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## **REPORT No. 60/18**

### **CASE 12.709**

JUAN CARLOS FLORES BEDREGAL AND FAMILY  
BOLIVIA

Approved by the Commission at its session No. 2129 held on May 8, 2018  
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**I. SUMMARY**

1. On June 14, 2006, the Inter-American Commission on Human Rights (hereinafter "the Inter-American Commission," "the Commission," or "the IACHR") received a petition lodged by Olga Flores Bedregal (hereinafter "the petitioner") in which she alleged international responsibility of the Plurinational State of Bolivia (hereinafter "the Bolivian State," "the State," or "Bolivia") for the forced disappearance of her brother Juan Carlos Flores Bedregal in connection with the military coup d'état in July 1980 and for the fact that those deeds remain unpunished.

2. The Commission approved the admissibility report No. 65/09 on August 4, 2009<sup>1</sup>. On August 14, 2009, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement.<sup>2</sup> The parties were informed of the statutory deadlines for submitting additional observations on the merits. All information received was duly relayed between the parties.

3. The petitioner alleged that in connection with the military coup in Bolivia in July 1980 the alleged victim had been disappeared when, in his capacity as leader of the Revolutionary Workers' Party (Partido Obrero Revolucionario) and alternate national representative in Congress, he had attended a meeting of the Committee for the Defense of Democracy at the headquarters of the Bolivian Workers Confederation (Central Obrera Boliviana), when those headquarters were attacked by soldiers and paramilitary forces. She argued that the State had not fully investigated those facts, had not punished those responsible, and had not determined the whereabouts of Mr. Flores Bedregal's remains. She also complained that while judicial orders had been issued to declassify documents and information held by the Armed Forces, which would help to throw light on the facts and on the whereabouts of the alleged victim, those orders had not been obeyed by the authorities concerned.

4. The State, for its part, referred to domestic procedures aimed at investigating the facts and punishing those responsible. It specified that former de facto President Luís García Meza had been put on trial to determine his criminal liability for those events, which included what had happened to Juan Carlos Flores Bedregal, and that García Meza and his collaborators had been convicted. It pointed out that criminal proceedings were initiated in 1999 regarding the same facts, which ended with a dismissal of proceedings in respect of some of the accused and with convictions handed down against most of them. Regarding the length of time taken for domestic proceedings, Bolivia asked the Commission to take into account the complexity of the case, the actions taken by the judicial authorities, and the filing of a series of remedies and incidental pleas by the accused. The IACHR argued that the IACHR cannot act as a fourth instance reviewing decisions by domestic courts.

5. After analyzing the positions of the parties and the information in the file, the Commission concluded that the State of Bolivia is responsible for violating the rights to juridical personality, life, personal integrity, personal liberty, judicial guarantees, freedom of expression, freedom of association, participation in government/public affairs, and judicial protection set forth in Articles 3, 4.1, 5.1, 5.2, 7, 8.1, 13, 16, 23 and 25.1 of the American Convention on Human Rights (hereinafter "the American Convention" or "the

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<sup>1</sup> IACHR Report No. 65/09. Petition 616-06. Admissibility. Juan Carlos Flores Bedregal. Bolivia. The Commission stated that the facts could characterize violations of Articles 3, 4, 5, 7, 8, 12, and 25 of the American Convention, in conjunction with Article 1.1 thereof, as well as Article I and III of the Inter-American Convention on Forced Disappearance of Persons (ICFDP). The IACHR declared the petition inadmissible in respect of Article 24 of the Convention.

<sup>2</sup> It transpires from the file that the parties approached one another with a view to a possible friendly settlement process. Given the lack of information regarding any concrete progress in that direction, in a communication dated September 9, 2015 the IACHR conveyed its decision to declare an end to its part in that possible process and to continue its consideration of the merits.

Convention") in conjunction with Article 1.1 and 2 of the same instrument and Articles 1.a and b and III of the Inter-American Convention on Forced Disappearance of Persons (hereinafter "the IACFDP") to the detriment of the persons named in this report. The IACHR made the corresponding recommendations.

## **II. POSITIONS OF THE PARTIES**

### **A. The petitioner**

6. The petitioner alleged that Juan Carlos Flores Bedregal, a leader of the Partido Obrero Revolucionario and member of the Chamber of Deputies in Congress, disappeared on July 17, 1980, after an attack by soldiers and armed members of paramilitary forces on the headquarters of the Bolivian Workers Confederation (hereinafter "the COB"). She explained that this occurred during a meeting of the Committee for the Defense of Democracy convened prior to an imminent coup d'état announced by the Armed Forces. She alleged that the political leaders and trade unionists present had been captured during that attack after declaring that they were unarmed and had been forced to file down to the street one behind the other with their hands behind their necks. She maintained that after he had been recognized in that group, the socialist leader Marcelo Quiroga Santa Cruz resisted his attackers and was shot and wounded. Seeing what had happened, the alleged victim had tried to help him, but was then himself "hit in a burst of gunfire." She alleged that the alleged victim and Marcelo Quiroga Santa Cruz had been taken to the offices of the Army Chief of Staff in one of the ambulances used in the capture of the COB, which was where they had last been seen. She asserted that 30 years later the whereabouts of Mr. Flores Bedregal or of his remains was still unknown.

7. The petitioner presented abundant information regarding a series of claims filed by relatives of the alleged victim with judicial bodies, the Public Prosecutors' Office, and the Executive and Legislative branches of government since the events addressed in the case. She stated that as early as July 17, 1980 a complaint had been lodged, in Bolivia and abroad, regarding the disappearance of the alleged victim, and then with the National Commission on Disappeared Persons. She complained that during the first inquiries State agents had provided false information regarding the whereabouts of the alleged victim, thereby obstructing investigations, and that pressure had been exerted on family member to accept remains that were not those of Mr. Flores Bedregal.

8. The petitioner made mention of the proceedings to determine liability, and to the conviction handed down by the Supreme Court of Justice against the de facto President following the military coup, Luis García Meza, and his collaborators. She argued, in that regard, that the crimes that were committed in the attack on the COB were not properly clarified in those proceedings and that most of the perpetrators of the forced disappearance of the alleged victim were not included in that trial.

9. She also referred to the investigation carried out by the Human Rights Commission of the Chamber of Deputies (hereinafter the "CDH") since 1997 and stated that it had only included Marcelo Quiroga Santa Cruz as a victim, not Mr. Flores Bedregal, even though both had disappeared in the same circumstances. She pointed out that the Public Prosecutors' Office had opened a criminal investigation in 1999 into several people based on the report issued by the CDH and that the family members of the alleged victim had been able to act as the claimants for civil damages. However, she claimed that said investigation had been faulty and no charges had been brought for the most serious offenses.

10. She said that on December 12, 2007, several of the accused were convicted of various offenses and several sentences were handed down, while six defendants were acquitted. She said she filed appeals including for cassation to challenge that judgment, which was ratified. She argued that the sentences had been minimal, despite the fact that grave human rights violations had been committed. With respect to the crime of forced disappearance, she argued that since it had been legally characterized as a crime until 2006, the judicial authorities had subsumed the facts of the case into less serious forms of criminal conduct.

11. The petitioner alleged that no effective actions had been undertaken to find and return the remains of Mr. Flores Bedregal. She stated that, in connection with the judicial proceedings, family members had requested that the Ministry of Defense declassify the files of the time of the military coup, which would

likely contain information as to the whereabouts of the remains. She asserted that despite a number of orders and judicial rulings requiring the armed forces to declassify that material, those orders were disobeyed by the military authorities and no steps were taken to enforce them.

## **B. The State**

12. At the merits stage, the State referred mainly to internal proceedings undertaken because of events relating to the death of the alleged victim and acknowledged that Mr. Flores Bedregal has been "murdered" in the assault on the COB on July 17, 1980. The State asserted that it had met its obligations to see justice done and that the IACHR could not act as a fourth instance to review domestic decisions establishing liabilities of the perpetrators and instigators. It also pointed out, in connection with the reasonable length of time criterion, that account had to be taken of the complexity of the facts investigated. In particular, the State argued that consideration should also be given to the fact that the events surrounding the assault on the COB had occurred under a dictatorship and in connection with "complex conduct by an unconstitutional military organization trained to get rid of evidence and proofs."

13. First, the State referred to the judicial liabilities proceedings against former *de facto* President Luis García Meza and members of the ministerial cabinet, the Armed Forces, the National Police, as well as civilians. He said that at that trial the perpetrators and instigators of the events that occurred in the assault on the COB had been punished. The State pointed out that those proceedings had ended in a judgment of conviction handed down by the Supreme Court of Justice on April 15, 1993, in which the maximum penalties permitted under domestic law had been imposed, with no entitlement to a pardon.

14. Second, the State submitted information regarding the criminal proceedings brought under ordinary (i.e. non-military) jurisdiction in 1999 against Franz Pizarro Solano, a member of the military, and other persons for the same facts surrounding the assault on the COB. The State stressed that those proceedings had been initiated because of the need to investigate other possible responsibilities in addition to those established in the "judicial liabilities proceedings." It said that the aforementioned persons were tried for the offenses of "armed uprisings against the security and sovereignty of the State," terrorism, murder, obstruction of justice/cover-up (*encubrimiento*), false testimony, and murder. The State pointed out that several of the accused had been convicted in final judgments and sentenced to the maximum terms of imprisonment, by an Order handed down by the Supreme Court of Justice on October 25, 2010. The State stressed the complexity of these proceedings given a supposed "pact of silence among the defendants" and their "obstructionist attitude," as well as series of incidental pleas and objections raised by defense counsel, all of which had had to be addressed in order to guarantee due process. The State pointed out that the Supreme Court's ruling placed on record the fact that the proceedings had taken so long due to the behavior of the accused. It pointed out that the family members had acted as claimants of civil damages and had filed a series of petitions. The State mentioned a third criminal proceeding brought by the Public Prosecutor's Office in 2009 for the crime of forced disappearance to the detriment of Juan Carlos Flores Bedregal and other persons which in 2011 had been at the inquiries stage.

15. In subsequent communications, the State rejected characterization of the facts as a case of forced disappearance, stating that "the death of Mr. Flores Bedregal was a proven fact" according to domestic judicial findings. Accordingly, the State submitted that "*lato sensu* [broadly speaking] given the participation and/or acquiescence of State agents in the event that resulted in the death of Mr. Flores Bedregal, it could be considered that the State violated [...] the right to life [...]." However, it argued that when democracy returned, the State had met its obligations to see justice done. The State maintained that at the time of the facts and of the criminal proceedings, it had not been obliged to characterize the crime of forced disappearance.

16. The State also pointed to the efforts undertaken to "recover the remains of persons disappeared" during the military dictatorship, including those of the alleged victim. In particular, it stressed that via the Inter-Institutional Council to Shed Light on Forced Disappearances (hereinafter "the CIEDEF"), established in 2003, a number of actions had been undertaken, that priority had been given to the case of Mr. Flores Bedregal, and that the Council had worked with family members and civil society to recover victims'

remains. With regard to characterization of the crime of forced disappearance, it pointed out that the offense was incorporated into the Bolivian Criminal Code in 2006.

17. Concerning the requests to access classified documents of the Armed Forces, the State described how judicial authorities and prosecutors had acted in proceedings related to the declassification of that information. It alleged that a resolution issued in 2009 by the Ministry of Defense had authorized Army High Command to allow access to information to family members and victims who requested it and demonstrated a "legitimate interest" as well as other "judicial requirements." The State indicated that, according to the Commander in Chief of the Armed Forces, on February 26, 2010 access was given to classified information of the Army for Fiscal Year 1980, that the Office of the Public Prosecutor had participated in that procedure, and that information regarding the personnel roster had been remitted to the investigating judge, who forwarded it to the Public Prosecutors' Office (*Ministerio Público*).

### III. FINDINGS OF FACT

#### A. Context

18. Both organs of the inter-American system have been familiar with the political situation in Bolivia since the 1970s and the human rights situation in that context. In 1981, the Commission issued a country report<sup>3</sup> in which it pointed out that, despite various efforts to consolidate a democratic process, on July 17, 1980 a coup had been perpetrated by military and paramilitary forces, starting a repressive regime in which grave violations of human rights continued.<sup>4</sup>

19. The de facto government was headed by Army General Luis García Meza Tejada. The military junta took over the functions pertaining to the Executive, Legislative, and Judicial Branches of Government and in addition arrogated to itself the powers of a Constituent Assembly by refusing to recognize the electoral results through which members of the National Congress had been elected who, in turn, were to elect the Nation's President given that the candidate who had won the general elections convened on June 29, 1980 had not obtained the constitutionally required majority.<sup>5</sup>

20. Once the new military government was in place, it also decreed the militarization of the entire country and proclaimed the "Participation of the Armed Forces in the Current Political Process." The Commission pointed out that those developments had interrupted the return to democracy following previous dictatorships and had abolished the representative institutions of the people. It also analyzed how, as of July 17, 1980, the violation and restrictions on political rights had increased, reflecting the de facto military government's interest in eliminating any opposition, even peaceful opposition. The IACHR examined the restrictions on trade union and other associations' rights after July 17, 1980 imposed through a series of Supreme Decrees suspending freedom of association and assembly.<sup>6</sup>

21. In its judgment in the case of *Ticona Estrada et al. v. Bolivia*, the Inter-American Court of Human Rights (hereinafter "the Inter-American Court" or "the Court") also analyzed these circumstances. Based on the State's admission, the Court established that the military government "implemented a policy of

<sup>3</sup> On July 25, 1980, the Permanent Council of the Organization of American States (hereinafter "OAS") issued resolution 308, in which it resolved "to deplore the military coup, which indefinitely suspends the process of democratic institutionalization... [in Bolivia and] 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 [...]". It also requested that, in the shortest time possible, the Inter-American Commission on Human Rights examine the situation of human rights in Bolivia. Permanent Council of the OAS, Resolution CP/RES. 308 (432/80) of July 25, 1980. Cited in: IACHR. *Report on the Situation of Human Rights in the Republic of Bolivia*. OEA/Ser.L/V/II.53 doc.6 rev.2. October 13, 1981. Introduction.

<sup>4</sup> IACHR. *Report on the Situation of Human Rights in the Republic of Bolivia*. OEA/Ser.L/V/II.53 doc.6 rev.2. October 13, 1981. Chapter IV on political rights and Conclusions section.

<sup>5</sup> IACHR *Report on the Situation of Human Rights in the Republic of Bolivia*. OEA/Ser.L/V/II.53 doc.6 rev.2. October 13, 1981. Chapter IV on political rights. See also: I/A Court H.R. *Case of Ticona Estrada et al. v. Bolivia*. Merits, Reparations, and Costs. Judgment of November 27, 2008 Series C No. 191, para. 46

<sup>6</sup> IACHR. *Report on the Situation of Human Rights in the Republic of Bolivia*. OEA/Ser.L/V/II.53 doc.6 rev.2. October 13, 1981 Chapter IV on political rights and Chapter V on Right of Assembly and Freedom of Association: The Trade Unions.



intimidation, harassment and extermination" against left-wing groups and any person or organization that could constitute opposition ...to the purposes of the Military Junta." The Court determined that, in that context, the "security forces and the paramilitary groups ... committed serious violations of human rights within a framework of impunity that benefited the systematic practice of illegal detentions, tortures and forced disappearance of people."<sup>7</sup>

22. 47. Within Bolivia, several bodies and authorities also recognized that a military coup had occurred and denounced the repressive policy implemented during the dictatorship of Luis García Meza. The Supreme Court of Justice determined the existence of a planned policy of intimidation, harassment, and extermination of members of the Revolutionary Left Movement (MIR) and other opposition figures, using irregular armed groups or paramilitary for those purposes. The Permanent Assembly for Human Rights pointed out that during the military government "more than 500 murders and forced disappearances were committed, nearly 4,000 people were arrested, and thousands exiled, in addition to routine illicit detentions [...] inspired by the notorious Doctrine of National Security and the need to 'root out any vestiges of communism'. A policy was pursued that blatantly violated human right and physically eliminated those who opposed the regime [...]."<sup>8</sup>

### 1. The assault on the COB on July 17, 1980

23. As regards the political rights situation, the Inter-American Commission noted in its 1981 Country Report that in the days prior to the military coup and given the general elections held in Bolivia on June 29, 1980 there was an atmosphere of insecurity and uncertainty about whether the Armed Forces would allow that electoral process to go forward, after a series of earlier military coups. In that context, various community-based groups agreed to establish the National Committee for the Defense of Democracy (CONADE), made up of the Bolivian Confederation of Workers (COB), political parties, religious organizations, the Permanent Assembly for Human Rights, and other community-based civic institutions. Its purpose was to alert citizens and prepare them to put up peaceful resistance in the form of a general strike and roadblocks in the event of a disruption of the democratic order.<sup>9</sup>

24. Regarding what happened on July 17, 1980, during the military uprising, the Supreme Court of Justice established that the Government Palace had been taken by force of arms and that the then interim President Lidia Gueiler Tejada and her ministerial cabinet had been arrested. The Court also established that the COB had been violently attacked while a meeting was being held "to see how to prevent the coup d'état from materializing." The Supreme Court determined that, during those acts, several murders had been committed and a number of people arrested and taken to the barracks at Army Headquarters, "where all the prisoners were being taken, including the leaders of CONADE, ministers, journalists and radio and television personnel, along with the [...] dead and wounded."<sup>10</sup>

25. The IACHR also documented the assault on the headquarters of the COB, indicating that the CONADE had been meeting there to draft a declaration decreeing the strike and ordering road blocks; among other events of July 17, 1980.<sup>11</sup> In both its 1981 country report and in its Resolution 27/81, the IACHR took it as established that the arrest and death of the then presidential candidate for the Socialist Party and

<sup>7</sup> I/A Court H.R. *Case of Ticona Estrada et al. Bolivia* Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, paras. 45-47.

<sup>8</sup> See: Appendix 1. Decision of the Supreme Court of Justice of the Nation of April 15, 1993. Attached to the State's communication of March 25, 2010; and International Seminar: Impunity and its Effects on Democratic Processes." Santiago, Chile, December 14, 1996: Impunity and Democracy: **IMPUNITY IN BOLIVIA: Democratic Regimes in Latin America and Impunity.** By Waldo Albarracín of the Permanent Assembly for Human Rights in Bolivia. Available at: [www.derechos.org/koaga/xi/2/albarracin.html](http://www.derechos.org/koaga/xi/2/albarracin.html).

<sup>9</sup> IACHR. *Report on the Situation of Human Rights in the Republic of Bolivia*. OEA/Ser.L/V/II.53 doc.6 rev.2. October 13, 1981. Chapter IV on political rights.

<sup>10</sup> Appendix 1. Decision of the Supreme Court of Justice of the Nation of April 15, 1993. Attached to the State's communication of March 25, 2010.

<sup>11</sup> IACHR. *Report on the Situation of Human Rights in the Republic of Bolivia*. OEA/Ser.L/V/II.53 doc.6 rev.2. October 13, 1981. Chapter IV on political rights.

congressman Marcelo Quiroga Santa Cruz had taken place during the assault on the COB.<sup>12</sup> The I/A Court H.R. reached the same conclusion as part of the context reconstructed in the case of *Ticona Estrada et al. v. Bolivia*.<sup>13</sup>

**B. Regarding Juan Carlos Flores Bedregal and his family members, and events relating to his disappearance**

26. Juan Carlos Flores Bedregal was born on February 4, 1953 in La Paz, Bolivia.<sup>14</sup> His father was Fidel Flores Carrasco and his mother Carmen Bedregal Iturri, both of whom died in 1977.<sup>15</sup> His sisters are Verónica, Eliana Isabela, Liliana Teresa, and Olga Flores Bedregal.<sup>16</sup> In 1970, he began his medical studies and since then had been a student leader in a variety of activities. He began being an active member of the Revolutionary Workers Party in 1973 and in 1979 was elected as an alternate deputy member of Congress for the department of Chuquisaca after being placed on the lists of candidates for Unidad Democrática y Popular. He took up his position in Congress at the beginning of 1980.<sup>17</sup> At the time of the facts of the case, Mr. Flores Bedregal had also been on the National Committee for the Defense of Democracy.

27. The findings of investigations in the domestic jurisdiction into the events surrounding the disappearance of Mr. Flores Bedregal are contained in the case file. The judicial authorities determined that the alleged victim had been at COB headquarters when the armed assault on it took place on July 17, 1980, in connection with the military coup referred to in the foregoing section, and when a meeting was being held of the National Committee for the Defense of Democracy, of which congressman and socialist leader Marcelo Quiroga Santa Cruz and congressman Juan Carlos Flores Bedregal were members.<sup>18</sup> The State has not questioned those facts in its communications with the IACHR and has accepted the findings of fact in said rulings.

28. First, the Supreme Court of Justice found in a judgment handed down on April 15, 1993 that:

In a military operation called "Avispón" (hornet), the Bolivian Confederation of Workers building was captured by force of arms and some 50 trade union and political leaders were arrested and two killed (Carlos Flores Bedregal and Gualberto Vega Yapura) while another was fatally wounded (the leader of the Socialist Party, Marcelo Quiroga Santa Cruz).<sup>19</sup>

29. That same judgment reviewed the testimony of several people who had been present in the COB during the armed attack on July 17, 1980. One of the witnesses declared that:

It was when I was going down the steps and on the first landing that I saw a corner in which there were two bodies: there was one body whose face I didn't see, I just saw the back, probably he was dead; from later information I heard that it had been our fellow worker Flores; but lying across that body, in the same corner of that landing, lay the body of Don Marcelo Quiroga Santa Cruz. There were no signs of blood; nothing; they must have brought

<sup>12</sup> See: IACHR. Resolution No. 27/81. Case 7.458, Bolivia. June 25, 1981; and IACHR. Report on the Situation of Human Rights in the Republic of Bolivia. OEA/Ser.L/V/II.53 doc.6 rev.2. October 13, 1981. Chapter IV on political rights.

<sup>13</sup> I/A Court HR. *Case of Ticona Estrada et al. Bolivia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 46.

<sup>14</sup> Appendix 2. Birth certificate in the name of Juan Carlos Flores Bedregal. Registration No. 0489541. Attached to the petitioners' communication of June 10, 2012.

<sup>15</sup> Communication of the IACHR of Sunday, June 10, 2012

<sup>16</sup> Appendix 3. Birth certificates for Olga Beatriz, Eliana Isabela, Verónica, and Lilian Teresa Flores Bedregal. Attached to the petitioners' communication of June 10, 2012.

<sup>17</sup> Appendix 4. Publication entitled *Carta inconclusa a mi hermano Carlos* (Unfinished letter to my brother Carlos), written by Olga Flores Bedregal, Editorial Primigenias, La Paz, 2005, pp.80-84. Enclosed with the original petition received on June 14, 2006, and petitioner's communication of June 10, 2012.

<sup>18</sup> See: Appendix 5. Judgment handed down by the Second Criminal Settlement Enforcement Court of the Higher Court of the District of La Paz on December 12, 2007. Attached to the State's communication of December 9, 2011.

<sup>19</sup> Appendix 1. Decision of the Supreme Court of Justice of the Nation handed down on April 15, 1993, p. 45. Attached to the State's communication of March 25, 2010.



the bodies up there from lower floors where the bodies had been attacked, hauling them like a sack of potatoes or something. There was the one body I only saw the back of and on top of that lay the body of Don Marcelo Quiroga Santa Cruz. I approached and lifted his chin. His hair was unruffled and when I lifted him I could see he was pale, but not cold like a corpse and I even saw how making a tremendous effort he looked up.<sup>20</sup>

30. In the regular criminal proceedings brought in 1999 regarding the same events, the Second Criminal Enforcement Court found the following facts on which to base judgment:

The details of the coup d'état of July 17, 1980 perpetrated by Luis García Meza and Luis Arce Gómez, obviously with the intervention of a series of civilian and military collaborators, as a result of which Marcelo Quiroga Santa Cruz, Carlos Flores Bedregal, and Gualberto Vega Yapura were murdered.

[...]

The unlawful arrest of some 50 leaders, torture, rapes and kidnapping of those leaders, in addition to the adoption of a series of stances contrary to the Bolivian State, [...] the violation of human rights and guarantees.

[...]

The use and abuse of firearms by those conducting the coup and their collaborators in their capacity as members of the military or as paramilitaries and civilians trained in the use of arms.

[...]

Another fact ascertained is that as a result of said coup d'état, Quiroga Santa Cruz and Flores Bedregal were murdered, their bodies tossed out in the Mallsa district, then picked up and taken to the morgue, from which they disappeared with no information even now of the whereabouts of their remains.

Finally, the court finds and affirms that the accused took part in the facts described above in one way or another and to this day in a conspiracy of silence have not provided any information to shed light on what happened, thereby covering up crimes and many other facts and giving totally false testimony.

[...]

Likewise accredited are the deaths of trade union leaders such as Marcelo Quiroga Santa Cruz, Juan Carlos Flores Bedregal, and Gualberto Vega Yapura, The remains of the first two have not been located to this day, much less handed over by those responsible for their deaths to their family members.<sup>21</sup>

31. The Commission points in particular to the following extract from the court's decision:

The basis for this action is the taking of the COB, the murder of Quiroga Santa Cruz and Flores Bedregal and the disappearance of their bodies, in which much responsibility lies with the investigator assigned to the cases and his illegal behavior, namely removing the bodies without the participation of forensic experts; that after leaving the bodies in the morgue they curiously returned to it, that is to say, to the morgue next to Rogelio Gómez, together with a photographer, which is strange and which the accused seeks to hide despite the compelling statement by the witness (the photographer)' consequently, making a false statement means giving false testimony, in addition to the failure to provide true data on

<sup>20</sup> Appendix 1. Judgment of the Supreme Court of Justice of the Nation handed down on April 15, 1993, testimony of Noel Vásquez Valdez, p. 52. Attached to the State's communication of March 25, 2010.

<sup>21</sup> Appendix 6. Higher District Court of La Paz. Bolivia. Resolution No. 129/2007 of the Second Criminal Settlement Enforcement Court. Trial of Franz Pizarro Solano et al. for the crimes of armed uprising against the security and sovereignty of the State and others. December 12, 2007. Attached to the State's communication of December 6, 2011.

what they did, the report they filed, the return to the morgue to take photographic samples [...].<sup>22</sup>

32. The guilty verdict also describes parts of the testimony by the accused from which it transpires that there is a lack of certainty as to the destiny and whereabouts of the remains of Mr. Flores Bedregal.<sup>23</sup> Here the Commission places on record that in connection with these proceedings no light was shed on a series of major matters; what was ascertained was false information in several testimonies by the accused.<sup>24</sup>

### C. Judicial proceedings and other actions taken by family members

33. The file with the IACHR contains information regarding two internal proceedings conducted in connection with the facts, namely the trial to determine criminal responsibilities before the Supreme Court of Justice and a regular criminal proceeding brought against several people involved in the coup d'état and, in particular, the assault on the COB, following investigations conducted by the CDH.

34. In addition, the Commission has at its disposal information relating to actions undertaken by family members of Juan Carlos Flores Bedregal with a view to discovering his whereabouts and obtaining justice and truth with respect to his disappearance. Thus, in the months following the coup d'état, family members went to a series of government offices without eliciting any information about his whereabouts. It likewise transpires that in 1983-1984 Mr. Flores Bedregal's sisters took part in the exhumations of at least three corpses buried in clandestine cemeteries in La Paz, only to find that the remains were not his.<sup>25</sup> According to the petitioner, these actions were undertaken in connection with the functions of the National Commission on Disappeared Persons established in 1984. While they were the first formal steps taken to establish the whereabouts of Mr. Flores Bedregal, they too failed to come up with an answer.<sup>26</sup> It further transpires that family members also went to the Office of the Vice President of the Republic and the Office of

<sup>22</sup> Appendix 6. Higher District Court of La Paz. Bolivia. Resolution No. 129/2007 of the Second Criminal Settlement Enforcement Court. Trial of Franz Pizarro Solano et al. for the crimes of armed uprising against the security and sovereignty of the State and others. December 12, 2007. Attached to the State's communication of December 6, 2011.

<sup>23</sup> Thus, Felipe Froilán Molina Bustamante identified the person who allegedly shot Marcelo Quiroga Santa Cruz and Juan Carlos Flores Bedregal, but declared that he did not know what happened to their bodies; José Faustino Rico Toro Herbas declared that "no investigation was conducted of other aspects, such as the death of Quiroga Santa Cruz and the whereabouts of his body because no order was issued to do so [...]"; César Altamirano Lavadenz declared that that day he had been in the district of Mallasa and saw "that there were corpses in a ditch, [that] photographs were not taken, because the people from the laboratory had not come there" and that together with other officials, "they pulled out the bodies of [Marcelo] Quiroga and Flores [Bedregal] to take them to the morgue", and that "two days later he had heard that they had taken the bodies out of the morgue [...]"; Marco Erminio Mena Vargas declared that the bodies of Marcelo Quiroga Santa Cruz and Juan Carlos Flores Bedregal were taken to the morgue but he did not know "what person or persons had taken the bodies" away from there; Rogelio Gómez Espinoza declared that on that day he had been in "the Aranjuez district, where there were two bodies, that of Marcelo Quiroga Santa Cruz and that of Carlos Flores"; he stated that the bodies had been taken to the morgue but that "half an hour after depositing the corpses, he heard that they had been robbed by hooded men and civilians, an act that that was never investigated"; David Humberto Alarcón Romero declared that he had taken part in the moving of the bodies of Marcelo Quiroga Santa Cruz and Juan Carlos Flores Bedregal "from a place in Mallasa; [...] that] he had seen how they recovered the bodies" and had taken them to the morgue and then he had heard that "they had kidnapped the corpses"; Raúl Solano Medina, declared that he "had delivered 400 liters of gasoline that he presumes were used to burn the bodies of Quiroga Santa Cruz and Flores Bedregal" and that subsequently he had been ordered to return the ashes to family members of Quiroga Santa Cruz, after they had demanded the delivery of his remains; José Gregorio Loza Balsa declared that he had seen the body of Marcelo Quiroga Santa Cruz in the offices of the Army Chief of Staff, and did not know what happened to it thereafter; and Juan Gualberto Aquize Rada declared that he had taken part in the removal of the bodies of Quiroga Santa Cruz and Flores Bedregal, and that subsequently they had been taken to the morgue. See: Appendix 6. Higher District Court of La Paz. Bolivia. Resolution No. 129/2007 of the Second Criminal Settlement Enforcement Court. Trial of Franz Pizarro Solano et al. for the crimes of armed uprising against the security and sovereignty of the State and others. December 12, 2007. Attached to the State's communication of December 6, 2011.

<sup>24</sup> See: Appendix 6. Higher District Court of La Paz. Bolivia. Resolution No. 129/2007 of the Second Criminal Settlement Enforcement Court. Trial of Franz Pizarro Solano et al. for the crimes of armed uprising against the security and sovereignty of the State and others. December 12, 2007, Pages 19681-19683 and 19665. Attached to the State's communication of December 6, 2011.

<sup>25</sup> An article published in the Bolivian daily newspaper, El País, of July 11, 1998, and kept in the case file, gives a detailed account of those efforts by the victim's sisters to discover his whereabouts. Appendix 4. Publication entitled *Carta inconclusa a mi hermano Carlos* (Unfinished letter to my brother Carlos), written by Olga Flores Bedregal, Editorial Primigenias, La Paz, 2005, p. 49, copy of an article in El País published on July 11, 1998 and entitled *Carlos Flores: dieciocho años desaparecido y recordado* [Carlos Flores: missing for 18 years and remembered].

<sup>26</sup> See, inter alia, the petitioners' communication of June 30, 2008.

the Ombudsperson in their attempt to establish the whereabouts of Mr. Flores Bedregal. At the Ombudsperson's office, the family members complained of the refusal by the Armed Forces to allow access to their archives despite courts orders to that effect.<sup>27</sup>

35. The State, on the other hand, reported the establishment in 2003 of the Inter-Institutional Council to Shed Light on Forced Disappearances (CIEDEF), which had allegedly accorded priority to the case of Juan Carlos Flores Bedregal.<sup>28</sup> The latest information from the State, provided in 2014, states that "the mortal remains of Mr. Bedregal disappeared from the morgue of the Hospital de Clínicas in the city of La Paz, after their legal removal, there being no information thus far of their whereabouts or about those responsible for this occurrence."<sup>29</sup>

## 1. Trial to determine criminal liability of Luis García Meza and others

36. Following the restoration of democracy, the National Congress received criminal lawsuits brought by public and private institutions denouncing crimes committed during the dictatorship of Luis García Meza. After holding nine plenary sessions, on February 25, 1986, Congress filed charges before the Supreme Court of Justice against Mr. García Meza, his junta of military commanders, member of the 1980 ministerial cabinet, members of the Armed Forces, National Police and civilian personnel, for murder, sedition, armed uprising, the organization of irregular armed groups, conspiracy to commit crime, arrogation of the people's rights, resolutions contrary to the Constitution and laws of the country, "genocide and bloody massacre", deprivation of liberties, assaults on freedom of the press, violation of the autonomy of universities, illicit favor for the importing of vehicles, and other offenses.<sup>30</sup>

37. The Commission points out once again that in the case of *Ticona Estrada v. Bolivia*, the Inter-American Court took into account the context in the forced disappearance of the victim took place, that is to say, the 1980 coup d'état and the repressive regime established by Luis García Meza. Thus, the IACHR comes back to what was established in that case in which, in the trial to determine criminal liability, on April 15, 1993 the Supreme Court :

[...] found General Luis García Meza, and Colonel Luis Arce Gómez and their collaborators guilty of committing eight sets of crimes: sedition and the arrogating to themselves of rights pertaining to the people, armed uprising, the organization of irregular armed groups, resolutions contrary to the Constitution and to laws, deprivation of liberty, offenses against freedom of the press, the obtaining of illicit advantages, and violation of university autonomy. In the guilty verdict, it was established that the de facto regime's actions constituted "preparatory [and] planned acts."<sup>31</sup>

38. In matters concerning the instant case, the Supreme Court of Justice found Luis García Meza Tejada guilty of several punishable deeds, including the murder of Marcelo Quiroga Santa Cruz and of Carlos Flores Bedregal, for which he was sentenced to "30 years imprisonment, with no right to pardon." In addition, the "set of crimes" for which several of those tried as collaborators of Luis García Meza Tejada were convicted

<sup>27</sup> See, inter alia: Appendix 7. Note addressed to the Office of the Vice President of the Republic, with a stamp certifying receipt on August 5, 2003. Attached to the petitioner's communication of October 5, 2010: Appendix 15. Ombudsman's Resolution No. RD/00016/LPZ/2010 of February 22, 2010, p. 1, which states that on July 29, 2009, Olga and Verónica Flores Bedregal filed a complaint against the Commander in Chief of the Army for "not having implemented Ministerial Resolution No. 316 of the Ministry of Defense." Attached to the State's communication of December 6, 2011. See also: Appendix 4. Publication entitled *Carta inconclusa a mi hermano Carlos* (Unfinished letter to my brother Carlos), written by Olga Flores Bedregal, Editorial Primigenias, La Paz, 2005. Appendix to the initial petition received on June 14, 2006.

<sup>28</sup> See, inter alia: State's communications of May 18, 2010 and January 10, 2014.

<sup>29</sup> State's communication of January 10, 2014.

<sup>30</sup> See: Appendix 1. Decision of the Supreme Court of Justice of the Nation handed down on April 15, 1993, Section II: Regarding the First Trial to Determine Liability, and Section III: Regarding the Second Trial to Determine Liability. Attached to the State's communication of March 25, 2010.

<sup>31</sup> I/A Court H.R. *Case of Ticona Estrada et al. Bolivia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 49, citing Judgment handed down by the Supreme Court of Justice in the trials to determine liability brought by the Public Prosecutor's Office and others against Luis García Meza and his collaborators on April 15, 1993.

included the "assault on the Bolivian Confederation of Workers" on account of the crimes of murder, armed uprising, and conspiracy to commit crime.<sup>32</sup>

## 2. Criminal proceedings in the regular jurisdiction

39. Subsequently, regular criminal proceedings were initiated to determine the criminal liability of those involved in the coup d'état of July 17, 1980, the assault on the COB, the arrest, torture, execution and disappearance of social leaders who opposed the disruption of the democratic-constitutional order, as well as the cover-up of said facts by agents of the State and their civilian collaborators.<sup>33</sup> A precedent for these proceedings had been set by the investigations of the Human Rights Commission of the Chamber of Deputies, which had been instructed on September 3, 1997 to "follow up on and verify the search for the remains of former congressman Marcelo Quiroga Santa Cruz."<sup>34</sup> On November 17, 1998, the Chamber of Deputies ordered initial charges to be brought against several people for deeds committed during the coup d'état.<sup>35</sup>

40. On February 18, 1999, the Third Investigative District Judge for Criminal Cases of La Paz initiated judicial proceedings against Franz Pizarro Solano, Felipe Froilán Molina Bustamante, and José Luis Ormachea España, for the crimes of murder, armed uprising against the security of the State, terrorism and cover-up; and against Raúl Solano Medina, David Humberto Alarcón Romero, César Altamiro Labaden, Juan Aquize Rada, Rogelio Gómez Espinoza, Joaquin Quisberth Quiroga, Marcos Erminio Mena Vargas, Damian Gutiérrez Castro, and Sebastian Quispe Apaza, for the crimes of false testimony, cover-up, and conspiracy to commit crime.<sup>36</sup> On April 18, 2001, the Third Investigative Judge for Criminal Cases of La Paz arraigned 17 persons on charges of armed uprising against the security and sovereignty of the State, terrorism, murder, cover-up, and false testimony. In the same resolution, provisional dismissal of charges was ordered for four other persons, on the grounds that the evidence gathered was deemed insufficient to indicate their participation in the facts of the case.<sup>37</sup> These decisions included the facts relating to Juan Carlos Flores Bedregal.

41. On August 30, 2001, the Court declared the accused Franz Pizarro Solano, Damián Gutiérrez Castro, and René Javier Hinojosa Valdez in contempt of court and ordered the seizure of their assets. On a number of occasions the attorney for the Flores Bedregal family asked the Second Criminal Settlement Enforcement Court of La Paz to summon several of the accused to appear at oral hearings, issue arrest warrants, and perform certain evidentiary procedures<sup>38</sup>.

<sup>32</sup> Appendix 1. Decision of the Supreme Court of Justice of the Nation handed down on April 15, 1993, pp. 94-100. Attached to the State's communication of March 25, 2010.

<sup>33</sup> See: Appendix 8. Report of the Higher District Court of La Paz in the judicial proceedings entitled Public Prosecutor's Office (*Ministerio Público*) versus Franz Pizarro et al., p. 2. Appendix 1 to the State's communication of October 31, 2008.

<sup>34</sup> See: Appendix 9. Resolution of the Chamber of Deputies of September 3, 1997, signed by its President at the time, Hormando Vaca Diez. Attached to the State's communication of October 31, 2008. The file with the IACHR contains several of the investigative proceedings also undertaken pursuant to Supreme Resolution No. 218121 of August 19, 1997, which ordered that a search be conducted for the remains of Marcelo Quiroga Santa Cruz. See, for instance: Appendix 10. Ministry of the Interior (*Ministerio de Gobierno*) Communication S.N.R.I.P. 0241/97 of August 20, 1997 Attached to the State's communication of October 31, 2008. Through Chamber of Deputies Resolution No. 099 of October 23, 1997, the investigation was assigned to the Human Rights Commission of the Chamber of Deputies. Cited in: Appendix 11. Chamber of Deputies Instruction of November 17, 1998. Attached to the State's communication of October 31, 2008. The petitioner explained that given that these facts also involved the disappearance of Mr. Flores Bedregal, she requested that his case be included in the investigation. See: Communication by the petitioner of June 30, 2008.

<sup>35</sup> Appendix 11. Chamber of Deputies Instruction of November 17, 1998. Attached to the State's communication of October 31, 2008.

<sup>36</sup> Appendix 12. Initial decision to open investigations (*Auto Inicial de Instrucción*) issued on February 18, 1999 by the Judge of the Third Investigative Court for Criminal Cases of the Capital. Attached to the State's communication of October 31, 2008.

<sup>37</sup> Appendix 13. Resolution No. 158/2001, Arraignment by the Third Investigative Court for Criminal Cases of La Paz on April 18, 2001. Attached to the State's communication of June 1, 2010. According to the information available, through Resolution No. 410/99 of December 22, 1999, the accused Felipe Froilan Molina was granted bail ("libertad bajo la modalidad de fianza juratoria"). It likewise transpires that legal counsel for the Flores Bedregal family complained in connection with the criminal proceedings that that decision constituted an irregularity and that that individual had threatened Ms. Olga Flores Bedregal and one of her attorneys. See: Appendix 16. Request for reversal of the release on bail submitted by Mario Zapana Poma to the Third Criminal Court of the Higher Court of Justice on April 24, 2009. Attached to the petitioners' communication of Wednesday, April 29, 2009.

<sup>38</sup> See: Appendix 14. Written submissions by attorney Eulogia Pantoja Vacaflor addressed to the Second Criminal Settlement Enforcement Court of La Paz, with a stamp indicating receipt on August 28 and September 23, 2006. Attached to the petitioners' communication of October 5, 2010.

42. The family members of Juan Carlos Bedregal joined these proceedings as plaintiffs and requested that the accused be convicted of the crimes of "murder, armed uprising against the security and sovereignty of the State, ill-treatment and torture, false testimony, cover-up, conspiracy to commit crime, and forced disappearance of persons," based on the provisions of Bolivian criminal law and the Rome Statute.<sup>39</sup>

43. The Commission lacks full information regarding the proceedings through to 2007. According to the petitioner, there was no procedural activity in 2005 and 2006.<sup>40</sup> The State did not contest that assertion by submitting documentation to the contrary.

44. On May 21, 2007, the Public Prosecutor's Office of the District of La Paz submitted arguments to the Second Criminal Law Enforcement Judge regarding the fact that crimes against humanity do not prescribe under the statute of limitations and referring to the murder "[...] of defenders of democracy, in which Carlos Flores Bedregal and Marcelo Quiroga Santa Cruz had been killed by bullets fired from a submachine gun [...]"<sup>41</sup> Thus, according to the Public Prosecutors' Office, their deaths had occurred "during the assault on the COB" and their "bodies had been tossed out in the Mallasa district, recovered, transferred to the morgue, and then kidnapped, with no news of their whereabouts to this day."<sup>42</sup>

45. On December 12, 2007, the Second Criminal Settlement Enforcement Court of the District of La Paz handed down judgment convicting State agents and civilians for a series of crimes. The relevant sections of the operative part of that judgment establish the following:

[...] RULES AS FOLLOWS CONVICTING the accused: FRAN (sic) PIZARRO SOLANO, JOSE LUIS ORMACHEA ESPANA, AND FELIPE FROILAN MOLINA BUSTAMANTE, whose legal particulars in respect of the first two are unknown as they were tried in contempt of court [...], for being the PERPETRATORS of the crimes of ARMED UPRISING AGAINST THE SECURITY AND SOVEREIGNTY OF THE STATE, TERRORISM, AND COVER-UP, offenses characterized by Articles 121, 133, and 171 of the Criminal Code, and of being responsible as ACCOMPLICES in the crime of MURDER, punishable under Article 252.2, 3, 4, and 6 in conjunction with Article 23, all of the Criminal Code; and because the file contains full, direct, and compelling proof against them in connection with said crimes. Consequently, each of them is hereby sentenced to 30 (thirty) years imprisonment with no right to pardon in the San Pedro de Chonchocoro prison in the Department of La Paz, plus payment of damages to the civilian party and the State that can be verified during execution of sentence.<sup>43</sup>

<sup>39</sup> See: Appendix 6. Higher District Court of La Paz. Bolivia. Resolution No. 129/2007 of the Second Criminal Settlement Enforcement Court. Trial of Franz Pizarro Solano et al. for the crimes of armed uprising against the security and sovereignty of the State and others. December 12, 2007. Attached to the State's communication of December 6, 2011.

<sup>40</sup> See: Petitioner's communication of June 10, 2017; Appendix 17. Petition lodged with the Ministries of the Interior, Justice, and National Defense on May 12, 2006, entitled "We demand enforcement of the law in the case of the forced disappearance of our brother Carlos Flores Bedregal." Attached to the communication of the petitioner of April 29, 2009; and Appendix 18. Request to the Ministry of Justice of June 19, 2006 entitled "We call for you to intervene to ensure that the criminal proceedings brought by the Public Prosecutors' Office against Franz Pizarro continue to be conducted in accordance with regulations." Attached to the petitioners' communication of April 29, 2009. In this last communication, Ms. Olga Flores Bedregal and Ms. Verónica Flores Bedregal complained about the slow pace of the proceedings and "the lack of interest in the case" shown by the judge hearing it and his "alarming tolerance of the absenteeism of the accused" and "animosity toward the civilian party." Another communication presented in 2017 by Ms. Olga Flores Bedregal to a number of authorities also points out irregularities being committed in the processing of the case, including its slow pace, such that in some years only four hearings would be held. See: Appendix 19. Communication addressed to the Vice Minister of Justice and Human Rights and the Vice Minister of Transparency and Efforts to Combat Corruption on August 31, 2007, entitled "We note strange judicial conduct in the proceedings by the Public Prosecutors' Office regarding the murder of Quiroga Santa Cruz and armed uprising." Attached to the petitioners' communication of April 29, 2009.

<sup>41</sup> Appendix 20. Presentation of arguments for conviction by the Office of the Public Prosecutor for the District of La Paz to the Second Criminal Law Enforcement Judge of the Capital, of May 21, 2007. Attached to the petitioners' communication of June 10, 2007.

<sup>42</sup> See: Appendix 6. Higher District Court of La Paz. Bolivia. Resolution No. 129/2007 of the Second Criminal Settlement Enforcement Court. Trial of Franz Pizarro Solano et al. for the crimes of armed uprising against the security and sovereignty of the State and others. December 12, 2007. Attached to the State's communication of December 6, 2011.

<sup>43</sup> Guilty verdicts were also handed down against: i) Raúl Solano Medina, Rogelio Gómez Espinoza, Adolfo Ustares Ferreyra, José Gregorio Loza Balsa, René Javier Hinojoza Valdez, and Joaquín Quisberth Quiroga, for the crimes of cover-up and false testimony. They were sentenced to three years' imprisonment and payment of damages and costs; and ii) José Faustino Rico Toro for the crime of concealment.

[continues ...]



46. Regarding the crime of forced disappearance, the Court ruled that it could not be applied by virtue of the principle that criminal law may be applied retroactively and also because it had not figured in the indictment.<sup>44</sup> On this matter, Law 3326 of January 18, 2006 incorporated the crime of forced disappearance of persons in the Criminal Code in the following terms:

Whoever, with the authorization, support, or acquiescence of any organ of the State, deprives one or more persons of their liberty and deliberately hides or denies information regarding acknowledgment of the deprivation of liberty or the whereabouts of the person, thereby preventing the implementation of remedies and procedural guarantees, shall be punished with rigorous imprisonment (*presidio*) for between five and fifteen years. If as a consequence of this deed the victim should suffer grave physical or psychological damage, the sentence shall be to between fifteen and twenty years' rigorous imprisonment. If the perpetrator is a government official, the maximum sentence shall be increased by one third. If, as a consequence of the deed, the victim should die, the sentence imposed shall be thirty years of rigorous imprisonment.<sup>45</sup>

47. Against the judgment of December 12, 2007, some of the accused and legal counsel for the aggrieved filed an appeal with the Third Criminal Division of the Higher Court of the Judicial District of La Paz.<sup>46</sup> The representative of the Flores Bedregal family argued in her appeal that the acquittal of several of the accused had been based on an improper assessment of the evidence gathered through the proceedings.<sup>47</sup>

48. The case file contains a communication sent by the Ombudsperson's Office to the Minister of the Interior referring to complaints filed by Ms. Olga Flores Bedregal, pointing out that she "was being followed by individuals who even wrote down the number plate of her vehicle" after that judgment had been handed down and alleging that her attorney had also received threats. The Ombudsperson's Office requested that the necessary measures be adopted to guarantee the security of the family members of Mr. Flores Bedregal and of their attorney.<sup>48</sup> The IACHR has no information regarding protection measures for the family.

[... continuation]

He was sentenced to 2 years in prison, plus payment of damages and costs. The following were acquitted: David Humberto Alarcón Romero, César Altamirano Lavandez, Juan Gualberto Aquize Rada, Marcos Herminio Mena Vargas, Damián Gutiérrez Castro, and Sebastián Quispe Apaza. Appendix 6. Higher District Court of La Paz. Bolivia. Resolution No. 129/2007 of the Second Criminal Settlement Enforcement Court. Trial of Franz Pizarro Solano et al. for the crimes of armed uprising against the security and sovereignty of the State and others. December 12, 2007. Attached to the State's communication of December 6, 2011.

<sup>44</sup> Appendix 6. Higher District Court of La Paz. Bolivia. Resolution No. 129/2007 of the Second Criminal Settlement Enforcement Court. Trial of Franz Pizarro Solano et al. for the crimes of armed uprising against the security and sovereignty of the State and others. December 12, 2007. Attached to the State's communication of December 6, 2011.

<sup>45</sup> Law 3326 of January 18, 2006, published in the Official Gazette of Bolivia on January 21, 2006. On this matter, the State stressed that legal characterization of the offense of forced disappearance was undertaken in response to an order of the Inter-American Court of Human Rights in the *Trujillo Oroza* case. State's communication of December 6, 2011.

<sup>46</sup> See: Appendix 8. Report of the Higher District Court of La Paz in the judicial proceedings entitled Public Prosecutor's Office (*Ministerio Público*) versus Franz Pizarro et al., p. 6. Appendix 1 of the State's communication of October 31, 2008; and Appendix 21, Resolution No. 103/2008 issued on August 22, 2008 by the Third Criminal Division of the Higher Court of the Judicial District of La Paz. Attached to the State's communication of June 1, 2010.

<sup>47</sup> See: Appendix 21. Resolution No. 103/2008 issued on August 22, 2008 by the Third Criminal Division of the Higher Court of the Judicial District of La Paz. 10-11. Attached to the State's communication of Tuesday, June 1, 2010. In a complaint filed with the Office of the Ombudsperson, the family members also maintained that the judgment had issued "minimal sentences for several of the "co-defendants" and that the acquittal of six "members of the repressive regime of that time" stood in blatant contradiction to the views expressed in the judgment. See: Appendix 22. Complaint filed on April 15, 2008 with the Ombudsperson against the Public Prosecutor of the District of La Paz. Attached to the petitioners' communication of June 30, 2008.

<sup>48</sup> See: Appendix 23. Communication from the Office of the Ombudsperson addressed to the Ministry of the Interior, dated February 25, 2008. Attached to the petitioners' communication of April 29, 2009.



49. It further transpires that, on April 9, 2008, the appellate prosecutor's office for the District of La Paz requested the annulment of all the proceedings thus far "due to the delays and harm done to the intervening parties."<sup>49</sup>

50. On August 22, 2008, the Third Criminal Division of the Higher Court of the Judicial District of La Paz partially confirmed the judgment of the court of first instance with respect to the sentences it handed down and revoked the acquittal of the four defendants. In light of that ruling, David Humberto Alarcón Romero, César Altamirano Lavadenz, Juan Alberto Aquize Rada, and Marco Herminio Mena Vargas were found guilty of cover-up and sentenced to two years in prison and payment of damages and costs. In addition, the Division rejected the request referred to above.<sup>50</sup>

51. Some of the accused also filed incidental pleas, requesting dismissal or termination of the proceedings due to prescription of the criminal suit due to the statute of limitations and the unconstitutional nature of rules invoked by the Criminal Court that had sentenced them, among other legal challenges.<sup>51</sup> In a motion issued in October 2009, the Appeals Prosecutor (*Fiscal de Recursos*) in the Office of the Attorney General requested that the Supreme Court regard those appeals as groundless since in his view both substantive and procedural provisions had been correctly applied.<sup>52</sup> That request was addressed by the First Criminal Division of the Supreme Court of Justice of the Nation in resolutions issued on August 10 and September 29, 2010, respectively.<sup>53</sup> In particular, the Supreme Court found that the alleged prescription of the criminal suit did not apply and that failure to comply with the five-year deadline for processing the case envisaged in criminal law was "due to the behavior of the defendants."<sup>54</sup>

52. On October 25, 2010, the First Criminal Division of the Supreme Court of Justice dismissed as groundless several appeals for annulment filed by the defense counsel for the convicted. Likewise, in response to an appeal for annulment and cassation filed by family members of Juan Carlos Flores Bedregal,

<sup>49</sup> Appendix 24. Legal Opinion issued by the District Appellate Prosecutor, Teresa Vera Loza, on April 9, 2008, numbered paragraph 4. Attached to the petitioners' communication of June 30, 2008. In response to a complaint by the family, on November 30, 2009, the National Disciplinary Tribunal declared that this Public Prosecutor had been guilty of serious misconduct in her handling of this matter. See: Appendix 25. Complaint lodged by Olga Flores Bedregal on May 8, 2012 with the Inspector General of the Public Prosecutors' Office; Appendix 26. Request by family members of Juan Carlos Flores Bedregal to the President of the Human Rights Commission of the Chamber of Deputies, dated April 14, 2008. Both documents attached to the petitioner's communication of June 30, 2008; Appendix 27. Request by the Office of the Inspector General of the Public Prosecutors' Office to the Third Criminal Division of the Higher Court of Justice of La Paz, dated September 24, 2008. Attached to the State's communication of October 31, 2008; Appendix 28. Resolution No. 132/2008 of October 22, 2008 issued by the Office of the Inspector General of the Public Prosecutors' Office. Attached to the petitioners' communication of March 31, 2009. Appendix 29. Minutes of the preliminary hearing. National Disciplinary Tribunal, November 30, 2009. Appendix to the petitioner's communication of December 20, 2009; and Appendix 30. Resolution No. 006/2010. National Disciplinary Tribunal, February 19, 2010. Attached to the petitioners' communication of March 15, 2010.

<sup>50</sup> Appendix 21. Resolution No. 103/2008 issued on August 22, 2008 by the Third Criminal Division of the Higher Court of the Judicial District of La Paz. Attached to the State's communication of Tuesday, June 1, 2010. With regard to César Altamirano Lavadenz, the ruling establishes that he "participated in the removal of the bodies of Marcelo Quiroga Santa Cruz and Carlos Flores Bedregal and that the bodies arrived in an irregular manner from the district of Mallasa to the morgue; that after committing these offenses he helped cover up the action of those who committed the crime, by failing to denounce it"; with respect to David Humberto Alarcón Romero and Juan Alberto Aquize Rada, the decision indicates that both participated directly in the removal of the two bodies and did not announce those facts to any government authority; and regarding Juan Alberto Aquize Rada, the ruling establishes that "he was a former DIN driver who, together with the investigated parties, took part in the removal of the bodies from the Mallasa district and drove the bodies to the morgue [...]" and that since he had taken part in said procedure and had not reported it he too bore criminal liability.

<sup>51</sup> See, inter alia: Appendix 31. Request to the Third Criminal Division of the Higher Court of La Paz, entitled "Prior objection due to prescription of offenses and maximum duration of proceedings," presented by the defense counsel of Raúl Solano Medina and dated September 2, 2008. Attached to the State's communication of October 31, 2008.

<sup>52</sup> Appendix 32. Opinion of October 2009 issued by Miltón Iván Montellano Roldán, the Appeals Prosecutor of the Office of the Attorney General (*Fiscalía General del Estado*) Attached to the State's communication of June 1, 2010.

<sup>53</sup> Appendix 33. Supreme Court decision No. 356 handed down on August 10, 2010 by the First Criminal Division of the Supreme Court of Justice of the Nation, and rejecting an incidental appeal filed by defendant Felipe Froilán Bustamante alleging unconstitutionality. Appendix 34. Supreme Court decision No. 448 handed down on September 29, 2010 by the First Criminal Division of the Supreme Court of Justice rejecting the appeal for cassation and annulment and request for termination of the criminal proceedings filed by defendants Rogelio Gómez, Gerardo Gianni Prado Herrera, and Felipe Froilán Molina Bustamante. Documents attached to the State's communication of January 28, 2011.

<sup>54</sup> Appendix 34. Supreme Court decision No. 448 handed down on September 29, 2010 by the First Criminal Division of the Supreme Court of Justice. p. 4. Attached to the State's communication of January 28, 2011.

who had constituted themselves as civil parties to the suit,<sup>55</sup> the Criminal Division partially amended the judgment of August 22, 2008, in respect of the penalty imposed on several of those convicted of the crimes of false testimony and cover-up, and also included in that conviction Damián Gutiérrez Castro and Sebastián Quispe Apaza, who, according to the Division had been "unjustifiably omitted in the decision under review."<sup>56</sup>

53. According to the information available, in 2013, the Second Criminal Enforcement Court of La Paz issued arrest warrants against Felipe Froilán Molina Bustamante, José Luis Ormachea España, and Franz Pizarro Solano.<sup>57</sup> According to the last information provided by the State, the judgment of the Second Court was enforced.<sup>58</sup>

54. The Commission notes that in a report prepared by the Higher District Court in La Paz a series of "difficulties" had been identified with respect to the criminal proceedings referred to in this section, including: i) they were being conducted based on the previous code of criminal procedure using a "quasi-inquisitorial system"; ii) the complexity of the case file due to its sheer "volume"; iii) reiterative use of evidence for and against and other motions solely designed to delay the case and avoid pronouncement of judgment"; iv) the "excessive use of defense tactics by the accused, who filed a series of incidental pleas, prior objections of a lack of legal characterization, prior ruling requirements, prescription of the suit [...]"; v) "the absence of domiciles in respect of several of the accused"; vi) that "all parties involved had been allowed to offer and process evidence"; vi) failure of the accused or of their attorneys to attend proceedings, and so on.<sup>59</sup>

55. In communications during 2010 and 2011, the Bolivian State reported that on July 17, 2009 the Public Prosecutors' Office had initiated new criminal proceedings (No. 6441/09) in respect of the crime of forced disappearance of Juan Carlos Flores Bedregal et al., based on the new legal and constitutional framework in force. The State reported that a "Special Commission of Public Prosecutors" had been formed to direct the investigation and that CIEDEF had also been keeping track of the proceedings.<sup>60</sup> In subsequent communications in 2015, the State pointed out that the purpose of those proceedings was to advance the search for the remains of the alleged victim and other persons.<sup>61</sup> The Commission has no documentary evidence with which to ascertain the existence, progress, and current status of these proceedings.

<sup>55</sup> See: Appendix 35. Appeal for annulment and cassation filed by Olga Beatriz Flores Bedregal with the Third Criminal Division of the Higher Court of Justice on January 24, 2009. Attached to the petitioners' communication of March 31, 2009. Specifically, in support of that appeal, the petitioner argued that the crimes involved should be considered crimes against humanity because both Marcelo Quiroga Santa Cruz and Juan Carlos Flores Bedregal had been "victims of torture, murder, and forced disappearance" and that therefore the Court should have applied the Rome Statute of the International Criminal Court ratified by Bolivia in 2002.

<sup>56</sup> Appendix 36. Supreme Court decision No. 504 handed down on October 25, 2010 by the First Criminal Division of the Supreme Court of Justice, file No. 136/09, pp. 14-15. Attached to the State's communication of January 28, 2011.

<sup>57</sup> Appendix 37. Arrest warrants issued by the Second Criminal Enforcement Court of La Paz on November 27, 2013. Attached to the State's communication of January 10, 2014. The case file likewise contains a report issued by the National Police in 2014 stating that there was no information regarding Franz Pizarro Solano; José Luis Ormachea España "is registered as having died"; and Felipe Froilán Molina Bustamante could not be found at the address on record. See: Appendix. Report No. 04/2014. National Police. Secretariat of the Department of Criminal Analysis and Intelligence, February 3, 2014. Attached to the State's communication of March 5, 2014.

<sup>58</sup> State's communication of January 26, 2017.

<sup>59</sup> Appendix 8. Report of the Higher District Court of La Paz in the judicial proceedings entitled Public Prosecutor's Office (*Ministerio Público*) versus Franz Pizarro et al., p. 2. Appendix 1 to the State's communication of October 31, 2008. The file with the IACHR contains communications from family members of Juan Carlos Flores Bedregal and from organizations requesting that the criminal proceedings be expedited. See, inter alia: Appendix 39. Communication addressed to the President of the Higher District Court in La Paz entitled "expediting the trial of the oppressors for the death and disappearance of Juan Carlos Flores Bedregal and Marcelo Quiroga Santa Cruz", by the Permanent Assembly for Human Rights, dated May 2, 2008. Attached to the State's communication of October 31, 2008.

<sup>60</sup> See, inter alia: State's communication of December 6, 2011.

<sup>61</sup> State's communication of June 29, 2015.

### 3. Regarding the declassification of and access to information contained in military archives

56. It transpires from the case file that family members of Juan Carlos Flores Bedregal repeatedly asked the judicial authorities in charge of the criminal proceedings entitled "Public Prosecutors' Office v. Franz Pizarro et al." for the declassification of and access to information contained in military archives that could establish the victim's whereabouts, as well as the circumstance and persons responsible for his forced disappearance. Given the failure to comply with requests for access to information ordered by the criminal justice authorities, the family members of the victim requested the Ministry of Defense directly for access to the military archives. In addition to taking legal steps, the family members of the victims took part in several protests, including hunger strikes, to demand access to that information.<sup>62</sup> Following is a chronological list of the procedures undertaken:

57. On August 28, 2006, in connection with the criminal proceedings entitled "Public Prosecutors' Office v. Franz Pizarro et al.", the Flores Bedregal family asked the Judge of the Second Criminal Settlement Enforcement Court for the declassification and disclosure of documents contained in the Armed Forces archives for 1980.<sup>63</sup> The petitioners allege -- and the State did not deny -- that the Court never responded to that request. In 2008, during the appeals phase, the plaintiffs again requested declassification of, and access to, the military archives. In July 2008, the Higher District Court in La Paz issued judicial order No. 496/2008, ordering the Armed Forces General Staff to declassify the documents contained in its archives from 1979 to 1980 and to remit "certified copies of all people entering or leaving the offices of the Army General Staff between July 10 and 20, 1980."<sup>64</sup> The Higher Court handed down its judgment on August 22, 2008,<sup>65</sup> and the Armed Forces never complied with the order to declassify and provide access to the archives.<sup>66</sup>

58. Given the failure to comply with the court orders, on May 28, 2009, family members of the victim asked the Armed Forces directly for access to the archives, public records, and documents in the Armed Forces' possession that had a bearing on the disappearance of Juan Carlos Flores Bedregal.<sup>67</sup> The request was based on Resolution No. 316/09 issued by the Ministry of Defense on May 19, 2009 in response to demands by family members of victims of serious human rights violations in Bolivia to have access to the military archives corresponding to periods of dictatorship. The resolution "authorizes the Commander in Chief of the Armed Forces to facilitate access by family members and victims of military dictatorship regimes to archives, public records, and documents of the Armed Forces when they so request and demonstrate a legitimate interest (Article 1)."<sup>68</sup>

59. On June 5, 2009, the Armed Forces replied to the request, indicating that applicants had to meet the following requirements: "1. Demonstrate legitimate interest in the information requested; 2. specify

<sup>62</sup> Appendix 40. Photograph and caption included in the following articles in the press: [www.laprensa.com.bo](http://www.laprensa.com.bo). El País. February 26, 2010, showing Olga Flores Bedregal and Marta Montiel in a tent on the street next to a poster calling for "Declassification of Military Archives"; [www.la-razon.com](http://www.la-razon.com). A10. February 27, 2010, showing two people with a cape marked "Truth and Justice NOW!" The caption reads: "From behind, Olga Flores and Martha (sic) Montiel, family members of disappeared persons demand that the Armed Forces tell them the truth." Attached to the State's communication of March 15, 2010, received by the IACHR on April 6, 2010.

<sup>63</sup> Appendix 41. Communication signed by attorney Eulogia Pantoja Vacaflor and bearing a stamp indicating receipt by the Second Criminal Settlement Enforcement Court on August 28, 2006.

<sup>64</sup> Appendix 42. Third Criminal Division, Higher Court of Justice. Resolution No. 496/2008 of July 2008. Attached to the State's communication of October 21, 2008, received by the IACHR on October 22, 2008.

<sup>65</sup> Appendix 43. Order of the Judge of the Third Criminal Division of the Higher District Court in La Paz, September 2008. Attached to the State's communication, received by the IACHR on October 22, 2008.

<sup>66</sup> Appendix 44. Supreme Court decision No. 125/09, handed down by the First Criminal Division of the Supreme Court of Justice on April 1, 2010, file No. 136/09, last paragraph on p.2 and first line on page 3. Attached to the State's communication of June 22, 2010, received by the IACHR on July 8, 2010. Written communication of September 11, 2008, LEGAL ADVISOR, Official letter No.341/08, signed by Air Force General Luis Trigo Antelo, Commander in Chief of the Armed Forces, attached to the State's communication received by the IACHR on October 22, 2008. Brief signed by attorney Alfonso Dorado and Olga Flores Bedregal (civil party claimant), stamped as received by the Higher Court of Justice. Third Criminal Division, September 10, 2008. Capital letters used in the original. Attached to the State's communication of October 21, 2008, received by the IACHR on October 22, 2008.

<sup>67</sup> Appendix 45. Official letter addressed to the Commander in Chief of the Armed Forces of the State, with a stamp indicating receipt on June 1, 2009. Attached to the State's communication of June 22, 2010, received by the IACHR on July 8, 2010.

<sup>68</sup> Appendix 46. Ministerial Resolution No. 316, issued by the Ministry of Defense on May 19, 2009. Attached to the State's communication of July 13, 2009, received by the IACHR on July 27, 2009.

dates and details of the information requested; 3. ways to ensure that the information provided will be kept secret; 4. meet legal requirements and formalities before a competent authority; 5. the substantiated order issued by a competent authority must be addressed to the Captain General of the Armed Forces; 6. By virtue of the powers vested in him and in consultation with the Commander in Chief of the Armed Forces, the Captain General of the Armed Forces shall consider whether, in accordance with the above requirements, the case merits granting the competent Judge's petition."<sup>69</sup>

60. On June 25, 2009, the family members of the victim requested that the Armed Forces clarify the requirements, since they had not been stipulated in Resolution No. 316/09.<sup>70</sup> In the absence of a reply from the Ministry of Defense, on December 10, 2009, the family members of the victim filed an action for constitutional relief (*acción de amparo*) with the Higher District Court in La Paz.<sup>71</sup> On December 12, 2009, the Second Criminal Division of the Higher District Court in LA Paz issued Resolution No. 88/2009, declaring the appeal INADMISSIBLE in limine.<sup>72</sup> The Division determined that "first the applicants must comply with the procedure indicated by the authority, [...] the action may not be brought instead of other ordinary procedures established by law." The family members of the victim did not reiterate their request to the Ministry of Defense since they considered that the requirements violated their right to the truth and they did not manage to directly access the military archives via this channel.

61. On February 15, 2010, when the criminal proceedings entitled "Public Prosecutors' Office v. Franz Pizarro et al" were in cassation, the family members again requested declassification of and access to the information contained in the military archives.<sup>73</sup> On April 1, 2010, the First Criminal Division of the Supreme Court (CSJ) issued Supreme Court ruling No. 125, which ordered the Armed Forces to proceed, together with a representative of the Public Prosecutors' Office, to "declassify the archives in the Second Department of the Chiefs of Staff from June 1979 to December 1980 and to report on all persons entering or leaving the office of the Chiefs of Staff of the Army between July 10 and July 20, 1980, by remitting certified copies to this Court."<sup>74</sup> On April 16, 2010, at the request of the family members of the victim, the CSJ issued Supreme Court decision No. 167, specifying that the declassification it had ordered included also "the Classified Documents on the Roster of Armed Forces Personnel kept in the office of the Chiefs of Staff, from June 1979 to December 1980."<sup>75</sup>

62. For five months the family members of the victim took a series of legal actions to achieve compliance with the declassification orders issued by the CSJ.<sup>76</sup> As a result of those endeavors, on September

<sup>69</sup> Appendix 47. Official letter of June 5, 2009 issued by the Commander in Chief of the Armed Forces. Attached to the State's communication of June 22, 2010, received by the IACHR on July 8, 2010.

<sup>70</sup> Appendix 48. Communication of June 25, 2009 addressed to the Commander in Chief of the Armed Forces of the State, with a stamp indicating receipt on June 29, 2009. Attached to the petitioner's communication of June 22, 2010, received by the IACHR on July 8 of the same year, and Official Letter of July 6, 2009 signed by the legal advisor to the Commander in Chief of the Armed Forces. Attached to the State's communication of June 22, 2010, received by the IACHR on July 8, 2010.

<sup>71</sup> Appendix 49. Copy of the document filing the *amparo* suit, presented by Olga Beatriz Flores Bedregal and Verónica Flores Bedregal before the Higher District Court in La Paz on December 10, 2009. Attachment 8 to the petitioner's communication of December 20, 2009, received by the IACHR on December 23, 2009 and Attachment 14 to the State's communication of October 16, 2013, received by the IACHR on October 18, 2013.

<sup>72</sup> Appendix 50. Higher District Court of La Paz, Second Criminal Division. Resolution 88/2009 of December 12, 2009. Capital letters used in the original. Attachment 7 to the State's communication, received by the IACHR on January 19 and 31, 2011.

<sup>73</sup> Appendix 44. Supreme Court decision No. 125/09, handed down by the First Criminal Division of the Supreme Court of Justice on April 1, 2010, file No. 136/09, p.5. Attached to the petitioner's communication of June 22, 2010, received by the IACHR on July 8, 2010 and Appendix 51. Official letter of the Office of the Attorney General of the Republic (FGR) of March 12, 2010 addressed to the First Criminal Division of the Supreme Court. Attached to the State's communication of June 22, 2010, received by the IACHR on July 8, 2010. Capitals used in the original version.

<sup>74</sup> Appendix 44. Supreme Court decision No. 125/09, handed down by the First Criminal Division of the Supreme Court of Justice on April 1, 2010, file No. 136/09, p.5. Attached to the State's communication of June 22, 2010, received by the IACHR on July 8, 2010. Capitals used in the original version.

<sup>75</sup> Appendix 52. Supreme Court decision No. 136/09, handed down by the First Criminal Division of the Supreme Court of Justice on April 16, 2010, file No. 136/09, p.2. Attached to the State's communication of June 22, 2010, received by the IACHR on July 8, 2010.

<sup>76</sup> Appendix 53. Communication addressed to the Commander in Chief of the Armed Forces of the Plurinational State of Bolivia, signed by the Appeals Prosecutor in the Office of the Attorney General, Dr. Milton Iván Montellano, and dated September 24, 2010, and stamped as received on September 27, 2010. Attachment 10 to the State's communication of October 16, 2013, received by the IACHR on October 18, 2013.

28, 2010, the Public Prosecutor entered the facilities of the Chiefs of Staff and conducted an on-site inspection of the archives, which consisted of making an inventory of the documentation corresponding to 1979-1980.<sup>77</sup> In October 2010, the Armed Forces sent the judicial authorities a report with documentation that in its view compliance with the court orders<sup>78</sup> and stated that said documentation "must be kept CONFIDENTIAL as stipulated in the last part of Article 98 of the Organic Law of the Armed Forces." The family members of the victim did not have access to the information handed over, nor did they participate in the inspection of the military archives. On October 25, 2010, the Supreme Court of Justice issued its cassation judgment, confirming the criminal conviction of the accused, but it did not manage to establish the whereabouts of Juan Carlos Flores Bedregal.

63. Parallel to the above, in connection with the criminal proceedings entitled "Public Prosecutors' Office v. Felipe Froilán", resolutions were issued ordering the declassification of, and access for the Public Prosecutors' Office to, the information contained in military archives that could determine the whereabouts of Juan Carlos Bedregal and other victims of forced disappearance in Bolivia<sup>79</sup>. The public prosecutors assigned to the job conducted judicial inspections of the archives<sup>80</sup> and later on the Armed Forces remitted to the court "a brief with three closed envelopes attached," in which in the Armed Forces' opinion constituted compliance with the court orders to declassify.<sup>81</sup> Those three envelopes were remitted to the Public Prosecutors' Office for its information.<sup>82</sup> There is no indication in the file that the family members of Flores Bedregal took part in that criminal proceedings or that they gained access to the information obtained at the trial.

<sup>77</sup> Appendix 54. Minutes of the On-Site Inspection signed by the Appeals Prosecutor and other authorities, dated "La Paz, on September 28, 2010 at 9:15 a.m.", which were added to the file together with two handwritten lists signed by the same persons who drew up the aforementioned minutes. Under the heading "Documents Reviewed (1979)" there are seven numbered paragraphs and under the heading Documents Reviewed (1980)" there are another 10 numbered paragraphs. Among the documents referred to there are radiograms, memos, and newspaper articles. Attachment 1 to the State's communication of October 16, 2013, received by the IACHR on October 18, 2013.

<sup>78</sup> Appendix 55. Official letter, Legal Advisor No. 562/2010. Communication addressed to the Appeals Prosecutor of the Office of the Attorney General, Iván Montellano Roldán, dated October 19, 2010, with confirmation of receipt on October 22, 2010 at 11:00 a.m., signed by the Commander in Chief of the Armed Forces. Army General Ramiro De La Fuente Bloch. Attachment 2 to the State's communication of October 16, 2013, received by the IACHR on October 18, 2013.

<sup>79</sup> Appendix 56. Resolution No. 384/2009, issued on September 16, 2009 by the Eighth Criminal Investigative Judge for Precautionary Measures (*Juez Octavo de Instrucción en lo Penal Cautelar*). Bold face, italics, and capitals used in the original version. Attached to the State's communication of December 6, 2011, received by the IACHR on December 20, 2011. Appendix 57. Resolution No. 59/2010, issued on February 10, 2010 by the Eighth Criminal Investigative Judge for Precautionary Measures. Bold face and capitals used in the original version. Attached to the State's communication of December 6, 2011, received by the IACHR on December 20, 2011. Annex. Eighth Criminal Court Judge for Precautionary Measures. Decision dated October 24, 2009. Attached to the petitioner's communication of December 20, 2009, received by the IACHR on December 23, 2009.

<sup>80</sup> Appendix 58: Newspaper article, "Fiscalía pedirá el secuestro y revelación de archivos", [Public Prosecutor's Office will ask for seizure and disclosure of archives], *www.la-razon.com*, A10, of February 27, 2010, para. 3. Attached to the petitioner's communication of March 15, 2010, received by the IACHR on April 6, 2010, and Report by the State of Bolivia, October 18, 2013.

<sup>81</sup> Appendix 59. Brief dated March 1, 2010, presented by Roberto Siles Terán to the Eighth Investigative Criminal Court for Precautionary Measures. Attached to the State's communication of May 18, 2010, received by the IACHR on May 25, 2010; Appendix 60. Report of the Eighth Criminal Investigative Judge for Precautionary Measures of March 23, 2010. Appendix to the State's communication of Tuesday, May 18, 2010, received at the IACHR on Tuesday, May 25, 2010.

<sup>82</sup> Appendix 61. Report signed by the Eighth Criminal Investigation Judge on March 23, 2010, addressed to the President of the Higher Court of Justice in La Paz. Attachment 8 to the State's communication of May 18, 2010, received by the IACHR on October 18, 2013.



#### IV. LEGAL ANALYSIS

##### A. **Rights to recognition of juridical personality, personal liberty, personal integrity, life, judicial guarantees, and judicial protection (Articles 3, 7, 5, 4, 8.1, and 25.1 of the American Convention) in conjunction with obligation to respect and guarantee rights Article 1.1 of the same instrument<sup>83</sup>; and Articles 1.a and b<sup>84</sup> of the IACFDP.)**

64. In its consistent case law on cases of forced disappearance of persons, the inter-American system for protection of human rights has reiterated that it constitutes an illegal act that gives rise to a multiple and continuing violation of several rights protected by the American Convention and places the victim in a state of complete defenselessness, giving rise to other related crimes. The State's international responsibility is increased when the disappearance forms part of a systematic pattern or practice applied or tolerated by the State. It amounts, in short, to a crime against humanity, entailing a crass departure from the core principles upon which the inter-American system is founded.<sup>85</sup>

65. Thus the States have an obligation not to practice or tolerate the forced disappearance of persons under any circumstances. Furthermore, they must take reasonable steps to prevent the commission of this crime, conduct a serious investigation when it is committed in order to identify those responsible and punish them accordingly, and ensure appropriate reparation in respect of the victim.<sup>86</sup> These obligations are explicitly stated in Article 1 of the Inter-American Convention on Forced Disappearance of Persons.

66. In keeping with its consolidated case law, the Commission finds that forced disappearance is a complex human rights violation that continues in time so long as the whereabouts of the victim or of their

<sup>83</sup> The provisions of the American Convention referred to in the title above provide as follows:

Article 3. Right to Juridical Personality: Every person has the right to recognition as a person before the law.

Article 4. Right to Life. 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.

Article 5. Right to Humane Treatment. 1. Every person has the right to have his physical, mental, and moral integrity respected. 2. No one shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. All persons deprived of their liberty shall be treated with respect for the inherent dignity of the human person.

Article 7. Right to Personal Liberty: 1. Every person has the right to personal liberty and security.

Article 8. Judicial Guarantees 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.

Article 25. Judicial protection 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.

Article 1.1. The States Parties to this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

<sup>84</sup> Those articles establish the following:

The States Parties to this Convention undertake to: a) Not to practice, permit, or tolerate forced disappearance of persons, not even in a state of emergency, exception, or suspension of individual guarantees; b) To punish in their sphere of jurisdiction the perpetrators, accomplices, and .after the fact of the crime of forced disappearance of persons, as well as the attempt to commit it.

<sup>85</sup> IACHR. Report 101/01. Case 10.247 and others. Extra-legal Executions and forced disappearance of persons. Peru. October 10, 2001. Para. 178; IACHR. Application before the Inter-American Court of Human Rights, Case No. 11.324, Narciso González Medina et al. , the Dominican Republic, May 2, 2010, para. 103; IACHR. Application before the Inter-American Court, Case No. 12.517, Gregoria Herminia Contreras et al., El Salvador, June 28, 2010, para. 131; I/A Court H.R., *Case of Goiburú et al.* Judgment on Merits, Reparations and Costs Judgment of September 22, 2006. Series C No. 153. Para. 82; I/A Court H.R., *Case of Gómez Palomino*. Judgment of November 22, 2005. Series C No. 136. Para. 92; I/A Court H.R., *Case of the Serrano Cruz Sisters. Preliminary Objections*. Judgment of November 23, 2004. Series C No. 118, paras. 100 to 106; I/A Court H.R., *Case of Molina Theissen*. Reparations (Art. 63(1) of the American Convention on Human Rights). Judgment of July 3, 2004, Series C No. 108, para. 41.

<sup>86</sup> I/A Court H.R. *Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 4*, par. 174; *Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations, and Costs, Judgment of September 22, 2009. Series C No. 202*, para. 62; and *Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209*, para. 142.



remains are not known. Disappearance as such only ceases when the victim appears or his or her remains are found,<sup>87</sup> in such a way that their identity can be determined with certainty.<sup>88</sup>

67. As regards the rights violated, forced disappearance violates the right to personal liberty and places the victim at grave risk of suffering irreparable harms to his rights to personal integrity and life. The Court has pointed out that forced disappearance violates the right to personal integrity because "prolonged isolation and deprivation of communication are in themselves cruel and inhuman treatment."<sup>89</sup> The Commission and the Court have determined that it is clear that in the case of a forced disappearance, the victim's personal integrity is affected in all its dimensions.<sup>90</sup> The Court has likewise stated that even assuming that the torture or murder of a victim of disappearance cannot be demonstrated in a particular case, the subjection of detainees to State agents or private individuals acting with their acquiescence or tolerance who with impunity practice torture or murder in itself represents a violation of the rights to personal integrity and life.<sup>91</sup>

68. According to the case law of both organs of the Inter-American system, the practice of disappearances has frequently involved the secret execution of those detained, without trial, followed by concealment of the corpse in order to eliminate any material evidence of the crime and to ensure absolute impunity, which entails a brutal violation of the right to life, established in Article 4 of the Convention.<sup>92</sup> The jurisprudence of the Inter-American system has also determined that when a person has disappeared in violent circumstances and remained disappeared for a long time it is reasonable to presume that he has been killed.<sup>93</sup>

69. In addition, the Commission has consistently pointed out that in cases of forced disappearance, given the multiple and complex nature of this serious human right violation, the forced disappearance entails a specific violation of the right to recognition of juridical personality.<sup>94</sup> This has also been recognized by the Inter-American Court.<sup>95</sup> This is because, apart from the disappeared person no longer being able to exercise and enjoy the rights to which he or she is entitled, his or her disappearance "is not only one of the most serious forms of placing the person outside the protection of the law but it also entails denying that person's existence and placing him or her in a kind of limbo or uncertain legal situation before society and the State."<sup>96</sup> The Commission considers that forced disappearance also implies a violation of the rights to judicial guarantees and judicial protection of the disappeared victim, given the lack of actions

<sup>87</sup> IACHR. Application before the Inter-American Court, Case No. 12.529, Rainer Ibsen Cárdenas and José Luis Ibsen Peña, Bolivia, Mayo 12, 2009, para. 106.

<sup>88</sup> Cf. inter alia, *Velásquez Rodríguez Case v. Honduras*. Merits, supra, paras. 155 to 157; and *Case of Osorio Rivera and Family v. Peru*, supra, para. 31.

<sup>89</sup> I/A Court H.R. *Case of Chaparro Álvarez and Lapo Ñíguez v. Ecuador*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 21, 2007. Series C No. 170, para. 171; and *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202, para. 85.

<sup>90</sup> I/A Court H.R. *Case of Ticona Estrada et al. v. Bolivia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 58; and IACHR, Report No. 5/16, Cases 11.053, 11.054, 12.224, 12.225, and 12.823. Merits. Peru. April 13, 2016, para. 167.

<sup>91</sup> I/A Court H.R. *Case of Ticona Estrada v. Bolivia*. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 59; *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202, para. 85; and *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para.

<sup>92</sup> I/A Court H.R., *Case of the 19 Merchants*. Judgment of July 5, 2004. Series C No. 109, para. 154; I/A Court H.R., *Case of Bámaca Velásquez*. Judgment of November 25, 2000. Series C No. 70, para. 130; and IACHR, Report No. 44/00. Case 10.820, Américo Zavala Martínez. Peru. April 13, 2000, para. 41.

<sup>93</sup> I/A Court H.R., *Velásquez Rodríguez Case*. Judgment of July 29, 1988. Series C No. 4, para. 188 and IACHR. Application before the Inter-American Court in Case 12.529 *Rainer Ibsen Cárdenas and José Luis Ibsen Peña vs. Bolivia*. May 12, 2009, para. 248.

<sup>94</sup> IACHR. Applications before the Inter-American Court in the cases: Renato Ticona Estrada et al. (12.527), paras. 153-165; Rosendo Radilla Pacheco (12.511), paras. 138-145; Kenneth Ney Anzualdo Castro (11.385), paras. 167-176; Julia Gómez Lund et al (11.552), paras. 208-220; Florencio Chitay Nech (12.599), paras. 136/-146; Rainer Ibsen Cárdenas and José Luis Ibsen Peña, (12.529), paras. 251-262; and Narciso González Medina et al (11.324), paras. 138-149.

<sup>95</sup> I/A Court H.R. *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202, paras. 91-92; *Case of Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 157.

<sup>96</sup> I/A Court H.R. *Case of Anzualdo Castro v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202, para. 90. See also: IACHR, Report No. 5/16, Cases 11.053, 11.054, 12.224, 12.225, and 12.823. Merits. Peru. April 13, 2016, para. 166.

designed to ascertain his or her whereabouts through efficient investigations and the impossibility of filing appeals on his or her behalf given the State's denial of the fact that the disappeared person is in its custody.

70. Forced disappearance comprises the following concurrent, basic elements: (1) deprivation of liberty; (2) direct involvement of governmental officials or acquiescence thereof; and (3) refusal to acknowledge the deprivation of liberty or to disclose the fate and whereabouts of the person concerned.<sup>97</sup>

71. Next, the Commission will determine whether what happened to Juan Carlos Flores Bedregal constituted a forced disappearance, by the standards referred to above. The Commission notes that in the instant case the Bolivian State itself has acknowledged that Mr. Flores Bedregal was one of the victims of the armed assault on the CB on July 17, 1980. The same transpires from the principal judicial decisions handed down by Bolivian courts with respect to the facts relating to the coup d'état and, in particular, the aforementioned assault. Accordingly, no party is questioning the participation of State agents in the events surrounding the armed attack, when Mr. Flores Bedregal was last seen after being shot and in the custody of said agents.

72. Thus the Commission finds that the two first constituent elements of forced disappearance are given in this case. In the particular circumstances of the instant case, the Commission considers that the controversy surrounding the legal characterization of the facts as forced disappearance is directly related to the third element, namely the refusal to acknowledge the deprivation of liberty or to disclose the fate and whereabouts of the person concerned.

73. The Commission's analysis of this element takes into account, in particular, the existence of a context already addressed by the organs of the inter-American system, especially as regards the grave human rights violations in connection with the coup d'état in 1980 and the dictatorial regime established by the de facto President Luis García Meza, and his policy of repression toward any person or group opposing it, especially leaders and representatives of left-wing parties. That context includes the systematic use of forced disappearance as a repressive mechanism and, as the State itself has admitted, the existence of an apparatus organized to cover up those cases.

74. In the case of the *Santa Bárbara Campesino Community v. Peru*, the Court summarized its case law with respect to forced disappearance, specifically in cases in which the legal characterization of the facts stemmed from "[...] what State agents did after killing the victims, that is to say, the adoption of measures designed to conceal what had really happened or to get rid of any trace of the bodies to avoid their identification or prevent their fate or whereabouts from being established."<sup>98</sup> The Court also referred to the standards of the Working Group on Enforced or Involuntary Disappearances of the United Nations, whereby what distinguishes forced disappearance from an extrajudicial execution is denial by the perpetrators of the deed, as State agents or with the acquiescence of State agents, "who even after carrying out the execution, refuse to reveal the fate or whereabouts of those persons or to acknowledge that the act was ever committed."<sup>99</sup> According the Court reaffirmed that "the existence of more or less circumstantial evidence regarding the death of the victims" does not alter the characterization of the facts as forced disappearance.<sup>100</sup>

<sup>97</sup> IACHR. Report No. 111/09. Case 11.324, Merits. Narciso González Medina. Dominican Republic, November 10, 2009. Para. 130; and I/A Court H.R., *Case of Anzaldo Castro v. Peru*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202, para. 60.

<sup>98</sup> The Court referred to analysis of the cases of *Rodríguez Vera et al (the Disappeared from the Palace of Justice)*, *Ibsen Cárdenas and Ibsen Peña, La Cantuta, Gómez Palomino, 19 Merchants, Bámaca Velásquez and Castillo Páez*. See: **I/A Court H.R. Case of the Santa Bárbara Campesino Community v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 299, para. 164.**

<sup>99</sup> **I/A Court H.R. Case of the Santa Bárbara Campesino Community v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 299, para. 164, among others:** Working Group on Enforced or Involuntary Disappearances. Report of the Working Group on Enforced or Involuntary Disappearances, General comment on the definition of enforced disappearance, A/HRC/7/2, January 10, 2008, p. 14, par. 10.

<sup>100</sup> The Court referred to analysis of the cases of *Rodríguez Vera et al (the Disappeared from the Palace of Justice)*, *Ibsen Cárdenas and Ibsen Peña, La Cantuta, Gómez Palomino, 19 Merchants, Bámaca Velásquez and Castillo Páez*. See: **I/A Court H.R. Case of the Santa Bárbara Campesino Community v. Peru. Preliminary Objections, Merits, Reparations and Costs. Judgment of September 1, 2015. Series C No. 299, para. 163.**

75. Based on the foregoing considerations and the proven facts in the instance case, the Commission observes that although proceedings were conducted in domestic courts that ended in convictions both in the trial to determine liabilities and in the ordinary criminal proceeding initiated in 1999, to this day light has not fully been shed on what happened to the alleged victim, and even the whereabouts of his remains are unknown, due to the use of multiple cover-up mechanisms. Furthermore, non-judicial initiatives, such as actions taken by CIADEF have also failed to produce results in the search for the whereabouts of the victim in the instant case.

76. Regarding the cover-up mechanisms, the IACHR deems it relevant to refer to the findings of the ordinary criminal proceeding, which ended in a conviction handed down by the Second Criminal Enforcement Court in 2007. As established in the proven facts section, the judicial authorities themselves identified and recognized the serious obstacles created to achieving true insight into what happened, particularly the "pact of silence" embraced by those alleged to be responsible, that is to say, the military and police officers who remained on active duty after the coup d'état. The Commission reiterates that in processing the instant case internally the Bolivian State adopted those judicial findings regarding concealment of information by the aforementioned officials. It is therefore clear to the Commission that the impossibility of locating the whereabouts of Mr. Flores Bedregal following the armed assault on the COB, so that his family members might be certain as to what his ultimate fate, stems directly from the refusal of State agents to provide that information and the inadequacy of the methods adopted to achieve that outcome.

77. Indeed, Resolution No. 129 of 2007 made it clear that there were a number of contradictions in the testimonies of officials involved in the aforementioned criminal proceeding. Thus, different places were mentioned as the place where the remains of the alleged victim had been taken. The most concrete explanation taken from that judicial ruling and which the State adopted as its position vis-a-vis the Commission is that after being murdered along with Marcelo Quiroga Santa Cruz, the bodies had been taken to the district known as "Mallasa," then taken to the morgue, from where they disappeared, without "any information at all to this day about the exact whereabouts of their remains." Thus, actions subsequent to the armed assault on the COB by State authorities make it possible to establish that said acts were designed to get rid of evidence of what happened and to generate uncertainty as to the whereabouts of the victim and as to whether he was alive or dead. In addition, as analyzed below, State authorities also did not guarantee direct and timely access by family members of Mr. Flores Bedregal to all the information in military archives needed to ascertain the whereabouts of the victim and the truth about what happened.

78. In light of the above, the Commission considers that the third prerequisite for forced disappearance is given in the instant case and that the existence of circumstantial evidence about the death of Mr. Flores Bedregal does not alter that legal characterization of the facts. As of this day, his family members have no information about or access to his remains, such as would give them certainty as to his fate. As mentioned earlier, according to inter-American jurisprudence, this is what distinguishes extrajudicial execution from forced disappearance, the cover-up factor being obvious in the instant case.

79. Therefore, the IACHR finds that Bolivian State violated and continues to violate the rights to juridical personality, life, humane treatment/personal integrity, personal liberty, personality, a fair trial/judicial guarantees and judicial protection, enshrined in Articles 3, 4.1, 5.1, 5.2, 7.1, 8.1, and 25.1 of the American Convention, in connection with the obligations established in Article 1(1) of that instrument, to the detriment of Juan Carlos Flores Bedregal. The Commission likewise concludes that the State violated Articles 1 a) and b) of the IACFDP to the detriment of the same person, bearing in mind that both at the time that treaty was ratified by the Bolivian State and to this day the forced disappearance of Mr. Flores Bedregal was being, and continues to be, committed.

## B. Political rights and freedom of association (Articles 23 and 16 of the American Convention<sup>101</sup>)

80. The Commission notes that the petitioner alleged violation of Mr. Flores Bedregal's political rights at the merits stage. In this regard, as it has done in other cases, the Commission considers that, irrespective of the fact that said argument was made after decision on the admissibility of the case, analysis of the file with the IACHR points to facts that would support the analysis of Article 23 of the American Convention. Furthermore, the IACHR finds that during the proceedings the State was aware of the facts on which the above argument is based. Based on the foregoing arguments, the Commission will give consideration to the matter<sup>102</sup>, as well as to the right to freedom of association, by virtue of the *iura novit curia* principle.

81. Article 23 of the Convention recognizes political rights and protects political participation through the right to active suffrage as well as the right to passive suffrage, understood to mean the right to submit one's candidacy for elected office, and the establishment of appropriate electoral regulations guaranteeing the exercise of those rights, without exclusions or arbitrary or discriminatory limitations.<sup>103</sup> States must adopt measures to guarantee the effective exercise of rights, bearing in mind the vulnerability of members of certain social sectors or groups.<sup>104</sup> Restricting the exercise of political rights impairs not only the political rights of the person concerned. It also entails impairment of the collective dimension of said rights and may potentially have a significant impact on the practice of democracy.

82. At the same time, the Commission has pointed out that Article 16 of the Convention protects the right to associate freely for ideological or political purposes, without the intervention of government authorities that curtail or disrupt the exercise of said right. In addition to these negative obligations, there are also positive obligations to prevent attacks against freedom of association, protect those who practice it, and to investigate violations of that freedom.<sup>105</sup> Freedom of association can only be exercised in a situation in which fundamental human rights are fully guaranteed and respected, particularly those related to the life and safety of the individual.<sup>106</sup>

83. As established under proven facts, at the time of the events, Mr. Flores Bedregal was an alternate member of the Chamber of Deputies, a militant member of the Partido Obrero Revolucionario, and a member of the National Committee for the Defense of Democracy. It was also established that on the day of the armed assault on the COB, in connection with the coup d'état, Mr. Flores Bedregal was participating in a meeting of the National Committee for the Defense of Democracy convened to address the situation triggered by the coup perpetrated by the Armed Forces. The Commission further highlights the observation by the Supreme Court of Justice of the Nation in its decision to convict in the trial to determine criminal liabilities of former de facto President Luis García Meza and others, inasmuch as the armed assault on the COB constituted a military operation, during which "some 50 trade union and political leaders" were arrested, and other

<sup>101</sup> Those Articles establish:

Article 23. Political rights 1. Every citizen shall enjoy the following rights and opportunities: a. to take part in the conduct of public affairs, directly or through freely chosen representatives; b. to vote and to be elected in genuine periodic elections, which shall be by universal and equal suffrage and by secret ballot that guarantees the free expression of the will of the voters; and c. to have access, under general conditions of equality, to the public service of his country.

Article 16. Freedom of Association 1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes. 2. The exercise of this right shall be subject only to such restrictions established by law as may be necessary in a democratic society, in the interest of national security, public safety or public order, or to protect public health or morals or the rights and freedoms of others. 3. The provisions of this article do not bar the imposition of legal restrictions, including even deprivation of the exercise of the right of association, on members of the armed forces and the police.

<sup>102</sup> On this, see: IACHR, Report No. 49/15, Case 12.585. Merits, Ángel Pacheco León and family, Honduras, July 28, 2015, paras. 121-122, 141.

<sup>103</sup> IACHR, Report No. 92/09, Case 12.668, Merits, Leopoldo López Mendoza, Venezuela, August 8, 2009, para. 64.

<sup>104</sup> I/A Court H.R., Case of Yatama v. Nicaragua. Preliminary Objections, Merits, Reparations and Costs. Judgment of June 23, 2005. Series C No. 127, para. 201; IACHR. Application of the Inter-American Commission on Human Rights before the Inter-American Court of Human Rights, the Republic of Nicaragua, Case 12.388, Yatama, para. 127.

<sup>105</sup> IACHR, Report 62/08, Case 12.531, Merits, Manuel Cepeda Vargas, Colombia, July 25, 2008, para. 131.

<sup>106</sup> I/A Court H.R., Case of Kawas-Fernández v. Honduras. Merits, Reparations, and Costs. Judgment of April 3, 2009, Series C No. 196, para. 150.

congressmen killed, along with the political leaders of the Partido Socialista, Marcelo Quiroga Santa Cruz. That, too, is to be seen against a broader backdrop already analyzed by the Commission and the Inter-American Court in the case of *Ticona Estrada et al v. Bolivia*, on the policy of repression against left-wing groups and any person or organization opposing the Military Junta.

84. Thus, the Commission deems it sufficiently well established that the forced disappearance of Mr. Flores Bedregal stemmed from a determination by the de facto government and security forces acting in that context that the activities going on in the COB on July 17, 1980 had to be repressed in accordance with the above-mentioned policy pursued by the armed forces, whereby the exercise of political rights and freedom of association provided the motive for the attack, and repression of those rights the consequence. In conclusion, the State of Bolivia is internationally responsible for violation of the rights established in Articles 16 and 23 of the American Convention, in conjunction with Article 1.1 thereof, to the detriment of Juan Carlos Flores Bedregal.

**C. Right to due guarantees and judicial protection (Articles 8.1 and 25.1 of the American Convention on Human Rights) in connection with the obligation to respect human rights and the duty to adopt measures under domestic law (Articles 1.1 and 2 of the same Convention<sup>107</sup>) and Articles I.b and III<sup>108</sup> of the IACFDP.**

85. It follows from inter-American jurisprudence that insofar as a missing person's report is concerned the response of the State is inevitably linked to the protection of the life and well-being of the person reported missing. Whether the disappearance may have occurred at the hands of private citizens or at the hands of state agents is immaterial where duty of the State to render an immediate and exhaustive response is concerned. The Commission reiterates that when there are reasonable grounds to suspect that a person has been disappeared, it is essential for prosecutorial and judicial authorities to take prompt and immediate action by ordering timely and necessary measures to determine the whereabouts of the victim or the place where he or she might be deprived of liberty."<sup>109</sup>

86. The Court has found that the States Parties have an obligation to provide effective judicial remedies to victims of human rights violations (Article 25), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1)), all in keeping with the general obligation of such States to guarantee the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1)).<sup>110</sup>

87. Thus, the Court has held that the obligation to investigate entails that, as soon as the State authorities become aware of the facts, they must initiate, ex officio and without delay, a serious, impartial, and effective investigation by all lawful means available in order to determine the truth and to ensure the pursuit, capture, trial, and eventual punishment, if applicable, of all the authors of the facts,<sup>111</sup> especially when State

<sup>107</sup> Article 2 of the American Convention establishes as follows: Domestic Legal Effects [duty to adopt measures under domestic law]. 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 Convention, such legislative or other measures as may be necessary to give effect to those rights or freedoms.

Articles 8, 25, and 1.1 of the Convention were addressed in the foregoing section.

<sup>108</sup> Said article establishes that the States Parties to said Convention undertake 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."

<sup>109</sup> IACHR. Report No. 111/09. Case 11.324, Merits. Narciso González Medina. Dominican Republic, November 10, 2009. Para. 225; I/A Court H.R., Case of Anzualdo Castro v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 22, 2009. Series C No. 202, para. 134; Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 221; Case of Ibsen Cárdenas and Ibsen Peña v. Bolivia. Merits, Reparations, and Costs. Judgment of September 1, 2010. Series C No. 217, para. 167. See, also, Matter of Natera Balboa Provisional Measures regarding Venezuela. Order of the Inter-American Court of Human Rights of February 1, 2010, preambular par. 13, and Matter of Guerrero Larez. Provisional measures regarding Venezuela. Order of the Court, August 29, 2013, Sixth preambular paragraph.

<sup>110</sup> I/A Court H.R. Case of Velásquez Rodríguez v. Honduras Preliminary Objections. Judgment of June 26, 1987. Series C No. 1, para. 91; **Case of Gutiérrez and Family v. Argentina, Merits, Reparations, and Costs. Judgment of November 25, 2013. Series C No. 271**, para 97; and Case of Landaeta Mejías Brothers et al v. Venezuela, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 215.

<sup>111</sup> I/A Court H.R. Velásquez Rodríguez Case. v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 1, para. 177; Case of Veliz Franco [continues ...]



agents are or may be involved.<sup>112</sup> The duty to investigate is one of means, not results, that must be assumed by the State as its own legal duty and be undertaken in a serious manner and not as a mere formality preordained to be ineffective, or simply as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.<sup>113</sup> The State's obligation to investigate must be fulfilled diligently in order to avoid impunity and the recurrence of this type of event.<sup>114</sup>

88. Furthermore, as regards due diligence in the course of the investigation, the Inter-American Court has determined that "each State act that composes the investigation proceeding, and the entire investigation in itself, should be oriented at a specific purpose: the determination of the truth and the investigation, finding, arrest, prosecution and, if applicable, punishment of those responsible for the events."<sup>115</sup> In that regard, the State must show that it carried out an immediate, exhaustive and impartial investigation,<sup>116</sup> and it must be aimed at exploring all the possible lines of inquiry.<sup>117</sup> The State may be liable for a failure to order, practice or evaluate evidence that may have been essential for a proper clarification of the facts.<sup>118</sup>

89. At the same time, Article 8(1) of the American Convention establishes as one of the elements of a fair trial that tribunals reach a decision on cases submitted for their consideration within a reasonable time. Pursuant to the provisions of that Article, the Commission will consider, in light of the specific circumstances of the case, the four elements that the organs of the inter-American system have taken into account: (i) the complexity of the case; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities; and (iv) the general effects on the legal situation of the person involved in the proceeding.<sup>119</sup> The Inter-American Court has found that a prolonged delay may constitute, in itself, a violation of the right to a fair trial,<sup>120</sup> and that, therefore, it is for the State to explain and prove why it has required more time than would be reasonable to deliver final judgment in a specific case.<sup>121</sup>

90. First, the Commission notes that although the State conducted internal proceedings relating to violations of human rights committed during the dictatorship of Luis García Meza and the events of July 17, 1980 in connection with the coup d'état, it was not until 13 years later that a first conviction was handed down by the Supreme Court of Justice in the trial to determine responsibilities initiated, moreover, only upon Bolivia's return to democracy. During all that time, the facts relating to the forced disappearance of Mr. Flores Bedregal were not investigated, despite the fact that from the day he disappeared his family members embarked on actions to search for his whereabouts. Thus 19 years elapsed before ordinary criminal proceedings began to establish additional liabilities, but they, too, failed to shed light on what really happened

[... continuation]

et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183.

<sup>112</sup> I/A Court H.R. Case of Myrna Mack Chang v. Guatemala. Merits, Reparations, and Costs. Judgment of November 25, 2003. Series C No. 101, para. 156; and Case of the Afro-descendant communities displaced from the Cacarica River Basin (Operation Genesis) v. Colombia. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 20, 2013. Series C No. 270, para. 371.

<sup>113</sup> I/A Court H.R. Case of Velásquez Rodríguez v. Honduras. Merits. Judgment of July 29, 1988. Series C No. 1, para. 177; Case of Veliz Franco et al. v. Guatemala. Preliminary Objections. Merits, Reparations, and Costs. Judgment of May 19, 2014. Series C No. 277, para.

<sup>114</sup> I/A Court H.R. Case of the Ituango Massacres v. Colombia. Judgment of July 1, 2006, Series C No. 148, par. 319; Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations and Costs. Judgment of May 19, 2014. Series C No. 277, para. 183; and Case of Landaeta Mejías Brothers et al v. Venezuela, Preliminary Objections, Merits, Reparations and Costs. Judgment of August 27, 2014. Series C No. 281, para. 216

<sup>115</sup> I/A Court H.R. Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, para. 131.

<sup>116</sup> IACHR. IACHR, Report on Merits No. 55/97, Juan Carlos Abella et al. (Argentina), November 18, 1997, par. 412.

<sup>117</sup> IACHR. IACHR, Report No. 25/09, Merits (Sebastião Camargo Filho) Brazil, March 19, 2009, par. 109. See, too, IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 41.

<sup>118</sup> I/A Court H.R. The "Street Children" Case (Villagrán Morales et al.), par. Judgment of November 19, 1999. Series C No. 63, para. 230. See, too, IACHR, Access to Justice for Women Victims of Violence in the Americas, OEA/Ser. L/V/II. doc.68, January 20, 2007, para. 41.

<sup>119</sup> IACHR. Report No. 111/10, Case 12.539, Merits, Sebastián Claus Furlan and family, Argentina, October 21, 2010, par. 100. I/A Court H.R., Case of the Santo Domingo Massacre v. Colombia. Preliminary Objections, Merits and Reparations. Judgment of November 30, 2012. Series C No. 259, para. 164.

<sup>120</sup> I/A Court H.R. Case of García Asto and Ramírez Rojas v. Peru. Judgment of November 25, 2005. Series C No. 137, para. 166; Case of Gómez Palomino v. Peru. Judgment of November 22, 2005. Series C No. 136, para. 85; Case of the Moiwana Community v. Suriname. Judgment of June 15, 2005. Series C No. 124, para. 160.

<sup>121</sup> I/A Court H.R. Case of Ricardo Canese v. Paraguay, Judgment of August 31, 2004. Series C No. 111, para. 142.



to Juan Carlos Flores Bedregal. The above implies that during that time the Bolivian State refrained from initiating an ex officio investigation into the facts, even though they were widely known and, as mentioned above, the family members had started searching immediately. The Commission considers that this fact in itself implies disregard for the State's duty to provide effective remedies to victims of human rights violations and their family members.

91. Second, without prejudice to the fact that the judgments handed down in internal proceedings, both in the trial to determine responsibilities and in the ordinary criminal proceedings initiated in 1999, are an important frame of reference for the Bolivian Judiciary's efforts to address deeds that occurred during the dictatorship of Luis García Meza, the Commission reiterates that it is an uncontested fact that to this day, and despite the proceedings that were started, nothing at all has been done to determine the whereabouts of the body of Mr. Flores Bedregal, nor has light been shed on the circumstances of his disappearance, the manner in which he was taken out of the COB after the attack perpetrated against the people meeting inside, and the exact place he was taken to. Under those circumstances, the family members of Mr. Flores Bedregal have, over three decades, made multiple representations to a series of authorities and have joined the judicial proceedings without so far obtaining any real answer about the fate of their loved one.

92. In that connection, the Commission underscores that while the specific case of Mr. Flores Bedregal was incorporated into the investigations and judicial proceedings it has analyzed, they addressed a series of broader and more complex facts relating to the military coup in Bolivia in 1980 and the dictatorial regime it led to. Accordingly, the ISCHR observes that in both the 1993 decision of the Supreme Court in the trial to determine responsibilities and in the 2007 conviction handed down in ordinary criminal proceedings, no determination was made of specific facts relating to the case of Mr. Flores Bedregal, beyond taking it as established that he was murdered and determining the persons who participated in the armed assault on the COB on July 17, 1980. However, although the decisions handed down themselves point to lack of certainty and contradictions among the accused that created serious obstacles, none of the proceedings turned out to be an effective vehicle for shedding light of what really happened to Juan Carlos Flores Bedregal.

93. With regard to the time taken, the Commission notes that the State's argument focuses on the fact that the events occurred under a dictatorship and that due to the complexity of the proceedings it bore no international responsibility in respect of judicial guarantees and protection. On this, the IACHR understands that, indeed, the crimes and persons deemed responsible in the judicial proceedings referred to in the proven facts section require assessment of a multitude of facts, including the commission of serious human rights violations committed during a period of dictatorship. Nevertheless, while said proceedings were conducted upon Bolivia's return to democracy, as was established in the proven facts section, Bolivian authorities themselves have acknowledged that there was procrastination, particularly in the ordinary criminal proceedings initiated in 1999 and that concluded finally in 2010 with Supreme Court decision No. 504. In any event, the Commission reiterates that, despite the important advances mentioned earlier, 38 years later still nothing is known about the whereabouts and fate of Juan Carlos Flores Bedregal, a finding his family members are still waiting for.

94. At the same time, the IACHR stresses that according to the proven facts the crime of forced disappearance was not included among those for which the defendants were tried, in either the trial to determine responsibilities or the ordinary criminal proceedings begun in 1999. Likewise, the decision of December 2007 by the Second Criminal Enforcement Court dismissed the possibility of including that crime based on the principle that laws cannot be applied retroactively. On this, the IACHR once again states that due to the ongoing or permanent nature of the crime of forced disappearance and due to the fact that its "consummation is prolonged over a period of time, if the criminal conduct continues after incorporation of the crime legally characterized as forced disappearance of persons into domestic criminal law, the new law

turns out to be applicable."<sup>122</sup> It is likewise worth pointing out that the prohibition of this crime and the corresponding duty to investigate it and punish those responsible qualify as *jus cogens*.<sup>123</sup>

95. With regard to the actual characterization of the crime of forced disappearance in Bolivia. The Commission points out once again that the State ratified the IACFDP on May 5, 1999 and it was not until 2006, that is to say, seven years later, that its incorporation into Bolivian criminal law took effect.

96. Based on the foregoing considerations, the Commission concludes that the Bolivian State violated the rights established in Articles 8.1 and 25.1 of the American Convention in conjunction with Articles 1.1 and 2 of the same instrument, as well as Articles I b) and III of the IACFDP, to the detriment of Juan Carlos Flores Bedregal and his family members.

#### **D. Rights to Access to Information (Articles 13, 124 1.1, and 2 of the Convention) and Judicial Protection (Article 25 of the American Convention)**

##### **1. Additional considerations regarding access to information relating to grave human rights violation contained in State archives**

97. The right of access to information is a fundamental right protected by Article 13 of the American Convention.<sup>125</sup> It is a particularly important right for the workings of democratic systems and an indispensable tool for the exercise of other human rights.<sup>126</sup> As inter-American case law has reiterated, everyone is entitled to access information controlled by the State, to which end it is not necessary to accredit a direct interest or personal need to obtain the information in the possession of the State, except in cases in which legitimate restrictions apply that are permitted under the American Convention.<sup>127</sup>

98. Inter-American jurisprudence has recognized that the right to access information protects the right of victims and their family members, as well as society as a whole, to be access information on grave human rights violation that is stored in State archives, even if said archives are kept in security agencies or military or police facilities.<sup>128</sup> That presupposes a set of positive obligations or actions to take, above all in contexts involving a transition to a democratic State governed by the rule of law.<sup>129</sup>

99. First, States need to adapt their legal framework in order to guarantee full and effective exercise of the right to access information regarding serious human rights violations. The laws must ensure that access to information is governed by the principles of maximum transparency and good faith. As the Inter-American Court has established, in cases of human rights violations, State authorities cannot take legitimately hide behind such mechanisms as State secrets or the confidentiality of the information. Nor can they invoke reasons of public interest or national security to avoid providing the information required by judicial or administrative authorities responsible for investigation or proceedings that are pending.<sup>130</sup> Several

<sup>122</sup> I/A Court H.R. Case of Tiu Tojin v. Guatemala. Merits, Reparations, and Costs. Judgment of November 26, 2008. Series C No. 190, para. 87.

<sup>123</sup> I/A Court H.R. Case of La Cantuta v. Peru. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C No. 162, para. 157.

<sup>124</sup> The pertinent portions of Article 13 of the American Convention provide that: 1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice. 2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. Respect for the rights or reputations of others; or b. The protection of national security, public order, or public health or morals. [...]

<sup>128</sup> IACHR, The Right to the Truth in the Americas, OEA/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 107ff; IACHR, Special Rapporteurship for Freedom of Expression, El derecho de acceso a la información en el marco jurídico interamericano [The right to access information in the Inter-American Legal Framework] (second edition), para. 77; IACHR, Special Rapporteurship for Freedom of Expression, Annual Report (2010), Chapter III, Access to Information on human rights violations.

<sup>129</sup> IACHR, The Right to the Truth in the Americas, OEA/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 110 ff.

<sup>130</sup> IACHR, The Right to the Truth in the Americas, OEA/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 113. See, inter alia, I/A Court H.R. Case of Myrna Mack Chang v. Guatemala. Judgment of November 25, 2003. Series C No. 101, para. 180; Case of Tiu Tojin v. Guatemala. [continues ...]

countries in the region have adopted regulations that establish that information on human rights violations not only must be provided to the authorities in charge of investigating those crimes; under no circumstances may it be kept secret.<sup>131</sup>

100. Second, the State must seek the information needed to achieve the objectives of an investigation and make it possible to ascertain the truth about what happened, using all possible means, making a "substantive effort" in good faith, and when the information was illegitimately stolen from official archives the State must employ such mechanisms as are needed to recover it.<sup>132</sup> If the above efforts are unsuccessful, the State has an obligation to reconstruct the information lost. This duty to seek, recover, and reconstruct relevant information is intrinsic to the right of access to information. Under no circumstances may it be left to the discretion of a state organ whose agents are deemed to have committed an illicit act to decide whether or not the documentation requested exists.<sup>133</sup> In Germany, for instance, after the fall of the Berlin Wall, thousands of bags were found containing the remains of documents pertaining to the intelligence services. The Birthler Commission, in charge of enforcing the law on Stasi archive, found that documents from 6,500 bags could be recovered and since then documents from more than 400 of the bags found were manually reconstructed.<sup>134</sup> The Commission has considered that States need to make a major effort to find information that was allegedly destroyed; if in Germany it was possible to recover documents that had literally been torn to pieces, the States in our region should conduct serious, committed, and effective investigations to find copies of information that was purportedly lost.<sup>135</sup>

101. Third, State efforts to guarantee access to information would have to include opening up archives so that institutions investigating the facts may conduct on-site inspections; the drawing up of inventories and tracking data stored in official facilities; promoting searches that include raids in places where the information may be kept; conducting hearings and questioning those who may know where the information is being kept or who can reconstruct what happened; among other possibilities. Family members of victims and their representatives must be able to take part in such actions and have direct access to the documentation uncovered. When it is a matter of information relating to the forced disappearance of persons, under no circumstances may the information be kept from those investigating the crime and from the victims or close relatives of the victims. The IACHR has recognized that withholding information that could lead to the discovery of the whereabouts of a disappeared family member or that could shed light on the circumstances in which the crime was committed constitutes a form of cruel and inhumane treatment.<sup>136</sup>

102. Fourth, the State has a duty to preserve and facilitate access to State archives, when such exist; and to create and preserve them when they are not kept organized as such. In cases of serious human rights violations, the information such archives may contain is invaluable and essential not only for moving investigations forward but also for avoid the recurrence of the aberrant acts. This practice has already been

[... continuation]

Merits, Reparations, and Costs. Judgment of November 26, 2008. Series C No. 190, para. 77; Case of Radilla Pacheco v. Mexico. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 23, 2009. Series C No. 209, para. 258; Case of Gomes Lund et al. ("Guerrilha do Araguaia") v. Brazil. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 196-202.

<sup>131</sup> IACHR, The Right to the Truth in the Americas, OEA/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 113. See, Republic of Peru, Law 27806—Law on Transparency and Access to Public Information, Article 15-C, establishing that "information relating to the violation of human rights or of rights under the 1949 Geneva Conventions, by anyone in any circumstances shall not be regarded as classified information"; Eastern Republic of Uruguay, Law No. 18.381, Right of Access to Public Information, Article 12, establishing that "Persons bound by this law may not invoke any of the confidentiality clauses mentioned in foregoing articles when the information requested refers to human rights violations or is relevant, for investigating, preventing, or avoiding violations of such rights"; OAS, Inter-American Model Law on Access to Information, 2010, Art. 45.

<sup>132</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report (2010), Chapter III, Access to Information on human rights violations, para. 19.

<sup>133</sup> IACHR, The Right to the Truth in the Americas, OEA/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 116.

<sup>134</sup> See, in general, Jefferson Adams, *Probing the East German State Security Archives*, 13 International Journal of Intelligence and CounterIntelligence 21(2000).

<sup>135</sup> IACHR, Special Rapporteurship for Freedom of Expression, Annual Report (2010), Chapter III, Access to Information on human rights violations, para. 19.

<sup>136</sup> IACHR, Special Rapporteurship for Freedom of Expression. El derecho de acceso a la información en el marco jurídico interamericano [The right to access information in the Inter-American Legal Framework] (second edition), March 7, 2011, para. 80-86.

adopted in some countries in the region that have created "memory archives" charged with compiling, analyzing, classifying, and disseminating documents, testimonies, and other kinds of information relating to human rights violations in the recent past.<sup>137</sup> For instance, Argentina has established a "National Memory Archive" (published in the Official Gazette on December 17, 2003). Article 1 of its regulations established that the function of the archive will be to "obtain, analyze, classify, duplicate, digitize and archive information, testimonies and documents on the breakdown of human rights and fundamental freedoms for which the Argentina State bears responsibility and on the social and institutional response to those violations."<sup>138</sup>

103. In short, the above-mentioned obligations entail a duty to make sincere and significant efforts to guarantee that the victims of grave human rights violations and their family members, those responsible for investigating these crimes, and society as a whole have access to all the information in the possession of the State that they need to ascertain the truth of what happened.

## 2. Analysis of the case

104. The IACHR notes that the family members of the victims asked the authorities on several occasions to declassify and provide access to the information kept in military archives that could shed light on the whereabouts of Juan Carlos Flores Bedregal and possible perpetrators of his forced disappearance. The petitioners stated that, despite their requests to the administration and via the courts, they never managed to have access to the military archives and the required documentation in the possession and control of the Armed Forces. The State has not denied the assertions made by the petitioners. On the contrary, it indicated that the public and declassified records of the Armed Forces were only "the subject of official access" and that they do not contain information useful for investigation the whereabouts of the remains of Juan Carlos Flores Bedregal. The State stressed that the lack of information "is not attributable to the Bolivian State, particularly since it was following the restoration of democracy that the judicial and administrative proceedings needed to throw light on this lamentable occurrence have been conducted."

105. It is up to the IACHR to establish whether in the instant case the State complied with its international obligations derived from the right of access to information of the family members of Juan Carlos Flores Bedregal, as a component of the right to ascertain the truth about what happened to the disappeared victim, and, in particular, whether it effectively complied with its positive obligations to guarantee access to information regarding serious human rights violations contained in State archives.

106. First, the Commission observes that the judicial authorities belatedly issued orders to declassify military archives, which were not complied with in good time by the Armed Forces. Indeed, in connection with the proceedings entitled "Public Prosecutors' Office v. Pizarro Solano et al, the first order to declassify was issued at the appeal stage, despite the fact that the family members of the victim had filed requests at the start of the trial two years earlier. According to allegations by the petitioners, that have not been challenged by the State that order was never complied with. In April 2010, when the criminal trial was at the cassation stage, new orders to declassify were issued at the behest of the family members of the victim. Those orders were obeyed months later, despite requests by the family members of the victim to expedite the process. The Armed Forces only allowed the Public Prosecutor's Office to inspect the archives at the end of September 2010 and certified copies of the documents to which the investigators had access were handed over on October 19, 2010, six days before the CSJ handed down its cassation judgment on October 25, 2010.

107. The State did not accredit any circumstances explaining the failure to adopt timely and ex officio measures to order the declassification of the military archives and for access to the information needed so that the institutions investigating the facts could ascertain the truth about what happened in the instant case. Nor did it explain any measures designed to ensure that, once the court orders to declassify had been issued, they would be promptly and effectively enforced/obeyed. Bolivia was under an obligation to respond in a timely manner to the requests filed for access to information and to ensure that its Armed Forces would officially make available to the authorities in charge of the investigation into the forced disappearance

<sup>137</sup> IACHR, The Right to the Truth in the Americas, OEA/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 118.

<sup>138</sup> IACHR, The Right to the Truth in the Americas, OEA/Ser.L/V/II.152, Doc. 2, August 13, 2014, para. 119.

of Mr. Flores Bedregal and to his family members direct access to all the information at their disposal that might be of use for the investigation into the facts and for ascertaining his whereabouts. By omitting to ensure the timely declassification and opening up of the military archives, the State failed to comply with its positive obligations in this case.

108. Second, the IACHR notes that the court orders issues in connection with the "Public Prosecutors' Office v. Franz Pizarro Solano et al" proceedings did not guarantee direct access to said information for the family members of the victim. In the judicial files to which the Commission had access it transpires that the judicial authorities ordered that the information handed over by the Armed Forces to the Public Prosecutors' Office be kept confidential, pursuant to Article 98 of the Organic Law of the Armed Forces, which provides that "classified information regarding the personnel roster of the Armed Forces is secret and inviolable. That condition may only be lifted: 1. By a substantiated petition from the Legislature; 2) By court order of the competent judge, in the form of a decision substantiated in a formal proceeding. In both cases the information shall be remitted to the requester via the Commander in Chief and shall be kept confidential." The Commission reiterates that the victims of serious human rights violations and their family members have a right to direct and timely access to the information needed to ascertain the truth about what happened, including that contained in military archives and that States may not invoke national security concerns to prevent that access. Moreover, when it is a matter of information relating to the forced disappearance of persons, under no circumstances may the information be kept from those investigating the crime and from the victims or close relatives of the victims.

109. Accordingly, the Commission considers that Article 98 of the Organic Law of the Armed Forces could not have been legitimately invoked to deny access to military information to the family members of Juan Carlos Flores Bedregal. Indeed, by inter-American standards, that legal provision can in no way justify preventing victims, their family members and society as a whole from access to the information needed to shed light on the historical truth associated with grave human rights violations. Applying Article 98 of the aforementioned law to information regarding serious human rights violations is incompatible with the obligations incurred by the Bolivian State in this matter.

110. Third, the IACHR notes that the State did not guarantee for the family members of the victim a simple procedure to requesting access to the information contained in the military archives regarding the forced disappearance of Juan Carlos Flores Bedregal, separate from the criminal proceedings under way. On the contrary, the Ministry of Defense, based on the regulations in effect, subjected the family members of the victim to onerous and exorbitant requirements to access the military archives, including having to demonstrate legitimate interest in the information requested, specifying dates and data for the information requested and how they would guarantee the secrecy of the information provided, coming up with a substantiated ruling by a competent authority, as well as complying with other legal requirements and formalities. The IACHR reiterates that for people to be able to request information, the State must make a simple, user-friendly mechanism available that only demands compliance with basic requirements. Moreover the administration has an obligation to advise applicants on how to fill in their application.<sup>139</sup> States cannot demand that applicants for information justify their application or insist on other unnecessary and disproportionate requirements.<sup>140</sup> These obligations are especially binding in cases of requests for information involving grave human rights violations and in a context of transition s toward the consolidation of democracy, justice, reparation and guarantees of non-repetition. The Bolivian State's failure to comply with this obligation is blatant in the instant case.

111. Fourth, the Commission notes that the family members had no judicial remedy for contesting the decision by the Ministry of Defense and protecting them against rulings that violated their right to access information. The family members of Flores Bedregal challenged through an amparo action the decision by the Ministry of Defense to deny access to information and impose onerous requirements for access, but it was

<sup>139</sup> IACHR, Special Rapporteurship for Freedom of Expression. El derecho de acceso a la información en el marco jurídico interamericano [The right to access information in the Inter-American Legal Framework] (second edition), March 7, 2011, para. 26.

<sup>140</sup> IACHR, Special Rapporteurship for Freedom of Expression. El derecho de acceso a la información en el marco jurídico interamericano [The right to access information in the Inter-American Legal Framework] (second edition), March 7, 2011, para. 17.



rejected *in limine*. The judge considered that the family members should first comply with the procedures established by the military authority for access to classified information. The IACHR points out once again that inter-American system case law has consistently held that judicial remedies are compatible with the requirements of the American Convention provided that they are appropriate and effective, that is to say, suitable for affording protection with respect to the legal right infringed and capable of producing the intended results.<sup>141</sup> Otherwise, the lack of effectiveness in the remedy would violate the American Convention as it did in the instant case.<sup>142</sup>

112. Fifth, the IACHR notes that apart from the judicial inspections by the Public Prosecutor's office in the criminal proceedings conducted in the instant case, the State did not accredit or specifically describe the actions it undertook and their characteristics to demonstrate that had made a significant effort using all available resources to locate and/or reconstruct the information that the Armed Forces had at their disposal that could determine the whereabouts of Flores Bedregal and identify all its agents that had some responsibility for his forced disappearance. It is not enough to allege that the required information does not exist and in any case the job of determining whether it exists or not can never be left to the organs whose members are being investigation for alleged illicit acts, as was the case in the instant case.

113. Finally, it transpires from all of the above that the Bolivian States has not complied to this day with its obligation to obtain, produce, analyze, classify, organize the information required and provide society as a whole with access to the military archives relating to grave human rights violations in the recent past. If it had done so, the violations described in this Chapter might have been avoided.

114. Based on the above, the Commission concludes that the State violated Articles 13 and 25 of the American Convention, in conjunction with Articles 1.1 and 2 thereof.

#### **E. Right to humane treatment (Article 5 in connection with Article 1(1) of the American Convention)**

115. The right to integrity of the person is enshrined in Article 5(5.1) of the American Convention, which provides "Every person has the right to have his physical, mental, and moral integrity respected."

116. The Inter-American Commission and the Court have indicated that the next-of-kin of victims of certain human rights violations may, in turn, be considered victims.<sup>143</sup> In that regard, the Court has ruled that their right to mental and moral integrity [may be] violated based on the ... particular circumstances of the violations perpetrated against their loved ones and owing to the subsequent acts or omissions of the State authorities in relation to the facts.<sup>144</sup>

117. The Commission notes that, in accordance with the Court's case law, "in cases involving forced disappearance of people, it can be understood that the violation of the right to mental and moral integrity of the victim's next-of-kin is, precisely, a direct consequence of that event, which causes them severe suffering and is made worse, inter alia, by the continued refusal of state authorities to supply information on the victim's whereabouts or to conduct an effective investigation to elucidate the facts."<sup>145</sup>

<sup>141</sup> I/A Court H.R., Velásquez Rodríguez Case v. Honduras. Judgment of July 29, 1988. Series C No. 4, para. 66.

<sup>142</sup> I/A Court H.R., Judicial Guarantees in States of Emergency (Articles 27(2), 25 and 8 of the American Convention on Human Rights). Advisory Opinion OC-9/87 of October 6, 1987. Series A No. 9, para. 23.

<sup>143</sup> IACHR. Report No. 11/10. Case 12.488. Merits. Barrios Family, Venezuela. March 16, 2010. 91. IACHR. Report on Terrorism and Human Rights. Para. 227; I/A Court H.R., Case of Cantoral Huamaní and García Santa Cruz v. Peru. Preliminary Objection, Merits, Reparations, and Costs. Judgment of July 10, 2007. Series C No. 167, paragraph 112; and Case of Bueno-Alves v. Argentina, Merits, Reparations, and Costs. Judgment of May 11, 2007. Series C. No. 164, par: 102.

<sup>144</sup> I/A Court H.R. Case of Vargas-Areco v. Paraguay, Judgment of September 26, 2006. Series C No. 155, paragraph 96.

<sup>145</sup> I/A Court H.R. Case of Blake v. Guatemala. Merits. Judgment of January 24, 1998. Series C No. 36, para. 114; Case of Ticóna Estrada v. Bolivia. Merits, Reparations, and Costs. Judgment of November 27, 2008. Series C No. 191, para. 87; Case of La Cantuta v. Peru. Merits, Reparations, and Costs. Judgment of November 29, 2006. Series C No. 162, para. 123; and Case of Anzualdo Castro v. Peru, Judgment of September 22, 2009, Series C No. 202, paragraph 105.



118. In the instant case, the Commission considers that the forced disappearance of the victim generated a profound sense of grief, anxiety, and uncertainty in his family members, which has only gone deeper due to the violations described in the foregoing section, including their long search for justice and the absence of information about what happened to their loved one.

119. In light of the above considerations, the Commission concludes that the State is responsible for the violation of the right to mental and moral integrity established in Article 5.1 of the American Convention, in conjunction with the obligations set out in Article 1(1.1) thereof, to the detriment of the sisters of Mr. Flores Bedregal identified in this report.

## **V. CONCLUSIONS AND RECOMMENDATIONS**

120. The Commission concludes that the State of Bolivia is responsible for violating the rights to recognition of juridical personality, life, personal integrity, personal liberty, judicial guarantees, freedom of expression, freedom of association, participation in government/public rights, and judicial protection set forth in Articles 3, 4.1, 5.1, 5.2, 7, 8.1, 13, 16, 23 and 25.1 of the American Convention on Human Rights in conjunction with Articles 1.1 and 2 of the same instrument and Articles I.a and b and III of the Inter-American Convention on Forced Disappearance of Persons to the detriment of the persons named in this report.

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS RECOMMENDS THAT THE STATE OF: BOLIVIA**

1. Conduct a thorough, impartial, and effective investigation to determine the whereabouts of Juan Carlos Flores Bedregal, and, as appropriate, take the necessary steps to identify his remains and return them to his family members, as they desire.

2. Carry out and conclude the domestic proceedings relating to the human rights violations found in the instant report in an impartial and effective manner within a reasonable time in order to shed full light on the facts of the case, identify all those responsible, and impose the appropriate penalties.

3. Provide adequate reparation for the human rights violations found in the instant report in material as well as moral respects, including fair compensation. In addition, the State should adopt measures of satisfaction for recovery of the historical memory of the life of Juan Carlos Flores Bedregal and his role as a social and political leader. The measures of satisfaction should also include a public ceremony acknowledging the State's responsibility.

4. Arrange for the physical and mental health care needed for the rehabilitation of the family members declared to be victims in the instant case, if they so wish and in a manner agreed upon by consensus.

5. Make such arrangements as are necessary, by the standards set in this report, to comply with its obligations in respect of access to information kept in State, including military, archives relating to grave violations of human rights committed during the dictatorship of Luis García Meza. In particular, pursue policies designed to obtain, produce, analyze, reconstruct, organize, and make available the information contained in those archives and that is needed to ascertain the truth of what happened in the instant case, ensuring direct access to it by family members of Mr. Flores Bedregal and society as a whole.

6. Adopt the non-repetition measures needed to avoid a recurrence of similar events in future, including effective mechanisms for searching for and identifying the remains of persons disappeared during Bolivia's military dictatorships. Likewise, promulgate a law and establish institutional mechanisms to guarantee full and effective exercise of the right of access to public information in Bolivia, containing clear safeguards for access to information about grave violations of human rights in keeping with the standards set forth in this report.