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REPORT No. 376/20
CASE 12.902
REPORT ON MERITS

JORGE LUIS LÓPEZ SOSA
PARAGUAY

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I. INTRODUCTION

1. On December 11, 2000, the Inter-American Commission on Human Rights (hereinafter the "Inter-American Commission," "Commission," or "IACHR") received a petition filed by Mr. Jorge Luis López Sosa (hereinafter "the petitioner" or "the alleged victim") which alleges that the Republic of Paraguay (hereinafter "the Paraguayan State," "the State," or "Paraguay") bore international responsibility for violation of his rights to humane treatment and personal liberty, and that, to date, the proceeding instituted for the acts that affected him remains unfinished.

2. The Commission adopted Report on Admissibility No. 27/13 on March 20, 2013.¹ On April 1, 2013, the Commission notified the parties of that report and placed itself at their disposal with a view to reaching a friendly settlement; however, the conditions for said procedure to be initiated never materialized. The parties were afforded the regulation time limits to present additional observations as to merits. All information received was duly relayed between the parties.

II. SUBMISSIONS OF THE PARTIES

A. The Petitioner

3. The petitioner and alleged victim, Mr. Jorge Luis López Sosa, who at the time of the events was a police officer, claims that he was tortured in order to implicate other persons in the failed coup d'état of May 2000, in which he says he played no part whatsoever. He alleges that the torture was inflicted by police officers under the orders of the then-Minister of Interior. At the time he submitted the petition to the IACHR, the petitioner said that he was detained at the National Police Special Forces Headquarters, where he claims to have been pressured to reach a financial arrangement with his torturers in exchange for withdrawing his complaint, and that he was prevented from presenting a criminal complaint for fear of reprisals. He also said that his wife was in intensive care for a medical condition and he was not allowed to care for her.

4. He claims that on May 19, 2000, he was informed by the Chief of the Ecological and Rural Protection Group that he was to report to 11th Metropolitan Police Precinct (Comisaría 11 Metropolitana), where he was taken by police personnel. Once there, he was taken to the Commissioner's office, where he was relieved of his service weapon and handcuffed with his hands behind him for about 75 hours. In that state, an officer tore off his shirt, blindfolded him with a folded sheet of paper and packing tape, and placed him on the floor face down next to another person, who was in the same condition; he then interrogated about his whereabouts the previous night, during which he was beaten on the soles of his feet on several occasions. At one point, one of the officers stood on him and pulled his arms upward, causing intense pain in the joints of both shoulders.

5. The petitioner says he that he was moved to other state facilities, including "el cuadrilátero." He says that on May 20 he was taken back to the 11th Precinct, where he was kept handcuffed with his hands behind him in a cell that was bare except for a piece of mattress, and that he was only handcuffed with his hands in front of him when he was brought food or he needed to wash or go to the bathroom. He says that on May 21, the then-Minister of the Interior, Mr. Bower, visited to the premises, and he was ordered to kneel for one hour because the Minister was visiting. That day he had a 15-minute visit from his wife, and after she left, Mr. Lopez was told to collaborate with the investigation, bearing in mind his wife's pregnant state and that she was also a police officer, lest she be included in the case.

6. He claims that on May 21 he was transferred by security personnel of the Minister of the Interior and police officers to the Marine Corps facility. He claims that while he was being tortured at the Marine Corps facility, he saw Interior Minister Walter Bower, and that at one point, a deputy commissioner stepped on his head to force him to look away while he heard another person being tortured. He was reportedly told that the

¹ IACHR, Report No. 27/13, Petition 164-01, Admissibility, Jorge Luis López Sosa, Paraguay, March 20, 2013. The Commission declared the petition admissible in regards to the rights enshrined in Articles 5, 7, 8, and 25 of the American Convention, in connection with the obligations contained in Articles 1(1) and 2 of the same treaty; as well as to the rights enshrined in Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

Minister of the Interior wanted him to implicate another policeman in the attempted coup, and in exchange his wife would be left out of the matter.

7. He says that he was not seen by medical personnel until approximately 15 days later, when the International Red Cross visited them. Later, he was visited by a judicial committee composed of a judge, a medical examiner and other people, who were unable to find any trace of the torture, due to the time that had passed. He adds that between late June and early July, he had a visit from a doctor, an actuary and prosecutors and that, after confirming that he had been tortured, he was transferred to "el cuadrilátero" as punishment and was allegedly falsely accused of the murder of a detainee through torture while he, the alleged victim, was serving as head of the Criminal Investigation Section of the Fifth Department Caaguazú, so that he would retract the complaint made.

8. Finally, he alleges unwarranted delay in the processing of the criminal case brought in response to the torture to which he was allegedly subjected, as a result of shady deals between the defendants and the judicial authorities, and that the preliminary hearing had not yet been held, despite the fact that years had passed since the case was first brought.

B. The State

9. The State did not submit any comments at this merits stage but merely requested that the petition be set aside due to inactivity, despite the fact that the request for observations was reiterated on April 9, 2020. On November 13, 2020, in response to a request for information made by the IACHR, the State referred to a number of specific points consulted by the Commission. In light of the above, this section is based primarily on the arguments related to the merits of the case that were put forward by the State during the admissibility stage, as well as those raised in the response to the request for information of November 13, 2020. The Commission notes that the State also indicated that it would send additional information "as soon as access to the record is possible." However, no such information has been received as of the date of this report.

10. The State claims that the events that befell the alleged victim originated as a consequence of "the failed coup attempt of May 18, 2000," and that after that event there were various arrests and investigations, especially in relation to police and military personnel. It says that in that context, given that Jorge Luis López Sosa was an officer in the National Police and was at the police precinct that day, he was the subject of inquiries along with other public security agents. The State affirms that, Mr. López was detained in the context of a "State of Emergency validly declared as a consequence of a coup d'état" and "of his functions." It also says that upon being arrested he was informed that he was suspected of participating in the attempted coup d'état the night before, and that "prosecutors verified his situation *in situ* on the day of his arrest."

11. The State maintains that, "according to allegations by the Public Prosecution Service (*Ministerio Público*), acts of torture were indeed allegedly perpetrated against several of those detainees, including the petitioner," and that since those arrests and possible acts of torture were widespread, various proceedings were instituted in order to investigate them; those proceedings were eventually joined due to the elements connecting them.

12. The State claims that in one case, three police officers were charged with "bodily injury in the exercise of public functions," and in another case, former Interior Minister Walter Bower Montalto was charged with "torture." After the prosecutorial inquiry, all of the accused were indicted for the crimes mentioned, and the cases were joined due to their connection on July 24, 2001. The State says that as a result of that decision a series of "apparently dilatory" motions were filed that led to constitutional challenges before the Supreme Court. With respect to the delay in the criminal proceedings, the State argued that the holdups were due to "apparent malicious practice by the defendants' defense counsels, relying on a criminal system still lacking in infrastructure and relatively new."

13. The State says that on November 26, 2003, the preliminary hearing was reached with the case "practically extinguished," as a result of which the Public Prosecution Service and the plaintiff filed an objection on constitutional grounds, requesting that certain provisions of the Code of Criminal Procedure be declared inapplicable. After the judge declared herself as lacking jurisdiction to take up objection, the State recognized

the "tardiness" of the Supreme Court of Justice, which took 4 years and 8 months to rule on the objection on constitutional grounds aimed at preventing the criminal action against the alleged torturers from being declared extinguished. The State says that on May 5, 2008, the Supreme Court of Justice ruled in favor of the alleged victim and the Public Prosecution Service, declaring certain contested articles of the Code of Criminal Procedure inapplicable, which, according to the State, "removed any impediment to holding a new preliminary hearing to review the indictment with a view to initiating the oral trial in the case." As of August 2008, it says that the matter was still before the Supreme Court in order to resolve a request for clarification made by the defendants' defense.

14. It should be added that as a result of the above, the State initially challenged the admissibility of the petition on the grounds of non-exhaustion of domestic remedies. It stated that "the possibility clearly exists of holding the preliminary hearing, the oral and public trial," and the potential pursuit of subsequent remedies. It argued that while the excessive delay in disposing of the objection on constitutional grounds was questionable, the new situation created by the decision in his favor ruled out suspicions and allowed the judicial operators "to search for the real truth." It added that Decision and Judgment No. 195 of May 5, 2008 should be taken into account as evidence of the filing of the complaint in accordance with Article 48(1)(c) of the American Convention and Article 34(c) of the Rules of Procedure of the IACHR.

15. The State also said that there were no new possibilities for dilatory interference in the process given the change in Paraguay's political context. It noted that at the time the petition was lodged, the country was being governed by authorities belonging to the political party that had been in power for more than 60 years and remained so until 2008, when there was a transition in power. In that regard, it said that the record was "withheld" by a judge for 2 years and 6 months, until he was recused and separated from the case; therefore, "there is no possibility within the judiciary of further interference of a purely dilatory nature." Thus, it committed itself to ensuring that the process is conducted with unrestricted respect for the procedural deadlines provided by domestic law.

16. On November 13, 2020, the State reported that the oral and public trial lasted four months and that a judgment was handed down on December 30, 2019, which declared "not proven the existence of the punishable act of torture," and consequently, the three defendants in the case were acquitted on the basis of "reasonable doubt," since it was not possible from the evidence to establish conclusively the events under investigation and the participation of the accused. The State added that the judgment is not final because the case is currently in the Court of Appeal for Criminal Matters, Third Division, Asunción, because appeals were filed. It also said that "the State cannot but point out that its position with regard to the facts in the case must be consistent with the judicial pronouncements that have been made and that may be made in the near future." In addition, the State said that it would keep the IACHR informed of the progress of the proceedings and "take action on other matters related to the case as soon as possible."

III. FINDINGS OF FACT

A. Relevant law

17. The Organic Law of the National Police in force at the time states:²

Article 6. The functions, obligations and powers of the National Police shall be:

4. To investigate under judicial direction crimes committed anywhere in the national territory, public waters, or airspace.

9. To detain persons caught in the act of committing crimes, or suspected thereof, in the manner and for the time established in the National Constitution and laws, to inform them of the reasons for the arrest and their rights, and to bring them before a competent judge.

B. Facts in the case

² Organic Law of the National Police, Law 222/93.

18. According to the statement he gave in the context of the criminal proceedings against him, Jorge Luis López Sosa was a police officer, and on May 18, 2000, while he was on leave, he received a call from Chief Commissioner Alfredo Cáceres González, who instructed him to report in uniform to the National Police Headquarters. Once there, Commissioner Cáceres told him that the Government was apparently being taken over and that in the absence of superiors he was temporarily taking command of the police. Mr. López was ordered to report for duty and to accompany police personnel in order to warn of "any suspicious movement that may occur in the area where [they were going], be that movement of armed personnel or of a large group of people." During the wait, Jorge López identified the entourage of the Minister of the Interior. Later, other personnel reportedly arrived at the place where they were stationed.³

19. According to the above statement, on his way back to the headquarters, the deputy commissioner who was with him "dropped [him] off at the corner of Chile and Palma, from where [he] made his way to the police headquarters on foot and saw several patrol cars at the various police precincts covering the intersections leading to the headquarters and to the parliament." Shortly afterwards, he reached the police headquarters and police personnel later arrived to arrest Commissioner Cáceres. Later, a tank arrived at the police headquarters and threatened to open fire unless the gates were opened. After this situation, the alleged victim left and went home. The next day, the alleged victim went to work, where he was ordered to report to the 11th Metropolitan Police Precinct together with another police officer, where they were taken in a police van.⁴

20. As stated in the indictment, after "the alleged attempted coup d'état on May 18, 2000 (...) several people were detained under the State of Emergency ordered by the executive branch," among them Inspector Jorge López, who informed prosecutors of the duress to which he was subjected while in detention. On May 19, 2000, Mr. Jorge López "was transferred by order of the Commissioner General (...) to the 11th Metropolitan Police Precinct (...) and he arrived at the aforementioned police precinct between 8:00 a.m. and 9:00 a.m.," where he was allegedly taken to the office of Commissioner Basilio Pavón, who said that "López took part in the attempted coup d'état the night before."⁵

21. According to the prosecutor's indictment, the alleged victim was relieved of his service weapon and handcuffed with his hands behind him and blindfolded with newspaper and packing tape. The alleged victim was allegedly thrown to the ground face down and beaten on the soles of his feet, during which several members of the police were reportedly present on the aforementioned premises. This account was given by Mr. López and borne out by other testimonies referenced in the prosecutor's indictment. According to Jorge López's statement, he and others were being held at police facilities. He said that he was questioned about the alleged coup d'état and that an officer pulled a knife from Mr. Lopez's belt and cut the uniform he was wearing. He said that he was beaten throughout the morning. This statement was reportedly confirmed by other officers who were at the 11th Metropolitan Police Precinct and who allegedly saw "[Mr. Lopez's] handcuff[ed], blindfolded with newspaper and packing tape, and being beaten on the soles of his feet with a rubber club."⁶

22. On May 20, Mr. Lopez was again transferred to the 11th Metropolitan Police Precinct and later put in the holding cells with "common detainees." The alleged victim said that at 9:00 p.m. on May 21 he was taken to the Marine Corps facility,⁷ where he was again blindfolded and interrogated, after which, at 1:00 a.m. on May 22, he was taken to the 11th Metropolitan Police Precinct. He added that on May 23, he was brought before a commissioner who told him that he had done everything to save his wife, who is also a non-commissioned officer, and asked him to implicate a commissioner in order to "free" his wife.⁸

³ Annex 1, Statement of the accused under Article 84 of the Code of Criminal Procedure, Petitioner's brief of March 13, 2008.

⁴ Annex 1, Statement of the accused under Article 84 of the Code of Criminal Procedure, Petitioner's brief of March 13, 2008.

⁵ Annex 2, Indictment and request to open trial of the Public Prosecution Service of June 11, 2001, Case 01-01-02-00001-2000-2606, Petitioner's brief of March 13, 2008.

⁶ Annex 2, Indictment and request to open trial of the Public Prosecution Service of June 11, 2001, Case 01-01-02-00001-2000-2606, Petitioner's brief of March 13, 2008.

⁷ According to the page of the Marine Corps log book for May 21, 2000, the entry of Mr. Lopez, six police agents, Minister Bower and security personnel was recorded at 9:40 p.m., and their departure at 1:30 a.m. Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 404.

⁸ Annex 4, Inquiry statement by Jorge López of June 7, 2000, Petitioners' brief of January 11, 2011.

23. As for the above-described facts, there are several judicial testimonies, including that of Mr. López, that are specifically concerned with what happened at the 11th Metropolitan Police Precinct on May 19, 2000. Also, some testimonies referred to the subsequent transfer of Mr. López and others to the Special Forces Headquarters that same day, as well as subsequent events. The following testimonies are available in that regard:

a) Judicial statement by Mr. López:⁹

- Mr. López said that on Friday, May 19, 2000, he was at the Ecological and Rural Protection Group when he was called by his supervisor, who ordered him to report to the 11th Police Precinct, where he was taken by a policeman. He said that when he arrived at the police precinct he saw another detained officer lying face down, handcuffed and blindfolded. He added that his hands were tied with a strip of mattress cover, disarmed, blindfolded with paper and packing tape, and his uniform was torn. He also said that he was made to lie down on the floor, after which they began to question him about the previous day's coup d'état, and for every question that he did not know the answer to, they struck the soles of his feet with a broom handle, all of which went on for several hours. Later, he was moved to a room with another detainee (Emilio López), and as time went on more detainees were brought in the same condition, showing pain on the soles of their feet and signs of having been beaten. Mr. López added that he and others were transferred to the Special Forces Headquarters, and held in the "cuadrilátero," a place of police confinement. There, he said that he recommended to a fellow detainee that they put their feet in "salt water and that was our initial medication and the only one we had access to during the time that we were there."
- He said that the next day he was again transferred to the 11th Metropolitan Police Precinct, where he was handcuffed with his hands behind him in the holding cells for common detainees, in a 2x3 cell without mattresses. He indicated that on Sunday morning he was ordered to kneel with his eyes on the wall "because the Minister of the Interior, Mr. Walter Bower, was coming and he was supposed to find me suffering physical duress." He said that after his arrest he was able to see his wife for 10 minutes, adding that he was kept handcuffed with his hands behind his back until Sunday, and that that same day, at around 8:00 p.m., he was transferred to the Marine Corps facility, where Commissioner Cáceres was being held; there, he was again blindfolded (in this regard he said that on the two occasions he was blindfolded in this way he had some visibility and was able to identify the people present) and made to lie face down while he was interrogated and could hear the mistreatment of another policeman (Cáceres). He says that he was asked if Cáceres had paid him, and that he answered yes "because of the pressure I felt at the time," after which he was taken back to the 11th Police Precinct. He said that to prevent him from seeing who was entering, an agent grabbed him by the hair, twisted his face around, and stepped on his head. He said that he was later transferred to the Special Forces Headquarters, where he was kept with his hands in handcuffs behind his back and held in a place that appeared to be intended for officers. He said that he was asked to implicate another police officer. He said "approximately 15 days passed before [he] was visited by Judge Paredes and a medical examiner." He said that he told them that he had been tortured, so he was transferred to the "cuadrilátero" for three days as a punishment. He said that he was offered money to withdraw his complaint.
- He said that he lodged an initial verbal complaint with three prosecutors and a medical examiner "more than a month after the alleged coup," in which he identified each of the accused. Finally, he said that in June-July (no year indicated) he was acquitted and rejoined the police force, without recovering the 4 years of service he had accumulated. He said that during his statement he was assisted by the lawyer of Commissioner Cáceres because he could not afford a lawyer.
- He said that after the events "I became more violent in how I expressed myself at home; I raised my voice, I shouted at my children, and I eventually paid for that with a divorce." He said, "I was in treatment at the police hospital about two years ago. I spent almost 6 months in treatment with a psychologist (...) at the police hospital." He ended the treatment for reasons of distance and because he felt better.

⁹ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, pp. 164 to 184.

- b) Regarding the transfer of Mr. López to the 11th Metropolitan Police Precinct
- Víctor Cáceres Samudio (police officer at the time):¹⁰ He said that on the morning of May 19, his supervisor at the Ecological Group called him and told him to “take Jorge López to Commissioner Pavón.” He said that he asked Mr. Lopez to turn over his sidearm and that he drove him in a police vehicle. He said that “he did not know how he had been involved and was afraid; he did not know what he had done.” He indicated that, upon arriving at the 11th Precinct, Mr. López was put in “a room that served as an improvised cell.” He said that he did not remember the bandage or the handcuffs. He said he saw the final part of Lopez’s interrogation and that he was standing. He explained: **“I received an order from my supervisor to transfer [him]; he told me it was the commander’s order – no paper, no note; to take him personally. That was what happened.”**
- c) Regarding the events at the 11th Metropolitan Police Precinct and the Ecological Group:
- Juan Ecurra Monzón (head of operations at the 11th Precinct at the time):¹¹ He indicated Mr. Lopez and other people were taken “to be subjected to torture; they were blindfolded, tied up and questioned about what was being done with them (...) they were beaten on the soles of their feet, there were several who arrived little by little, all the personnel who arrived were subjected to this.” He mentions those he saw admitted on Friday, May 19. He said that they were handcuffed with their hands behind them. In particular, he detailed that Mr. López “was put on the floor face down, and beaten on his feet,” and named the agents who were present. He added that he too was placed under arrest the next day but was not beaten.
 - Prospero Arevalos López (police intelligence agent at the time):¹² He said that he was taken as a detainee to the 11th Metropolitan Police Precinct, where he was tortured. He said that he saw Mr. Lopez lying face down, blindfolded.
 - Higinio Pérez Benítez (policeman at the time):¹³ He said that he was detained with Mr. López, who told him that he and others had been tortured.
 - Víctor Cogliolo González (policeman at the time):¹⁴ He said that he was detained at the Special Forces Headquarters and that he saw Mr. López in “a dreadful state with marks of blows to the neck, back and soles of his feet. He told me that he was tortured at the 11th to pressure him into saying that he had been involved in the failed coup. He even told me that he had been threatened that if he resisted that his wife would pay the consequences, and he also mentioned that his wife was a member of the police and was pregnant.
 - Emilio López (police intelligence agent at the time):¹⁵ He said that on May 19 he was taken under arrest to the 11th Police Precinct, handcuffed with his hands behind his back, blindfolded, and threatened by the same agents that Mr. López identified as having allegedly tortured him. He said that he was beaten on the soles of his feet while lying on his stomach. He said that he did not receive medical attention. He said that he saw Mr. Lopez.
 - Saturnino Gamarra (police non-commissioned officer at the time):¹⁶ He said that he was taken to the 11th Police Precinct, where he saw Mr. Lopez on the floor, “bloody, his face swollen, his feet swollen with blood, then they lifted him up and cuffed his hands behind his back. He said that Mr. Lopez was shoeless. He indicated that he was tied with a mattress cover, blindfolded with a sheet

¹⁰ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State’s brief of November 13, 2020, p. 248.

¹¹ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State’s brief of November 13, 2020, p. 184 to 188.

¹² Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State’s brief of November 13, 2020, p. 192.

¹³ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State’s brief of November 13, 2020, p. 194.

¹⁴ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State’s brief of November 13, 2020, p. 201.

¹⁵ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State’s brief of November 13, 2020, p. 209.

¹⁶ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State’s brief of November 13, 2020, p. 214.

of paper and adhesive tape, and agents told him that "Jorge López [had sung like a canary]." He said that he was not treated by any doctor.

- Diosnel Ferreira (brigade leader at the time):¹⁷ He said that he was assigned to the 11th Police Precinct, and that those who arrived were disarmed, recorded and interrogated, but "no examining magistrate, judge, or prosecutor was present there." He said he was attending to other duties when they were questioned. He added that Mr. Lopez "was very nervous and always in an agitated state while handcuffed in the holding cells (...) he was in a bad way at that moment and looked agitated." He said that Mr. Lopez was in the holding cells handcuffed at all times, and "he came and went on the 19th and 20th." He said: "I did not see Lopez hurt or wounded, I can testify to that all the same; but you're going to hear the banging, but I didn't hear anything like that; he was fine when he came in and the same when he left. He walked in fine and left the same way. Blindfolded with packing tape or something like that." He claimed that he did not "see him being beaten but if [he] did see him in the holding cells in handcuffs; he was not alright."
- Rafael Sosa Carmona (police officer at the time):¹⁸ He said that he was ordered to report to the 11th Police Precinct along with other officers, and upon arrival he was asked to hand over his weapons, remove his shoes and shirt, and kneel down, a newspaper was tied to them with packing tape; he said that you could hear a cry for help from the first officer to enter "the torture room." He indicated that he was hit in the face, made to kneel in handcuffs, and kicked. He said that he was later transferred to the Ecological Association where he was given table salt with water and a painkiller, and that after four days he left the "cuadrilátero."
- Lorenzo Genes (non-commissioned officer at the time):¹⁹ He said that he was taken on May 19 to the 11th Police Precinct, that, along with other people, he was mistreated and had his hands tied behind his back with the cloth lining of a mattress, blindfolded with newspaper and packing tape, placed face down, and beaten.

d) Regarding Mr. Lopez's access to medical examination:

- José Nicolás Lezcano (doctor at the time):²⁰ He said: "What I saw was a report from the Special Forces Headquarters issued by Commissioner Humberto Núñez; in that report, he said that I accompanied the group of judicial officials headed by Dr. Paredes, that it was routine for the duty doctor to require our presence, and that we should not accompany him; that was the only thing I did, I did not file any written report on the matter anywhere. I was summoned to see some inmates who were at that unit, at the Special Forces Headquarters, it must have been because I do not remember going to the 11th Precinct. He stated: "I have no record of having conducted any medical examination, I simply accompanied the judge on duty, as I was on duty. He said that he did not remember any dates.
- Carlos Antonio Garrigoza (medical examiner at the time):²¹ He said that he examined someone at the Special Forces Headquarters, who may have been Mr. López.
- Juan Humberto Núñez Agüero (head of the Special Forces at the time):²² He said that all the people who arrived at the Special Forces Headquarters "were rigorously checked by the Unit doctor, Dr. Andrés Gómez. I, by resolution of the Special Forces, established a book where he has to record the examination of everyone who is confined."

¹⁷ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 228.

¹⁸ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 243.

¹⁹ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 254.

²⁰ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 282.

²¹ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 303.

²² Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 265.

- Andrés Alcibíades Gómez Cardozo (doctor at the police hospital at the time):²³ He said that he served at the police hospital and the Special Forces Unit, where there was a doctor's office for examinations. He said: "I don't remember, in truth. I did attend to Jorge Sosa. His statement is displayed so that he can read it because there is a difference between it and the statement at the prosecutor's office."
- e) Regarding Mr. Lopez's access to a judge:
- Juan Carlos Paredes (lower court judge at the time):²⁴ He indicated that "in reality I did not go on the 19th or 20th, but on May 27, by order of the presidency of the Supreme Court; the office of the general superintendent (...) summoned several judges of first instance," and they were instructed to go to places where people were detained under the state of emergency in order to verify the place and conditions of the detainees, and whether they had medical assistance. In his case, he, Dr. Del Puerto del Menor, and Marian Antonia from the civil jurisdiction visited the FOPE and the Special Forces Headquarters. He said that at the Special Forces Headquarters he interviewed 7 or 10 people, and that Mr. López "said that he was mistreated at the 11th Police Precinct; he told me that he was mistreated, not at the Special Forces Group, but at the 11th, where Pavón and Commissioner Palacio were in charged; there, he was abused and beaten on the soles of his feet; with us was the medical examiner Nicolas Lezcano and he set down on the record that was made on that occasion, what he referred to and the traces that remained. Regarding Mr. Lezcano's examination, he said that "it was not a very thorough examination, but rather to verify if there were injuries to the eyes.

24. The record shows that by note No. 62/2000 (date unknown) addressed to the Chief of the Metropolitan Police from Commissioner Dejav. Pavón, it was reported that several officers were arrested, including Mr. Jorge López and that "they were arrested for their alleged participation in the attempted attack on the residence of the Minister of the Interior, Walter Bower."²⁵

25. In a decision of May 26, 2000, the Supreme Court ordered that, within 48 hours, lower court judges throughout the Republic should visit places where people were suspects identified under the state of emergency were located in order to ensure free communication, verify the conditions of detention, and arrange for relevant medical examinations.²⁶

26. It is recorded that, on June 7, 2000, the Fourth Magistrate's Court visited the Special Forces Headquarters. Present were the examining judge, the attorney general, and the deputy counsel from the Office of the Counsel General of the Republic, to take the statement of Jorge López in the context of an administrative inquiry for "alleged acts of deliberate breach of duties and obligations established in the Law and the Regulations and insubordination (alleged participation in an attempted coup d'état)." In the act, he was advised of his constitutional guarantees under Article 17, paragraphs 5 and 7, on "summary proceedings" and the right to appoint a defense attorney to assist him in the case or to have a defender provided by the Police Justice Department. In that act, Mr. López appointed a defender. It is recorded in the statement that was made, that Mr. Lopez said that he had been mistreated.²⁷

27. By presidential decree of July 20, 2000, Inspector Jorge López was discharged for "serious misconduct in the performance of his duties."²⁸

²³ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 183.

²⁴ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 301.

²⁵ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 402.

²⁶ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 406.

²⁷ Annex 4, Inquiry statement by Jorge López of June 7, 2000, Petitioners' brief of January 11, 2011.

²⁸ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 406.

28. Mr. Lopez was kept in detention until December 2000, when he was released under house arrest.²⁹
29. The record shows that an administrative inquiry was opened for physical mistreatment at the 11th Metropolitan Police Precinct, in which, by resolution of December 12, 2000, five police officers were acquitted.³⁰
30. On July 19, 2000 the Public Prosecution Service opened an investigation after receiving Mr. Lopez's statement. On June 11, 2001, the Public Prosecution Service filed an indictment against three agents for the crime of torture (Article 309, paragraph 1, subparagraph 1(e) of the Criminal Code) under the criminal definitions described in Articles 307 and 308 of the aforementioned Code (bodily injury in the exercise of public functions and coercion with respect to statements) and requested the opening of a trial. According to the indictment, Jorge Lopez and other officers and non-commissioned officers were alleged to have been subjected to coercion at the 11th Metropolitan Police Precinct and the Marine Corps facility.³¹
31. On the same day, the Public Prosecution Service requested that the case be joined with the case of "Walter Hugo Bower Montalto - torture," in view of their connection. In that regard, it was requested that Representative Walter Bower be stripped of his immunity on the grounds that there was sufficient evidence to suspect his participation in the alleged acts of torture.³² On July 24, 2001, the lower criminal court in charge joined the cases, and on August 8, 2001, an indictment was filed against Walter Bower.³³
32. According to the prosecutor's indictment, there was another alleged victim of the illicit act, namely Commissioner Alfredo Cáceres; hence his request for the joinder of cases.³⁴ Mr. López and Mr. Cáceres coincided in their statements that, apart from police officers, Interior Minister Walter Bower was also present at the Marine Corps Headquarters on May 21, 2000, his presence being confirmed by the Public Prosecution Service from the log book for that day.³⁵
33. After the cases were joined, the matter "passed to the Court of Appeals and the Supreme Court of Justice itself until constitutional challenge was filed in the trial of "Basilio Pavón et al. (...)" by the defendant Bower. On June 5, 2003, the Constitutional Division of the Supreme Court of Justice rejected the challenge. On July 22, 2003, the preliminary hearing was suspended, due to an objection on constitutional grounds presented by a defendant, in order to question competence of the intermediate stage. As the Public Prosecution Service mentioned, "in light of these motions, whose sole purpose was to postpone the preliminary hearing and gain time in order subsequently to invoke the statute of limitations, months later, after decisions were made on the motions filed," the parties were summoned to appear before the Criminal Court of Guarantees for the Intermediate Stage on November 26, 2003.³⁶
34. Anticipating the "demise" of the case, on September 8, 2003, the Public Prosecution Service filed an objection challenging the constitutionality of certain articles of the Code of Civil Procedure and the Code of Criminal Procedure that the defense of the accused persons sought to use to justify extinction of the criminal

²⁹ Annex 3, Judicial statement by Jorge López, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, pp. 164 to 184, State's brief of November 13, 2020.

³⁰ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 406.

³¹ Annex 2, Indictment and request to open trial of the Public Prosecution Service of June 11, 2001, Case 01-01-02-00001-2000-2606, Petitioner's brief of March 13, 2008.

³² Annex 5, Written request for joinder of cases by the Public Prosecution Service of June 11, 2001. Case 01-01-02-00001-2000-2606, Petitioner's brief of March 13, 2008.

³³ Annex 6, Report of the Public Prosecution Service on Case No. 2606/2000, "Basilio Pavón et al. - Bodily injury in the exercise of public functions" of August 19, 2008. Enclosed with the State's communication of August 27, 2008.

³⁴ Annex 2, Indictment and request to open trial of the Public Prosecution Service of June 11, 2001, Case 01-01-02-00001-2000-2606, Petitioner's brief of March 13, 2008.

³⁵ Annex 6, Report of the Public Prosecution Service on Case No. 2606/2000, "Basilio Pavón et al. - Bodily injury in the exercise of public functions" of August 19, 2008. Enclosed with the State's communication of August 27, 2008.

³⁶ Annex 7, Decision and Judgment No. 195 of May 5, 2008. Enclosed with the State's communication of August 27, 2008.

action, which objection the alleged victim joined.³⁷ The Public Prosecution Service based its motion on the fact that it would violate the rule by which the offense of torture is not subject to limitation (Article 5 of the Constitution) and the principle of constitutional supremacy. The prosecution filed four “requests for urgency” with the Supreme Court so that the objection would be resolved.³⁸

35. On May 5, 2008, the Supreme Court ruled on the objection on constitutional grounds, ruling Articles 25 (3), 136, and 137 of the Code of Criminal Procedure inapplicable.³⁹

36. As stated in the judgment of the Supreme Court, the case has been on “writ for judgment” since December 18, 2003. Likewise, the IACHR notes that the Public Prosecution Service presented three requests in 2006 and one in 2007 for the prompt resolution of the matter, which was also made by one of the alleged victims of the crimes charged. Likewise, the record shows that the plaintiff Alfredo Cáceres, in a brief dated March 27, 2007, moved for the recusal of Dr. Víctor Nuñez “with cause,” asserting that, according to the Secretariat’s computer system, “from April 5, 2004, until September 2006, the aforementioned case file was kept in his office prior to the offering of an opinion, that is, for a period of two years or so after I had presented the respective pertinent requests for urgency (...) until I was informed by Justice José Altamirano that he had signed his opinion on September 23, 2006, and then I had no further news of the case file, until my attorney reported its disappearance on February 22 of this year, after which I had news of it again (...) on March 7, 2007.” On May 23, 2007, the justice recused himself from the case. The IACHR notes that between May and July 2007, four justices recused themselves from examining the case, until August 7, 2007, when a justice agreed to join the Constitutional Division.⁴⁰

37. Following the Supreme Court’s ruling on the objection on constitutional grounds, a request for clarification of the decision was submitted by the defendants’ counsel.⁴¹ According to a press release contained in the record, the scheduled preliminary hearing was again suspended on June 16, 2009, after the lawyers for the defendants presented motions.⁴² The IACHR notes that in 2012 the State reported that a preliminary hearing had been set for July 24, 2012. It also mentioned that prior to that, the case had been held up in a separate proceeding involving the recusal of three judges, which the Supreme Court decided by means of an interlocutory order of April 10, 2012, in which it ruled inadmissible an appeal against “I.A. No. February 4, 8, 2012.”⁴³ According to a press release, the hearing was postponed for a ninth time and rescheduled for August 29.⁴⁴

38. According to a brief included in the record in 2018, by then the process had been going on for 16 years without a preliminary hearing held.⁴⁵ It also includes a notice dated March 9, 2018, advising the parties that the review hearing requested by the accused Walter Bower would not be held due to a recusal motion filed by the defense counsel for one of the accused.⁴⁶ In 2018, the judge in the case reportedly sanctioned Walter Bower as a “bad faith litigant for 17 years” and ordered him to be detained for 48 hours in the jail at the Palace of Justice, a sanction that was subject to confirmation by the Court of Appeals.

³⁷ Annex 8, Challenge of the Public Prosecution Service on “Objection to challenge constitutionality,” of September 8, 2003. Enclosed with the State’s communication of August 27, 2008.

³⁸ Annex 6, Report of the Public Prosecution Service on Case No. 2606/2000, “Basilio Pavón et al. - Bodily injury in the exercise of public functions” of August 19, 2008. Enclosed with the State’s communication of August 27, 2008.

³⁹ Annex 7, Decision and Judgment No. 195 of May 5, 2008. Enclosed with the State’s communication of August 27, 2008.

⁴⁰ Annex 7, Decision and Judgment No. 195 of May 5, 2008. Enclosed with the State’s communication of August 27, 2008.

⁴¹ Annex 6, Report of the Public Prosecution Service on Case No. 2606/2000, “Basilio Pavón et al. - Bodily injury in the exercise of public functions” of August 19, 2008. Enclosed with the State’s communication of August 27, 2008.

⁴² Annex 9, “Juez suspendió audiencia de Bower y Merardo Palacios,” Digital ABC, June 16, 2009. Petitioner’s brief of January 11, 2012.

⁴³ State’s brief of July 6, 2012.

⁴⁴ Annex 10, “Novena Audiencia diferida de Bower,” ABC, p. 37. Petitioner’s communication of July 25, 2012.

⁴⁵ Brief received on March 3, 2018 – not dated or signed by the sender.

⁴⁶ Annex 11, “Case of Basilio Pavon et al. - Bodily injury in the exercise of public functions,” No. 1-1-2-1-2000-2626.” Document received without a main document.

39. According to information in the public domain, oral proceedings began on August 20, 2019, 19 after the process was instituted.⁴⁷

40. According to the submissions of the Public Prosecution Service, certain evidentiary exhibits were excluded by the criminal court for various reasons, such as "not having the original because it was not authenticated," and in other instances "because there are no records in the record that were presented by the then-prosecutor (...) who left the case after recusing himself at the request of the complaint." Thus, the Public Prosecution Service said that "all these evidentiary exhibits, the Marine Corps logbook, were lost during transfers between different courts and tribunals that were assembled and disassembled on various occasions. Without a doubt we are facing a trial of extraordinary dimensions where all the blame has fallen on the Public Prosecution Service (...) putting on my shoulders the non-presentation of evidence after this inordinately long delay, something for which, however, I have no responsibility whatsoever, as the facts show."⁴⁸

41. The record shows that, in the context of the oral proceedings, the Public Prosecution Service argued that at that time Law 222/93 (Organic Law of the National Police) was in force, and that Article 6, paragraphs 4 and 9 of that Law provided that the powers of the police include the authority to investigate, under the direction of the Public Prosecution Service, acts committed anywhere in the national territory, and to detain persons caught in the act of committing crimes, or suspected thereof, in the manner and for the time established in the Constitution and laws, to inform them of the reasons for the arrest and their rights, and to bring them before a competent judge. In that regard, the prosecution argued that "none of those obligations were met by the personnel of the 11th Metropolitan Police Precinct, who acted with complete irregularity, according themselves interrogation functions at a metropolitan police station, which did not have nor does it have any jurisdiction or competence whatsoever under the laws and the rules that govern criminal procedure to carry out this type of interrogation, without mentioning that those interrogations were carried out under coercion and with the use of force and intimidation; that is to say, under "torture" (...) Nor does the state of emergency give them the necessary legal grounds to carry out this type of interrogation, and in that case, the executive decree that ordered the arrests should have granted special powers to the 11th Metropolitan Police Precinct to carry out some type of investigation, which is not the case because that, in itself, would have been unconstitutional."⁴⁹

42. The Public Prosecution Service mentioned in the context of the trial, that according to an authentic copy of a book of records of the Special Forces Headquarters, on May 19, 2000, five police officers were sent, including Mr. Lopez.⁵⁰ It also mentioned that, according to a book of records used for the health service of the Special Forces Headquarters, Mr. López was attended by Mr. Andrés Gómez Cardozo on May 20, 2000. In addition, it said that the duty medical examiner at the Supreme Court stated that he visited the Special Forces Headquarters together with a judge and declared that "he ha[d] no record of any medical examination having been carried out." Regarding this statement, the Public Prosecution Service said that that examination "took place on May 27, 2000, days after the events of duress and torture that occurred." It also said that, according to the statement made in the trial by the medical examiner of the Public Prosecution Service, he reported that he accompanied three prosecutors and attempted to make a thorough examination, but found nothing untoward. The Public Prosecution Service added that this procedure "was carried out on July 11, 2000, that is, almost two months after the event that is the subject of this proceeding."⁵¹

43. Furthermore, the Public Prosecution Service argued that the administrative inquiries prompted by the allegations of mistreatment were all conducted in the presence of the Deputy Counsel General of the Republic, despite the fact that the Organic Law of the National Police does not authorize that authority to take part in

⁴⁷ "Tras 19 años, hoy debe iniciarse juicio oral y público contra Walter Bower por tortura," ADN Paraguay, August 20, 2019, available at: <https://www.adndigital.com.py/tras-19-anos-hoy-debe-iniciarse-juicio-oral-contr-walter-bower-por-tortura/>. Date consulted: September 10, 2020.

⁴⁸ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 12.

⁴⁹ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 60.

⁵⁰ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 64.

⁵¹ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 56.

police inquiries. It said that "that intervention further weakened the independence and transparency that an administrative inquiry in the police justice system should have." He argued that the purpose of his participation in the interrogations was to cover up for those under investigation "and to prevent any potential investigation from reaching then-Minister Bower."⁵²

44. On December 30, 2019, a judgment was delivered that,⁵³ in a two-to-one ruling, acquitted Walter Bower, Merardo Palacios and Osvaldo Vera, with a dissenting opinion from one of the judges.

45. The court considered that Jorge López's own statement contradicted the testimonies offered by other people in the trial. It referred to the statements of Victor Cáceres Zamudio, who, the court recalled,⁵⁴ "did not see any blindfolds, did not hear a request for help, did not see physical duress toward Lopez" and said that Mr. Lopez affirmed that when he arrived at 11th Police Precinct, Emilio Lopez was already handcuffed and blindfolded. However, Mr. Victor Cáceres stated that while Jorge Lopez was testifying, Emilio Lopez entered, and that he did not recall seeing the latter blindfolded or handcuffed. On this last point, the court stated that the witness Fabián Ojeda did not see any police personnel "blindfolded or abused, or anyone mistreated."⁵⁵ In addition, the court noted that Jorge López and Emilio López contradicted each other regarding the time they were in Commissioner Pavón's office, and the type of blindfold used for each.

46. It also recalled that Mario Alejandro Ortellado saw Mr. Lopez standing, that "he believes he was handcuffed with his hands behind him," that the others were barefoot and standing, all with their hands secured behind them, they were blindfolded with paper and, he believes, with tape; that he did not observe any physical duress, that Jorge Lopez was in uniform, and that the police precinct was not disrupted in any way as a result of that activity.⁵⁶ It also said that the statements of Diosnel Ferreira and Mario Ortellado indicated that they were present at the time the police officers were being questioned, and both of them said that they were all blindfolded, but that no one had been beaten or mistreated. However, Mr. Juan Escurra said that whoever who entered Pavón's office was subjected to beatings on the soles of their feet. The court stated that Escurra, according to Ferreira's testimony, was also took part in the events relating to the coup, for which he was arrested.⁵⁷

47. Among other aspects, the court noted the discrepancies in statements as what the detainees had been blindfolded with (statement by Prospero Arevalo Lopez).⁵⁸ It also noted that, in his testimony, Fabian Ojeda said that he was not subjected to duress, however, Lorenzo Genes said that all were beaten and had to be helped into the vehicle that transferred them to the Special Forces Headquarters. It said that those testimonies contradicted that of Victor Cáceres, who indicated that no duress was applied, that no screams or requests for help were heard, and that all those arrested boarded the vehicle that went to the Special Forces Headquarters unassisted.⁵⁹

48. The court recalled that Ricardo Orue Salinas, who was on guard duty on May 19 at the 11th Police Precinct, said that he was not aware that the persons arrested had been beaten, that he did not see anyone with signs of beatings, and that they got in unassisted when transferred in the group took them to the Special Forces Headquarters. In addition, regarding the description provided by Saturnino Antonio Gamarra (who said that

⁵² Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 61.

⁵³ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020.

⁵⁴ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 361.

⁵⁵ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 362.

⁵⁶ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 366.

⁵⁷ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 368.

⁵⁸ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 368.

⁵⁹ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 372.

Mr. López was bloody, his face swollen, his feet swollen with blood), it said that it contradicted the account of the alleged victim himself and those of other officials, and therefore it lacked probative weight.⁶⁰ Regarding Victor Cogliolo's statement, it considered that he described signs of torture that not even Mr. López himself described.⁶¹

49. The court considered that none of the witnesses offered the court positive certainty of the existence of the event itself,⁶² "since there were opposing, contradictory and ambiguous versions or testimonies," starting with the fact that Mr. López claimed to have been beaten with a broom handle, while non-commissioned officers Genes, Sosa, Arevalos and Emilio López said they were mistreated with a "club or baton." It also said that there were inaccuracies about who actively participated in the mistreatment, as Arevalos said that it was Diosnel Ferreira, while Sosa claimed it was Osvaldo Vera. Likewise, it said that Emilio López and Jorge López contradicted each other as to the times at which the events took place, since the alleged victim claimed that he was taken to the 11th Police Precinct at approximately 7:00 a.m., and that when he arrived he saw Emilio López lying on the floor; however, the latter said that he was held at the Special Forces Headquarters on May 19 from 6:00 a.m. to 1:00 p.m., after which he was handed over to agents Pavon, Palacios and Vera.

50. Furthermore, the judgment includes a reference to the victimology report of the Public Prosecution Service's Victim Assistance Department, which says that several people who said they had been tortured, including the alleged victim, were interviewed in a cynical way. The description of common harm included feelings of humiliation and social stigmatization, as well as loss of confidence in the police, feelings of insecurity and affective, cognitive, interpersonal, workplace, and social relationship disorders, and emotional stress. In the conclusion relating to the specific harm to Mr. López, he expressed difficulty in coming to terms with his discharge from the police, concern for the consequences of the fact, state of permanent nervous agitation, feeling permanently on edge linked to the possibility of being victimized again, and depression associated with physical and mental exhaustion, anxiety, and irascibility. Regarding this evidence, the court noted that "this document is only partially legible, so it is impossible for the court to evaluate it positively, although it is true that a conclusion regarding Jorge López contained in it finds that he has difficulty accepting his discharge from the police and it makes no reference to the supposed physical duress that is under examination." The court stated that the report "lacks a technical-scientific methodology to support its results (...) the person examined might very well be in the situation described for any number of reasons" that do not allow one to say for certain that the characteristics are due to the offense being tried in the case.⁶³

51. The record shows that the court also dismissed the evidence contained in the copy of the list of persons for whom an arrest warrant was issued under the state of emergency because it considered that it "has nothing to do with the existence of the act being tried."⁶⁴

52. In the judgment, the court held that "free conviction is always limited to in dubio pro reo. The court is obliged to uphold the presumption of innocence." In addition, it considered that there was a wealth of testimonial evidence that was mainly contradictory, added to the fact that there appeared to be no scientific or technical proof that Mr. López had been subjected to physical or psychological duress, as the Public Prosecution Service and the joined criminal complaint alleged. In that regard, the court found that "the combined evidence offered and produced during the public hearing is unsuitable and insufficient to find the accused guilty (...) of an alleged act of torture." Thus, "the evidence produced during the public hearing and weighed in accordance with the rules for evaluating evidence that governs us, does not allow us to reach the absolute certainty

⁶⁰ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 373.

⁶¹ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 378.

⁶² Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 378.

⁶³ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 404.

⁶⁴ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 404.

required for judges to find that the accused participated (...) in the offense of torture."⁶⁵ In conclusion, it established that the evidence created "reasonable doubt" as to the existence of the act.

53. Additionally, the sentence found that although, according to witnesses, they themselves were subjected to torture, "they were not included by the Public Prosecution Service in the indictment as victims of the act, so the court could scarcely convict the accused (...), for the acts that they have mentioned."⁶⁶

54. In her dissent, the dissenting judge assessed the testimonies as "fully accrediting the offense of torture and demonstrating the authorship of the accused," and considered that the victimological diagnosis of the Victim Assistance Department of the Public Prosecution Service was crucial evidence that described objective elements of the criminal definition of torture and attested to "the state of mind of the victims and the consequences left on their bodies after being tortured."⁶⁷

55. Finally, the Commission takes note of the fact that, according to information from the State, the aforementioned judgment is not final, following an appeal filed with the Court of Appeals for Criminal Matters, Third Division, in Asunción.

IV. LEGAL ANALYSIS

⁶⁵ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 409.

⁶⁶ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 372.

⁶⁷ Annex 3, Judgment S.D. No. 01 of December 30, 2019, Collegiate Sentencing Court of the Capital Judicial District, State's brief of November 13, 2020, p. 413 ff. Dissenting opinion.

Rights to humane treatment, personal liberty, a fair trial, and judicial protection (Articles 5,⁶⁸ 7,⁶⁹ 8,⁷⁰ and 25⁷¹ of the American Convention in relation to Article 1(1) of the same instrument and Articles 1,⁷² 6,⁷³ and 8⁷⁴ of the Inter-American Convention to Prevent and Punish Torture⁷⁵)

A. The right to personal freedom

56. The Inter-American Court has held that the "essential aim of Article 7 of the Convention is to protect the freedom of the individual against any arbitrary or illegal interference by the State" and that "Article 7 of the [American] Convention contains two distinct types of regulations: one general, the other specific. The general one is contained in the first subparagraph: '[e]very person has the right to personal liberty and security.' While the specific one is composed of a series of guarantees that protect the right not to be deprived of liberty unlawfully (Article 7[2]) or arbitrarily (Article 7[3]), to be informed of the reasons for the detention and the charges brought against him (Article 7[4]), to judicial control of the deprivation of liberty (Article 7[5]), and to contest the lawfulness of the arrest (Article 7[6]). Any violation of subparagraphs 2 to 7 of Article 7 of the Convention necessarily entails the violation of Article 7(1) thereof."⁷⁶

57. According to the jurisprudence of the Inter-American Court, "Article 7(2) of the Convention refers automatically to domestic law. Accordingly, any requirement established in domestic law that is not complied

⁶⁸ The pertinent portions of Article 5 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.

⁶⁹ 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.

4. Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charge or charges against him.

5. Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to the continuation of the proceedings. His release may be subject to guarantees to assure his appearance for trial.

6. Anyone who is deprived of his liberty shall be entitled to recourse to a competent court, in order that the court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful. In States Parties whose laws provide that anyone who believes himself to be threatened with deprivation of his liberty is entitled to recourse to a competent court in order that it may decide on the lawfulness of such threat, this remedy may not be restricted or abolished. The interested party or another person in his behalf is entitled to seek these remedies.

⁷⁰ Article 8 of the American Convention: "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."

⁷¹ Article 25(1) of the American Convention: 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."

⁷² Article 1 of the Inter-American Convention to Prevent and Punish Torture (IACPTT): "The State Parties undertake to prevent and punish torture in accordance with the terms of this Convention."

⁷³ Article 6 of the IACPTT: "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."

⁷⁴ Article 8 of the IACPTT: "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."

⁷⁵ By virtue of the principle of *iura novit curia*, the Commission considers it appropriate to offer its opinion on the international responsibility of the State with respect to Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. The State has been afforded the opportunity to exercise its right to contradict and express its position on the facts that support this analysis.

⁷⁶ I/A Court H.R., Case of Argüelles et al. v. Argentina, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 20, 2014, Series C. No. 288, par. 114.

with when depriving a person of his liberty will cause this deprivation to be unlawful and contrary to the American Convention."⁷⁷

58. The Inter-American Court has held that the "causes and reasons" for the detention must be provided "at the time it occurs," which "constitutes a mechanism to avoid illegal or arbitrary detentions from the very moment of imprisonment and, at the same time, ensures the individuals right to defense,"⁷⁸ and that "the information about the motives and reasons for the arrest necessarily supposes, first, providing information on the arrest itself. The detained person must understand that he is being detained. Second, the agent who carries out the arrest must inform him in simple language, free of technical terms, about the essential legal grounds and facts on which the arrest is based. Article 7(4) of the Convention is not satisfied by the mere mention of the legal grounds."⁷⁹ Thus, the Court has held that a State violates Article 7(4) of the Convention when it has not proven that its authorities informed the detained person of the reasons and grounds for their detention.⁸⁰

59. In addition, Article 7(5) of the Convention provides that when any person is detained, he or she is entitled to be promptly brought before a judicial authority for review of said detention, as a suitable means of control to prevent arbitrary and unlawful arrests. Prompt judicial control is a measure intended to avoid arbitrary or unlawful arrests, bearing in mind that, under the rule of law, the judge is responsible for guaranteeing the rights of the detained person, authorizing the adoption of precautionary or coercive measures when strictly necessary and, in general, ensuring that the accused is treated in a manner in keeping with the presumption of innocence.⁸¹

60. With regard to this guarantee, the Commission has considered:

The single most important protection of the rights of a detainee is prompt appearance before a judicial authority responsible for overseeing the detention. And that the right to request a decision on the lawfulness of the detention is the fundamental guarantee of the constitutional and human rights of the detainee deprived of his liberty by agents of the State.⁸²

61. Likewise, the Inter-American Court has held that "the terms of the guarantee established in Article 7(5) of the Convention are clear in what refers to the fact that the person arrested must be taken before a competent judge or judicial authority, pursuant to the principles of judicial control and procedural immediacy" in order to enable "protection of the right to personal liberty and to grant protection to other rights, such as life and personal integrity." The Court has also specified that "the simple awareness of a judge that a person is detained does not satisfy this guarantee, since the detainee must appear personally and give his statement before the competent judge or authority."⁸³

62. In the present case, the Commission notes that, according to the information provided, on May 19, 2000, Mr. Jorge López was detained after being instructed to report to the 11th Metropolitan Police Precinct. The Commission examines below if the State complied with the above obligations.

63. With regard to the legality of the arrest, the Commission notes that, according to Article 12 of the Constitution of Paraguay, an arrest must be made on a written order from a competent authority, except when a person is caught in the act of committing an imprisonable offense. Also, according to that provision, the

⁷⁷ 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. 57.

⁷⁸ Case of Juan Humberto Sánchez v. Honduras, Preliminary Objection, Merits, Reparations and Costs, Judgment of June 7, 2003, Series C. No. 99, par. 82; and 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. 70.

⁷⁹ 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. 71.

⁸⁰ 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. 73.

⁸¹ I/A Court H.R., Case of Acosta Calderón v. Ecuador, Merits, Reparations and Costs, Judgment of June 24, 2005, Series C. No. 129, par. 61; and Case of Tibi v. Ecuador, Judgment of September 7, 2004, Series C. No. 114, par. 76.

⁸² IACHR, Report on the Human Rights of Persons Deprived of Liberty in the Americas, December 31, 2011, par. 120.

⁸³ I/A Court H.R., Case of Acosta Calderón v. Ecuador, Merits, Reparations and Costs, Judgment of June 24, 2005, Series C. No. 129, par. 78.

detained person must be taken before a competent judge within no more than 24 hours.⁸⁴ The Commission observes that the State has not demonstrated the existence of an order issued by a judge, or that the alleged victim was caught in the act of committing an offense. Likewise, the State did not reference any other rule or information to suggest that the arrest was lawful.

64. With regard to his being informed of the reasons for his arrest, the Commission notes that, according to the indictment, after the alleged victim was arrested, the Commissioner said that he had taken part "in an attempted coup." Although the Commission does not have precise information as to the manner in which that reference was made, as mentioned in relation to this personal liberty safeguard, the detained person must clearly informed of the "essential legal grounds and facts on which the arrest is based."⁸⁵ This is essential in order to enable the detained person to challenge the legality of their detention, and therefore, the burden is on the State to demonstrate that it has effectively met that obligation.⁸⁶ Based on the foregoing, the Commission notes there is no document or any other evidence in the record to show that this guarantee was observed.

65. Finally, with respect to judicial control of the detention, the Commission notes that the State has provided no specific information as to the date on which Jorge López first appeared before a judge. Mr. Lopez alleged that he was not examined by medical personnel until approximately fifteen days after his arrest, after which he was visited by a judicial committee composed of a judge, a medical examiner, and other persons. From the evidence in the case, Mr. Lopez was taken into police custody on May 19, 2000. The record shows that on May 26, 2000, the Supreme Court ordered that, within 48 hours, lower court judges throughout the Republic should visit places where people were suspects identified under the state of emergency were located in order to ensure free communication, verify the conditions of detention, and arrange for relevant medical examinations. In that connection, according to the testimony of the witness Juan Carlos Paredes on May 27, by order of the presidency of the Supreme Court several judges of first instance were summoned and instructed to go to places where people were detained under the state of emergency. Mr. Paredes said that he, together with other civil jurisdiction officials, visited the Special Forces Headquarters, and that Mr. López told them that he was subjected to mistreatment at the 11th Police Precinct. Likewise, the record shows that on June 7, 2000, the Fourth Magistrate's Court visited the Special Forces Headquarters to take the statement of Jorge López.

66. From its analysis of that information, the Commission finds that the State has not shown that Mr. Lopez was brought promptly before a judge after his arrest. According to the available information and the allegations of the petitioner, at least one week passed before he had access to a judge, which further supports the submission that the State failed to comply with this guarantee.

67. In light of the foregoing, the Commission concludes that the State violated the rights recognized in Articles 7(1), 7(2), 7(4), and 7(5) of the American Convention, taken in conjunction with the obligation to respect rights set forth in Article 1(1) of the same instrument, to the detriment of Jorge López Sosa.

B. Right to Humane Treatment

68. The American Convention makes prohibits the use of torture or the cruel, inhuman, or degrading treatment or punishment of persons under any circumstances. The Commission has noted that "an essential aspect of the right to personal security is the absolute prohibition of torture, a peremptory norm of international law

⁸⁴ Constitution of the Republic of Paraguay, June 20, 1992. Article 12. Detention and Arrest. No one may be detained or arrested without a written order issued by a competent authority, except when they are caught in the act of committing an imprisonable offense. All detained persons have the right: (1) To be informed at the time of the act of the reason for the arrest and of their right to remain silent and to be assisted by a defender of their confidence. In the act of arrest, the authority is obliged to show the written order that ordered it; (2) that the arrest be immediately communicated to his relatives or persons that the detainee indicates; (3) that they be allowed to communicate freely unless, where exceptional circumstances so warrant, a competent court orders incommunicado detention; the incommunicado detention shall not apply to their defense counsel and in no case may it exceed the term prescribed by law; (4) that they have an interpreter, if necessary, and (5) that they be placed, within a period not exceeding twenty-four hours, at the disposal of a competent judge, so that the latter may decide what is appropriate under law.

⁸⁵ 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. 71.

⁸⁶ 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, pars. 70–73.

creating obligations *erga omnes*.⁸⁷ For its part, the Inter-American Court has repeatedly held that international human rights law strictly prohibits torture and cruel, inhuman, or degrading punishment or treatment. The absolute prohibition of torture, both physical and psychological, is currently part of the domain of the international *jus cogens*.⁸⁸

69. According to the jurisprudence of the inter-American system, the following elements must be present for an act to be considered torture: it must (i) be an intentional act committed by an agent of the State or with his or her authorization or acquiescence; (ii) cause severe physical or mental suffering; and (iii) be committed with a given purpose or aim.⁸⁹

70. The Commission recalls that when torture is alleged, in many cases, such as this one, usually no mechanism is available to the person to prove the acts of violence inflicted upon them.⁹⁰ In this regard, the Court has held:

[E]vidence obtained during the medical examination plays a crucial role during the investigations conducted against detainees and in cases when the latter allege ill-treatment. In this regard, it is extremely difficult for the victim to substantiate allegations of ill-treatment while in police custody, if he was isolated from the exterior world, without access to doctors, lawyers, family or friends who could provide support and gather the necessary evidence. Therefore, the judicial authorities have the duty to ensure the rights of the detainee, and this entails obtaining and ensuring all the evidence that may prove the acts of torture, including medical examinations. In addition, it is important to emphasize that, in cases in which there are allegations of supposed torture or ill-treatment, the time that has passed before the corresponding medical appraisals are made is determinant in order to conclude without doubt the existence of the harm, especially when there are no witnesses other than the perpetrators and the victims themselves and, consequently, the evidence may be very limited. This reveals that, for an investigation into acts of torture to be effective, it must be conducted promptly.⁹¹

71. In light of the above, when victims who have been deprived of their liberty 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.”⁹² In the event of a complaint about the commission of a crime of this nature, under Articles 8 and 25 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.”⁹³ The State's obligation to investigate possible acts of torture is reinforced by the provisions contained in Articles 1, 6 and, 8 of the Inter-American Convention against Torture that oblige the States “to take effective measures to prevent and punish torture within their jurisdiction.”⁹⁴

72. In the present case, the Commission recapitulates that according to the consistent statement and complaints presented by the alleged victim, after he arrived at the 11th Precinct he was subjected to various beatings and mistreatment that included repeated blows to the soles of his feet over the course of several hours. According to the dissenting opinion of one of the judges who heard the case, there is a victimology report suggesting objective elements of torture based on the consequences thereof. In addition, the Commission notes that, according to the available evidence, there are testimonies from other persons who also said that they were

⁸⁷ IACHR, Report on Terrorism and Human Rights, October 22, 2002; and Report on the Situation of Human Rights of Asylum Seekers within the Canadian Refugee Determination System, February 28, 2000, par. 118.

⁸⁸ I/A Court H.R., Case of Bueno Alves v. Argentina, Merits, Reparations and Costs, Judgment of May 11, 2007, Series C. No. 164, par. 76.

⁸⁹ IACHR, Report No. 5/96. Case 10.970, Merits, Raquel Martin Mejia, Peru, March 1, 1996, Section 3. See also I/A Court H.R., Case of Bueno Alves v. Argentina, Merits, Reparations and Costs, Judgment of May 11, 2007, Series C. No. 164, par. 79.

⁹⁰ IACHR, Report No. 82/13, Case 12.679, Merits, José Agapito Ruano Torres and Family, El Salvador, November 4, 2013, par. 162. I/A Court H.R., Case of Cabrera García and Montiel Flores v. Mexico, Judgment of November 26, 2010. Series C. No. 220, par. 128.

⁹¹ Case of Valenzuela Avila v. Guatemala, Merits, Reparations and Costs, Judgment of October 11, 2019, Series C. No. 386, par. 184.

⁹² I/A Court H.R., Espinoza Gonzáles Judgment, par. 177.

⁹³ 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; Mendoza Judgment, par. 234.

⁹⁴ I/A Court H.R., Case of Rodríguez Vera et al. (Persons Disappeared from the Palace of Justice) v. Colombia, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 14, 2014, Series C. No. 287, par. 476.

subjected to torture. In that regard, there are several statements⁹⁵ (*supra*, par. 23) in which other detained officers, like Mr. López, claimed to have been tortured in a similar manner to the alleged victim, or to have seen or heard that the alleged victim had been handcuffed, blindfolded, made to lie face down, and beaten at the 11th Precinct. Furthermore, according to the statement of an agent assigned to the 11th Precinct, Mr. Lopez was blindfolded and kept handcuffed in the holding cells.⁹⁶ Likewise, Mr. Lopez, said that the acts alleged in the petition affected his personality and that in the recent years he had received psychological treatment.

73. In relation to the response of the State, the Commission observes that, according to the statement of the witness Judge Juan Carlos Paredes, it was at least eight days after his arrest before Mr. López received a visit from a judge and a medical examiner, whom he reportedly told that he had suffered torture. There is also information regarding an examination carried out on July 11, 2000, almost two months after the alleged torture. In addition, the Commission notes that the Paraguayan State told the IACHR that "according to allegations by the Public Prosecution Service, acts of torture were indeed allegedly perpetrated against several of those detainees, including the petitioner."⁹⁷ Furthermore, the investigation y domestic proceedings have not concluded. Consequently, in light of the foregoing, the Commission observes that the State has not yet provided a satisfactory explanation for the allegations and findings that suggest that torture was carried out, based either on timely medical examinations or on an investigation of the complaints that effectively disproved the allegations.

74. The Commission notes that the court concluded in its judgment that none of the witnesses offered the court positive certainty of the existence of the event itself, "since there were opposing, contradictory and ambiguous versions or testimonies." Likewise, it dismissed or cast doubt on the occurrence of certain events due to a lack of consistency regarding the type of material used to bandage the detainees, the object with which the beatings were administered, and the times at which certain events allegedly occurred. The IACHR finds that the statements made by those who were detained at 11th Precinct were broadly consistent in affirming that there were people who were tortured inside the precinct, and that those testimonies that affirmed that there was no evidence of mistreatment were provided by police officers assigned to the unit or whose involvement was as personnel who had some type of contact with the detainees. The Commission also notes that said court dismissed the evidence regarding the list of persons for whom an arrest warrant was issued under the state of emergency because it considered that it "ha[d] nothing to do with the existence of the act being tried."

75. Furthermore, the Commission observes with regard to the victimology report of the Victim Assistance Department of the Public Prosecution Service, the court noted that the document was only partially legible, "so it is impossible for the court to evaluate it positively, although it is true that a conclusion regarding Jorge López contained in it finds that he has difficulty accepting his discharge from the police and it makes no reference to the supposed physical duress that is under examination," and considered that the findings of the report were not supported by technical and scientific methodology. In this regard, it is striking that, if the document was only partially legible, the court did not order a better copy of it, given its evidentiary significance.

76. Based on the foregoing, the Commission considers it appropriate to give evidentiary weight to the above-mentioned evidence, taking into account that the beatings and mistreatment were intended to pressure the alleged victim to testify to the involvement of persons in an attempted coup d'état, and that he was even threatened with involving his wife in the criminal proceedings against him. Accordingly, the Commission considers that the requirements for establishing that torture was indeed carried out have been met. At the same time, as mentioned, the State has not yet concluded an investigation, and a final decision has not yet been rendered on the criminal proceeding that refutes the allegations and evidence of events that occurred while Mr. López was in its custody.

77. In similar fashion, the Inter-American Court, having established a failure of diligence in the investigation of indications of state participation, has found it:

⁹⁵ See, for example, statements by Juan Ecurra Monzón, Prospero Arevalos López, Higinio Pérez Benitez, Emilio López, Rafael Sosa, and Lorenzo Genes.

⁹⁶ Statements by Diosnel Ferreira.

⁹⁷ State's observations brief of September 11, 2008, p. 2.

... reasonable to assess as evidence the indications contained in the case file ... that point to the involvement of state agents in these events, particularly those handled by the very state agencies that were in charge of the investigation which have not been disproven by the State. Reaching any other conclusion would entail allowing the State to resort to its own negligence or inefficacy [in] the criminal investigation to release itself from responsibility for the violation of Article 4(1) of the Convention.⁹⁸

78. Likewise, the Court has reiterated that failure to investigate alleged violations committed against someone when there are suggestions of involvement of state agents “prevents the State from presenting a satisfactory and convincing explanation of the [facts] alleged, and disproves the arguments concerning its responsibility, with adequate probative elements.”⁹⁹ The Court has considered such failure to clarify the facts as a factor to be born in mind in accrediting alleged violations and the attendant international and responsibility.¹⁰⁰

79. By virtue of the foregoing, the Commission considers that the State violated the right to humane treatment established in Articles 5(1) and 5(2) of the American Convention in relation to Article 1(1) of the same instrument, to the detriment of Jorge Lopez Sosa. The State also violated to his detriment Articles 1 and 6 of the Inter-American Convention to Prevent and Punish Torture.

C. Rights to a fair trial and judicial protection and duty to investigate and punish acts of torture

80. The Inter-American Court has found that the State has an obligation to provide effective judicial remedies to persons who claim to be victims of human rights violations (Article 25 of the Convention), remedies that must be substantiated in accordance with the rules of due process of law (Article 8(1) of the Convention), the foregoing in keeping with the general obligation to ensure the free and full exercise of the rights recognized by the Convention to all persons subject to their jurisdiction (Article 1(1) of the Convention). Thus, it has maintained that, “the right of the alleged victims or their relatives to know the truth about what happened and that those responsible be punished must be ensured within a reasonable time (...) Consequently, the State has a duty to investigate the facts, which is one of means, not results, that must be assumed by the State as its own legal duty and be undertaken in a serious manner and not as a mere formality preordained to be ineffective, or simply as a step taken by private interests that depends upon the initiative of the victim or his family or upon their offer of proof.”¹⁰¹

81. In particular, in the light of the general obligation 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 in violation of Article 5 of the American Convention.”¹⁰² Therefore, “as soon as the State authorities become aware of an act that could amount to torture, they must initiate, ‘ex officio and without delay, a serious, impartial, and effective investigation’ by all lawful means available in order to determine the truth and to ensure the pursuit, capture, trial, and eventual punishment, where applicable, of all the architects and material perpetrators of the deeds, especially when State agents are or may be involved.”¹⁰³

82. As mentioned in the previous section, the duty to investigate provided for in the American Convention is reinforced by the provisions of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. According to Article 8 of that instrument, “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

⁹⁸ 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. 97.

⁹⁹ 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, par. 353.

¹⁰⁰ 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, par. 354.

¹⁰¹ I/A Court H.R., Case of Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations and Costs, Judgment of September 2, 2015, par. 75.

¹⁰² I/A Court H.R., Case of Gutiérrez Soler v. Colombia, Judgment of September 12, 2005, Series C. No. 132, par. 54.

¹⁰³ I/A Court H.R., Case of Omar Humberto Maldonado Vargas et al. v. Chile, Merits, Reparations and Costs, Judgment of September 2, 2015, par. 76.

examination of his case. Likewise, if there is an accusation or well-founded 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 proceedings. Thus, on several occasions the Court has considered that when there is a failure to investigate alleged acts of torture, that also entails a breach of those articles of the IACPPT."¹⁰⁴

83. The Inter-American Court has held that the Convention against Torture envisages two situations that activate the State's duty to investigate: "on the one hand, whenever an accusation is filed and, on the other hand, whenever there is a well-grounded reason to believe that an act of torture has been committed within State jurisdiction. In these situations, the decision to initiate and conduct an investigation is not up to the State to make, that is to say, it is not a discretionary power; instead, this duty to investigate constitutes an imperative obligation of the State that derives from international law and cannot be disregarded or conditioned by domestic acts or legal provisions of any nature."¹⁰⁵

84. Additionally, the Court has considered that in the investigation of torture, the procedures must "be conducted in accordance with international standards for documentation and for the construction of forensic evidence proving the commission of torture acts, ... and especially with those in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ("the Istanbul Protocol").¹⁰⁶ In this regard the UN Committee against Torture has established that in the face of allegations of torture, an examination by an independent medical practitioner is required in all cases. The medical assessment must include: (i) case information; (ii) clinician's qualifications (for judicial testimony); (iii) Statement regarding veracity of testimony (for judicial testimony); (iv) background information; (v) allegations of torture and ill-treatment; (vi) physical symptoms and disabilities; (vii) psychological history/examination; (viii) photographs; (ix) diagnostic test results; (x) consultations; (xi) interpretation of findings; (xii) conclusions and recommendations; (xiii) statement of truthfulness; (n) statement of restrictions on the medical evaluation/investigation; (xiv) clinician's signature, date, place; (xv) relevant annexes.¹⁰⁷

85. Finally, the Court has established that "the reasonableness of the period of time mentioned in Article 8.1 of the Convention must be assessed in relation to the total time demanded by criminal proceedings. This time period runs from the first procedural act addressed to a specific person allegedly responsible for a given offense, until final and non-appealable judgment is rendered."¹⁰⁸ In order to examine reasonableness of time in a criminal proceeding, the Commission notes that a case-by-case analysis must be made in light of the particular circumstances of the case and, in accordance with Article 8(1) of the Convention, consideration must be given to four elements: (i) the complexity of the case; (ii) the procedural activity of the interested party; (iii) the conduct of the judicial authorities; and (iv) the effects that the delay in the proceeding may have on the legal situation of the victim.¹⁰⁹

86. In the present case, according to the available information, the Commission has established that the alleged victim did not have a medical evaluation near the date that the torture occurred. According to the information available, it was eight days later that Mr. Jorge López was reportedly visited by a doctor and a judge, to whom he reported that he had been tortured. The Commission does not have available to it the medical assessment that was carried out on that occasion. However, it notes with concern that, according to the alleged victim's statement, he was transferred to the "cuadrilátero" as punishment and allegedly offered money to withdraw

¹⁰⁴ I/A Court H.R., Case of Ruiz Fuentes et al. v. Guatemala, Preliminary Objection, Merits, Reparations and Costs, Judgment of October 10, 2019, Series C. No. 385, par. 173.

¹⁰⁵ Case of Vélez Loor v. Panama, Preliminary Objections, Merits, Reparations, and Costs, Judgment of November 23, 2010, par. 240.

¹⁰⁶ I/A Court H.R., Case of Gutiérrez Soler v. Colombia, Judgment of September 12, 2005, Series C. No. 132, par. 100.

¹⁰⁷ See Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment "Istanbul Protocol," Office of the United Nations High Commissioner for Human Rights, United Nations, New York and Geneva, 2001.

¹⁰⁸ I/A Court H.R., Case of Bayarri v. Argentina, Judgment of October 30, 2008, Series C No. 187, párr. 107; Baldeón García Case v. Peru, Merits, Reparations and Costs, Judgment of April 6, 2006, Series C. No. 147, par. 150; and Case of Genie Lacayo v. Nicaragua, Judgment of January 29, 1997, par. 77.

¹⁰⁹ I/A Court H.R., Case of Valle Jaramillo v. Colombia, Merits, Reparations and Costs, Judgment of November 27, 2008, Series C. No. 192, par. 155.

his complaint. There is no information that the above-mentioned evaluation took into account the parameters explained above (supra par. 83). Although the Commission understands that the alleged victim subsequently underwent a victimological diagnosis, which confirmed the occurrence of torture, there is no detailed information to show that it met all the aforementioned requirements.

87. The Commission notes that the oral trial reportedly did not begin until August 20, 2019; that is, 19 years after criminal proceedings for torture were instituted. A judgment was returned on December 30, 2019, acquitting the defendants. The Commission notes that the ruling was supposedly based on a lack of scientific evidence that offered certainty that the alleged victims had been physically tortured, and it argued that there was reasonable doubt as to the existence of the illicit act, given the contradictory testimonies in the case, and that the combined evidence was "unsuitable and insufficient to find the accused guilty (...) of an alleged act of torture."

88. The IACHR also notes that, according to what the State mentioned in its communication of November 13, 2020, appeals are pending with respect to the aforementioned judgment, in particular that filed by the Public Prosecution Service. In that regard, the IACHR finds it particularly troubling that 20 years after the events there is no final decision on the alleged torture.

89. In addition, the Commission observes that although the judgment states that some witnesses said that they were tortured, the court considered that "they were not included by the Public Prosecution Service in the indictment as victims of the act, so the court could scarcely convict the accused (...), for the acts that they have mentioned." In that respect, the IACHR observes that, in spite of the fact that the court was apparently informed of crimes of torture by witnesses, there is nothing to suggest that it ordered any further investigation in that regard, so that the findings of such inquiries might help to establish responsibility in this case.

90. In these circumstances, which reflect shortcomings in the investigation into the torture of the alleged victim, the Commission also notes that the investigation has taken an unreasonably long time, as will be analyzed below.

91. As for the complexity of the case, the IACHR finds nothing in the record to suggest that the investigations were particularly complex, since the facts refer to a specific person, and the perpetrators are clear subjects for investigation in clearly determined circumstances in terms of place, space, and time. The IACHR recalls that the State did not present any observations on merits in this matter, and with respect to its comments on admissibility it merely noted, with respect to the delay in the criminal proceedings, that the holdups were due to "apparent malicious practice by the defendants' defense counsels, relying on a criminal system still lacking in infrastructure and relatively new." In this regard, it indicated that there was no apparent likelihood of further dilatory interference in the process, given the change in the political context in Paraguay, and that it was committed to ensuring that the process was conducted with unrestricted respect for the procedural deadlines provided by domestic law. The Commission is not aware of subsequent complex proceedings which have been taken into account to determine the criminal responsibility of the accused persons. The State has not presented any arguments or evidence to that effect. The section on proven facts refers to various proceedings concerning incidental motions and remedies invoked by the defendants. Indeed, according to the information available, in 2018, the judge in the case reportedly sanctioned Walter Bower as a "bad faith litigant for 17 years."

92. As for the procedural activity of the interested party, as the State itself mentioned, the delays evidently had to do with the "malicious" action of the defense of the accused. The record appears to show that the alleged victim participated in the process and identifies no actions on his part that would have delayed the case.

93. With respect to the conduct of the domestic authorities, the Commission notes that in the instant case the State did not explain or provide specific evidence to demonstrate that the judicial authorities acted with the necessary diligence to ensure a timely and diligent decision. The IACHR notes that, anticipating the "demise" of the case, on September 8, 2003, the Public Prosecution Service filed an objection challenging the constitutionality of certain articles of the Code of Civil Procedure and the Code of Criminal Procedure that the defense of the accused persons sought to use to justify extinction of the criminal action. Likewise, the record

shows that it was not until May 5, 2008, that the Supreme Court ruled on the objection challenging constitutionality, ruling certain provisions of the Code of Criminal Procedure inapplicable. Thus, the Supreme Court took almost five years to settle the objection, which was precisely intended to prevent the extinguishment of the process. In addition, the IACHR notes that, according to the judgment of the Supreme Court, the case had been on "writ for judgment" since December 18, 2003, and the Public Prosecution Service filed three requests for prompt resolution in 2006 and one in 2007.

94. It should be added that, according to the evidence, a co-plaintiff challenged Dr. Víctor Núñez "with cause," asserting that the case file was "kept" in his office from April 5, 2004, until September 2006, that is, for a period of two years, despite the fact that the relevant "requests for urgency" had been presented. Likewise, after the case file was transferred to another justice, the co-plaintiff reported its disappearance; it reportedly reappeared on March 7, 2007. The IACHR also notes that on May 23, 2007, the challenged justice recused himself from the case and that between May and July 2007, four justices recused themselves from examining the case, until August 7, 2007, when a justice agreed to join the Constitutional Division.¹¹⁰ In this sense, it does not appear that the State has demonstrated that the judicial authorities acted diligently; on the contrary, according to the record, the authorities were apparently responsible for delaying the process.

95. With respect to the fourth element, the IACHR considers that the fact that the proceedings lasted nearly 20 years before a judgment at first instance was reached resulted in a denial of access to justice to the detriment of Mr. López.

96. In addition, the State itself acknowledged that proceedings were lengthened due to malicious practice on the part of defense counsels of the accused, "relying on a criminal system still lacking in infrastructure and relatively new." In conclusion, the IACHR considers that the criminal proceeding in relation to the alleged torture of Mr. López took an unduly long period of time that has not been justified by the State.

97. Based on the foregoing, the Commission considers that the investigation has not been carried out diligently and within a reasonable time. Consequently, the Commission concludes that the State also violated to his detriment Articles 8(1) and 25(1) of the American Convention in relation to Article 1(1) of the same instrument. Furthermore, taking into account that the Inter-American Convention to Prevent and Punish Torture entered into force in Paraguay on March 9, 1990, Commission notes that, according to the case law of the Inter-American Court, from that date forward the obligations contained in that treaty were enforceable for the State.¹¹¹ Accordingly, the Commission finds that the failure to take effective steps to prevent and punish torture 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.

V. CONCLUSIONS AND RECOMMENDATIONS

98. The Commission concludes that the State is responsible for violation of the rights to humane treatment, personal liberty, a fair trial, and judicial protection established in Articles 5(1), 5(2), 7(1), 7(2), 7(4), 7(5), 8(1), and 25(1) of the American Convention on Human Rights in relation to Articles 1(1) and 2 of the same instrument, to the detriment of Jorge López Sosa. Likewise, the Commission concludes that the State is responsible for violation of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

99. Based on the foregoing arguments of fact and law,

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS, RECOMMENDS THAT THE STATE OF PARAGUAY:

1. Provide full reparation for the human rights violations found in the instant report that covers both material and nonpecuniary dimensions. The State should adopt measures of economic compensation and satisfaction.

¹¹⁰ Annex 7, Decision and Judgment No. 195 of May 5, 2008. Enclosed with the State's communication of August 27, 2008.

¹¹¹ 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, par. 159.

2. Arrange the physical and mental health care necessary for the rehabilitation of Jorge López Sosa, should he so wish and in coordination with him.
3. Continue ex officio the criminal investigation in a diligent and effective manner within a reasonable time in order to clarify the acts of torture reported by Jorge López Sosa, identify all those who bear possible responsibility, and impose the appropriate penalties for the human rights violations declared in this report.
4. Adopt the necessary measures to prevent the recurrence of such events in the future and, specifically, ensure that the prohibition of acts of torture and cruel, inhuman, or degrading treatment in accordance with inter-American standards is established as a study component in training programs for law enforcement, judges, and prosecutors. Also, that the parameters set out in the Istanbul Protocol be observed in the practice of examinations in relation to possible acts of torture.