the right of the victim or his next of kin to obtain clarification of the facts relating to the violations and the corresponding responsibilities from the competent State organs, through the investigation and prosecution established in Articles 8 and 25 of the Convention.<sup>157</sup>

201. From the Court's interpretation of the generic obligations contained in Article 1(1) of the Convention, as set forth in *Castillo Páez Case*, the inference is that the right to the truth is a basic and essential obligation for any State Party, since the inability to know the facts associated with human rights violations means in practice that the system of protection is incapable of ensuring the identification and ultimate punishment of the responsible parties, particularly in cases of forced disappearance, in which continuous violation are involved. The Inter-American Court has established that the State has a duty to investigate facts while there is uncertainty about the fate of the person who has disappeared, and the need to provide a simple and prompt recourse in the case, with due guarantees.<sup>158</sup>

202. After the case was closed in 1986, the Attorney General's Office ordered it reopened on March 8, 2005. However, a further delay was triggered when the trial court vacated the proceedings pending a decision by the lower court as to whether the

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<sup>156</sup> I/A Court H.R., *Case of Carpio Nicolle et al.* Judgment of November 22, 2004. Series C No. 117; par. 128; I/A Court H.R., *Case of the Plan de Sánchez Massacre.* Judgment of November 19, 2004. Series C No. 116, par. 97; I/A Court H.R., *Case of Tibi.* Judgment of September 7, 2004. Series C No. 114, par. 257.

<sup>157</sup> I/A Court H.R., *Bámaca Velásquez Case*, Merits, Judgment of November 25, 2000, par 201.

<sup>158</sup> *Idem*, par. 197.

case was time barred by the statute of limitations by virtue of constitutional ruling 101/2004.<sup>159</sup>

203. The Commission contends that the present case is not subject to the statute of limitations, as the crime is that of forced disappearance, which is continuous and therefore cannot be time barred. Following this reasoning, in the *Trujillo Oroza Case*, the Inter-American Court held the following on the question of the statute of limitations:

On May 5, 1999, Bolivia ratified the Inter-American Convention on the Forced Disappearance of Persons, which establishes that the criminal prosecution for the forced disappearance of persons shall not be subject to statutes of limitations. (...) The State has the obligation to eliminate the internal impediment of extinguishment of the criminal proceeding so that "those responsible may be criminally prosecuted and punished under the offense of forced disappearance of persons."<sup>160</sup>

204. The failure to prosecute the perpetrators of the human rights violations herein analyzed prolongs the suffering that those violations cause. The State's duty is to provide an adequate judicial response that establishes the identity of those responsible for masterminding and carrying out the policy of forced disappearance that was the context for the events in this case. The State also has a duty to prosecute and punish the material authors of the disappearance. The testimony given to the National Commission of Enquiry into Forced Disappearances and before the La Paz District Superior Court recounts the suffering and anguish that the violations committed by agents of the Bolivian State caused, which have inflicted profound moral damage upon Renato Ticona Estrada's next of kin whose consequences persist even today.

205. For all the foregoing reasons, the Commission asks the Court to adjudge and declare that the Bolivian State violated articles 8(1) and 25 of the American Convention, in relation to Article 1(1) thereof.

#### **H. Failure to comply with Article 2 of the American Convention (duty to adopt legislative measures) and articles I and III of the Inter-American Convention on Forced Disappearance of Persons**

206. Article 2 of the American Convention reads as follows:

Where the exercise of any of the rights or freedoms referred to in Article 1 is not already ensured by legislative or other provisions, the States Parties undertake to adopt, in accordance with their constitutional processes and the provisions of this

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<sup>159</sup> Paragraph III.5.2 of constitutional ruling 101/2004 states that:

As has already been established, the legal provisions under examination in this constitutionality proceeding must be compatible with the principles of the Constitution. Under the law and under the Constitution, a judge or court hearing a case, either *ex officio* or at the request of a party to a dispute, shall declare the criminal action time barred when the delay in the proceedings beyond the maximum allowed is the fault of the court or the prosecutor's office, as determined by objective criteria; the case may not be time barred when the delay is attributable to the conduct of the accused or defendant.

<sup>160</sup> I/A Court H.R., *Trujillo Oroza Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002. Series C No. 92, par. 92.b.

Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

207. Article III of the Inter-American Convention on Forced Disappearance of Persons reads as follows:

Article III

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

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

208. These articles articulate the positive obligation of those States that have ratified the American Convention, which is to strike down any domestic laws that are incompatible with the object and purpose of these two international instruments.

209. The Inter-American Court has written the following with respect to Article 2 of the American Convention:

The general duty set forth in Article 2 of the American Convention implies the adoption of measures on two fronts. On the one hand, the suppression of rules and practices of any kind that entail the violation of the guarantees set forth in the Convention. On the other, the issuance of rules and the development of practices leading to the effective observance of said guarantees.<sup>161</sup>

210. Therefore, to be in compliance with Article 2 of the American Convention the State must adopt domestic measures on two levels: on the one hand, elimination of all kinds of provisions and practices that breach guarantees set forth in the Convention; on the other, adoption of provisions and development of practices that lead to effective observance of said guarantees.<sup>162</sup> Article I (d) of the Inter-American Convention on Forced Disappearance of Persons contains a similar provision.

211. Article II of the Inter-American Convention on Forced Disappearance of Persons defines forced disappearance as follows for purposes of the Convention:

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<sup>161</sup> I/A Court H.R., *Cantoral Benavides Case*, *supra*, par. 178 citing *Durand and Ugarte Case*, *supra*, par. 137, and *Castillo Petruzzi et al. Case*, *supra*, par. 207. Cf. I/A Court H.R., *Certain Attributes of the Inter-American Commission on Human Rights (Arts. 41, 42, 46, 47, 50 and 51 of the American Convention on Human Rights)*, Advisory Opinion OC-13/93 of July 16, 1993. Series A No. 13, par. 26. See also I/A Court H.R., *Baena Ricardo et al. Case*, Judgment of February 2, 2001, par. 182.

<sup>162</sup> I/A Court H.R. "*Bulacio*" Case, Judgment of September 18, 2003, par. 143; *Case of the "Five Pensioners"*, Judgment of February 28, 2003. Series C No. 98; *Cantos Case*, Judgment of November 28, 2002. Series C No. 97, par. 61; and *Case of Hilaire, Constantine and Benjamin et al.*, Judgment of June 21, 2002. Series C No. 94, par. 113.

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.

212. Recognizing that defense and protection of human rights rest necessarily and above all else on the domestic system, Article 2 of the Convention provides that States parties shall adopt the legislation and other measures necessary to give effect to any right or freedom not yet guaranteed by domestic law and practice.

213. At the time of the events in this case, forced disappearance had not yet been criminalized in Bolivia. On January 18, 2006, in Act No. 3326, the offense of forced disappearance was criminalized and added to Bolivia's Penal Code, as follows:

Article 292 Bis (Forced Disappearance of Persons) of the Penal Code provides as follows:

Anyone who, with the authorization, support or acquiescence of any State body or agency, deprives one or more persons of their freedom and deliberately conceals or refuses information that would acknowledge the deprivation of freedom or the whereabouts of the person, thereby preventing the exercise of the procedural remedies and guarantees, shall be subject to a penalty of imprisonment for a period of five to fifteen years.

If as a consequence of this act the victim sustains grave physical and psychological harm, then the penalty shall be imprisonment for fifteen to twenty years.

If the author of the offense is a public official, then the maximum penalty shall be increased by one third.

If the victim dies as a consequence of this act, the penalty shall be imprisonment for a period of thirty years.

Let this be forwarded to the Executive Branch, for the purposes set forth in the Constitution.

Given in the Assembly Hall of the National Congress this fifth day of January in the year two thousand six.

214. The Commission recognizes that the criminalization of forced disappearance and its inclusion in Bolivia's Penal Code is an important step forward in the development of laws consistent with the principles established in the international instruments to which the State is party in the area of human rights. Nevertheless, the Commission observes that the facts in the present case occurred well before the efforts made by the State. It therefore submits that because it did not adopt legislative measures to criminalize forced disappearance until 2006, the State failed to comply with its obligation under Article 2 of the American Convention.<sup>163</sup>

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<sup>163</sup> I/A Court H.R., *Case of Montero Aranguren et al. (Retén de Catia)*. Judgment of July 5, 2006. Series C No. 150, par. 113.

215. The Commission observes that except for the addition of the qualifier “deliberately” with regard to the concealment or refusal to provide information on the victim’s whereabouts, the definition of the crime of forced disappearance adopted by the State is substantially the same as the one contained in Article II of the Inter-American Convention on Forced Disappearance of Persons.

216. The Commission is therefore asking the Court to adjudge and declare that until 2006 the State was in noncompliance with its obligation under Article 2 of the American Convention and articles I and III of the Inter-American Convention on Forced Disappearance, which is to adopt domestic legislation to give effect to the Convention-recognized rights.

## VIII. REPARATIONS AND COSTS

217. Given the facts alleged in the present application and the *jurisprudence constante* of the Inter-American Court, which states that “it is a principle of international law that any violation to an international obligation that has caused damage entails the duty to provide adequate reparation,”<sup>164</sup> the Commission is filing with the Court its claims for the reparations and costs that should be required of the Bolivian State by virtue of its responsibility for the human rights violations committed against Renato Ticona Estrada, his parents César Ticona Olivares and Honoria Estrada de Ticona, and his siblings Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada.

218. The Inter-American Commission is asking the Court to order the State to compensate the pecuniary and non-pecuniary damages caused to Renato Ticona Estrada and his next of kin, under the terms indicated below. The Inter-American Commission is also asking the Court to order the State to pay the legal costs and expenses that the victims and their next of kin incurred in pursuing the case at the domestic level, and those stemming from the processing of the present case with the inter-American system.

### A. Obligation to make reparation and measures of reparation

219. Article 63(1) of the American Convention provides that:

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

220. The *jurisprudence constante* of the Court is that:

Article 63(1) of the American Convention reflects a customary rule that is one of the key principles of contemporary international law regarding the responsibility of the States. Thus, when an unlawful event takes place that is attributable to a State, this immediately gives rise to the State’s international responsibility for the

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<sup>164</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra*, par. 187; *Myrna Mack Chang Case*, *supra*, par. 234; *Bulacio Case*, *supra*, par. 72; *Case of Juan Humberto Sánchez*, *supra*, par. 147.

violation of an international rule, with the attendant duty of reparation and of making the consequences of the violation cease.<sup>165</sup>

221. Reparations are vital to ensuring that justice is done in an individual case and are the vehicle that carries the Court's decision beyond the realm of moral condemnation. Reparations are measures intended to cause the effect of the violations committed to disappear. Reparation of the damage caused by breaching an international obligation requires, whenever feasible, full restitution (*restitutio in integrum*), which involves reestablishment of the situation *ex ante*.

222. If full restitution is not possible, it is up to the Inter-American Court to order the adoption of a series of measures that, in addition to ensuring respect for the rights that were abridged, provide reparation of the consequences caused by the violations and pay compensation for the damages caused in the pertinent case.<sup>166</sup> The main purpose of the compensation in such cases is to redress the real harm, both material and moral, suffered by the injured parties.<sup>167</sup> Reparations are to be "proportionate to the gravity of the violations and the resulting damage."<sup>168</sup> Reparations serve another no less important function, which is to avoid and deter future violations.

223. The obligation to make reparations is regulated in all respects (scope, nature, modes and determination of beneficiaries) by international law and cannot be modified by the respondent State by invoking the provisions of its own domestic laws; nor can the latter decline to discharge that obligation by invoking provisions of its own domestic laws,<sup>169</sup> since "[w]henver a violation goes unpunished or a wrong unredressed, the law is in crisis, not just as a means for settling a certain litigation, but as a method for settling any litigation; in other words, as a tool to ensure peace with justice."<sup>170</sup>

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<sup>165</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra*, paragraph 188; *Case of the 19 Merchants*, *supra*, par. 220; *Case of Maritza Urrutia*, Judgment of November 27, 2003, Series C No. 103, par. 141; *Myrna Mack Chang Case*, *supra*, par. 142.

<sup>166</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra*, par. 189; *Case of the 19 Tradesmen*, *supra*, par. 221; *Case of Molina Theissen. Reparations (Art. 63(1) of the American Convention on Human Rights)*, Judgment of July 3, 2004, Series C No. 108, par. 42.

<sup>167</sup> I/A Court H.R., *Bulacio Case*. Judgment of September 18, 2003. Series C No. 100, par. 70; *Case of Hilaire, Constantine and Benjamin et al.* *supra*, par. 204; and *Case of the "Panel Blanca" (Paniagua Morales et al.)*. *Reparations (Art. 63(1) American Convention on Human Rights)*. Judgment of May 25, 2001. Series C No. 76, par. 80.

<sup>168</sup> United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees, Revised set of basic principles and guidelines on the right to reparation for victims of gross violations of human rights and humanitarian law*, prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117, May 24, 1996, par. 7. See also I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.*, *supra*, par. 205; *Cantoral Benavides Case. Reparations (Art. 63(1) American Convention on Human Rights)*. Judgment of December 3, 2001, Series C N° 88, par. 42, and *Cesti Hurtado Case. Reparations (Art. 63(1) American Convention on Human Rights)*, Judgment of May 31, 2001, Series C No. 78, par. 36.

<sup>169</sup> I/A Court H.R., *Myrna Mack Chang Case*, *supra*, par. 143; *Bulacio Case*, *supra*, par. 72, and I/A Court H.R., *Case of Juan Humberto Sánchez*, *supra*, par. 149.

<sup>170</sup> SERGIO GARCÍA RAMÍREZ, *LAS REPARACIONES EN EL SISTEMA INTERAMERICANO DE PROTECCIÓN DE LOS DERECHOS HUMANOS* [REPARATIONS IN THE INTER-AMERICAN SYSTEM FOR THE PROTECTION OF HUMAN RIGHTS], paper presented at the Seminar on "The Inter-American System for the Protection of Human Rights on the Threshold of the Twenty-first Century," San José, Costa Rica, November 1999.



224. In the instant case, the Inter-American Commission has shown that the State incurred international responsibility for its violation of the above-indicated articles of the Convention, to the detriment of Renato Ticona Estrada and his next of kin. Despite the gravity of the facts in this case, more than 25 years have passed since the victim's forced disappearance and effective measures to locate his whereabouts and identify, prosecute and punish those responsible have still not been taken, with the result that the impunity in this case is absolute.

225. Finally, under the Court's Rules of Procedure, which give the individual standing, the Inter-American Commission will, in the present application, simply outline the general criteria for reparations and costs that it believes the Court should apply in the instant case. The Inter-American Commission understands that it is up to the victims and their representatives to spell out their claims, pursuant to Article 63 of the American Convention and Articles 23 and other applicable provisions of the Court's Rules of Procedure. However, should the victims' next of kin not exercise this right the Commission would respectfully request that the Court give the Commission an opportunity in the proceedings to put a *quantum* on the claims. The Inter-American Commission will promptly inform the Court should it have any comment regarding the *quantum* on the damages sought by the victims' next of kin or their representatives.

## **B. Measures of reparation**

226. The Court has held that reparations are measures intended to cause the effect of the violations committed to disappear.<sup>171</sup> Measures of reparations are the different ways in which a State can redress the international responsibility it has incurred, and under international law consist of restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>172</sup>

227. The United Nations Commission on Human Rights has established that:

In accordance with international law, States have the duty to adopt special measures, where necessary, to permit expeditious and fully effective reparations. Reparation shall render justice by removing or redressing the consequences of the wrongful acts and by preventing and deterring violations. Reparations shall be proportionate to the gravity of the violations and the resulting damage and shall include restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.<sup>173</sup>

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<sup>171</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra*, par. 190; *Case of the 19 Merchants*, *supra*, par. 223; *Myrna Mack Chang Case*, *supra*, par. 237; *Cantos Case*, *supra*, par. 108, and *Del Caracazo Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of August 29, 2002. Series C No. 95, par. 78.

<sup>172</sup> See United Nations, *Final Report presented by Theo Van Boven, Special Rapporteur on the Right to Restitution, Compensation and Rehabilitation for Victims of Gross Violations of Human Rights and Fundamental Freedoms*, E/CN.4/Sub2/1990/10, July 26, 1990. See also: I/A Court H.R., *Blake Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 22, 1999. Series C No. 48, par. 31; I/A Court H.R., *Suárez Rosero Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 20, 1999, Series C No. 44, par. 41; and I/A Court H.R., *Castillo Páez. Case, Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 43.

<sup>173</sup> United Nations, Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, E/CN.4/Sub.2/1996/17, *The Administration of Justice and the Human Rights of Detainees, Revised set of basic principles and guidelines on the right to reparation for*

228. Based on the foregoing, the Inter-American Commission would have the Court order measures of full reparation, which in turn send a message condemning the impunity with which the vast majority of human rights violations in the Member States of the Organization of American States are committed. This requires that judicial and administrative mechanisms be established and, where necessary, reinforced so as to enable victims to obtain reparation through *ex officio* proceedings that are swift, fair, inexpensive and accessible.

229. Based on the evidence presented in the case at bar and the criteria established by the Court in its own case law, the Inter-American Commission is submitting its conclusions and claims with respect to the measures of reparation in the form of pecuniary and non-pecuniary damages and other forms of reparation and satisfaction that are due in the case of the forced disappearance of Renato Ticona Estrada.

### 1. Measures of compensation

230. The Court has established the basic criteria to be followed in setting the amount that will constitute adequate and effective economic compensation to redress the damages sustained as a result of the violations of a victim's human rights. The Court has written that the indemnity is purely compensatory in nature, and will be granted to the extent and in the amount sufficient to compensate for the pecuniary and non-pecuniary damages caused.<sup>174</sup>

#### i. Pecuniary damages

231. The *jurisprudence constante* of the Court on the matter of reparations has held that pecuniary damages include both the *damnum emergens* and the *lucrum cessans* for the victim and, in certain cases, for his nuclear family.<sup>175</sup>

232. *Damnum emergens* has been defined as the direct and immediate damage caused to a victim's assets and includes the direct and immediate effect that the events caused to the assets of the victim and his or her next of kin by virtue of the expenses they were forced to incur.<sup>176</sup> *Lucrum cessans*, on the other hand, is understood as the economic earnings or benefits lost or not received by virtue of a given event and that can be quantified by certain measurable and objective indicators.<sup>177</sup>

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*victims of gross violations of human rights and humanitarian law*, prepared by Mr. Theo van Boven pursuant to Sub-Commission decision 1995/117, May 24, 1996, par. 7.

<sup>174</sup> I/A Court H.R., *Case of Hilaire, Constantine and Benjamin et al.*, *supra*, par. 204; "Panel Blanca" *Case (Paniagua Morales et al.)*. *Reparations*, *supra*, par. 80; *Castillo Páez Case. Reparations*, *supra*, par. 52, and *Garrido and Baigorria Case. Reparations* (art. 63(1) American Convention on Human Rights). Judgment of 27 de August de 1998, Series C N° 39, par. 41.

<sup>175</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra*, par. 205 citing *Case of Maritza Urrutia*, *supra* 5, par. 155; *Myrna Mack Chang Case*, *supra*, par. 250; and *Case of Juan Humberto Sánchez*, *supra*, par. 162.

<sup>176</sup> I/A Court H.R., *Loayza Tamayo Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of November 27, 1998. Series C No. 42, par. 147; *Aloeboetoe et al. Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of September 10, 1993. Series C No. 15, par. 50.

<sup>177</sup> *Ibid.*

233. Apart from the loss of their loved one, Renato Ticona Estrada's next of kin sustained multiple consequences. His parents spent "all their income and savings to find their son."<sup>178</sup>

234. Notwithstanding any claims that the representatives of the victims and their next of kin may make at the appropriate stage in the proceedings, the Commission is asking the Court, in exercise of its broad authority in this area, to set an amount, in equity, as compensation for *damnum emergens* and *lucrum cessans*.

## ii. Non-pecuniary damages

235. On the question of non-pecuniary damage, the Court has written that:

[i]t may include both the suffering and affliction caused to the direct victims and to their close relations, detriment to very significant values of the individuals, as well as non-pecuniary changes in the conditions of existence of the victim or the victim's family. Since it is not possible to assign a specific monetary equivalent to non-pecuniary damage, for purposes of comprehensive reparations to the victims it can only be compensated, in two ways. First, by payment of an amount of money or delivery of goods or services that can be quantified in monetary terms, which the Court will establish by rationally applying judicial discretion and in terms of fairness. Second, by carrying out acts or works that are public in their scope or repercussion, such as broadcasting a message of official reproof of the human rights violations involved and of commitment to efforts to avoid their repetition...<sup>179</sup>

236. The Court has also suggested the existence of a presumption in the matter of non-pecuniary damages suffered by victims of human rights violations. It has held that moral or non-pecuniary damages inflicted upon victims are self-evident, as it is human nature that anyone whose human rights are attacked or threatened will experience moral suffering, and "no evidence is required to arrive at this conclusion."<sup>180</sup>

237. The United Nations Working Group on Enforced or Involuntary Disappearances has written that forced disappearance is

a doubly paralyzing form of suffering: for the victims, frequently tortured and in constant fear for their lives, and for their family members, ignorant of the fate of their loved ones, their emotions alternating between hope and despair, wondering and waiting, sometimes for years, for news that may never come. The victims are well aware that their families don't know what has become of them and that the chances are slim that anyone will come to their aid. Having been removed from the protective precinct of the law and "disappeared" from society, they are in fact deprived of all their rights and are at the mercy of their captors. If death is not the final outcome and they are eventually released from the nightmare, the victims may suffer a long time from the physical and psychological

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<sup>178</sup> See Appendix 3 of the application, table on damages sustained.

<sup>179</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra*, par. 211; *Case of the 19 Merchants*, *supra*, par. 244; and *Case of Molina Theissen*, *supra*, par. 65.

<sup>180</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra*, par. 217; *Case of the 19 Merchants*, *supra*, par. 248.

consequences of this form of dehumanization and from the brutality and torture which often accompany it.

The family and friends of disappeared persons experience slow mental torture, not knowing whether the victim is still alive and, if so, where he or she is being held, under what conditions, and in what state of health. Aware, furthermore, that they too are threatened; that they may suffer the same fate themselves, and that to search for the truth may expose them to even greater danger.

The family's distress is frequently compounded by the material consequences resulting from the disappearance. The missing person is often the mainstay of the family's finances. He or she may be the only member of the family able to cultivate the crops or run the family business. The emotional upheaval is thus exacerbated by material deprivation, made more acute by the costs incurred should they decide to undertake a search. Furthermore, they do not know when - - if ever -- their loved one is going to return, which makes it difficult for them to adapt to the new situation. In some cases, national legislation may make it impossible to receive pensions or other means of support in the absence of a certificate of death. Economic and social marginalization is frequently the result.<sup>181</sup>

238. As the Court will be able to establish for itself, Renato Ticona Estrada's next of kin have had to endure the loss of a loved one under violent circumstances, and the anguish and uncertainty that comes from not knowing his whereabouts. Since the time Renato Ticona Estrada disappeared, his parents have devoted their lives to searching for him and to a quest for justice. They have had to leave their home and spend long periods of time in La Paz, "to find their son or to convince some authority to give them information about him." Their home life has been profoundly altered since Renato's disappearance. With the parents gone for long periods of time, Betzy Ticona Estrada "had to replace them in caring for her younger brother Rodo. For all practical purposes, she was a kind of mother to Rodo and Hugo; she took charge of the home, but at great sacrifice to herself."<sup>182</sup>

239. In addition to the mental stress that Renato Ticona Estrada's next of kin had endured, Mrs. Honoria Estrada has had serious eye problems "that even now, threaten her sight." Mr. César Ticona had a heart attack in 1981, the consequences of which he still suffers from today.<sup>183</sup>

240. Hugo Ticona has been mentally and physically scarred by the torture and abuse to which he was subjected and by his brother's forced disappearance. "He witnessed his brother's torture firsthand and was with him until the final moments prior to his forced disappearance. In the years following Renato's disappearance, even under the democratic government, he continued to be persecuted by police and arrested arbitrarily (1985). He invested much of his life to the quest for justice in the case [...] at his own family's expense." Rodo Ticona, for his part, was the target of physical and psychological abuse when doing his compulsory military service in Tarija, all because of

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<sup>181</sup> United Nations, Office of the High Commissioner for Human Rights, *Enforced or Involuntary Disappearances, Fact Sheet No. 6*, Geneva, 1993, p. 1.

<sup>182</sup> See appendix 3 of the application, table on damages suffered.

<sup>183</sup> *Id.*

the public complaints made against the Armed Forces in connection with Renato Ticona's forced disappearance."<sup>184</sup>

241. In addition to the above, the absolute impunity attending Renato Ticona's disappearance and the lack of effective measures to identify, prosecute and punish the responsible parties compound the suffering experienced by the victim's next of kin.

242. Based on the foregoing facts and given the egregious circumstances surrounding the present case, the intensity of the suffering that the facts of the case have caused to the victim and his next of kin, the altered lifestyle that the facts in this case have thrust upon Renato Ticona Estrada's next of kin, and the other pecuniary and non-pecuniary consequences that the events in this case have caused, the Commission is petitioning the Court to order payment of compensation for non-pecuniary damages based on the principle of equity and in consideration of the circumstances surrounding the victim's forced disappearance.

## **2. Measures of satisfaction and guarantees of non-repetition**

243. Satisfaction is understood as any measure that the perpetrator of a violation is required to take under the provisions of international instruments or customary law, for the purpose of acknowledging the commission of an unlawful act.<sup>185</sup> "The objects of satisfaction are three, which are often cumulative: apologies or other acknowledgment of wrongdoing [...]; the punishment of the individuals concerned; and the taking of measures to prevent a recurrence of the harm."<sup>186</sup>

244. First, time and time again the Court has held that every individual and society as a whole have the right to be informed of what happened in cases of human rights violations.<sup>187</sup> Similarly, in a recent resolution the United Nations Commission on Human Rights recognizes that for the victims of human rights violations, public knowledge of their suffering and the truth about the perpetrators, including their accomplices, of these violations are essential steps toward rehabilitation and reconciliation and therefore urges States to intensify their efforts to provide victims of human rights violations with a fair and equitable process through which these violations can be investigated and made public and to encourage victims to participate in such a process.<sup>188</sup>

245. In keeping with the case law of the Court, which makes satisfaction and guarantees of non-repetition part of reparations, the IACHR considers that one of the essential measures of satisfaction in this case is completion of a serious, thorough and effective investigation to identify the intellectual and material authors of the arrest and subsequent forced disappearance of Renato Ticona Estrada since impunity in this case

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<sup>184</sup> *Id.*

<sup>185</sup> Brownlie, *State Responsibility, Part 1*. Clarendon Press, Oxford, 1983, p. 208.

<sup>186</sup> *Idem.*

<sup>187</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra*, par. 230; *Case of the 19 Merchants*, *supra*, par. 261; and *Case of Molina Theissen*, *supra*, par. 81.

<sup>188</sup> United Nations, Resolution of the Commission on Human Rights, Impunity, E/CN.4/RES/2001/70, April 25, 2001.

can foster “chronic recidivism of human rights violations, and total defenselessness of victims and their relatives.”<sup>189</sup>

246. In its case law, the Court has held that every person, including the next of kin of the victims of grave violations of human rights, has the right to the truth. Therefore, the next of kin of the victims and society as a whole must be informed of everything that has happened in connection with said violations.<sup>190</sup> The Court has also upheld the right of the victims’ next of kin to know what happened to them and, if appropriate, where their remains are located,<sup>191</sup> which constitutes a measure of reparation and an expectation that the State must satisfy for the victims’ next of kin and society as a whole.<sup>192</sup>

247. The Court has also written that

the Court considers that the delivery of the mortal remains in cases of detained-disappeared persons is, in itself, an act of justice and reparation. It is an act of justice to know the whereabouts of the disappeared person and it is a form of reparation because it allows the victims to be honored, since the mortal remains of a person merit being treated with respect by their relatives, and so that the latter can bury them appropriately.<sup>193</sup>

248. Thus, the State must take the measures necessary to locate the as yet unrecovered remains of Renato Ticona Estrada so that his next of kin may find closure in mourning the disappearance of their loved one, which will make some measure of reparation for the harm caused possible.

249. As for the investigation that the Bolivian State must conduct, the Court has been emphatic in asserting that

the State must ensure that the domestic proceeding to investigate and punish those responsible for the facts in this case attains its due effects and, specifically, it must abstain from resorting to legal concepts such as amnesty, extinguishment, and the establishment of measures designed to eliminate responsibility. In this regard, the Court has already pointed out that:

[...] all amnesty provisions, provisions on prescription and the establishment of measures designed to eliminate responsibility are inadmissible, because they are intended to prevent the investigation and punishment of those responsible for serious human rights violations such as torture, extrajudicial, summary or arbitration execution and forced disappearance, all of them prohibited because

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<sup>189</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra*, par. 132 citing *Myrna Mack Chang Case*, *supra*, par. 156; and *idem*. paragraphs 148 and 228 (quotation marks omitted).

<sup>190</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra*, par. 230; *Case of the 19 Merchants*, *supra*, par. 263; *Myrna Mack Chang Case*, *supra*, par. 274.

<sup>191</sup> I/A Court H.R. *Castillo Páez Case*, *supra*, par. 90; *Case of Caballero Delgado and Santana. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of January 29, 1997, par. 58; and *Neira Alegría et al. Reparations*. Judgment of September 19, 1996, par. 69.

<sup>192</sup> I/A Court H.R., *Castillo Páez Case*, *supra*, par. 90.

<sup>193</sup> I/A Court H.R. *Trujillo Oroza Case. Reparations* (Art. 63(1) American Convention on Human Rights). Judgment of February 27, 2002, par.115.

they violate non-derogable rights recognized by international human rights law.<sup>194</sup>

250. The Inter-American Commission is therefore asking the Court to order the Bolivian State to complete an effective investigation, in keeping with the international obligations that Bolivia undertook of its free will. Such measures are considered essential as satisfaction for the victims' next of kin, and as a guarantee of non-repetition.

### **C. Beneficiaries of the reparations owed by the State**

251. Under Article 63(1) of the American Convention, "the consequences of the measure or situation that constituted the breach of such right or freedom [shall] be remedied and [...] fair compensation [...] paid to the injured party." The persons entitled to such compensation are generally those directly affected by the violations in question. The Court assumes that a victim's suffering and death cause pain and suffering to their children, spouse or partner, parents and siblings, and no evidence is required to reach this conclusion.<sup>195</sup>

252. Given the nature of the present case, the beneficiaries of any reparations that the Court should see fit to order as a consequence of the human rights violations committed by the Bolivian State in this case are: Renato Ticona Estrada, his parents César Ticona Olivares and Honoria Estrada de Ticona, and his siblings Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada.

253. Renato Ticona Estrada's next of kin are also victims of the violation of Article 5 of the American Convention and as such entitled to reparations.

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

254. The *jurisprudence constante* of the Court is that costs and expenses should be understood to be included within the concept of reparation established in Article 63(1) of the American Convention because the measures taken by the victim or victims, their heirs or their representatives to have access to international justice imply disbursements and commitments of a financial nature that must be compensated.<sup>196</sup> This Court has also held that the costs to which Article 55(1)(h) of its Rules refers also include the various necessary and reasonable expenses that the victim or victims incur to have access to the oversight bodies established by the American Convention. The fees of those who provide legal assistance are included among the expenses.

255. In the instant case, the Inter-American Commission is asking the Court that, once it has heard from the representatives of the victims' next of kin, it order the State to pay the costs and expenses duly proven by them, taking into account the special characteristics of the present case.

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<sup>194</sup> I/A Court H.R., *Myrna Mack Chang Case*, *supra*, par. 276.

<sup>195</sup> I/A Court H.R., *Case of the 19 Merchants*, *supra*, par. 229, citing the *Case of Maritza Urrutia*, *supra*, par. 169.a); the "*Panel Blanca*" *Case (Paniagua Morales et al.)*. Reparations, *supra*, paragraphs 108, 125, 143, 173 -174; *Myrna Mack Chang Case*, *supra*, par. 245, 264.c), 264.f).

<sup>196</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*, *supra*, par. 242; *Case of the 19 Merchants*, *supra*, par. 283; and *Case of Molina Theissen*, *supra*, par. 95.

## **IX. CONCLUSIONS**

256. Renato Ticona Estrada's forced disappearance violates multiple basic and non-derogable human rights. These violations are continuing to this date, inasmuch as the Bolivian State has not established the victim's whereabouts or found his remains. Over 25 years have passed since the events in the case, and to this day the responsible parties have not been punished and the next of kin have not been assured adequate compensation.

257. For all the foregoing reasons, the Commission is asking the Court to adjudge and declare that the Bolivian State is responsible for violation of the right to juridical personality, the right to personal liberty, the right to humane treatment, the right to life, the right to a fair trial and the right to judicial protection, recognized in articles 3, 7, 5, 4, 8 and 25, respectively, of the American Convention, and articles I, III and XI of the Inter-American Convention on Forced Disappearance, for the arrest and forced disappearance of Renato Ticona Estrada.

258. The Commission is also requesting that the Court adjudge and declare that the State is responsible for the violation of the right to humane treatment, the right to a fair trial and the right to judicial protection, protected under articles 5, 8 and 25 of the American Convention, to the detriment of the next of kin of the disappeared victim Renato Ticona Estrada, who are: César Ticona Olivares, María Honoria Estrada de Ticona, Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada.

259. The Commission contends that the State failed to fulfill its duty to adopt the domestic legislative provisions necessary to give effect to the rights and freedoms recognized in the Convention, pursuant to Article 2 thereof, and its duty under articles I and III of the Inter-American Convention on Forced Disappearance of Persons.

## **X. SUBMISSIONS**

260. The Inter-American Commission requests that the Court adjudge and declare that the Bolivian State has incurred international responsibility for the violations spelled out in the object of the application (*supra*, paragraph 7), and that it adopt the measures indicated therein (*supra* paragraph 8).

## **XI. EVIDENCE**

### **A. Documentary evidence**

1. Birth certificates of Renato, Hugo, Rodo and Betzy Ticona Estrada, and marriage certificate of César Ticona and María Honoria Estrada.

2. Copy of the record in the Case of the *National Commission v. René Veizaga et al.*

3. April 21, 1993 ruling of the Bolivian Supreme Court in the case against General García Meza.

4. Letters to various officials



5. Newspaper articles.
6. Radio Panamericana's interview with General García Meza, April 15, 2004.
7. Report of Amnesty International.
8. The experts' CVs.
9. Power of attorney that César Ticona Olivares, María Honoria Estrada de Ticona, Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada gave to Drs. Waldo Albarracín Sánchez, Ombudsman of Bolivia, and Guido Iburguen Burgos, Human Rights Advisor to Bolivia's Ombudsman, January 23, 2007.
10. National Commission of Enquiry into Forced Disappearances, February 9, 1983.
11. Law 3326 of January 18, 2006.
12. Voluntary statement that Erasmo Calvimontes Calvimontes made before Small Claims Judge Number 6, April 14, 1984.
13. Statement that José Cadima Meza gave before the National Commission of Enquiry into Forced Disappearances, February 5, 1985.
14. Testimony that Ruth Sánchez García de Jordán and José Cadima Meza gave before the La Paz Second Criminal Examining Court on February 19, 1986, by order of the Third Criminal Examining Judge.

**b. Request that the Bolivian State be asked to submit documents**

261. The Commission is petitioning the Honorable Court to order the Bolivian State to submit certified and complete copies of all records of the domestic measures taken in connection with the forced disappearance of Renato Ticona Estrada, and the Supreme Court's April 21, 1993 ruling on General García Meza.

**B. Testimony of witnesses and experts**

**a. Witnesses**

262. The Commission is submitting the following list of witnesses:

1. María Honoria Estrada Figueroa de Ticona. The Commission is offering this witness to give testimony to the Court about her son's forced disappearance, her efforts to find him and the family's situation subsequent to his disappearance, among other matters related to the object and purpose of the present application. Any correspondence for this witness may be sent to her representative's address, which appears below.
2. César Ticona Olivares. The Commission is offering this witness to testify

about his son's forced disappearance, his efforts to find him and the family's situation subsequent to his disappearance, among other matters related to the object and purpose of the present application. Any correspondence for this witness may be sent to his representative's address, which appears below.

3. Hugo Ticona Estrada. The Commission is offering this witness to testify about his brother's forced disappearance, his efforts to find him and the family's situation subsequent to his disappearance, among other matters related to the object and purpose of the present application. Any correspondence for this witness may be sent to his representative's address, which appears below.

4. Rodo Ticona Estrada. The Commission is offering this witness to testify about his brother's forced disappearance, his efforts to find him and the family's situation subsequent to his disappearance, among other matters related to the object and purpose of the present application. Any correspondence for this witness may be sent to his representative's address, which appears below.

5. Betzy Ticona Estrada. The Commission is offering this witness to testify about her brother's forced disappearance, her efforts to find him and the family's situation subsequent to his disappearance, among other matters related to the object and purpose of the present application. Any correspondence for this witness may be sent to her representative's address, which appears below.

**b. Experts**

1. Dr. Andrés Guatier and Lic. Zulema Callejas. Respectively, Director of Bolivia's Institute of Therapy and Research in the Aftermath of State Torture and Violence [*Instituto de Terapia e Investigación sobre las Secuelas de la Tortura y Violencia Estatal*] (ITEI) and a psychologist at the ITEI in Cochabamba. The Commission is offering these experts to provide their expert testimony as to the suffering that Renato Ticona Estrada's forced disappearance caused to his next of kin, their efforts to locate him and the family situation since his disappearance, as well as other issues pertinent to the object and purpose of the present application. Any correspondence for these expert witnesses may be sent to the address of the Bolivian Ombudsman, who is the victim's representative. That address appears below.

2. Roger Cortéz Hurtado. The Commission is offering this expert to address the backdrop of human rights violations at the time of Renato Ticona Estrada's forced disappearance and the lack of a judicial inquiry into cases such as his, as well as other issues pertinent to the object and purpose of the present application.

3. Ana María Romero de Campero. The Commission is offering this expert to address the backdrop of human rights violations at the time of Renato Ticona Estrada's forced disappearance and the lack of a judicial inquiry into cases such as his, as well as other issues pertinent to the object and purpose of the present application.

**XII. PARTICULARS ON THE ORIGINAL PETITIONERS, THE VICTIM AND HIS NEXT OF KIN**

263. In keeping with Article 33 of the Rules of Procedure of the Court, the Inter-American Commission is supplying the following information on the representation

of the victims' next of kin. Dr. Waldo Albarracín Sánchez, Ombudsman of Bolivia, and Dr. Guido Ibarguen Burgos, Human Rights Advisor to Bolivia's Ombudsman, will appear in the proceeding as representatives of the victim and his next of kin. The corresponding power of attorney is attached.<sup>197</sup>

264. The address to which notifications may be sent is as follows: Defensor del Pueblo de Bolivia, Calle Colombia 440, La Paz, Bolivia. Telephone (5912) 2112600 or 2113600 Int. 505. Fax: (5912) 2113538. Email: gibarguen@defensor.gov.bo.

### **XIII. APPENDICES**

1. Report No. 45/05, Petition 712/04, Admissibility, Renato Ticona Estrada *et al.*, October 12, 2005.
2. Report No. 112/06, Case 12,527, Merits, Renato Ticona Estrada *et al.*, Bolivia, October 26, 2006.
3. File of the proceedings on the case of Renato Ticona Estrada *et al.* with the Inter-American Commission on Human Rights.

Washington, D.C.  
August 8, 2007.

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<sup>197</sup> See Annex 9, power of attorney given by César Ticona Olivares, María Honoria Estrada de Ticona, Hugo Ticona Estrada, Rodo Ticona Estrada and Betzy Ticona Estrada on January 23, 2007.