

**REPORT N° 84/08**  
PETITION 40-2003  
ADMISSIBILITY  
BLAS VALENCIA CAMPOS ET AL.  
BOLIVIA  
October 30, 2008

**I. SUMMARY**

1. On January 8, 2003, the Inter-American Commission on Human Rights (hereinafter also "the Inter-American Commission," "the Commission," or "the IACHR") received a petition from Mr. Arturo Rodríguez Tapia (hereinafter also "the petitioner") on behalf of 26 persons<sup>1</sup> (hereinafter also "the alleged victims"), in which the Republic of Bolivia (hereinafter also "Bolivia," "the State," or "the Bolivian State") is alleged to have violated the rights enshrined in the American Convention on Human Rights<sup>2</sup> (hereinafter also "the American Convention," "the Convention," or the "ACHR"), the rights protected in Articles 3, 4, 5, 6, and 10 of the Inter-American Convention to Prevent and Punish Torture, and the rights enshrined in Articles 2, 3, 4, and 7 a) and b) of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (hereinafter also "the Convention of Belém do Pará"). The petitioner indicated that in the early morning hours of December 18, 2001, a police operation was carried out involving violent raids on the residences of the alleged victims, who were savagely beaten after having been subjugated and handcuffed. He stated that the alleged victims included some children, and that women were also beaten and forced to strip naked on several occasions, and that several of them were victims of sexual violence on the part of policemen. The petitioner added that the acts of torture continued at Judicial Technical Police stations, where those arrested were held in solitary confinement for three months and were forced to incriminate themselves without due guarantees. In terms of domestic remedies, the petitioner stated that the alleged victims were unable to exhaust judicial remedies due to threats by police officers and due to being held in solitary confinement for three months.

2. For its part, the State of Bolivia argued that the alleged victims are part of an organized criminal group and that the use of force in their capture was reasonable and necessary, and had to do with the high degree of danger posed by those who were arrested. The State also stressed that the defendants' judicial guarantees were respected throughout the criminal proceedings and that currently the individuals are serving their sentences. In terms of admissibility requirements, the State contended that domestic remedies were not exhausted, because when the petition was filed the criminal proceedings still had not yet culminated; moreover, the alleged acts of torture had not been reported in a timely manner and no appeal had been filed for extraordinary review of the final judgment.

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<sup>1</sup>Blas Valencia Campos; Norma Lupe Alarcón de Valencia; Mercedes Valencia Chuquimia; Mauricio Valenzuela Valencia (age 15); Álvaro Taboada Valencia; Claudia Valencia Alarcón; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; María Fernanda Peña Gallardo (deceased); Freddy Cáceres Castro; Oswaldo Lulleman Antezana; Raúl Oswaldo Lulleman Gutiérrez; Victoria Gutiérrez de Lulleman; Paola Lulleman de Zaconeta; Luís F. Lulleman Gutiérrez; Julia Mamani Mamani; Genaro Ahuacho Luna (Walter Herrera Flores - deceased); Carlos Enrique Castro Ramírez; Alfredo Bazán La Rosas (José Miguel Abildo Díaz); Víctor Manuel Boggiano Bruzon (Juan Ramírez Ortega); Elacio Peña Córdoba; Francis Elida Pimentela Merino; Edwin Rodríguez Alarcón; Gabriel Valencia Alarcón; Alexis Valencia Alarcón (age 12); Claudio Valencia (age 3). The petitioner does not explain the reason for the double identity of five of the alleged victims. The annexes provided by the State also show double identities for some of the alleged victims. It was not possible to determine which of the identities was real. The Commission will analyze the admissibility of the petition with regard to 26 persons, including the three that both the petitioners and the State have identified with two names.

<sup>2</sup> The petitioner does not specify the articles of the American Convention he considers to have been violated.

3. After examining the available information in light of the admissibility requirements established in Articles 46 and 47 of the American Convention, the Commission concluded that it has competence to hear the claim and that the petition is admissible due to the alleged violation of rights protected in Articles 4, 5, 7, 11, 19, 8, and 25 of the American Convention, in conjunction with the obligations established in Article 1.1. The Commission likewise concluded that the petition is admissible due to the alleged violation of Article 7 of the Convention of Belém do Pará and Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture. Accordingly, the Commission decided to notify the parties, publish this Report on Admissibility, and include it in its Annual Report.

## **II. PROCEEDINGS BEFORE THE COMMISSION**

4. On January 8, 2003, the Commission received the initial petition, which was registered as No. P-40-03.

5. On July 10, 2006, the relevant parts of the petition were conveyed to the State of Bolivia, with a request for a response within two months.

6. On October 26, 2006, the Bolivian State requested an extension for presenting its comments. On December 27, 2006, the Commission granted the State a one-month extension.

7. On February 15, 2007, the State of Bolivia requested a new, two-month extension and a copy of the video provided by the petitioner along with the complaint. On February 20, 2007, the Commission granted the State a one-month extension.

8. On March 20, 2007, the State of Bolivia reiterated its request for a copy of the video provided by the petitioner and asked for another two-month extension dating from the receipt of the video.

9. On March 23, 2007, the Commission sent the State a copy of the requested video and asked that it present its comments within one month.

10. On May 16, 2007, the State presented its comments on the petition and asked the Commission not to inform the petitioner about its response until the State could provide "greater back-up to supplement its position in this case." Bolivia asked for an additional month in which to do that.

11. On October 16, 2007, the State of Bolivia presented supplementary information.

12. On October 18, 2007, the Commission sent the relevant parts of the State's response to the petitioner, requesting that he present any pertinent observations within one month. On November 13, 2007, the Commission sent the petitioner additional information provided by the State.

## **III. POSITIONS OF THE PARTIES**

### **A. Position of the Petitioner**

13. The petition was presented on behalf of 26 persons: Blas Valencia Campos; Norma Lupe Alarcón de Valencia; Mercedes Valencia Chuquimia; Mauricio Valenzuela Valencia (age 15 at the time of the incidents); Álvaro Taboada Valencia; Claudia Valencia Alarcón; Carlos Eladio Cruz Añez; Patricia Catalina Gallardo Ardúz; María Fernanda Peña Gallardo (deceased); Freddy Cáceres Castro; Oswaldo Lulleman Antezana; Raúl Oswaldo Lulleman Gutiérrez; Victoria Gutiérrez de

Lulleman; Paola Lulleman de Zaconeta; Luis F. Lulleman Gutiérrez; Julia Mamani Mamani; Genaro Ahuacho Luna (Walter Herrera Flores - deceased); Carlos Enrique Castro Ramírez; Alfredo Bazán La Rosas (José Miguel Abildo Díaz); Víctor Manuel Boggiano Bruzon (Juan Ramírez Ortega); Elacio Peña Córdoba; Francis Elida Pimentela Merino; Edwin Rodríguez Alarcón; Gabriel Valencia Alarcón; Alexis Valencia Alarcón (age 12 at the time of the incidents); Claudio Valencia (age 3 at the time).

14. The petitioner stated that following the illegal nighttime raids on their homes, the alleged victims were arrested on December 18, 2001, as part of an investigation being carried out by the Judicial Technical Police in connection with a robbery four days earlier of PROSEGUR, a n armored truck, which resulted in the deaths of three persons and the loss of the money.

15. The petitioner specified that at 3 a.m. on December 18, 2001, more than 80 heavily armed police agents raided the home of Mr. Blas Valencia Campos, where he lived with his wife, his four children, and his grandson. According to the petitioner's account, within the span of about four hours, the police agents:

- Broke down doors and searched every room with no respect for the fact that some of the persons found there were children, even pointing a gun at a 3-year-old child.
- Cruelly beat all those who were present, who were handcuffed, their faces covered, and placed face-down on the floor.
- Struck the already subjugated and handcuffed individuals in the head with their guns until they lost consciousness, kicked them in the face, and delivered blows to their genital organs until they vomited blood, threatening that if they didn't talk they were "going to kill" them.
- While some policemen administered the beatings, others set about robbing their belongings, taking \$150,000 in U.S. currency and 38,000 *bolívianos*, which allegedly belonged to the Valencia Alarcón family. They also stole jewelry, clothing, electrical appliances, and computers.
- The women's vaginas were penetrated with fingers and guns, and the women were forced to strip naked.
- Alexis Valencia Alarcón, a minor, was held for several hours, beaten, and forced to denounce and incriminate his parents, Blas Valencia Campos and Norma Alarcón de Valencia. He was also driven through various parts of the city and forced to report the houses in which the others implicated in the robbery could be found.

16. The petitioner stated that on that same night of December 18, 2001, in the residence of the Peruvian citizens Víctor Manuel Boggiano Bruzon (Juan Ramírez Ortega), Genaro Ahuacho Luna (Walter Herrera Flores), Alfredo Bazán y Rosas (José Miguel Abildo Díaz), Mercedes Valencia Chuquimia, and the 15-year-old minor Mauricio Valenzuela Valencia, the police "opened fire" with heavy-caliber weapons and captured the aforesaid persons, who were placed face-down and beaten cruelly and inhumanely. The petitioner indicated that as a result of the foregoing, three months later Mr. Genaro Ahuacho Luna (Walter Herrera Flores) was taken from the Chonchocoro prison for emergency attention at a medical center in the city of El Alto, where he died from blows received to the head.

17. The petitioner continued that in the family home of two of those arrested, Oswaldo and Raúl Lulleman, the latter's toenails were pulled out, which meant that he would be unable to attend any of the hearings in person to defend himself. According to the petitioner, Mr. Raúl Lulleman was held in solitary confinement at other police stations; meanwhile, his younger brother Luis Lulleman Gutiérrez was presented as a substitute at the hearing on precautionary measures. The brother was freed after that hearing, and the real Raúl Lulleman continued to be prosecuted. The petitioner indicated that the night of the raid, the daughters of Mr. Oswaldo Lulleman were beaten, as well as the cleaning staff.

18. The petitioner added that at the home of Francis Pimentela Merino, Eladio Cruz Añez, and Carlos Enrique Castro, the police burst in violently that same night, "cruelly torturing" Mr. Eladio Cruz, breaking his feet, suffocating him with a plastic bag that contained gas, kicking him everywhere, and hitting him with the butts of their rifles. He noted that Mrs. Pimentela was beaten so severely that it caused her to lose her pregnancy at three months' gestation. The petitioner identified the person responsible for this as the Judicial Technical Police investigator Captain Gary Sánchez.

19. The petitioner indicated that all those arrested were taken to Judicial Technical Police stations, where they were again beaten brutally so that they would confess to their participation in the aforementioned robbery. According to the petitioner's account, the women were undressed in front of police and prosecutors, and Mrs. Norma Alarcón de Valencia was beaten by a Deputy Commander of the Judicial Technical Police, who broke her nose, struck her with a gun, and broke two of her ribs, "as the police and prosecutors looked on attentively."

20. He stated that at the offices of the Judicial Technical Police, those arrested were stripped naked and body-searched four times a day with "dirty objects and sweaty hands," while the women had sticks and dirty fingers introduced into their vaginas. The petitioner indicated that those arrested continued to be beaten and forced to sleep on the cold floor, for the purpose of getting them to incriminate themselves and not report the theft of their belongings. According to various press accounts attached by the petitioner, those arrested were held in solitary confinement for three months.

21. The petitioner indicated that the events described were videotaped by the Intelligence Department of the National Police, which went along on the raids, and that months before the complaint was presented, the video had been broadcast by various media. He also noted that the acts of torture against the alleged victims were documented by various print media.

22. According to the petitioner, those arrested were incriminated through evidence obtained under torture. He specified that on the day of the robbery, Mr. Elacio Peña Córdoba was hit by a bullet and after being arrested was taken to installations of the Judicial Technical Police; there his wound, which had been stitched, was opened up again with a pen by the same policemen. After reopening the wound, they poured hot sauce and salt in it, getting him to incriminate himself and the others who were being detained.

23. The petitioner indicated that the abuses of the alleged victims in fact got them to incriminate themselves with regard to the events of December 14, 2001. In the words of the petitioner, "we fathers incriminated our children, children their parents, Peruvians [incriminated] Bolivians, Bolivians Peruvians, husbands wives, wives husbands, minors adults, adults minors...we were forced to change our names and recognize firearms as though they were ours."

24. He added that the alleged victims had to give statements to the Office of the Prosecutor without having attorneys of their own choosing present, but only public defenders which in their estimation had the role more of accusers than of defenders. Specifically, he indicated that the attorney for the Blas Valencia family is facing judgment in the court of honor of the College of Attorneys for the Judicial District of the city of La Paz "for taking part in illegal acts of fraudulent incrimination."

25. The petitioner contended that the facts of the current case constituted a violation of the American Convention<sup>3</sup>, of the rights protected in Articles 3, 4, 5, 6, and 10 of the Inter-

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<sup>3</sup> The petitioner did not specify which provisions.

American Convention to Prevent and Punish Torture, and articles 3, 4, and 7 a) and b) of the Convention of Belém do Pará.

26. In terms of domestic remedies, the petitioner contended that the alleged victims first filed complaints with the Office of the *Ombudsman*. He added that “the impossibility of initiating judicial procedures stems from the constant threats by the police aggressors, who have systematically been able to impede any attempts to bring legal actions.” According to the petitioner, from the time of their arrest—on December 18, 2001—the alleged victims were “placed in isolation cells and held incommunicado for three months,” which made it impossible for them to file the corresponding complaints.

#### **B. Position of the State**

27. The State indicated that on December 14, 2001, there was an assault on a delivery truck of PROSEGUR, an armored truck, which resulted in the death of three persons and the robbery of the money being transported in the vehicle. It stated that a preliminary investigation of the facts found that the criminal organization involved “two police chiefs and criminals of Peruvian nationality, Col. Blas Valencia Campos, Maj. Freddy Cáceres Castro, and Patricia Gallardo.”

28. The State recounted that an operation leading to the capture of the criminal organization took place on December 18, 2001, involving different units of the police, including the Rapid Response Team, the Technical Judicial Police, Radio Patrol 110, firefighters, and prosecutors. It specified that the operation consisted of raids ordered by the Eighth Criminal Trial Judge and that during these raids “necessary and reasonable force is used, taking into account that this involved a very dangerous criminal organization that had committed several crimes of murder and aggravated robbery.”

29. The State noted that on March 14, 2002, a hearing was held on precautionary measures in which the justification for preventive detention was determined, given the danger of flight and of obstruction of the process. It added that in June 2002, the Public Ministry filed charges for the crimes of aggravated robbery, murder, and others against Blas Valencia Campos, Norma Alarcón de Valencia, Claudia Valencia, Mercedes Valencia, Patricia Gallardo, Francis Elida Pimentela, Carlos Eladio Cruz Añez, Raúl Lulleman Gutiérrez, Oswaldo Lulleman Antezana, Freddy Cáceres Castro, Leonel Eber Delgadillo, Elasio Peña Córdova, Carlos Enrique Castro, Alfredo Bazán y Rosas, Víctor Manuel Boggiano Bruzon and the declared fugitives Miguel Aguilar, Angel León Arévalo, and Camilo Reguera Isuiza.

30. The State indicated that after various excuses and challenges put forth by the alleged victims, the criminal proceedings were held in the Second Tribunal for the city of El Alto, which on May 16, 2003, handed down a conviction. It stated that this judgment was appealed by the alleged victims, a legal action decided by the Criminal Division of the Superior District Court, which upheld the conviction. It added that this decision was appealed through a motion for cassation, which was declared inadmissible by the Supreme Court of Justice, rendering the judgment final. It indicated that those convicted are currently serving their sentences.

31. The State emphasized that the rights guaranteed in Article 8 of the American Convention were respected in the criminal proceedings against the alleged victims, as their statements were received in the presence of their attorneys, both their private attorneys and those provided by the Bolivian Public Defender’s Office. It indicated that the alleged victims were tried in accordance with the criminal procedures established in the country, by independent, regular, technical tribunals previously established by law, in full compliance with the American Convention.

32. The State added that in the course of the oral proceedings, many of the defendants made use of their right to silence, a procedural guarantee that was respected. It indicated that in the course of the proceedings, no "illegal or hearsay" evidence was presented, as is evident in the most important procedural records in the file, to wit: informational statements by the defendants; records of the defendants' hearing on precautionary measures; the indictment by the Public Ministry; records of the oral, public proceedings; the conviction issued by the Second Sentencing Court; the records of the limited-appeal hearing, the decision to hear the appeal, and the ruling on the appeal.

33. The State noted that while the Bolivian Code of Criminal Procedures, in its Article 13, establishes that evidence obtained under torture, mistreatment, coercion, threats, deceit, or violation of individuals' fundamental rights has no legal value, "the spirit of this law clearly intends that in the case of torture, this would have to have a direct bearing on the legal value of the evidence or the information obtained through torture."

34. The State specified that to put that into effect, Article 172 of the same law establishes "evidentiary exclusion" as an ideal mechanism by which to exclude evidence obtained under torture from the process and take away its legal value. The State emphasized that the alleged victims did not use this legal mechanism. The State stressed that the video in which the arrest operation supposedly was recorded was neither offered nor used in the oral proceedings.

35. The State provided information on the jurisprudential line of the Bolivian Constitutional Tribunal, under which any violation of rights committed at the time of and during arrest must be reported at the hearing on precautionary measures, which, according to the State, did not occur in this case.

36. The State reiterated that the use of physical force was due to the high degree of danger posed by the criminals and to the fact that they were armed with high-caliber weapons and that the criminal gang was of an international nature with military and police training, that they had killed three persons in the assault, and that they had criminal records.

37. According to the State, the police set in motion several official investigations of an internal nature, and in none of those were there indications of sufficient evidence to involve members of the National Police as perpetrators of torture or abuse. The State stressed that the police who participated in this operation were selected according to their professional profiles and had knowledge and experience in this area. It added that all officials act in accordance with standards of legality, necessity, and proportionality and that in accordance with Law 1178, the lawfulness of operations and activities carried out by any public servant is presumed, unless demonstrated to the contrary.

38. The State indicated that the judgment in the PROSEGUR case ordered that the case history be conveyed to the Public Ministry for the investigation into alleged actions that may have violated human rights, "the venue in which any relevant evidence should have been presented in a timely manner."

39. The State deemed it relevant to recount its international obligations in terms of the fight against organized crime, emphasizing that "the criminal gang led by Blas Valencia and others" is an organized crime group. In the words of the State, "the criminal organization led by former police Colonel Blas Valencia can be considered a structured group that has been formed on a premeditated basis for the immediate commission of planned crimes. Added to this situation is the participation of Peruvian citizens who make up the aforementioned organized group, an aspect which, given the seriousness of the participation in and planning of the crimes, gives them the added connotation of a transnational criminal organization."

40. The Bolivian State informed the Commission about a report by the National Police of Peru, dated January 3, 2002, in which reference is made to the participation of Peruvian citizens in the perpetration of crimes against financial entities in Bolivia. According to the State, it can be inferred from this report that several of the people mentioned in it were the ones who participated in the holdup of PROSEGUR. The State underscored that their actions followed a clearly articulated *modus operandi* consistent with their entry into the country as tourists and their subsequent immediate departures from Bolivia.

41. As to the alleged theft of jewelry, the State indicated that these are currently being held by the judicial authority so they can be used to indemnify and repair the widows of the deceased. It emphasized that the criminal complaint filed by some of the alleged victims regarding this aspect was rejected by the Second Criminal Trial Judge, a rejection subsequently upheld by the Second Sentencing Court of the city of El Alto, on the grounds that ownership rights had not been established.

42. In terms of admissibility requirements, the State indicated that the petition does not meet the requirements established in Article 46.1 a) and that it cannot be deduced from the petitioner's account that there were events characterized by any violation of the rights protected in the American Convention. In the words of the State, Bolivia "has made use of its domestic legislation in the framework of respect for all guarantees of the alleged victims' human rights, there now being a final judgment whose review or annulment does not fall to the IACHR; otherwise this would fall under the fourth-instance doctrine." In conclusion, the State asked the Commission to declare the petition inadmissible.

43. The State argued that the alleged victims did not comply with the requirement to exhaust all domestic remedies, since at the time the petition was presented to the Commission the judicial authority had yet to issue a decision on the domestic proceedings or on the alleged tortures. In this regard, the State noted that the international human rights system has a function that is collaborative and complementary to that offered by States' domestic laws. In the view of Bolivia, the filing of a petition without having a judgment of the first instance and without having denounced the alleged acts of torture is evidence of the inadmissibility of the charge.

44. The State also contended that the alleged victims did not file an appeal for extraordinary review of the final judgment, enshrined in Article 421 of the Code of Criminal Procedures. According to the State, this standard clearly establishes that there is no deadline for filing an appeal; on the contrary, the motion can proceed at any time on behalf of the convicted, and could lead to the sentence being overturned and a new trial being held.

#### **IV. ANALYSIS OF ADMISSIBILITY**

##### **A. Competence**

##### **1. Commission's competence *ratione personae*, *ratione loci*, *ratione temporis*, and *ratione materiae***

45. The petitioner is authorized, under Article 44 of the Convention, to file applications on behalf of the alleged victims. The alleged victims in the case were under the jurisdiction of the State of Bolivia at the time of the reported events. In consequence, the Commission has competence *ratione personae* to examine the case.

46. The Commission has competence *ratione loci* to hear the case, since the petition alleges violations of rights protected under the American Convention that would have taken place within the territory of a State party to that treaty.

47. Moreover, the Commission has competence *ratione temporis*, since the obligation to respect and guarantee the rights protected by the American Convention and by the Convention of Belém do Pará was already in effect for the State at the time the incidents alleged in the petition would have occurred. Specifically, the State of Bolivia ratified the American Convention on July 19, 1979, and the Convention of Belém do Pará on December 5, 1994. In terms of the Inter-American Convention to Prevent and Punish Torture, the Commission notes that the State ratified that treaty on November 21, 2006, that is to say, subsequent to the events alleged in the petition. In that regard, the Commission has competence *ratione temporis* to pass judgment on possible violations of that treaty that would have taken place since the time of the referenced date.

48. Finally, the Commission has competence *ratione materiae* because the petition denounces alleged human rights violations protected by the American Convention. Further, according to Article 12 of the Convention of Belém do Pará, the Commission has jurisdiction to hear individual petitions related to alleged violations of Article 7 of that instrument.

## **B. Exhaustion of Domestic Remedies**

49. Article 46.1a) of the American Convention states that, in order for a petition filed with the Inter-American Commission to be admissible under Article 44 of the Convention, domestic remedies must have been pursued and exhausted, in accordance with generally recognized principles of international law. The purpose of this requirement is to allow national authorities to hear alleged violations of protected rights and, where appropriate, have the opportunity to resolve them before they are heard before an international instance.

50. The requirement of prior exhaustion is applied when the national system has available remedies that are adequate and effective to remedy the alleged violation. In this regard, Article 46.2 specifies that the requirement does not apply when domestic legislation does not afford due process of law for the protection of the right in question; or if the alleged victim did not have access to remedies under domestic law; or if there are unwarranted delays in the deciding those remedies. As indicated in Article 31 of the Commission's Rules of Procedure, when the petitioner alleges one of these exceptions, it is up to the State to demonstrate that domestic remedies have not been exhausted, unless that can clearly be deduced from the case file.

51. The Commission notes that the State has claimed the failure to exhaust domestic remedies, putting forward three arguments: i) that the alleged victims filed the petition when a definitive verdict still did not exist in the criminal procedure being brought against them; ii) that the alleged victims did not file an appeal for extraordinary review of the final judgments; and iii) that the alleged victims did not denounce the purported acts of torture in a timely fashion, nor did they present pertinent evidence in regard to the matter.

52. For his part, the petitioner argued that the alleged victims were unable to denounce the alleged acts of torture for two reasons: i) they were threatened by police authorities to keep them from reporting the abuse against them; and ii) they were held in solitary confinement for three months.

53. In order to determine compliance with the requirement for exhaustion of domestic resources, it is up to the Commission to establish which remedy is relevant for each specific case, understanding such to be the remedy that can address the legal situation that has been infringed. The Commission considers that the principal purpose of the claim filed involves the practice, on the part of police and prosecutors, of allegedly conducting illegal raids on the dwellings of the alleged victims, along with inflicting them with acts of excessive violence, torture, and solitary confinement so they would incriminate themselves. In this respect, in cases in which violations of the right to

humane treatment are alleged, the Inter-American Court and Commission have repeatedly affirmed that the appropriate mechanism to investigate and, where applicable, punish those responsible and repair the victims' relatives where the perpetrators are State agencies is through a criminal investigation, which should be undertaken *ex officio* by the States and carried out with due diligence so that it can be considered effective.<sup>4</sup>

54. In particular, in terms of excessive use of force on the part of State agents,, the Court has stated that:

Whenever the use of force caused the death or injuries to one or more people, the State should give a satisfactory and convincing explanation of the events and rebut the allegations related to its liability, by means of adequate evidence.<sup>5</sup>

55. The Commission notes that the State contended that the alleged victims did not denounce the supposed acts of torture in a timely manner. Moreover, the State indicated that once a first-instance judgment had been issued, on March 16, 2003, the records were sent to the Public Ministry for an investigation into the acts of torture insinuated during the trial by those convicted. The State emphasized that the victims did not provide evidence in this investigation to support their allegations.

56. The Commission notes that since the alleged victims were detained, different State authorities, including the court with jurisdiction over the arrest, knew about the alleged acts of torture that were committed at the time of the arrest and subsequently. In fact, the file shows that various communications media broadcast photos of the alleged victims in which they were obviously battered, as well as reports by the then-*Ombudsman* about the purported use of excessive force in this case and about those arrested being held incommunicado. The file further shows that since the hearing on precautionary measures, held on December 19, 2001, one day after the arrest, the public defenders of several of those arrested denounced the excessive use of force by the police who carried out the arrest. In particular, the defender of Mr. Blas Valencia asked the judge in the case to observe that the alleged victim was battered. The records also show that when one of the defense attorneys tried to denounce acts of torture and other cruel, inhuman, or degrading treatment, the Eighth Criminal Trial Judge interrupted him saying, "I will ask the gentleman attorney that he limit his defense to the matter of the precautionary measures."<sup>6</sup>

57. Moreover, the Commission notes that throughout the process, particularly in the pleadings and evidence presented by several of the defendants during the month of August 2002, as well as in the filing of motions for appeal and cassation in June and September 2003, respectively, the illegal raids were reported, along with illegally obtained evidence, acts of torture, solitary confinement, and other acts that the alleged victims believed violated their right to humane treatment, both at the time of their arrest and subsequently at Judicial Technical Police stations. The evaluation and examination of evidence was also sought with regard to this matter, including

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<sup>4</sup> See, for example: Inter-American Court of Human Rights, *Ximenes Lopes Case*. Judgment of July 4, 2006. Series C, No. 149, par. 148; Inter-American Court of Human Rights, *Baldeón García Case*. Judgment of April 6, 2006. Series C, No. 147, pars. 92 and 93; IACHR, Report No. 14/04, Case 11.568, *Luis Antonio Galindo Cárdenas v. Peru*, February 27, 2004, par. 41; IACHR, Report No. 24/04, Petition 723/01, *Tirso Román Valenzuela Avila v. Guatemala*, February 26, 2004, pars. 30 and 31; IACHR, Case No. 11.509, Manuel Manríquez, Mexico. Report No. 2/99 of February 23, 1999, par. 58.

<sup>5</sup> Inter-American Court of Human Rights. *Montero Aranguren et al. Case*. Judgment of July 5, 2006. Series C, No. 150, par. 80.

<sup>6</sup> Annex provided by the State on May 16, 2007. "Records of statements of the accused—Prosegur Case— Volumes 1 and 2."

statements by forensic physicians of the District Superior Court, as well as videos and photographs.<sup>7</sup>

58. Notwithstanding the above, in the matter alleged by the State it was not until May 2003—through the conviction handed down in the court of first instance—that a criminal investigation was ordered into the purported suggestions of torture. Based on the information available, this investigation has produced no results because, in the words of the State, the alleged victims did not provide evidence in a timely manner.

59. The Commission reiterates that in cases in which there is an indication or reasonable grounds to believe that acts of torture or other cruel, inhuman, or degrading treatment or punishment have been committed, it is up to the State to undertake an official criminal investigation, without being able to excuse itself based on the victims' lack of diligence in providing the relevant proof.

60. In this context, the Commission concludes that the fact that almost seven years have passed since the events took place—with the State having made no progress in the investigation toward verifying the legality, necessity, and proportionality of the use of force in this case and determining the possible occurrence of acts of torture, having had knowledge through various media outlets of what happened—constitutes an unjustified delay under Article 46.2 c) of the American Convention.

61. In terms of the purported violations of due process alleged by the petitioner, although the State contended that at the time the petition was filed—January 8, 2003—criminal proceedings against the alleged victims were still underway, throughout the proceedings these circumstances were changing. The accused were convicted and the motions they filed for appeal and cassation were declared inadmissible; accordingly, they are still serving the sentences that were imposed. The Commission believes it is pertinent to reiterate that in situations in which the facts evolve throughout the admissibility process, the analysis of compliance with the respective requirements should be done based on the situation in effect at the time of the declaration of admissibility.<sup>8</sup>

62. In this regard, the Commission notes that the alleged victims pursued all remedies available to them—given that during the first stages of the process they were held incommunicado and unable to file legal actions—including those of appeal and cassation, presenting allegations of procedural irregularities and the fact that the charges were based on illegally obtained evidence. All these remedies were rejected, which meant that after the petition was presented, the conviction would remain final. In these circumstances, the Commission considers that the alleged victims were not required to have filed an appeal of the final criminal judgment, which is of an extraordinary nature and which in any case would have been based on the same claims that had already been presented unsuccessfully through ordinary appeals.

### **C. Deadline for Filing the Petition**

63. Article 46.1 b) of the Convention establishes that for the petition to be declared admissible, it must have been filed within six calendar months dating from the time the interested

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<sup>7</sup> Annex provided by the State on May 16, 2007. "Records of statements of the accused—Prosegur Case— Volumes 1 and 2."

<sup>8</sup> Inter-American Commission, Report No. 20/05. Case 714/00 (*Rafael Correa Díaz*), February 25, 2005, Peru. Par. 32; Inter-American Commission, Report No. 25/04, Case 12.361 (*Ana Victoria Sánchez Villalobos et al.*), March 11, 2004, Costa Rica. Par. 45; Inter-American Commission, Report No. 52/00. Cases 11830 and 12038 (*Dismissed Workers of Congress*), June 15, 2000, Peru. Par. 21.

party was notified of the final decision exhausting domestic jurisdiction. This rule does not apply when the Commission finds one of the exceptions to the exhaustion of domestic remedies protected in Article 46.2 of the Convention. In such cases, the Commission must determine whether the petition was filed within a reasonable time frame, in accordance with Article 32 of its Rules of Procedure.

64. Taking into account that the petition was filed on January 8, 2003, and that the events it alleges occurred beginning on December 18, 2001—a lapse of time in which these events were reported on various occasions, with the expectation that the State would undertake an investigation—the Commission considers that the case was presented within a reasonable time frame.

#### **D. Duplication of Procedures and *Res Iudicata***

65. Article 46.1 c) of the Convention states that the admission of petitions is subject to the matter “not pending in another international proceeding for settlement,” and Article 47 of the Convention prescribes that the Commission will not admit a petition or communication that is substantially the same as one previously studied by the Commission or by another international organization. In this case, the parties have not argued that either of these two circumstances of inadmissibility exists, nor can this be deduced from the file.

#### **E. Characterization of the Alleged Events**

66. For admissibility purposes, the Commission must decide whether the petition lays out facts that could constitute a violation, as prescribed in Article 47.b of the American Convention, or if it is “manifestly groundless or obviously out of order,” according to paragraph c) of the same article. The standard for assessing these extremes differs from that used to decide the merits of a case. The Commission must conduct a *prima facie* evaluation to examine whether the petition lays the foundation of an apparent or potential violation of a right guaranteed by the Convention, not to establish that a violation exists. This examination is a summary analysis that does not imply prejudice or an advance opinion on the merits.

67. The Commission notes in the first place that the petitioner alleged the purported violation of Articles 4, 5, 6, and 10 of the Inter-American Convention to Prevent and Punish Torture, and of the rights protected in Articles 2, 3, 4, and 7 a) and b) of the Convention of Belém do Pará, without expressly alleging provisions of the American Convention. In this regard and by virtue of the principle of *iura novit curia*, this analysis will incorporate the applicable articles of the American Convention, in addition to the articles alleged by the petitioner over which the CIDH has jurisdiction.

68. The Commission believes that if the events related to the following are true—i) the illegal raid on the residence of the alleged victims; ii) their capture through allegedly excessive use of force, including measures affecting children; iii) the subsequent beatings and mistreatment to which they allege they were subject at the Judicial Technical Police for the purpose of self-incrimination; iv) the situation of solitary confinement in which they were apparently held for three months; and v) the purported procedural irregularities and the alleged obstruction in terms of being able to have a defender of their own choosing—these could constitute a violation of the rights enshrined in Articles 5, 7, 8, 11, 19, and 25 of the American Convention.

69. Likewise, if it is proved that Mr. Genaro Ahuacho Luna (Walter Herrera Flores) died as a result of the blows he received at the time of his arrest and while he was at installations of the Judicial Technical Police, such events could constitute a violation of the right protected in Article 4 of the American Convention.

70. The Commission also believes that if it is true that there was a failure to verify, through a diligent investigation, the necessity and proportionality of the use of force, as well as a failure to investigate the alleged acts of torture and other inhumane acts to which the alleged victims were purportedly subject at police stations, these could characterize a violation of the rights protected in Articles 8 and 25 of the American Convention, as well as the provisions of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture, taking into account the other articles of that Convention that were alleged by the petitioner.

71. The Commission considers that if it is proved that the police agents committed unnecessary and disproportionate acts of violence against the women at the time of the arrest and subsequently at the Judicial Technical Police, as well as different types of sexual aggression, such acts could characterize a violation of Article 7 of the Convention of Belém do Pará.

## **V. CONCLUSIONS**

72. By virtue of the above facts and laws, and without prejudging the merits of the matter, the Inter-American Commission concludes that this case satisfies the admissibility requirements stated in Articles 46 and 47 of the American Convention, and therefore

### **THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS**

#### **DECIDES:**

1. To find the petition under study to be admissible with respect to the rights protected in Articles 4, 5, 7, 11, 19, 8, and 25 of the American Convention, in conjunction with the obligations established in Article 1.1; as well as the right enshrined in Article 7 of the Convention of Belém do Pará, and the provisions of Articles 1, 6, and 8 of the Inter-American Convention to Prevent and Punish Torture.

2. To notify the State and the petitioner of this decision.

3. To begin proceedings on the merits of the case.

4. To publish this decision and include it in the Annual Report to be presented to the OAS General Assembly.

Done and signed at the headquarters of the Inter-American Commission on Human Rights in the city of Washington, D.C., on the 30<sup>th</sup> day of October, 2008. (Signed): Paolo G. Carozza, Chairman; Luz Patricia Mejía Guerrero, First Chairwoman; Felipe González, Second Vice Chairman; Sir Clare K. Roberts, Paulo Sérgio Pinheiro, Florentín Meléndez, and Víctor E. Abramovich, members of the Commission.