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## **REPORT No. 54/19**

### **CASE 12.682**

MERITS

BLAS VALENCIA CAMPOS ET AL.  
BOLIVIA

Approved by the Commission at its session No. 2150 held on May 4, 2019  
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## I. INTRODUCTION

1. On January 8, 2003, the Inter-American Commission on Human Rights (hereinafter the “Inter-American Commission,” “Commission,” or “IACHR”) received a petition filed by Blas Valencia Campos and 25 other persons (hereinafter “the petitioners” or “the alleged victims”)<sup>1</sup> alleging that the Plurinational State of Bolivia (hereinafter “the Bolivian State,” “the State,” or “Bolivia”) bore international responsibility for alleged illegal raid of their homes and acts of excessive violence on the part of State agents—including torture, sexual violence, and incommunicado detention—in the course of their apprehension and subsequent detention.

2. The Commission adopted Report on Admissibility No. 84/08 on October 30, 2008.<sup>2</sup> On November 11, 2008, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement. However, the appropriate conditions for initiating that procedure failed to materialize. The parties were afforded the regulatory time limits to present additional observations as to merits. Some of the petitioners presented their observations on January 9, 2009,<sup>3</sup> February 23, 2009,<sup>4</sup> and January 14, 2015.<sup>5</sup> The State submitted its observations on merits on October 31, 2016. All information received was duly relayed between the parties.

## II. SUBMISSIONS OF THE PARTIES

### A. The Petitioners

3. The petitioners allege that, following the robbery of a Prosegur truck at approximately 8:30 a.m. on December 14, 2001, in which they were suspected to have taken part, at around 3:00 a.m. on December 18, 2001, their homes were raided by a large number of heavily armed state agents, who used excessive violence during their apprehension and subsequent detention to obtain confessions and information about their involvement in the robbery. Men, women, and children were threatened, handcuffed, severely beaten, and stripped naked; the women were also sexually abused—one, who was pregnant, miscarried as a result of the blows she received—and a child was abducted for several hours with the intention of forcing him to inform about the robbery. The State agents stole jewelry and money from their homes. The petitioners were then taken to facilities of the erstwhile Judicial Technical Police (PTJ)—now the Special Anti-Crime Force—where they were subjected to further abuse, and where some were held incommunicado for up to three months. Two of the petitioners allegedly died as a result of the mistreatment.

4. Several State authorities, including the Eighth Investigating Judge for Criminal Matters and Precautionary Measures (*Juez Octavo de Instrucción en lo Penal – Cautelar*) (hereinafter the “Investigating Judge”) – who was responsible for judicial oversight of the arrest and decided on precautionary measures – and El Alto Second Trial Court (*Tribunal de Sentencia Segundo de El Alto*) (hereinafter the “Trial Court”) – where they were tried for the crimes with which they were charged – as well as various police officers and prosecutors, were aware of the abuses perpetrated against the alleged victims and their allegations that they

<sup>1</sup> Those persons are Norma Lupe Alarcón de Valencia, Mercedes Valencia Chuquimia, Mauricio Valenzuela Valencia, Alvaro Taboada Valencia, Claudia Valencia Alarcón, Carlos Eladio Cruz Añez, Patricia Catalina Gallardo Ardúz, María Fernanda Peña Gallardo, Freddy Cáceres Castro, Oswaldo Lulleman Antezana, Raúl Oswaldo Lulleman Gutiérrez, Victoria Gutiérrez de Lulleman, Paola Lulleman de Zaconeta, Luis F. Lulleman Gutiérrez, Julia Mamanu Mamani, Genaro Ahuacho Luna (Walter Herrera Flores), deceased, Carlos Enrique Castro Ramírez, Alfredo Bazán la Rosas (José Miguel Abildo Díaz), Víctor Manuel Boggiano Bruzon (Juan Ramírez Ortega), Elacio Peña Córdoba, Francis Elida Primentela Merino, Edwin Rodríguez Alarcón, Gabriel Valencia Alarcón, Alexis Valencia Alarcón, and Claudio Valencia. It should be mentioned that subsequently Williams Gonzalo Orihuela Peñaranda and the Inter-American Association of Public Defender Offices (AIDEF) became the representatives of a number of alleged victims, as detailed in footnotes 4 to 6.

<sup>2</sup> IACHR, Report No. 84/08, Petition 40-03, Blas Valencia Campos et al., Bolivia, October 30, 2008. The IACHR declared the petition admissible with respect to the rights protected in Articles 4, 5, 7, 11, 19, 8, and 25 of the American Convention, in conjunction with the obligations established in Article 1(1) thereof; as well as to the right enshrined in Article 7 of the Convention of Belém do Pará, and the provisions of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

<sup>3</sup> Brief presented by Williams Gonzalo Orihuela Peñaranda on behalf of Francis Elida Primentela Merino and Eladio Cruz Añez.

<sup>4</sup> Brief presented by Blas Valencia Campos, representing himself for lack of economic means.

<sup>5</sup> Brief presented by the Inter-American Association of Public Defender Offices on behalf of Víctor Manuel Boggiano Bruzzón, also known as Juan Ramírez Ortega.

were being tortured, yet none of them acted promptly to protect them, prevent their mistreatment from continuing, or investigate the allegations.

5. Accordingly, the petitioners allege that the Bolivian State is responsible for violation of their rights to humane treatment, a fair trial, judicial protection, and respect for the honor and dignity, recognized at Articles 5, 8, 25, and 11 of the American Convention on Human Rights (hereinafter “the American Convention” or “the Convention”), in conjunction with the obligations set out in Article 1(1) of said instrument. They also allege that the State violated the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (hereinafter “Convention of Belém do Pará”).

6. As regards the right to humane treatment, they argue that the absolute prohibition of torture, whether physical or psychological, and of cruel, inhuman or degrading treatment or punishment is a moral imperative that admits no discussion from a utilitarian perspective. That prohibition is today part of international *jus cogens* and remains in effect even in the most difficult of circumstances and in the investigation of all crimes, however serious they may be. Any use of force that is not strictly necessary in view of the behavior of the person detained is an affront to human dignity. Indeed, use of force and measures such as incommunicado detention and solitary confinement should be exceptional. Furthermore, when faced with the possibility or suspicion that acts have been committed that violate a person's right to humane treatment, the State has the obligation to initiate ex officio an impartial, independent, and thorough investigation as soon as possible and to conduct the appropriate medical examinations at the earliest opportunity, which did not occur in this case.

7. As regards the right to a fair trial and judicial protection, the petitioners claim that they received neither assistance nor effective legal protection at any stage of the criminal proceedings against them. From the outset, their allegations of torture and mistreatment were ignored, which reveals not only that the defense they received was useless in preventing abuse by the police, but also that there was a complete absence of impartiality on the part of the adjudicating entity. In addition, their right to be presumed innocent was violated, given that they were forced to incriminate themselves because their guilt was presumed in advance. They also say that the guarantee of publicity of criminal proceedings was violated during their solitary confinement and incommunicado detention, owing to the lack of access to the judicial proceedings conducted during that period, which were thus inquisitorial and devoid of any legitimacy or legality. In addition, the way in which the Bolivian State acted apparently violated the principle of legality, owing to its failure to provide legal justification for its actions.

8. Finally, the petitioners argue that the repressive practices employed by the police and judicial authorities amounted to gross violations of the petitioners' right to have the honor and dignity respected, given that their dwellings were raided in the pre-dawn hours, violating their homes, private and family lives, and correspondence. The State also encouraged an attack on the honor and reputation of the petitioners by presenting them to the media as criminals, stigmatizing them, and encouraging their condemnation by public opinion.

## **B. The State**

9. In this stage, the State reiterated arguments concerning the admissibility of the petition, which are not addressed in this section, as the Commission has already made a decision on them in its Report on Admissibility No. 84/08. As to merits, Bolivia argues that it acted in accordance with its obligation to maintain order, given that the individuals alleging violations of rights in this case were members of an organized criminal group who, because they were highly dangerous, were apprehended using reasonable and necessary force. According to the State, a combination of measures were used aimed at averting the occurrence of criminal conduct that might affect the community at large, and therefore the supposed violations are not consonant with the rights recognized in the Convention.

10. As regards the right to humane treatment, after affirming that the Prosegur robbery was carried out with violence and cruelty, the State argues that, owing to the dangerous and malicious nature of the conduct of the criminal group, which used heavy-caliber weapons, was international in nature (its members included

Peruvians and Bolivians), had military and police knowledge, killed their victims in cold blood, and had criminal records, it was necessary to prevent them claiming more innocent victims, threatening society and undermining social order, harmony, and peace. Therefore, their apprehension could not be made in a normal way, be announced in advance, or carried out on a regular day or at a normal time, since it was necessary to prevent the criminals from getting away.

11. After analyzing the terms and conditions allowed under the applicable law, the State says that the apprehension was made in the circumstances of *flagrante delicto*, in which the formalities envisaged in the Constitution then in force and the Code of Criminal Procedure could be overlooked. Based on the foregoing, the State affirms that it met the legal requirements for capturing the perpetrators of the crime, as they had warrants issued by the competent authority that authorized them to carry out the raid and search on special days and at exceptional times, since the crimes were in flagrante.

12. The State also notes a proceeding initiated *ex officio* by the State for alleged torture and mistreatment of the petitioners, which would have been rejected by the Public Prosecution Service (*Ministerio Público*) in April 2014 for lack of proof, which was reportedly opposed by the Office of the Deputy Minister for Justice and Fundamental Rights. However, the State says that the petitioners were examined by a team of medical examiners, as attested in certificates dated December 18 and 19, 2001. The State notes that, in any event, it ratified the Inter-American Convention to Prevent and Punish Torture on November 21, 2006, which would be significant for determining the competence of the Commission in relation to the allegations.

13. It contends that there is nothing to prove or certify the alleged acts of sexual abuse, sexual violence, and violations of the rights of the child. As regards the allegations of incommunicado detention and solitary confinement, the State says that there is nothing to substantiate them and that no complaints were made to the competent authorities. It argues that, in any event, the alleged acts would only constitute torture or cruel, inhuman, or degrading treatment if they had been prolonged or unnecessarily used, but not if they had been used to preserve order inside correctional facilities or avoid obstructions in determining the truth. It also affirms that such measures are governed by the law and that their use does not violate the right of publicity, given that the right to defense through counsel affords knowledge of the proceedings.

14. With respect to the rights to a fair trial and judicial protection, the State indicates that the right to a defense was fully observed throughout the proceedings, that each of the accused was afforded a technical defense, that some invoked the right to silence, a procedural guarantee that was respected, and that no unlawful or derivative evidence was adduced. The State also reiterates that the process was not based on statements made by the accused at the time of their detention, but only on documentary evidence, ballistic evidence, witness testimony, material evidence, and a judicial inspection, all of which was legally obtained and corroborated the guilt of those convicted. In relation to the resolution on precautionary measures that ordered the pretrial detention of the petitioners, Bolivia says that its purpose was to ensure that the investigation was not obstructed, bearing in mind the background to the case, and that it was perfectly legal and did not undermine the presumption of innocence.

15. Finally, with respect to the allegations regarding the right to protection of honor and dignity, Bolivia reiterates that the claims lack sufficient evidence to substantiate them and that the media shockwaves and social outcry prompted by the Prosegur case stemmed from the seriousness of the events and the violence and recklessness with which those convicted acted.

### **III. FINDINGS OF FACT**

#### **A. Relevant Legal Framework**

16. The Commission notes that the Bolivian State argued that it acted in accordance with the laws in force; therefore, it is appropriate to bear in mind the following provisions:

#### **Political Constitution of the State ( February 6, 1995, in force at the time of the events in the case)**

Article 10. Any criminal caught in flagrante delicto may be apprehended, even without a warrant, by any other person with the sole purpose of being brought before a competent authority or judge, who must take their statement within a maximum period of twenty-four hours.

Article 21. Every home is an inviolable refuge; by night it may not be entered without the consent its inhabitant, and by day it may only be entered with a written, reasoned order from a competent authority, except when a crime is in the act of being committed.

#### **Code of Criminal Procedure (Law 1970)**

Article 118. Day and hour of performance. Procedural acts will be performed during business days and hours, without prejudice to authorizations provided by the judge or court, whether ex officio or at the request of a party, when it deems necessary. At the reasoned request of the prosecutor, the investigating judge may issue warrants on holidays and during exceptional hours.

Article 129. Types of warrant. The judge or court may issue the following orders: 1. To appear, to summon the accused to provide a statement, as well as witnesses and experts. It will include a warning that an arrest order may be issued in the event of disobedience; 2. Of apprehension, in the event of disobedience or resistance of judicial orders. Of pretrial detention; Of conviction; 5. Of arrest; 6. Of supervised release; 7. Of release for persons acquitted or exonerated, and for those who have completed the sentence imposed on them; 8. Of seizure; 9. Of attachment; and 10. For a raid and search of property.

Article 180. Raid of domicile. When a home must be searched, a reasoned resolution shall be required from the judge and the participation of the prosecutor shall be mandatory. It is prohibited to raid a domicile or private residence during nighttime hours; the raid may only be carried out during daytime working hours, unless a crime is in the act of being committed. Nighttime hours are defined as the time between 7:00 p.m. and 7:00 a.m. the following day.

Article 181. Coercive powers. For the purposes of conducting the search, the authority may order the persons found at the place not to leave during the procedure or to order anyone else immediately to appear. Anyone who disobeys shall be compelled by the security forces, without prejudice to the appropriate liability. The restriction of liberty shall not last more than eight hours, after which time an order from the investigating judge must be obtained.

Article 182. The order and its contents The raid order must contain the following: 1. The name and office of the judge or court ordering the raid and a brief identification of the proceeding; 2. A precise indication of the place or places to be raided; 3. The authority designated for the raid; 4. The specific reason for the raid, its respective legal basis, the procedures to be carried out and, if possible, individual identification of the persons or objects sought; and 5. The date and the signature of the judge. The order shall be valid for a maximum of ninety-six hours, after which it shall lapse. The prosecutor attending the raid shall be in charge of directing the procedure.

Article 227. Apprehension by the police. The National Police may apprehend any person in the following cases: 1. When surprised flagrante delicto; 2. When carrying out an apprehension order issued by a competent judge or court; 3. When carrying out an order issued by the prosecutor; and 4. When the person has escaped, having being unlawfully detained. Any police official apprehending a person shall notify and turn them over to the office of the prosecutor within a maximum of eight hours.

Article 230. Flagrante delicto. The perpetrator is considered to be in flagrante delicto when surprised while attempting to commit, committing, or immediately after committing a crime while being pursued by the security forces, the aggrieved party, or eyewitnesses to the fact.

#### **B. Facts in the case**

17. At approximately 8:15 a.m. on December 14, 2001, a Prosegur truck carrying money was traveling south in the city of La Paz with seven people inside (driver, policemen, security guards and cashiers) when it was robbed by a group of individuals with heavy caliber firearms. The robbery occurred on Avenida Kantutani, where the Prosegur truck was violently intercepted by a blue SUV. The Prosegur driver was shot in

the abdomen and lost control of the vehicle, which collided with a tree, whereupon the robbers descended from the SUV and started shooting, murdering two policemen and a cashier, and making off with the money.<sup>6</sup>

18. That same day, invoking Article 21 of the Constitution and Articles 129, 180, 181, and 182 of the Code of Criminal Procedure, the Investigating Judge issued a raid order with powers to search two properties,<sup>7</sup> at the request of the Public Prosecution Service (*Ministerio Público*), in order to "look for the perpetrators and arrest the suspects, seize any firearms, military or police uniforms, documents relating to the incident, and objects and instruments connected with [the robbery of the Prosegur armored truck]."<sup>8</sup> The resolution granting the aforementioned powers was broadened on December 17, 2001 to include six other properties,<sup>9</sup> and, bearing in mind that the "perpetrators [were] highly dangerous," expressly authorized the operations to be carried out at night and making special hours and holidays eligible for that purpose, invoking Article 118 of the Code of Criminal Procedure as legal basis.<sup>10</sup>

19. According to the petitioners<sup>11</sup> and testimonies presented to the Trial Court (*Tribunal de Sentencia*),<sup>12</sup> in the pre-dawn hours of December 18, 2001, a large number of heavily armed State agents violently raided four properties as part of an operation to capture those suspected of the robbery. In the course of the capture, everyone who was in those homes, including women and young children,<sup>13</sup> was severely beaten, handcuffed, subdued, and placed face-down on the floor with their heads covered. The women were forced to strip naked and had rifle barrels and fingers introduced into their vaginas. According to the petitioners, the detainees were then taken to facilities of the Judicial Technical Police (PTJ) where they were similarly mistreated.

20. The Commission notes that in the statements that they gave to the PTJ, practically all the detainees admitted taking part in the robbery and gave information about the participation of others therein.<sup>14</sup> Some of the detainees mentioned that they were subjected to beatings and mistreatment. Hereafter, the IACHR sets out for the record the specific allegations made by those who said they were victims of beatings and mistreatment: Mercedes Valencia said that during the raid on her home at around 2:00 a.m., she and her son

<sup>6</sup> **Annex 01**, Prosegur case file, Judgment of May 16, 2003, El Alto Second Sentencing Court, Case No. 1014, Resolution 12/2003 (hereinafter "Judgment of May 16, 2003"), pp. 1603-1614.

<sup>7</sup> Properties situated at the street addresses: Virgen del Rosario 55; and 11 # 120, Villa Dolores, El Alto de La Paz.

<sup>8</sup> **Annex 02**, Resolution No. 180/2001. Eighth Investigating Court for Criminal Matters and Precautionary Measures in the complaint brought by the Public Prosecution Service against the perpetrators of the alleged crime of murder and aggravated robbery, La Paz, December 14, 2001.

<sup>9</sup> Properties situated at: Avenida Cívica 75, El Alto; Presbitero Medina 2525, Sopocachi; Presbitero Medina 2523, Sopocachi; Las Rosas 2315, Sopocachi; Plaza Literal 6568-B, Irpavi; and Zarzuela 600, Achachicala.

<sup>10</sup> **Annex 03**, Resolution No. 186/2001. Eighth Investigating Court for Criminal Matters and Precautionary Measures in the complaint brought by the Public Prosecution Service against the perpetrators of the alleged crime of murder and aggravated robbery, La Paz, December 17, 2001. It is stated for the record that the second page of the only copy of this order provided by the State is practically illegible.

<sup>11</sup> Petitioners' complaint of January 24, 2003,

<sup>12</sup> **Annex 01**, Prosegur case file, Statement of Francis Elida Primentela Merino, Hearing of January 17, 2003, pp. 1141 verso and 1142; Statement of Claudia Mariela Valencia Alarcón, Hearing of January 21, 2003, p. 1148; Statement of Andres Sanchez Guegner, Hearing of March 11, 2003, p. 1252(a); Statement of Victoria Gutierrez Aguilar de Lulleman, Hearing of April 8, 2003, p. 1332; Statement of Carlos Eladio Cruz Añez, Hearing of April 15, 2003, p. 1378.

<sup>13</sup> According to the petitioners, the homes that were raided and the victims of the mistreatment included: (a) the home at Calle Las Rosas 2319, Sopocachi, La Paz, domicile of the Valencia Alarcón family, where Blas Valencia Campos, his wife Norma Alarcón, his children Edwin, Claudia, Gabriel and Alexis, and his grandson Claudio were located, the latter two, 11 and 3 years old at the time; (b) the domicile at Calle Presbitero Medina, where Victor Manuel Boggiano Bruzon (Juan Ramírez Ortega), Genaro Ahuacho Luna (Walter Herrera Flores), Alfredo Bazán la Rosas (José Miguel Abildo Díaz), Mercedes Valencia Chuquimia, and 15-year-old Mauricio Valenzuela Valencia were located; (c) the domicile at Avenida Cívica Ciudad del Alto, home of the Lulleman family, where everyone present was assaulted, including the women, and Oswaldo Lulleman Antezana and Raúl Oswaldo Lulleman Gutiérrez were detained; and (d) the domicile at Calle Juan Manuel Cáceres, pasaje Cáceres, where Francis Elida Primentela Merino, Carlos Eladio Cruz Añez, and Carlos Enrique Castro Ramírez were located. See Petitioners' complaint of January 24, 2003.

<sup>14</sup> **Annex 04**, Records Statements Accused Prosegur Case (hereinafter "Prosegur Case Statements"), Freddy Cáceres Castro, pp. 4 to 21; Patricia Catalina Gallardo Arduz, pp. 22 to 39; Blas Valencia Campos, pp. 40 to 55; Mercedes Valencia Chuquimia, pp. 56 to 66; Norma Alarcón de Valencia, pp. 67 to 74; Oswaldo Lulleman Antezana, pp. 75 to 81; Eladio Cruz Añez, pp. 82 to 87; Carlos Enrique Castro Ramírez, pp. 88 to 94; Alfredo Bazán y Rozas or José Miguel Avildo Díaz, pp. 95 to 101 verso; Víctor Boggiano Bruzón or Juan Ramírez Ortega, pp. 102 to 105; Eladio Peña Córdova, pp. 106 to 112 verso; Leonel Eber Delgadillo Salvatierra, pp. 114 to 126; Raúl Lulleman Gutiérrez, pp. 127 to 134; Francis Elida Primentel Merino, pp. 131 to 137; María Fernanda Peña Gallardo, pp. 138 to 141; and Claudia Mariela Valencia Alarcón, pp. 143 to 153.

were beaten and that “his skull was depressed”; she also alleged that she was mistreated at the prison.<sup>15</sup> Alfredo Bazán y Rosas (José Miguel Abildo Díaz) said that at the time of his apprehension he was beaten all over his body.<sup>16</sup> Víctor Boggiano Bruzon (Juan Ramírez Ortega) said that he was beaten in the face, he had not received medical attention; he could not see out of his right eye and his head ached.<sup>17</sup> Upon ratifying his statement one month later, he explained that during the previous statement he had been feeling unwell because of the physical abuse he had received from the police who raided his house.<sup>18</sup> In all three of her statements, Francis Primentela, said that the police raid on her home was conducted violently, she was placed face-down, she was physically and verbally assaulted, they beat and kicked her even when she told them that she was pregnant, and they pressured her to make a statement.<sup>19</sup> Claudia Valencia Alarcón also complained of being beaten, and that the women were forced to spread their legs and had guns pointed at them, as did the children; she added that she had been pressured by the prosecutor and her defense attorney to make a statement, that both of them insulted her, and that ultimately it was the attorney who answered the questions.<sup>20</sup>

21. The hearing on precautionary measures was held on December 19, 2001 before the Investigating Judge. The prosecution sought pretrial detention for the 17 detainees,<sup>21</sup> owing to their alleged participation in the crimes of murder, aggravated robbery, criminal association, and manufacture and possession of explosive weapons. During the hearing, at which the alleged victims were present, the public defenders and private defense counsels expressly informed the investigating judge that it was clear that the detainees had been physically assaulted, their detention was unlawful and that excessive and unnecessary force had been used in it, they had not been detained in the act of committing a crime, they had been presented to the press, been victims of torture and other cruel treatment, and their right to be presumed innocent had been infringed. While the first lawyer was presenting those facts, he was interrupted by the Investigating Judge, who instructed him to confine his remarks to the precautionary measures.<sup>22</sup> In his decision, the Investigating Judge referenced the allegations of the lawyers of the accused. However, he did not address the lawfulness of the detention or take any additional steps and merely indicated that the assessment of probability of authorship—one of the grounds for his decision to order pretrial detention for all the accused at PTJ facilities—did not violate the principle of innocence. However, he founded his decision on “the presentations of the parties in this hearing [...] the technical visual inspection reports, the operations carried out on the days prior, and the statements both of the accused and of other persons who knew about this incident.”<sup>23</sup>

22. The record contains photographs published by local newspapers on December 18, 19, and 21-27, 2001, that identify eight of the detainees in person.<sup>24</sup> The photographs clearly show them with injuries on their bodies and faces, from which it may be surmised that those individuals were severely beaten.<sup>25</sup> On January 30, 2002, La Prensa newspaper included an article that referred again to the mistreatment. The article said that the detainees had been sent to the Chonchocoro detention centers and Miraflores women’s jail on December 24, 2001, where they were “off-limits” to families and friends and were unable to converse privately, even with their lawyers. The article also mentioned that on January 18, 19, and 21, 2002, they

<sup>15</sup> **Annex 04**, Prosegur Case Statements, Additional statement of Mercedes Valencia, January 16, 2002, pp. 61 and 66.

<sup>16</sup> **Annex 04**, Prosegur Case Statements, José Miguel Alvildo Diaz, December 18, 2001, p. 101 verso.

<sup>17</sup> **Annex 04**, Prosegur Case Statements, Juan Ramírez Ortega, December 18, 2001, p. 105.

<sup>18</sup> **Annex 04**, Prosegur Case Statements, Juan Ramírez Ortega, March 20, 2002, p. 103.

<sup>19</sup> **Annex 04**, Prosegur Case Statements, Francis Primentela Merino, December 18, 2001, and January 17, pp. 132, 133, 135, 136, and 137.

<sup>20</sup> **Annex 04**, Prosegur Case Statements, Claudia Valencia Alarcón, January 16 and June 20, 2002, pp. 151 and 152.

<sup>21</sup> The detainees presented at that hearing were Enrique Castro Ramírez, Alberto Farfán Larrosa o José Miguel Aroldo Díaz, Juan Ramírez Organi, Walter Herrera Ríos, Alfredo Rodríguez Vives, Mercedes Valencia Chuquimia, Victoria Gutiérrez Aguilar, Blas Valencia Campos, Oswaldo Lullelam Antezana, Claudia Valencia Alarcón, Francis Pimentel Medina, Norma de Valencia, Carlos Cruz Añez, Elacio Peña Córdova, Freddy Cáceres, Patricia Gallardo Arduz, and Raúl Lulleman Gutiérrez.

<sup>22</sup> **Annex 05**, Record of Public Hearing on Precautionary Measures, Eighth Investigating Judge for Criminal Matters and Precautionary Measures, December 19, 2001.

<sup>23</sup> **Annex 06**, Resolution No. 189/2001, Reasoned Order, Eighth Investigating Judge for Criminal Matters and Precautionary Measures, December 19, 2001.

<sup>24</sup> Blas Valencia, Norma de Valencia, Carlos E. Castro, Juan Ramírez O., Eliceo Peña C., Alberto Farfán, Walter Herrera Ríos, and Carlos Cruz Añez.

<sup>25</sup> **Annex 07**, Various newspaper cuttings, including La Prensa of December 18, 2001, El Diario of December 19, 2001, and the weekly El Pulso of December 21-27, 2001. All are appended as annexes to the petitioners’ complaint of January 24, 2003.

managed to interview 16 of the 17 detainees, including 6 women,<sup>26</sup> and determined that they had been subjected to beatings, indignities, and physical and psychological mistreatment, particularly while at judicial police facilities; that the women had been forced to strip naked in front of uniformed male personnel, that many of the detainees were being held in solitary confinement and incommunicado detention, and that some of them did not know who their lawyers were, while others had not received medical assistance, medicine, and food and water for some days.<sup>27</sup>

23. Similarly, after a video of the operation was made public, in its edition of May 2, 2002, *La Razón* newspaper reported that the police had used excessive force in detaining the suspects, who were handcuffed and severely beaten.<sup>28</sup> The Commission also examined a video (without sound) in which, although no actual acts of violence are seen, it can be observed that several of the detainees had been badly beaten up—their faces were swollen and bleeding—and their hands restrained behind them and they were lying on their stomachs.<sup>29</sup> The video also shows how someone uses the tip of their shoe to move the heads of the handcuffed individuals to face the camera.<sup>30</sup> Children can be seen in the video, but none of them is handcuffed or lying face-down.<sup>31</sup> Women also appear in the video, all of them clothed; only one is lying on her stomach;<sup>32</sup> another woman is handcuffed and on her feet speaking to those detaining her.<sup>33</sup> The video also records that a large amount of money—dollars and bolivianos—in stacks, wrapped in paper or black bags, and in Prosegur bags;<sup>34</sup> a large quantity of jewelry, in boxes and a suitcase;<sup>35</sup> firearms (submachine guns, rifles, shotguns, and pistols), ammunition and grenades;<sup>36</sup> passports;<sup>37</sup> bulletproof vests;<sup>38</sup> and vehicle license plates were seized in the operation.<sup>39</sup>

24. According to reports of the Ombudsperson (*Defensor del Pueblo*) of the Republic of Bolivia,<sup>40</sup> 9 of the detainees,<sup>41</sup> were held in a solitary confinement regime for more than 60 days without being allowed into the yard, mingle with the prison population, receive any sunlight, or use a telephone. It was only after representatives of the Ombudsperson had a meeting with Colonel Carlos Fernández Maceda, the Governor of Chonchocoro Prison, on February 28, 2002, that he promised to move them the following day. The Ombudsperson mentions in his reports that the rights of the detainees were violated but considered that the situation was rectified by the prison authorities after they were transferred to open cells, as was verified by his office on March 5, 2003.

<sup>26</sup> Freddy Cáceres, Raúl Lulleman Gutiérrez, Enrique o Carlos Castro Ramírez, Carlos Eladio Cruz Añez, Alfredo Farfán Larrosa o José Miguel Abildo Díaz, Blas Valencia Campos, Juan Ramírez Ortega, Oswaldo Lulleman Antezana, Walter Herrera Ríos, Elacio Peña Córdova, Alfredo Rodríguez Vives, Mercedes Valencua Chuquimia, Claudia Valencia Alarcón, Norma Alarcón de Valencia, Francis Elida Pimentela Merino, Victoria Gutiérrez Aguilar, Patricia Gallardo Arduz.

<sup>27</sup> **Annex 08**, Cutting from *La Prensa* newspaper of January 30, 2002, appended to the petitioners' complaint of January 24, 2003.

<sup>28</sup> **Annex 09**, Cutting from *La Razón* newspaper of May 2, 2002, appended to the petitioners' complaint of January 24, 2003.

<sup>29</sup> **Annex 10**, Video (without sound) in VHS format of the police operation and reconstruction of the events, minutes 20:55, 27:30-30:16, 30:40-30:52, 31:45-32:05, 32:00-33:00, 34:30, 38:15, and 38:45.

<sup>30</sup> **Annex 10**, Video (without sound) in VHS format of the police operation and reconstruction of the events, minutes 28:00-30:17.

<sup>31</sup> **Annex 10**, Video (without sound) in VHS format of the police operation and reconstruction of the events, minutes 9:05-12:17, 26:25, and 26:35.

<sup>32</sup> **Annex 10**, Video (without sound) in VHS format of the police operation and reconstruction of the events, minute 38:40.

<sup>33</sup> **Annex 10**, Video (without sound) in VHS format of the police operation and reconstruction of the events, minutes 39:10, 39:30, 39:50-40:32, 41:30-41:47, and 42:45-45:32.

<sup>34</sup> **Annex 10**, Video (without sound) in VHS format of the police operation and reconstruction of the events, minutes 20:30, 21:04, 21:45, 28:38-29:22, 30:25-30:32, 31:08, 31:30-31:42, 35:58-36:20, 38:10, 38:30, 39:20, 39:30, 40:45-41:12, and 48:00-49:30.

<sup>35</sup> **Annex 10**, Video (without sound) in VHS format of the police operation and reconstruction of the events, minutes 36:20-37:02, 46:20, and 50:30-51:32.

<sup>36</sup> **Annex 10**, Video (without sound) in VHS format of the police operation and reconstruction of the events, minutes 22:30, 22:50-23:42, 31:00, 33:20-34:31, 34:45, 34:58, 37:00-38:02, and 49:45-52:17.

<sup>37</sup> **Annex 10**, Video (without sound) in VHS format of the police operation and reconstruction of the events, minutes 46:26-47:52.

<sup>38</sup> **Annex 10**, Video (without sound) in VHS format of the police operation and reconstruction of the events, minutes 40:45-41:12.

<sup>39</sup> **Annex 10**, Video (without sound) in VHS format of the police operation and reconstruction of the events, minutes 35:10-35:42.

<sup>40</sup> **Annex 11**, Direct Intervention Report of the Office of the Ombudsperson, Case No. 0277-ALT-2002, March 6, 2002; **Annex 12**, Report PA/ALT/00081/2002/DH of the Office of the Ombudsperson, Case No. 0277-ALT-2002, March 20, 2002.

<sup>41</sup> Blas Valencia Campos, Oswaldo Lulleman, Carlos Cruz Añez, Alfredo Rodríguez Vives, Enrique Castro Ramírez, Ignacio Peña Córdoba, Juan Ramírez Ortega, Walter Herrera Ríos, and José Miguel Albido Díaz.

25. According to medical reports, on April 14, 2002, Walter Herrera Ríos, who was 44 years old, died as a result of a cerebral infarction he suffered on April 12, 2002, at Chonchocoro prison. The deceased had no history of similar complaints and a cranial CT scan revealed the existence of an edema.<sup>42</sup>

26. A forensic medical certificate shows that María Fernanda Peña Gallardo attempted suicide on June 5, 2002 and was admitted to the hospital emergency room in a life-threatening condition as a result of drug poisoning, and that her clinical history showed that she had taken medication indiscriminately in the past.<sup>43</sup> The record also contains an act of suspension of the hearing to which María Fernanda Peña Gallardo had been summoned to provide an informational statement to the La Paz District Prosecutor's Office on June 6, 2006.<sup>44</sup>

### C. Domestic proceedings

27. On June 25, 2002,<sup>45</sup> the Public Prosecution Service in La Paz brought an indictment against 17 individuals<sup>46</sup> for the crimes of murder, criminal association, manufacturing of, trading in, or possession of explosive substances, compulsion, aggravated robbery and aggravated injury; and against two other persons for complicity and receiving stolen property.<sup>47</sup> During the oral proceedings before the Trial Court, which began on January 10, 2003 against 15 defendants,<sup>48</sup> the majority of them invoked their right to remain silent. However, those who opted to speak, as well as the lawyers of all of the accused, repeatedly referred to the mistreatment of which they had been victims during their apprehension, arrest, and investigation on the charges against them.<sup>49</sup>

28. Francis Primentela reiterated in the proceeding that during the course of the arrest and at the facilities of the PTJ the policemen in charge of the investigation, especially Gary Sánchez, kicked, beat, and physically and indecently humiliated her, causing her to lose her baby and failing to provide her with medical assistance while she was bleeding. She said that she and the other women—in particular, she mentioned Claudia Valencia—were subjected to insults, forced to strip naked five times a day, suffered sexual abuse (indecent touching and introduction of fingers in their genitals), had to sleep on the floor, and were doused with cold water in pre-dawn hours. She also said that her statement had been obtained while she was threatened with weapons and physical assault, that she had been tortured, and that despite her denouncing those facts to her counsel and the prosecutor, they did nothing.<sup>50</sup> Claudia Valencia, for her part, also described the beatings and indignities endured during the raid on her father's house at 3:00 a.m. on December 18, 2001, when around 100 policemen entered the home and subdued the occupants, including women and children. Her 11-year-old brother was abducted for some hours and the women were again subjected to particular mistreatment, sexual violence, and insults; they stripped her naked and touched her body, while her mother had a rifle barrel introduced into her genitals. The mistreatment continued at the PTJ facilities, were all of them, including the children, were taken and publicly paraded. She also confirmed that the women suffered

<sup>42</sup> **Annex 13**, Medical report dated April 12, 2002, signed by the prison physician, Dr. Angel E. Yujra Alavarez, and Medical report No. 001380 (undated) signed by the neurologist and the internist, Dr. Jorge Perdager and Dr. Juan Carlos Zapata M.

<sup>43</sup> **Annex 14**, Forensic medical certificate dated June 19, 2002, signed by medical examiner Dr. Freddy Torrejón.

<sup>44</sup> **Annex 15**, Act of suspension of informational statement hearing, Public Prosecution Service, District Prosecutor's Office, La Paz, Bolivia.

<sup>45</sup> **Annex 01**, Prosegur case file, Prosecutor's indictment, pp. 157 to 186.

<sup>46</sup> The accused include Patricia Catalina Gallardo Arduz, Freddy Cáceres Castro, Blas Valencia Campos, Mercedes Valencia Chuquimia, Norma Lupe Alarcón Castillo de Valencia, Oswaldo Lulleman Antezana, Carlos Eladio Cruz Añez, Carlos Enrique Castro Ramírez, Alfredo Bazán Y Rosas o José Miguel Abildo Diaz, Víctor Manuel Boggiano Bruzón o Juan Ramírez Ortega, Elasio Peña Córdoba, Leonel Eber Delgadillo Gutiérrez, Raúl Oswaldo Lulleman Gutiérrez, Francis Elida Primentela Merino, Miguel Aguilar, Ángel León Arévalo and José Alexander Reguera Isuiza (Camilo). The last three being fugitives and in contempt of court.

<sup>47</sup> The indictment for those charges was presented against María Fernanda Peña Gallardo and Claudia Mariela Valencia Alarcón. The record shows that María Fernanda Peña Gallardo died on July 14, 2002.

<sup>48</sup> The defendants submitted for oral proceedings were Blas Valencia Campos, Norma Alarcón de Valencia, Claudia Valencia Alarcón, Elasio Peña Córdoba, Oswaldo Lulleman Antezana, Raúl Oswaldo Lulleman Gutiérrez, Freddy Cáceres Castro, Leonel Delgadillo Gutiérrez, Mercedes Valencia Chuquimia, Francis Elida Primentela Merino, Carlos Eladio Cruz Añez, Patricia Catalina Gallardo Arduz, Carlos Enrique Castro Ramírez, Alfredo Bazan y Rosas (José Miguel Abildo Diaz) and Víctor Manuel Boggiano Bruzon (Juan Ramírez Ortega).

<sup>49</sup> **Annex 01**, Prosegur case file, Hearings of January 15 and 29, and May 13, 2003, pp. 1115 verso, 1118, 1118 verso, 1155, 1158, 1160, 1162, 1163, 1164, 1165, 1167, 1539, 1541, 1547-1549, 1552-1553, 1557, 1559, 1562, 1565, 1567, 1571-1572.

<sup>50</sup> **Annex 01**, Prosegur case file, Hearing of January 17, 2003, pp. 1138 verso, 1139, 1141, 1141 verso; and Judgment of May 16, 2003, pp. 1590.

sexual violence daily and that Francis Primentela had a miscarriage. He also alleged that she was not able to communicate with her father for three months and was unable to see her son. Finally, she said that her statements were given under torture and threats, that she was beaten and mistreated and forced to sign a statement, and that the lawyer and the prosecutor also compelled her to incriminate herself, using intimidation.<sup>51</sup> For her part, Patricia Gallardo, who admitted her participation in the robbery, also alleged that she and her daughter were physically assaulted at the PTJ, that Captain Gary Sánchez put a weapon to her head to force her to give a statement, and that both the police and the prosecutor's office put pressure on her and her daughter.<sup>52</sup>

29. Likewise, Carlos Eladio Cruz Añez said that at 6:00 a.m. on December 18, PTJ police burst into his home and subjected him and his wife to a brutal beating while questioning them about the Prosegur robbery and other events. He said that he was tortured by having a plastic bag placed over his head and filled with gas, and that Captain Sanchez struck him on the head three times with a gun butt. The torture allegedly continued at the PTJ facilities and his statements were taken without a lawyer present. He was also held incommunicado at Choncoco Prison for 60 days.<sup>53</sup> Leonel Delgado, who was also prosecuted for his alleged involvement in the robbery but is not a petitioner in this case, also identified the PTJ policeman Sánchez as the person who physically assaulted, insulted, and threatened him, forcing him to confess to taking part in a robbery. He also said that, despite insisting on his innocence, his attorney made him accept a summary procedure, saying that he was going to be found guilty anyway, and then asked him for money.<sup>54</sup>

30. During the oral proceedings from January 30 to April 7, 2003, the prosecution presented testimony evidence from 25 witnesses, including eyewitnesses to the robbery, events prior to it, and events subsequent thereto; experts, and police personnel. Of particular significance for this case was the testimony of Walter Osinaga Zambrana, General Commandant of the Bolivian Police, who said that he had first heard about the robbery from the then-President of the Republic, Jorge Quiroga, who called him early in the morning of December 14, 2001, saying that he had heard gunfire near the presidential residence and asking him to investigate.<sup>55</sup> He described the information that led to the capture of the accused,<sup>56</sup> and explained that, in keeping with the orders of the President and the Minister of the Interior, he was in command of the operation, took part in the raids,<sup>57</sup> and kept the President permanently apprised of progress.<sup>58</sup> In addition, he recognized that there had been children at the raided properties but denied that they had been handcuffed,<sup>59</sup> and he said that he did not recall if they were presented to the television cameras.<sup>60</sup> As regards the mistreatment suffered by the detainees, Osinaga did not deny what happened, but said that he did not know why the individuals had been beaten. He also said that he had always been the last to enter the properties and explained that the Commandant had the authority to discharge any police who committed abuses.<sup>61</sup> However, he expressly recognized that damage had been done to the properties, even saying that the police had had to pay for a door.<sup>62</sup>

31. Also relevant is the testimony of Andrés Sánchez Guegner, who was National Director of the PTJ in 2001. He provided more details about the investigations that uncovered the whereabouts of the detainees.<sup>63</sup> With regard to the arrests, he specified that in the raid on the Lulleman family home at approximately 3:30 a.m.,<sup>64</sup> Raúl Lulleman, his sister, his mother, and a domestic servant had indeed been arrested.<sup>65</sup> He also

<sup>51</sup> **Annex 01**, Prosegur case file, Hearing of January 21, 2003, pp. 1148, 1148 verso, 1149; and Judgment of May 16, 2003, pp. 1595.

<sup>52</sup> **Annex 01**, Prosegur case file, Hearings of April 28 and May 7, 2003, pp. 1411 and 1440.

<sup>53</sup> **Annex 01**, Prosegur case file, Hearing of April 21, 2003, p. 1378.

<sup>54</sup> **Annex 01**, Prosegur case file, Hearing of January 21, 2003, pp. 1144 and 1145 verso.

<sup>55</sup> **Annex 01**, Prosegur case file, Hearing of March 10, 2003, pp. 1234, 1240, and 1245.

<sup>56</sup> **Annex 01**, Prosegur case file, Hearing of March 10, 2003, pp. 1234-1236.

<sup>57</sup> **Annex 01**, Prosegur case file, Hearing of March 10, 2003, pp. 1238 and 1245.

<sup>58</sup> **Annex 01**, Prosegur case file, Hearing of March 10, 2003, pp. 1234, 1235, 1236, and 1240.

<sup>59</sup> **Annex 01**, Prosegur case file, Hearing of March 10, 2003, p. 1238.

<sup>60</sup> **Annex 01**, Prosegur case file, Hearing of March 10, 2003, p. 1243.

<sup>61</sup> **Annex 01**, Prosegur case file, Hearing of March 10, 2003, pp. 1239, 1240, and 1245.

<sup>62</sup> **Annex 01**, Prosegur case file, Hearing of March 10, 2003, p. 1240.

<sup>63</sup> **Annex 01**, Prosegur case file, Hearing of March 11, 2003, pp. 1248-1251.

<sup>64</sup> **Annex 01**, Prosegur case file, Hearing of March 11, 2003, p. 1252(a).

<sup>65</sup> **Annex 01**, Prosegur case file, Hearing of March 11, 2003, p. 1250.

recalled that at the home of Patricia Gallardo one of her daughters and a male child were present.<sup>66</sup> He said that he entered the Blas Valencia house, but that no minor had been kidnapped, detained, or presented to the press.<sup>67</sup> In relation to the petitioners' allegations, he said that he did indeed see that several people had bruises and he indicated that he asked for medical examiners to be summoned; however, he insisted that the statements were taken by the investigators assigned to the case and that he had not been present.<sup>68</sup>

32. Blas Valencia, Eladio Cruz Añez, Patricia Gallardo, and Francis Primentela Merino waived their right to submit evidence in their defense.<sup>69</sup> Rosario Viscarra Garnica, a lawyer from the Chamber of Deputies Human Rights Commission, who was presented as a defense witness for another accused woman, declared that she went to the PTJ facilities and saw that Blas Valencia had a bruise over the left cheekbone.<sup>70</sup> She said that she had gone in response to complaints that the detainees could not use the bathroom facilities, were not being given food or medication, and were unable to receive legal assistance.<sup>71</sup> She also remarked that the cells were very cramped and that there were a lot of people in them, with only one bed; she was unable to recall if that was on the men's side or the women's side. She also found that the detainees were being held incommunicado and that their attorneys could not enter the cells.<sup>72</sup>

33. One of the petitioners in this case, Victoria Gutiérrez de Lulleman, who was not prosecuted for the Prosegur robbery but testified as a witness for the defense, referred to the raid on her house on December 18, 2001, by the police, including General Osinaga. She said that the raid took place at around 2:00 a.m., her home and property were violated, and the occupants inhumanly treated, insulted, and threatened; her four-year-old grandson had a gun pointed at him in the pouring rain, her son was brutally beaten and kicked, and all were arrested. They were then taken to an empty cell where they were very badly treated, unable to wash, not allowed to go to the bathroom, and had nothing to eat. There were 12 women detained; they were taken out into the corridor and forced to strip naked and spread their legs. One of them was in a very bad way but received no care. They did not have access to a lawyer and there was no lawyer present when she gave her statement. Subsequently they were presented to the press and had falsehoods told about them, which caused them a civil death. She had not known any of those involved prior to the arrest, yet she was detained for two months.<sup>73</sup>

34. In addition to witness testimonies, a multitude of documentary and material evidence was presented for both the prosecution and the defense.<sup>74</sup> The inclusion of each exhibit was discussed by the parties, with both the prosecution and the accused, whether directly or through their lawyers, afforded the opportunity to make submissions on the admissibility of each. As a result of that procedure, the court ordered a number of items of evidence to be excluded, including: (a) the records of arms inspection and their respective photographs, which were barred for having being done after the statements of the defendants were taken, in contravention of Article 95 of the Code of Criminal Procedure and because they were collected in violation of Articles 180 of the Code of Criminal Procedure and 21 of the Constitution, as they were procured at the domicile of one of the accused between 3:00 a.m and 5:00 a.m.;<sup>75</sup> and (b) documents signed by Oswaldo Lulleman, Raul Lulleman, Leonel Delgadillo, and Patricia Gallardo admitting compromising acts, which were excluded because they were obtained with promises and inducement of errors on the part of representatives of the Public Prosecution Service.<sup>76</sup> Finally, a visual inspection was performed, followed by a reconstruction of the scene, with the voluntary participation of all defendants.<sup>77</sup>

<sup>66</sup> **Annex 01**, Prosegur case file, Hearing of March 11, 2003, p. 1255.

<sup>67</sup> **Annex 01**, Prosegur case file, Hearing of March 11, 2003, p. 1258.

<sup>68</sup> **Annex 01**, Prosegur case file, Hearing of March 11, 2003, p. 1257.

<sup>69</sup> **Annex 01**, Prosegur case file, Hearings of April 7, 8, and 10, 2003, pp. 1320, 1336-1337, 1345.

<sup>70</sup> **Annex 01**, Prosegur case file, Hearing of April 7, 2003, p. 1322.

<sup>71</sup> **Annex 01**, Prosegur case file, Hearing of April 7, 2003, pp. 1322-1323.

<sup>72</sup> **Annex 01**, Prosegur case file, Hearing of April 7, 2003, pp. 1322-1323.

<sup>73</sup> **Annex 01**, Prosegur case file, Hearing of April 8, 2003, pp. 1332-1334.

<sup>74</sup> **Annex 01**, Prosegur case file, Hearings of April 15, 16, 21, 22, 23, 28 and 30 and May 5, 2003, pp. 1356-1433.

<sup>75</sup> **Annex 01**, Prosegur case file, Hearing of April 22, 2003, pp. 1378-1389.

<sup>76</sup> **Annex 01**, Prosegur case file, Hearing of April 23, 2003, pp. 1392-1398.

<sup>77</sup> **Annex 01**, Prosegur case file, Hearing of May 7, 2003, pp. 1434-1511.

35. In its ruling, the Trial Court found Blas Valencia Campos, Patricia Catalina Gallardo Ardúz, Carlos Eladio Cruz Añez, Elasio Peña Córdova, Carlos Enrique Castro Ramírez, Alfredo Bazán y Rosas, and Victor Manuel Boggiano Bruzzon guilty of the crimes of murder, aggravated robbery, criminal association, and aggravated injury, and sentenced each to 30 years' imprisonment. Freddy Cáceres Castro and Norma Lupe Alarcón Castillo de Valencia were found guilty of the crimes of aggravated robbery and criminal association and of complicity in the crimes of murder and aggravated injury, as were Mercedes Valencia Chuquimia, Raúl Oswaldo Lulleman Gutiérrez, and Oswaldo Lulleman Antezana; the former were sentenced to 22 years' imprisonment, and the latter to 18 years. Francis Elida Primentela Merino and Claudia Mariela Valencia Alarcón were found guilty of complicity in the crime of aggravated robbery; the former was sentenced to seven years in prison; the latter was given a suspended sentence of three years' imprisonment. Finally, Leonel Eber Delgadillo Salvatierra was found guilty of the crime of aggravated larceny and sentenced to two years' imprisonment been granted a judicial pardon for being a first-time offender.<sup>78</sup>

36. The verdict was based solely on the evidence presented in the oral proceedings, which did not include the statements of the accused prior to the trial.<sup>79</sup> The Commission considers it important to stress that the Trial Court did not take into account the testimony of Walter Osinaga Zambrana, General Commandant of the Bolivian Police, because it considered it confusing "and even contradictory, such that it did not provide the Court with credible and valid information."<sup>80</sup> Furthermore, although, as is mentioned in paragraph 34 above, in the course of the proceedings the trial court decided to exclude evidence that it considered had been obtained in contravention of Articles 180 of the Code of Criminal Procedure and 21 of the Constitution,<sup>81</sup> in its decision it stated:

In the case before us, it has been insinuated, albeit indirectly, that the apprehension of some of the accused was allegedly done in an irregular manner. If so, their lawyers should have denounced such facts in a timely manner to the Investigating Court for Criminal Matters (Precautionary Measures), which is precisely authority in charge of oversight of such guarantees. Since that did not occur and given that that court decided on its own authority to order the defendants to be placed in pretrial detention, any such supposed anomalies have been regularized. Therefore, at this stage of the proceedings, the defendants' claims that they were unlawfully detained are without any legal foundation.<sup>82</sup>

37. Also of great significance for this case was the trial court's determination in its decision that, taking into account that during the oral proceedings it was alleged that human rights violations were committed by public officials in the detention of the defendants as well as during the investigations, it ordered that the antecedents be referred to the Public Prosecution Service for investigation,<sup>83</sup> as well as setting down in the record the evidence provided in connection with those allegations.<sup>84</sup>

38. The decision was appealed by those convicted, who reiterated the allegations that their human rights had been violated during the detention and investigation, and submitted, among other things, that the detention and collection of evidence was unlawful, and therefore that the proceedings were null and void. The First Criminal Chamber of the Superior Court of Justice ruled on the appeal on August 21, 2003, finding the submissions inadmissible and upholding the appealed judgment, without addressing the aforementioned allegations.<sup>85</sup> The convicted persons filed a cassation appeal against the judgment, offering similar arguments, but the appeal was ruled inadmissible by the Criminal chamber of the Supreme Court of Justice on October 29, 2003.<sup>86</sup>

<sup>78</sup> **Annex 01**, Prosegur case file, Judgment - Operative Part, Hearing of May 16, 2003, pp. 1580 (a) to (h).

<sup>79</sup> **Annex 01**, Prosegur case file, Judgment of May 16, 2003, pp. 1603-1671.

<sup>80</sup> **Annex 01**, Prosegur case file, Judgment of May 16, 2003, p. 1653

<sup>81</sup> **Annex 01**, Prosegur case file, Hearing of April 22, 2003, pp. 1378-1389.

<sup>82</sup> **Annex 01**, Prosegur case file, Judgment of May 16, 2003, pp. 1660-1661.

<sup>83</sup> **Annex 01**, Prosegur case file, Judgment - Operative Part, Hearing of May January 16, 2003, p. 1580(g) and Judgment of May 16, 2003, p. 1670.

<sup>84</sup> **Annex 01**, Prosegur case file, Judgment of May 16, 2003, pp. 1624 and 1635.

<sup>85</sup> **Annex 01**, Prosegur case file, Judgment of August 21, 2003, First Criminal Chamber, Superior Court of Justice, La Paz, Bolivia, Resolution 539/03, pp. 1999-2000.

<sup>86</sup> **Annex 01**, Prosegur case file, Judgment of October 29, 2003, Criminal Chamber, Supreme Court of Justice, Bolivia, Order of the Supreme Court 541, page number illegible.

39. The State says that the petitioners' allegations were the subject of an ex officio inquiry by the State and rejected by the Public Prosecution Service in 2014 for lack of evidence. However, it does not enclose any documents in support of that assertion.<sup>87</sup>

#### IV. LEGAL ANALYSIS

##### A. Rights to personal liberty<sup>88</sup> and to freedom from undue interference in private life and the family<sup>89</sup>

40. With regard to the right to personal liberty, the Inter-American Court of human rights (hereinafter the "Inter-American Court" or "Court") has consistently held in its case law that "regardless of the reason for [a] detention, insofar as it relates to a deprivation of liberty executed by a State Party to the Convention, [the] deprivation of liberty must be strictly in keeping with the relevant provisions of the American Convention and domestic law."<sup>90</sup> In that connection, for determining the legality of deprivation of physical liberty Article 7(2) of the Convention refers to the "reasons" and "conditions" established in the "constitution" or by a "law established pursuant thereto."<sup>91</sup> Consequently, "if the domestic law is not observed, both materially and formally, when depriving an individual of his liberty, this deprivation will be unlawful and contrary to the American Convention."<sup>92</sup> Furthermore, to determine the legality of a detention it is necessary to establish whether the material and formal requirements set down in the applicable domestic law were met beforehand. If they were not, then the detention will be unlawful, in violation of Article 7(2) of the Convention and, therefore, of Article 7(1) thereof, taken in conjunction with Article 1(1) of the same treaty.<sup>93</sup>

41. With respect to Article 7 (3) of the American Convention, the Court has held that "no one may be subjected to arrest or imprisonment for reasons and by methods which, although classified as legal, could be deemed to be incompatible with the respect for the fundamental rights of the individual because, among other things, they are unreasonable, unforeseeable or lacking in proportionality."<sup>94</sup> In relation to arbitrariness of detention, the Court has referred to the findings of the Human Rights Committee, which held that arbitrariness "is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law."<sup>95</sup>

42. As the Court has stated, Article 7 (6) of the Convention also protects the right of everyone deprived of their liberty to challenge the lawfulness of their detention before a judge, stipulating that such remedies "must not only exist formally by law, but must be effective; in other words, comply with the purpose of obtaining a prompt decision on the lawfulness of the arrest or detention."<sup>96</sup> In this context "analysis by the

<sup>87</sup> Observations brief, Blas Valencia et al. case, La Paz, October 31, 2016, par. 36.

<sup>88</sup> The pertinent portions of Article 7 of the American Convention provide: "Article 7. Right to personal liberty. 1. Every person has the right to personal liberty and security. 2. No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto. 3. No one shall be subject to arbitrary arrest or imprisonment. [...] 6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful."

<sup>89</sup> The pertinent portions of Article 11 of the American Convention provide: "Article 11. Right to Privacy. 1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, or his correspondence, or of unlawful attacks on his honor or reputation."

<sup>90</sup> See, *inter alia*, I/A Court H.R., *Case of Wong Ho Wing v. Peru*, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 30, 2015, Series C. No. 297 (Wong Ho Wing Judgment), par. 235.

<sup>91</sup> I/A Court H.R., *Case of Galindo Cárdenas et al. v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of October 2, 2015, Series C. No. 301 (Galindo Cárdenas et al. Judgment), par. 181.

<sup>92</sup> I/A Court H.R., *Wong Ho Wing Judgment*, par. 237. See also *Case of Ticona Estrada et al. v. Bolivia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C. No. 191 (Ticona Estrada Judgment), par. 57.

<sup>93</sup> For a similar finding, see: I/A Court H.R., *Case of Herrera Espinoza et al. v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment of September 1, 2016, Series C. No. 316, pars. 138-140.

<sup>94</sup> I/A Court H.R., *Case of Gangaram Panday v. Suriname*, Judgment of January 21, 1994. Series C. No. 16, par. 47.

<sup>95</sup> I/A Court H.R., *Case of Chaparro Álvarez and Lapo Íñiguez v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 21, 2007, Series C. No. 170, par. 92.

<sup>96</sup> I/A Court H.R., *Case of Espinoza Gonzáles v. Peru*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 20, 2014. Series C. No. 289 (Espinoza Gonzáles Judgment), par. 135. See also, *Case of Acosta Calderón v. Ecuador*, Merits, Reparations, and

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competent authority of a judicial recourse that debates the legality of the imprisonment cannot be reduced to a mere formality, instead it must examine the reasons invoked by the claimant and make express statements regarding the same, according to the parameters established by the American Convention.”<sup>97</sup> The judicial authority’s failure to analyze and make a pronouncement on the allegations of unlawful arrest rendered the remedy ineffective.<sup>98</sup>

43. The Court has also expressly indicated that Article 11 (2) of the Convention protects private life and the family from arbitrary or abusive interference and recognizes “that there is a personal sphere that must be protected from interference by outsiders and that personal and family honor and the home must be protected against such interference.”<sup>99</sup> In addition, the Court has determined that “in the light of Article 11 (2) of the Convention, obtaining appropriate authorization or a court order to conduct a house search or raid should be regarded as the general rule, and exceptions to it, such as when a crime is in progress, are valid only in the circumstances recognized by law, which, precisely because they are exceptions, must be narrowly interpreted.”<sup>100</sup>

44. Under the relevant constitutional and legal provisions in force in Bolivia at the time of the events (transcribed in the section “Relevant Legal Framework”), people may only be arrested in their homes, and their residences raided, during daytime hours, with a reasoned resolution to that end from a judge and the mandatory participation of the prosecutor. During nighttime hours, that is, from 7:00 p.m. to 7:00 a.m. the following day, it was absolutely prohibited to carry out house raids and a home could only be entered with the consent of its inhabitant or in case of flagrancy. As the same legal framework also stated, a perpetrator is only considered to be in flagrante delicto when surprised while attempting to commit, committing, or immediately after committing a crime while being pursued by the security forces, the aggrieved party, or eyewitnesses to the fact.

45. Consequently, the orders issued by the investigating judge dated December 14 and 17, 2001, could only validly be used between 7:00 a.m. and 7:00 p.m.. To the extent that they authorized operations at night, they were in violation of the Constitution and other applicable norms. As to the submission of the Bolivian State that the arrest and raids were carried out in flagrante delicto, the Commission notes that they took place four days after the events and after a series of investigative steps had been taken to locate those responsible; therefore, in no circumstances could they be considered actions that were carried out “immediately” afterwards or “while [the perpetrator was] being pursued.”

46. Bearing in mind the foregoing and what is described in the established facts, the Commission finds that both the arrests and the house raids carried out in the pre-dawn hours of December 18, 2001, were illegal. Furthermore, in spite of the fact that the suspects’ lawyers brought that illegality to the attention of the Investigating Judge at the precautionary measures hearing, he made no pronouncement on those allegations in his resolution; therefore, the lawyers’ efforts with the judicial authority were completely ineffective at restoring the rule of law. In addition, as will be examined in the next section, insofar as the violence with which the raids and the arrests were carried out has been accredited, the Commission considers that they too were arbitrary under the terms of Articles 11(2) and 7(3) of the Convention, respectively.

47. Consequently, the Commission concludes that Bolivia violated the rights to personal liberty of 16 people<sup>101</sup> and the right to freedom from arbitrary interference with the private life and the family of 22

[... continuation]

Costs, Judgment of June 24, 2005, Series C. No. 129, par. 97; Case of Vélez Looor v. Panama, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 23, 2010, Series C. No. 218, par. 129.

<sup>97</sup> I/A Court H.R., Case of López Álvarez v. Honduras, Merits, Reparations, and Costs, Judgment of February 1, 2006, Series C. No. 141 (López Álvarez Judgment), par. 96.

<sup>98</sup> I/A Court H.R., López Álvarez Judgment, par. 97.

<sup>99</sup> I/A Court H.R., *Case of the Ituango Massacres v. Colombia*, Judgment of November 29, 2006, Series C No. 148, par. 193.

<sup>100</sup> I/A Court H.R., *Case of Pollo Rivera et al. v. Peru*, Merits, Reparations, and Costs, Judgment of October 21, 2016, Series C. No. 319, par. 116.

<sup>101</sup> Blas Valencia Campos, Norma Lupe Alarcón de Valencia, Edwin Rodríguez Alarcón, Claudia Valencia Alarcón, Gabriel Valencia Alarcón, Alexis Valencia Alarcón (11 years old), Claudio Valencia (3 years old), Elacio Peña Córdoba, Víctor Manuel Boggiano Bruzon (Juan Ramírez Ortega), Genaro Ahuacho Luna (Walter Herrera Flores), Alfredo Bazán la Rosas (José Miguel Abildo Díaz), Mercedes Valencia

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people,<sup>102</sup> as recognized at Articles 7(1), 7(2), 7(3), 7(6), and 11(2) of the American Convention, taken in conjunction with Article 1(1) thereof.

**B. Right to life,<sup>103</sup> right to humane treatment,<sup>104</sup> right to privacy,<sup>105</sup> rights of the child,<sup>106</sup> and the right of women to live free from violence<sup>107</sup>**

48. As regards the right to life, the court has consistently stated that it “is a fundamental human right, and the exercise of this right is essential for the exercise of all other human rights. If it is not respected, all rights lack meaning.”<sup>108</sup> Observance of Article 4 of the Convention, in conjunction with Article 1(1) thereof, “does not only presuppose that no person can be arbitrarily deprived of his life (negative duty) but also requires, pursuant to its obligation to guarantee the full and free exercise of human rights, that the States adopt any and all necessary measures to protect and preserve the right to life (positive duty) of the individuals under their jurisdiction.”<sup>109</sup>

49. The Court has found that the State, in its capacity as guarantor of the rights enshrined in the Convention, is responsible for observance of the right to humane treatment of everyone in its custody. Although the State “has the right and obligation to guarantee its security and maintain public order, its powers are not unlimited ... [and it must] respect the fundamental rights of each individual in its jurisdiction.”<sup>110</sup> Consequently, “if a person was detained in good health conditions and subsequently died, the State has the obligation to provide a satisfactory and convincing explanation of what happened and to disprove accusations regarding its responsibility, through valid evidence.”<sup>111</sup>

50. With respect to the right to humane treatment enshrined in Article 5 of the Convention, the Court has indicated that it “is a category of violation that has several gradations and embraces treatment ranging from

[... continuation]

Chuquimia, Mauricio Valenzuela Valencia (15 years old), Oswaldo Lulleman Antezana, Raúl Oswaldo Lulleman Gutiérrez, Victoria Gutiérrez de Lulleman, Paola Lulleman de Zaconeta, Luis F. Lulleman Gutiérrez, Julia Mamanu Mamani, Francis Elida Primentela Merino, Carlos Eladio Cruz Añez, and Carlos Enrique Castro Ramírez.

<sup>102</sup> Blas Valencia Campos, Norma Lupe Alarcón de Valencia, Claudia Valencia Alarcón, Elacio Peña Córdoba, Víctor Manuel Boggiano Bruzon (Juan Ramírez Ortega), Genaro Ahuacho Luna (Walter Herrera Flores), Alfredo Bazán la Rosas (José Miguel Abildo Díaz), Mercedes Valencia Chuquimia, Oswaldo Lulleman Antezana, Raúl Oswaldo Lulleman Gutiérrez, Victoria Gutiérrez de Lulleman, Francis Elida Primentela Merino, Carlos Eladio Cruz Añez, Carlos Enrique Castro Ramírez, Freddy Cáceres Castro, and Patricia Catalina Gallardo Arduz.

<sup>103</sup> Article 4 (1) of the American Convention provides: “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.”

<sup>104</sup> The pertinent portions of Articles 5 (1) and (2) of the American Convention provide: “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.”

<sup>105</sup> The pertinent portions of Article 11 of the American Convention provide: “1. Everyone has the right to have his honor respected and his dignity recognized. 2. No one may be the object of arbitrary or abusive interference with his private life, his family, or his correspondence, or of unlawful attacks on his honor or reputation. 3. Everyone has the right to the protection of the law against such interference or attacks.

<sup>106</sup> Article 19 of the American Convention provides: “Article 19. Rights of the Child. Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state.”

<sup>107</sup> The pertinent portions of Article 7 of the Convention of Belém do Pará provide: “Article 7. The States Parties condemn all forms of violence against women and agree to pursue, by all appropriate means and without delay, policies to prevent, punish and eradicate such violence and undertake to: a. refrain from engaging in any act or practice of violence against women and to ensure that their authorities, officials, personnel, agents, and institutions act in conformity with this obligation; b. apply due diligence to prevent, investigate and impose penalties for violence against women.”

<sup>108</sup> I/A Court H.R., *The “Street Children” Case (Villagrán Morales et al.) v. Guatemala*, Merits, Judgment of November 19, 1999, Series C. No. 63 (Street Children Judgment), par. 144.

<sup>109</sup> See, *inter alia*, I/A Court H.R., *Case of Zambrano-Vélez et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment of July 4, 2007, Series C. No. 166 (Zambrano-Vélez et al. Judgment), par. 80; *Case of Montero Aranguren et al. (Detention Center of Catia) v. Venezuela*, Preliminary Objection, Merits, Reparations and Costs, Judgment of July 5, 2006, Series C. No. 150 (Detention Center of Catia Judgment), par. 65.

<sup>110</sup> I/A Court H.R., *Case of Bámaca Velásquez v. Guatemala*, Merits, Judgment of November 25, 2000, Series C. No. 70, par. 174.

<sup>111</sup> See, *inter alia*, I/A Court H.R., *Case of Juan Humberto Sánchez v. Honduras*, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 7, 2003, Series C. No. 99, par. 111.

torture to other types of humiliation or cruel, inhuman or degrading treatment.”<sup>112</sup> In particular, “[a]ny use of force that is not strictly necessary to ensure proper behavior on the part of the detainee constitutes an assault on the dignity of the person.”<sup>113</sup> According to Article 5 (2) of the Convention, all persons deprived of their liberty must be treated with respect for the inherent dignity of the human person, one of the core of inalienable rights recognized in Article 27 (2) of the Convention.<sup>114</sup> Indeed, “a person deprived of his or her liberty has the right to live in a detention situation that is compatible with his or her personal dignity. [...] [K]eeping a detainee in overcrowded conditions, lacking natural light and ventilation, without a bed to rest on or adequate hygiene conditions, in isolation and incommunicado or with undue restrictions to the system of visits, constitutes a violation of that person’s right to humane treatment.”<sup>115</sup> By the same token, prolonged isolation and deprivation of communication “are in themselves cruel and inhuman treatment, harmful to the psychological and moral integrity of the person and a violation of the right of any detainee to respect for his inherent dignity as a human being.”<sup>116</sup>

51. With respect to torture, it is strictly prohibited by international human rights law, and that prohibition is absolute and non-derogable, even in the most difficult circumstances.<sup>117</sup> The international juridical regime of absolute prohibition of all forms of torture, both physical and psychological, is now part of international *jus cogens*.<sup>118</sup> The Court has stated that, in the light of Article 5 (2) of the Convention,<sup>119</sup> an act constitutes torture when the ill-treatment: (i) is intentional; (ii) causes severe physical or mental suffering, and (iii) is committed with an objective or purpose.<sup>120</sup> Furthermore, threats and real danger of submitting a person to physical injuries produces, in certain circumstances, a moral anguish of such degree that it may be considered “psychological torture.”<sup>121</sup>

52. The IACHR has consistently held that rape committed by members of the security forces of a state constitutes, in any situation, a gross violation of the human rights protected by Articles 5 and 11 of the American Convention.<sup>122</sup> All acts of rape inflict severe and long-lasting mental and physical suffering, due to the non-consensual and invasive nature of this unlawful act, which affects the victim, her family and community. This is aggravated when the perpetrator is a state agent, because of the physical and psychological power the aggressor can exercise over the victim by reason of his position of authority.<sup>123</sup>

53. Both the Commission and the Court have held that sexual violence against women has devastating physical, emotional, and psychological consequences for them.<sup>124</sup> They have also recognized that the rape of a

<sup>112</sup> I/A Court H.R., *Loayza Tamayo Case v. Peru*, Merits, Judgment of September 17, 1997, Series C. No. 33 (Loayza Tamayo Judgment), par. 57.

<sup>113</sup> I/A Court H.R., *Loayza Tamayo Judgment*, par. 57.

<sup>114</sup> I/A Court H.R., *Detention Center of Catia Judgment*, par. 85.

<sup>115</sup> I/A Court H.R., *Case of Tibi v. Ecuador*, Preliminary Objections, Merits, Reparations and Costs, Judgment of September 7, 2004, Series C. No. 114, (Tibi Judgment), par. 150. See also Judgment in *Loayza Tamayo Case*, par. 58; *Case of the Miguel Castro Castro Prison v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2006, Series C. No. 160 (Miguel Castro Castro Prison Judgment), par. 315; *Case of Neira Alegría et al v. Peru*, Merits, Judgment of January 19, 1995, Series C. No. 20, par. 60.

<sup>116</sup> I/A Court H.R., *Case of Velásquez Rodríguez v. Honduras*, Merits, Judgment of July 29, 1988, Series C. No. 4 (Velásquez Rodríguez Judgment), par. 156.

<sup>117</sup> I/A Court H.R., *Case of Maritza Urrutia v. Guatemala*, Merits, Reparations, and Costs, Judgment of November 27, 2003, Series C. No. 103 (Maritza Urrutia Judgment), par. 89; and *Cantoral Benavides Case v. Peru, Reparations*, Judgment of December 3, 2001, Series C. No. 88 (Cantoral Benavides Reparations), par. 95.

<sup>118</sup> I/A Court H.R., *Maritza Urrutia Judgment*, par. 92; *Cantoral Benavides Reparations*, par. 102 and 103.

<sup>119</sup> Bearing in mind that the prohibition of torture is expressly included in Article 5 (2) of the Convention, the Commission considers it unnecessary in this case to analyze the concept of torture in light of the provisions of the Inter-American Convention to Prevent and Punish Torture, which was ratified by Bolivia after the events.

<sup>120</sup> I/A Court H.R., *Espinoza Gonzáles Judgment*, par. 143.

<sup>121</sup> I/A Court H.R., *Barrios Family Judgment*, par. 51.

<sup>122</sup> IACHR, Application to the Inter-American Court of Human Rights, Case 12.579, of Valentina Rosendo Cantú *et al.*, Mexico, August 2, 2009 (Valentina Rosendo Cantú *et al.* Application), par. 60; Application to the Inter-American Court of Human Rights, Case 12.580, Inés Fernández Ortega, Mexico, May 7, 2009 (Inés Fernández Ortega Application), par. 88; Report No. 53/01, Case 11,565, Merits, Ana, Beatriz and Cecilia González Pérez, Mexico, April 4, 2001, par. 45; and IACHR, Report No. 5/96, Case 10.970, Merits, Raquel Martín Mejía, Peru, March 1, 1996, Section 3. Analysis.

<sup>123</sup> IACHR, Rosendo Cantú *et al.* Application, par. 90, Inés Fernández Ortega Application, par. 117.

<sup>124</sup> IACHR, Report No. 53/01, Case 11,565, Ana, Beatriz and Celia González Pérez, Mexico, April 4, 2001, par. 45; I/A Court H.R., Miguel Castro Castro Prison Judgment, par. 313.

female detainee by a State agent is an especially gross and reprehensible act, taking into account the victim's vulnerability and the abuse of power displayed by the agent.<sup>125</sup> Similarly, they have held that rape is an extremely traumatic experience that has severe consequences<sup>126</sup> and causes great physical and psychological damage, leaving the victim "physically and emotionally humiliated," a situation that it is difficult to overcome with the passage of time.<sup>127</sup> In addition, the Court has stated that:

rape inherently produces severe suffering for the victim, even when there is no evidence of physical injury or affliction. Indeed, the consequences of rape will not be bodily injuries or ailments in all cases. Women victims of rape also experience severe psychological, and even social, harm and aftereffects.<sup>128</sup>

54. Furthermore, in keeping with the prevailing jurisprudential and normative criteria in the sphere of both international criminal law and comparative criminal law, the Court has found that

rape does not necessarily entail non-consensual vaginal sex, as it was traditionally deemed. Rape should also be understood as acts of vaginal or anal penetration, without the consent of the victim, using other parts of the perpetrator's body or objects, as well as oral penetration by the male organ.<sup>129</sup> In this regard, the Court clarifies that, in order for an act to be considered rape, it is sufficient that penetration, however slight, occurs, as described above.<sup>130</sup> In addition, it must be understood that vaginal penetration refers to penetration by any part of the perpetrator's body or by objects of any genital opening, including the *labia majora* and *labia minora*, as well as the vaginal orifice. This interpretation is in keeping with the concept that any type of penetration, however slight, is sufficient for an act to be considered rape.<sup>131</sup>

55. Moreover, "rape may constitute torture even when it is based in a single fact alone and takes place outside State facilities, such as in the victim's home. This is so because the objective and subjective elements that classify an act as torture do not refer either to the accumulation of facts or to the place where the act is committed, but to the intention, the severity of the suffering, and the purpose of the act."<sup>132</sup>

56. As to the adverse impact on private life in cases of rape, the Commission<sup>133</sup> and the Court have stated that that right, enshrined in Article 11 of the Convention, includes, among other dimensions, "sexual life and the right to establish and develop relationships with other human beings."<sup>134</sup> The Court found that rape violates essential aspects of private life and negates the "right to decide freely with whom to have intimate relations ... and [about] basic bodily functions."<sup>135</sup>

57. As in cases of death in state custody, when victims whom have been deprived of liberty in normal health allege that they have been tortured, "the presumption exists that the State is responsible for any injuries revealed by a person who has been in the custody of State agents [and] the State has the obligation to provide a satisfactory and convincing explanation of what happened and disprove the arguments concerning its responsibility, with satisfactory probative elements."<sup>136</sup>

<sup>125</sup> I/A Court H.R., Miguel Castro Castro Prison Judgment, par. 311.

<sup>126</sup> I/A Court H.R., Miguel Castro Castro Prison Judgment, par. 311.

<sup>127</sup> I/A Court H.R., Miguel Castro Castro Prison Judgment, par. 311, citing ECHR, Case of Aydin v. Turkey (GC), Judgment of 25 September 1997, App. No. 57/1996/676/866, § 83.

<sup>128</sup> I/A Court H.R., Espinoza Gonzáles Judgment, par. 193.

<sup>129</sup> I/A Court H.R., Case of J v. Peru, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 27, 2013. Series C. No. 275 (J. Judgment), par. 359, citing Miguel Castro Castro Prison Judgment, par. 310.

<sup>130</sup> J. Judgment, par. 359.

<sup>131</sup> I/A Court H.R., J. Judgment, par. 359.

<sup>132</sup> I/A Court H.R., Fernández Ortega et al. v. Mexico, Preliminary Objections, Merits, Reparations, Judgment of August 30, 2010, and Costs, Series C. No. 215 (Fernández Ortega Judgment), par. 128.

<sup>133</sup> IACHR, Report 5/96, Case 10.970, Peru, Raquel Martín de Mejía, March 1, 1996.

<sup>134</sup> I/A Court H.R., Case of Rosendo Cantú et al. v. Mexico, Preliminary Objection, Merits, Reparations and Costs, Judgment of August 31, 2010, Series C. No. 216 (Rosendo Cantú et al. Judgment), par. 119; Fernández Ortega Judgment, par. 129.

<sup>135</sup> I/A Court H.R., Rosendo Cantú et al. Judgment, par. 119; Fernández Ortega Judgment, par. 129.

<sup>136</sup> I/A Court H.R., Espinoza Gonzáles Judgment, par. 177.

58. The Court has stated that both the American Convention and the Convention on the Rights of the Child<sup>137</sup> “form part of a very comprehensive international *corpus juris* for the protection of the child.”<sup>138</sup> Under Article 19 of the Convention, children have an added, complementary right, “which the Convention establishes for those who, because of their physical and emotional development, require special protection.”<sup>139</sup> Thus, children have the same human rights that all persons enjoy, as well as special rights by virtue of their status as children,<sup>140</sup> considering their particularly vulnerable condition.<sup>141</sup>

59. Along the same lines, regarding the relationship between violence against women and discrimination, the United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee) has stated that the definition of discrimination against women “includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately.” It has also stated that “[g]ender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.”<sup>142</sup>

60. Furthermore, in the light of what is stated in the Inter-American Convention on the Prevention, Punishment, and Eradication of Violence against Women (Convention of Belém do Pará),<sup>143</sup> the Court has found that “violence against women not only constitutes a violation of human rights, but is ‘an offense against human dignity and a manifestation of the historically unequal power relations between women and men.’”<sup>144</sup>

61. In particular, women who are detained or arrested, “must be supervised and checked by female officer[s] and pregnant and nursing women must be offered special conditions during their detention.”<sup>145</sup> In keeping with international caselaw and the provisions of the Convention of Belém do Pará, the Court has indicated that sexual violence also consists of “actions with a sexual nature committed with a person without their consent, which besides including the physical invasion of the human body, may include acts that do not imply penetration or even any physical contact whatsoever.”<sup>146</sup> In light of the foregoing, subjecting women to forced nudity while under the constant observation of armed men constitutes, not only treatment that violates their dignity as person, but also sexual violence.<sup>147</sup>

62. As was indicated in the findings of fact, it is sufficiently demonstrated that during the raids on the properties at which there were 22 people,<sup>148</sup> heavily armed agents of the State employed a high degree of physical and psychological violence, violating the right to humane treatment of everyone there, including children. Indeed, multiple men and women were heavily beaten, had their hands restrained behind them, and were subdued face-down on the ground, where they received further physical blows. The IACHR finds in this

<sup>137</sup> Ratified by Bolivia on June 26, 1990. Relevant for the purposes of this section are Articles 37 (a) and (b), the pertinent portions of which provide: “Article 37. States Parties shall ensure that: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. [...] (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

<sup>138</sup> I/A Court H.R., Street Children Judgment, par. 194. See also *Juridical Condition and Human Rights of the Child*, Advisory Opinion OC-17/02 of August 28, 2002. Series A No. 17 (hereinafter, “Advisory Opinion, Juridical Condition and Human Rights of the Child”), par. 24.

<sup>139</sup> I/A Court H.R., *Case of the “Juvenile Reeducation Institute” v. Paraguay*, Preliminary Objections, Merits, Reparations and Costs, Judgment of September 2, 2004, Series C. No. 112, par. 147; *Case of Servellón García et al. v. Honduras*, Judgment of September 21, 2006, Series C. No. 152, par. 113.

<sup>140</sup> I/A Court H.R., Advisory Opinion, Juridical Condition and Human Rights of the Child, par. 54.

<sup>141</sup> I/A Court H.R., *Case of the “Las Dos Erres” Massacre v. Guatemala*, Preliminary Objection, Merits, Reparations and Costs, Judgment of November 24, 2009, Series C No. 211 (Las Dos Erres Massacre Judgment), par. 184.

<sup>142</sup> I/A Court H.R., Espinoza González Judgment, par. 221.

<sup>143</sup> Ratified by Bolivia on December 5, 1994.

<sup>144</sup> I/A Court H.R., Espinoza González Judgment, par. 190.

<sup>145</sup> I/A Court H.R., Miguel Castro Castro Prison Judgment, par. 303.

<sup>146</sup> I/A Court H.R., Miguel Castro Castro Prison Judgment, par. 306.

<sup>147</sup> I/A Court H.R., Miguel Castro Castro Prison Judgment, par. 306; Espinoza González Judgment, par. 191.

<sup>148</sup> Blas Valencia Campos, Norma Lupe Alarcón de Valencia, Edwin Rodríguez Alarcón, Claudia Valencia Alarcón, Gabriel Valencia Alarcón, Alexis Valencia Alarcón (11 years old), Claudio Valencia (3 years old), Elacio Peña Córdoba, Víctor Manuel Boggiano Bruzon (Juan Ramírez Ortega), Genaro Ahuacho Luna (Walter Herrera Flores), Alfredo Bazán la Rosas (José Miguel Abildo Díaz), Mercedes Valencia Chuquimia, Mauricio Valenzuela Valencia (15 years old), Oswaldo Lulleman Antezana, Raúl Oswaldo Lulleman Gutiérrez, Victoria Gutiérrez de Lulleman, Paola Lulleman de Zaconeta, Luis F. Lulleman Gutiérrez, Julia Mamanu Mamani, Francis Elida Primentela Merino, Carlos Eladio Cruz Añez, and Carlos Enrique Castro Ramírez.

case that, beyond a general reference to the alleged danger posed by the detainees, the State has neither argued nor demonstrated that the force used at the time of the raid was reasonable or necessary. In addition, although there is insufficient proof that the children were victims of physical violence or that they were handcuffed or abducted, it has been demonstrated that they were on the premises, and it may be surmised, therefore, that they experienced fear and anguish at seeing their parents, relatives, and the adults around them suffer such mistreatment, given their particular vulnerability. Accordingly, the IACHR considers that the children present suffered, at the least, adverse effects to their psychological integrity, in violation of the special protection that they were due given their age.

63. It is also proven that 16 people were taken to PTJ facilities,<sup>149</sup> where they were interrogated with great violence and aggression and without effective legal assistance, and that they were detained in small, overcrowded cells, without beds or access to bathroom facilities, food, medicine, or medical attention, where they were also unable to be visited by relatives or lawyers and where they continued to be attacked and physically assaulted. After being transferred to various prisons, eight individuals<sup>150</sup> were held in a regime of solitary confinement and incommunicado detention without access to natural light for more than 60 days. The Commission finds, therefore, that they were all victims of torture and cruel, inhuman and degrading treatment at the hands of State agents, who violated their right to humane treatment. The Commission considers that all of these facts, further aggravated by the incommunicado detention in which several of the detainees were subsequently held, meet the standards of severity, intentionality, and having been committed with an objective or purpose, and therefore qualify as acts of torture.

64. It is also demonstrated that the women who were apprehended and detained<sup>151</sup> were victims of particular insults and forced to strip naked and spread their legs. They were also victims of touching and the introduction of fingers and firearms in their genitals, both in their homes at the time of their apprehension, and during their detention. Moreover, Francis Primentela Merino had a miscarriage and did not receive timely medical attention. Those acts were carried out while the women were under the complete control of state agents and utterly defenseless. According to the above-referenced standards, such mistreatment constitutes sexual violence and rape, to which they were subjected for the fact that they were women and, therefore, it affected them disproportionately, causing them grievous psychological and moral suffering, in addition to the physical torment they endured. Those acts were a direct affront to the dignity of those women and constitute serious acts of torture and violence against women.

65. Finally, Genaro Ahuacho Luna (a.k.a. Walter Herrera Flores, a.k.a. Walter Herrera Ríos) died while he was imprisoned at Chonchocoro Prison, after he was admitted to the prison having sustained a severe beating and mistreatment at the hands of State agents during his arrest, without any medical history to explain what happened. There is no record that the State provided medical attention to that person prior to his death, nor has a satisfactory or convincing explanation been offered for what occurred. Therefore, the State is also responsible for violation of that person's right to life.

66. Based on the foregoing, the Commission concludes that the State of Bolivia violated the rights to life, to humane treatment, and to respect for privacy and dignity, as well as the duty to provide special protection to children and the right of women to live free from violence, to the detriment of the persons mentioned in each of the paragraphs in this section. All of the foregoing, is in accordance with Articles 4(1), 5(1), 5(2), 11, and 19 of the American Convention, taken in conjunction with Article 1.1 thereof, and Article 7 of the Convention of Belem do Pará.

<sup>149</sup> Blas Valencia Campos, Norma Lupe Alarcón de Valencia, Claudia Valencia Alarcón, Elacio Peña Córdoba, Víctor Manuel Boggiano Bruzon (Juan Ramírez Ortega), Genaro Ahuacho Luna (Walter Herrera Flores), Alfredo Bazán la Rosas (José Miguel Abildo Díaz), Mercedes Valencia Chuquimia, Oswaldo Lulleman Antezana, Raúl Oswaldo Lulleman Gutiérrez, Victoria Gutiérrez de Lulleman, Francis Elida Primentela Merino, Carlos Eladio Cruz Añez, Carlos Enrique Castro Ramírez, Freddy Cáceres Castro, and Patricia Catalina Gallardo Arduz.

<sup>150</sup> Blas Valencia Campos, Oswaldo Lulleman Antezana, Carlos Eladio Cruz Añez, Carlos Enrique Castro Ramírez, Elacio Peña Córdoba, Víctor Manuel Boggiano Bruzon (Juan Ramírez Ortega), Genaro Ahuacho Luna (Walter Herrera Ríos), and Alfredo Bazán la Rosas (José Miguel Albidio Díaz).

<sup>151</sup> Norma Lupe Alarcón de Valencia, Claudia Valencia Alarcón, Mercedes Valencia Chuquimia, Victoria Gutiérrez de Lulleman, Paola Lulleman de Zaconeta, Julia Mamanu Mamani, Francis Elida Primentela Merino, and Patricia Catalina Gallardo Arduz.

### C. Rights to a fair trial<sup>152</sup> and judicial protection<sup>153</sup> and duty to investigate and punish acts of torture<sup>154</sup>

67. As the Court has consistently expressed, in accordance with Article 25 and 8 (1) of the American Convention, States Parties are obligated to provide effective judicial remedies to the victims of the human rights violations, which remedies should be substantiated in conformity with the rules of due process.<sup>155</sup> While the obligation of the State is one of means, not of results, that “does not mean ... that the investigation can be undertaken as a mere formality condemned in advance to be fruitless.”<sup>156</sup> Indeed, that obligation “must ... be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof, without an effective search for the truth by the government.”<sup>157</sup> The case law also clearly states: “In light of this obligation, once the authorities have knowledge of the event, they should initiate a serious, impartial and effective investigation, *ex officio* and without delay. This investigation should be undertaken utilizing all the legal means available and should be oriented toward the determination of the truth.”<sup>158</sup>

68. The Court has also categorically stated that the presumption that the crime of torture has been committed “imposes a special obligation on the State to investigate.”<sup>159</sup> Indeed, in the light of the general obligation to respect and guarantee rights contained in Article 1 (1) of the Convention, “the State has the obligation to commence immediately an effective investigation that may allow the identification, the trial and the punishment of those liable, whenever there is an accusation or well-grounded reason to believe that an act of torture has been committed.”<sup>160</sup> Particularly when no complaint has been filed by the victim, but “there are indications that this has occurred, the State must open, *ex officio* and promptly, an impartial, independent and thorough investigation leading to the determination of the nature and origin of the injuries noted, together with the identification of those responsible, and their prosecution.”<sup>161</sup> Where a person claims that

<sup>152</sup> The pertinent portions of Article 8 of the American Convention provide: “Article 8. Right to a Fair Trial. 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. 2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law.”

<sup>153</sup> The pertinent portions of Article 25 (1) of the American Convention provide: “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.”

<sup>154</sup> The pertinent portions of the Inter-American Convention to Prevent and Punish Torture provide: “Article 1. The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention. [...] Article 6. In accordance with the terms of Article 1, the States Parties shall take effective measures to prevent and punish torture within their jurisdiction. The States Parties shall ensure that all acts of torture and attempts to commit torture are offenses under their criminal law and shall make such acts punishable by severe penalties that take into account their serious nature. The States Parties likewise shall take effective measures to prevent and punish other cruel, inhuman, or degrading treatment or punishment within their jurisdiction. [...] Article 8. The States Parties shall guarantee that any person making an accusation of having been subjected to torture within their jurisdiction shall have the right to an impartial examination of his case. Likewise, if there is an accusation or well-grounded reason to believe that an act of torture has been committed within their jurisdiction, the States Parties shall guarantee that their respective authorities will proceed properly and immediately to conduct an investigation into the case and to initiate, whenever appropriate, the corresponding criminal process. After all the domestic legal procedures of the respective State and the corresponding appeals have been exhausted, the case may be submitted to the international fora whose competence has been recognized by that State.” The Plurinational State of Bolivia deposited its instrument of ratification of that Convention on November 21, 2006.

<sup>155</sup> I/A Court H.R., *Las Dos Erres Massacre* Judgment, par. 104; I/A Court H.R., *Velásquez Rodríguez Case v. Honduras*, Preliminary Objections, Judgment of June 26, 1987, Series C. No. 1, par. 91; *Zambrano-Vélez et al.* Judgment, par. 114; *Miguel Castro Castro Prison* Judgment, par. 381.

<sup>156</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, par. 101; *Velásquez Rodríguez* Judgment, par. 177; *Case of Heliodoro-Portugal v. Panama*, Preliminary Objections, Merits, Reparations and Costs, Judgment of August 12, 2008, Series C. No. 186, par. 144; *Case of Valle Jaramillo et al. v. Colombia*, Merits, Reparations, and Costs, Judgment of November 27, 2008, Series C. No. 192, par. 100.

<sup>157</sup> I/A Court H.R., *Velásquez Rodríguez* Judgment, par. 177.

<sup>158</sup> I/A Court H.R., *Case of García-Prieto et al. v. El Salvador*, Preliminary Objections, Merits, Reparations and Costs, Judgment of November 20, 2007, Series C. No. 168, par. 101.

<sup>159</sup> I/A Court H.R., *Maritza Urrutia* Judgment, par. 127.

<sup>160</sup> I/A Court H.R., *Case of Gutiérrez Soler v. Colombia*, Judgment of September 12, 2005, Series C. No. 132, par. 54; *Ticona Estrada* Judgment, par. 94; *Case of Mendoza et al. v. Argentina*, Preliminary Objections, Merits and Reparations, Judgment of May 14, 2013, Series C. No. 260, par. 234.

<sup>161</sup> I/A Court H.R., *Galindo Cárdenas et al.* Judgment, par. 261 and footnote 231.

their statement or confession was obtained through coercion, “States have an obligation to verify, above all, the veracity of that claim by conducting an investigation with due diligence.”<sup>162</sup> In addition, however, “the burden of proof cannot be on the claimant; rather, the State must demonstrate that the confession was voluntary.”<sup>163</sup>

69. The Court has indicated that “[t]he right to presumption of innocence, as it is understood from Article 8 (2) of the Convention, requires that the State should not convict an individual informally or emit an opinion in public that contributes to forming public opinion, while the criminal responsibility of that individual has not been proved.”<sup>164</sup> Consequently, the exhibition of a person before the media as the perpetrator of a crime when they have not been legally prosecuted and convicted constitutes a violation of Article 8 (2) of the Convention.<sup>165</sup>

70. As is established in the findings of fact, the petitioners repeatedly denounced that they had been victims of torture and cruel, inhuman and degrading treatment, and that their statements were obtained under coercion. The State asserts that those allegations were investigated but provides no proof to support that assertion. It is also demonstrated that immediately after being apprehended, the detainees were presented to the press as the persons responsible for the Prosegur robbery before they had been prosecuted and convicted. Some of them were not even later indicted by the Public Prosecution Service but released in the course of the investigation.

71. Therefore, the State violated the rights to a fair trial and judicial protection recognized at Articles 8 (1) and 25 (1) of the American Convention, in conjunction with the duty to respect rights set down in Article 1 (1) thereof, to the detriment of all the petitioners in this case.<sup>166</sup> Accordingly, the Commission finds that the failure to investigate the allegations of torture and punish those responsible in this case also constitutes a violation of the obligations set forth in Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, as of the time said instrument came into force for the State.

## V. CONCLUSIONS AND RECOMMENDATIONS

72. Based on the factual and legal considerations contained in this report on merits, the Commission concludes that the Bolivian State is responsible for violation of the right to personal liberty, right to respect for private and family life, right to life, right to humane treatment, rights of the child, and rights to a fair trial and judicial protection recognized at Articles 4, 5, 7, 8, 11, 19, and 25 of the American Convention taken in conjunction with the obligations enshrined in Article 1 (1) of that instrument, as well as the duty to prevent violence against women established in Article 7 of the Convention of Belém do Pará and Articles 1, 6 and 8 of the Inter-American Convention to Prevent and Punish Torture, in light of the failure to investigate the allegations of torture and punish those responsible, all of the above to the detriment of the victims identified in this report.

73. Based on the foregoing,

<sup>162</sup> I/A Court H.R., *Case of Maldonado Vargas et al. v. Chile*, Merits, Reparations, and Costs, Judgment of September 2, 2015, Series C. No. 300 (Maldonado Vargas et al. v. Judgment) par. 86.

<sup>163</sup> I/A Court H.R., *Maldonado Vargas et al. v. Judgment*, par. 86.

<sup>164</sup> I/A Court H.R., *Case of Lori Berenson Mejía v. Peru*, Merits, Reparations, and Costs, Judgment of November 25, 2004. Series C. No. 119, (Lori Berenson Judgment), par. 160.

<sup>165</sup> I/A Court H.R., *Lori Berenson Judgment*, pars. 158-161.

<sup>166</sup> Blas Valencia Campos, Norma Lupe Alarcón de Valencia, Edwin Rodríguez Alarcón, Claudia Valencia Alarcón, Gabriel Valencia Alarcón, Alexis Valencia Alarcón (11 years old), Claudio Valencia (3 years old), Elacio Peña Córdoba, Víctor Manuel Boggiano Bruzon (Juan Ramírez Ortega), Genaro Ahuacho Luna (Walter Herrera Flores), Alfredo Bazán la Rosas (José Miguel Abildo Díaz), Mercedes Valencia Chuquimia, Mauricio Valenzuela Valencia (15 years old), Oswaldo Lulleman Antezana, Raúl Oswaldo Lulleman Gutiérrez, Victoria Gutiérrez de Lulleman, Paola Lulleman de Zaconeta, Luis F. Lulleman Gutiérrez, Julia Mamanu Mamani, Francis Elida Primentela Merino, Carlos Eladio Cruz Añez, Carlos Enrique Castro Ramírez, Alvaro Taboada Valencia, Patricia Catalina Gallardo Ardúz, María Fernanda Peña Gallardo, and Freddy Cáceres Castro.

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

1. Provide full reparation for the human rights violations found in the instant report, including both material and nonpecuniary dimensions. The State should adopt measures of economic compensation and satisfaction.
2. Arrange for the victims in this case to receive the necessary physical and mental health care for their rehabilitation, if they so wish and in a manner that meets with their agreement.
3. Initiate a diligent and effective criminal investigation within a reasonable time in order to completely clarify the events, identify all those who bear possible responsibility, and impose the appropriate penalties for the gross human rights violations recognized in this report. As these are gross human rights violations, the State may not invoke the statute of limitations or other grounds for excluding criminal responsibility in order not to implement this recommendation. Furthermore, the acts of torture should be investigated in accordance with the due diligence parameters prescribed herein, including those contained in the Istanbul Protocol, and a gender perspective in the case of the women who were victims of sexual torture.
4. Adopt such measures as may be necessary to prevent a recurrence of such events. In particular, implement permanent human rights training programs for the various police agencies, Public Prosecution Service personnel, and judicial officials in order to eradicate indiscriminate use of force in the investigation of criminal acts and in the arrest and detention of those responsible for them. In addition, where such conduct occurs, ensure that effective investigations are immediately opened ex officio, with gender perspective when necessary, in order to identify, prosecute, and punish those responsible.