

Ibsen Cárdenas and Ibsen Peña v. Bolivia

ABSTRACT¹

This case stems from human rights violations committed by Bolivia during President Hugo Banzer's dictatorship in the 1970s. In this case, the State carried out and covered up the forced disappearances of individuals it considered to be political opponents of the regime. Shortly after President Banzer executed a coup d'état to establish a military dictatorship over the State, Mr. José Luis Ibsen Peña and his son, Mr. Rainier Ibsen Cárdenas, were arrested on separate occasions due to their alleged involvement with political groups opposed to the dictatorship. While detained as political prisoners, Mr. Ibsen Cárdenas was shot and killed and Mr. Ibsen Peña was presumably tortured and later disappeared. The remains of Mr. Ibsen Cárdenas were identified over ten years after his death, and the remains of Mr. Ibsen Peña have yet to be found.

I. FACTS

A. Chronology of Events

October 7, 1925: Mr. José Luis Ibsen Peña is born in Chile.² His mother, Alicia Peña, is a Bolivian national.³

March 26, 1947: Mr. Ibsen Peña becomes a naturalized Bolivian citizen.⁴

July 31, 1948: Mr. Ibsen Peña marries Mrs. Asunta Isaura Cárdenas.⁵ Together they have a son, Mr. Rainier Ibsen Cárdenas.⁶

1. Sarah Frost, Author; Jennifer Barrera, Elise Cossart-Daly, Erika Green, Melissa Kurata, and Shamin Rostami, Editors; Laura Ybarra, Chief Articles Editor; Cesare Romano, Faculty Advisor.

2. Ibsen Cárdenas and Ibsen Peña v. Bolivia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 217, ¶ 71 (Sept. 1, 2010).

3. Ibsen Cárdenas and Ibsen Peña v. Bolivia, Petition No. 786/03, Inter-Am. Comm'n H.R., ¶ 70 (Sept. 26, 2003).

4. *Id.*

5. Ibsen Cárdenas and Ibsen Peña v. Bolivia, Merits, Reparations, and Costs, ¶ 71.

6. *Id.*

March 10, 1959: Mrs. Cárdenas passes away.⁷ Mr. Ibsen Peña subsequently marries Mrs. Martha Castro Mendoza and they have three children, Ms. Rebeca Ibsen Castro, Mr. Tito Ibsen Castro, and Ms. Raquel Ibsen Castro.⁸

February 18, 1970: Mr. Rainier Ibsen Cárdenas, the eldest son of Mr. Ibsen Peña, receives a bachelor's degree in Humanities from the Gabriel René Moreno University and is qualified to continue studying at the university.⁹

September 10, 1970: Mr. Ibsen Peña receives a degree in Law, Politics, and Social Sciences from the Gabriel René Moreno Autonomous University.¹⁰

August 19-21, 1971: In the midst of uprisings in the city of Santa Cruz, Bolivia, Colonel Hugo Banzer Suárez leads a *coup d'état* and establishes a military junta to govern the State.¹¹ The junta assigns full powers of the Office of the President of the Republic to Banzer Suárez.¹² Under his authority, Banzer Suárez creates the Political Order Department to put an end to unrest caused by political opponents.¹³

September 1971: Mr. Ibsen Peña is fired from the Medical Service of Yacimientos Petrolíferos Fiscales Bolivianos for his alleged involvement in political activities.¹⁴ The same month, he is arrested and advised to leave the country.¹⁵ He flees to Buenos Aires, Argentina, but after being unable to find work he returns to Bolivia to support his family.¹⁶

October 1971: Mr. Ibsen Cárdenas disappears.¹⁷ His family learns that he has been arrested in Santa Cruz and taken to the Political Order

7. *Id.*

8. *Id.*

9. Ibsen Cárdenas and Ibsen Peña v. Bolivia, Petition No. 786/03, Inter-Am. Comm'n H.R., ¶ 74 (Sept. 26, 2003).

10. *Id.* ¶ 71.

11. *Id.* ¶ 61.

12. *Id.*

13. *Id.*

14. *Id.* ¶ 85.

15. *Id.*

16. *Id.*

17. *Id.* ¶ 75.

Department in the city of La Paz.¹⁸ He is detained as a political prisoner based on his alleged membership in the National Liberation Army (“ELN”).¹⁹ Security forces of the Political Order Department later transfer him to the Achocalla Detention Center, located near La Paz.²⁰

May 1972: Mr. Ibsen Peña is living in Camiri, Santa Cruz, where he operates a law office.²¹ He has developed ties with *Central Obrera Boliviana* (Bolivian Labour Headquarters).²²

June 19, 1972: Mr. Ibsen Cárdenas is shot and killed at the Achocalla Detention Center.²³ The events leading to his death are uncertain.²⁴ An official communiqué of the Public Relations Department of the Ministry of the Interior indicates that several detainees of the ELN, including Mr. Ibsen Cárdenas, had tried to escape and died in the ensuing shootout.²⁵ A prisoner detained at the Achocalla Detention Center claims that a guard told him the men were found “in some sheds” and taken out “one by one to the Viacha plains.”²⁶

June 22, 1972: The newspaper *Presencia* publishes an article, entitled “Three ELN Militants Die in an Escape Attempt,” that indicates that Mr. Ibsen Cárdenas has been killed.²⁷ Mr. Ibsen Peña becomes aware of the article and makes attempts to confirm its veracity.²⁸

February 10, 1973: Mr. Ibsen Peña is arrested in Santa Cruz while buying school supplies with his eight-year old son, Tito Ibsen Castro.²⁹ He is detained by State security officials who order him to accompany them.³⁰ Tito returns home alone.³¹ That night, Mr. Ibsen Peña arrives at

18. *Id.*

19. *Id.*

20. *Id.* ¶¶ 75-76.

21. *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 217, ¶ 72 (Sept. 1, 2010).

22. *Id.*

23. *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Application to the Inter-Am. Comm’n H.R., ¶ 76 n.50.

24. *Id.* ¶ 79.

25. *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Merits, Reparations, and Costs, ¶ 75.

26. *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Application to the Inter-Am. Comm’n H.R., ¶ 77.

27. *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Merits, Reparations, and Costs, ¶ 75.

28. *Id.*

29. *Id.* ¶ 106.

30. *Id.*

31. *Id.*

his home accompanied by the same agents.³² He gathers some personal objects and is taken away again.³³

While detained in the El Pari Detention Center in Santa Cruz, Mr. Ibsen Peña receives visits from Tito Ibsen Castro, who brings food and clothes to his father.³⁴ Mr. Ibsen Peña gives his son some personal items, including his passport and some bloody clothes.³⁵ He tells Tito to take care of his mother and sister.³⁶ Mrs. Martha Castro Mendoza becomes convinced that her husband is being tortured and beaten when she sees the pair of bloody socks that Tito has brought home.³⁷

February 21, 1973: Mrs. Castro Mendoza and Tito visit Mr. Ibsen Peña and find that he has been beaten.³⁸ Later, they receive information that Mr. Ibsen Peña has been “removed for exile” to Brazil.³⁹ Mrs. Castro Mendoza goes to the Brazilian embassy in Bolivia, but is informed that no political prisoner has gone to Brazil.⁴⁰ Like his eldest son, Mr. Ibsen Peña ultimately disappears.⁴¹

April 15, 1973: Mrs. Castro Mendoza goes to the Bar Association of Santa Cruz for help securing the release of Mr. Ibsen Peña or for information of his whereabouts.⁴²

1979: Hugo Banzer’s dictatorship is overthrown. The former President faces trial initiated by the Legislature of the National Congress.⁴³ However, the trial against Hugo Banzer is unsuccessful.⁴⁴

February 19, 1983: Two national newspapers, *El Diario* and *Presencia*, report that the National Commission of Investigation has discovered the remains of fourteen disappeared individuals, including those of Mr. Ibsen Cárdenas.⁴⁵

32. *Id.*

33. *Id.*

34. *Id.* ¶ 107.

35. *Id.*

36. *Id.*

37. *Id.* ¶ 128 n.159.

38. *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Petition No. 786/03, Inter-Am. Comm’n H.R., ¶ 84 (Sept. 26, 2003).

39. *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Merits, Reparations, and Costs, ¶ 109.

40. *Id.*

41. *Id.* ¶ 2.

42. *Id.* ¶ 110.

43. *Id.* ¶ 56.

44. *Id.*

45. *Id.* ¶ 84.

February 22, 1983: The administrator of the General Cemetery of La Paz presents an “Informative Statement” to the Ministry of the Interior, Migration, and Justice of Bolivia. The statement indicates that the bodies have arrived at the cemetery in vehicles that belong to the *Hospital de Clínicas* (“Clinical Hospital”), along with death certificates signed by a forensic doctor.⁴⁶

February 28, 1983: The National Commission for Investigation requests the Public Prosecutor’s Office to exhume and perform necropsies on six people, including Mr. Ibsen Cárdenas.⁴⁷ The necropsies are never performed.⁴⁸

1985: The National Commission for Investigation is dissolved and its files and the remains found two years earlier are given to the Association of Relatives of Detainees, Disappeared, and Martyrs for National Liberation (*Asociación de Familiares de Detenidos, de Desaparecidos y Mártires por la Liberación Nacional*, “ASOFAMD”).⁴⁹ Without conducting a forensic examination, or otherwise verifying that the remains belonged to Mr. Ibsen Cárdenas, the remains are transferred to the ASOFAMD mausoleum at the General Cemetery of La Paz.⁵⁰

January 9, 1999: The District Coordinating Office of Public Defense of the Ministry of Justice and Human Rights of Bolivia (“District Coordinating Office”) requests that the District of Santa Cruz Prosecutor’s Office (“Prosecutor’s Office”) initiate judicial police proceeding on the disappearance of Mr. José Carlos Trujillo Oroza.⁵¹

January 11, 1999: Following the District Coordinating Office’s request, the Prosecutor’s Office refers the complaint regarding the death of Mr. Trujillo Oroza to the Technical Judicial Police.⁵²

March 27, 2000: The Fifth Criminal Examining Magistrate’s Court of Santa Cruz (“the Fifth Criminal Court”) issues a preliminary

46. *Id.* ¶ 85.

47. *Id.* ¶ 87.

48. *Id.*

49. *Id.*

50. *Id.*

51. *Id.* ¶ 138.

52. *Id.*

investigation order against several individuals for the crimes committed against Mr. Trujillo Oroza, including deprivation of liberty, abuse, and torture.⁵³

April 6, 2000: Ms. Antonia Gladys Oroza, the mother of José Carlos Trujillo Oroza, files suit in the Fifth Criminal Court against the accused individuals and others. She requests that the preliminary proceedings be expanded to include the crime of murder.⁵⁴

April 26, 2000: Mrs. Rebeca Ibsen Castro, the daughter of Mr. Ibsen Peña, files a complaint to join the proceeding initiated by Ms. Gladys Oroza and requests to broaden the complaint to include the crimes of genocide, murder, and abuse allegedly committed against Mr. Ibsen Peña and Mr. Ibsen Cárdenas.⁵⁵

May 20, 2000: Mrs. Ibsen Castro's petition is rejected.⁵⁶

June 2, 2000: Mrs. Ibsen Castro files a motion of appeal.⁵⁷

October 4, 2000: The First Criminal Chamber of the Supreme Court of Justice of Santa Cruz orders that the complaint be broadened to include Mrs. Ibsen Castro's claims.⁵⁸

October 18, 2000: The persons accused in the complaint argue that the statute of limitations has passed.⁵⁹

November 10, 2000: The Fifth Criminal First Instance Court grants the defendants' request to dismiss the complaint.⁶⁰

November 17, 2000: Mrs. Ibsen Castro appeals the decision to dismiss the complaint.⁶¹

53. *Id.* ¶ 139.

54. *Id.*

55. *Id.* ¶ 140.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* ¶ 141.

60. *Id.*

61. *Id.*

January 12, 2001: The First Criminal Chamber of the Superior Court of Justice of the District of Santa Cruz affirms the order to dismiss.⁶²

November 12, 2001: The Constitutional Court overturns the decisions of November 10, 2000, and January 12, 2001.⁶³ The proceeding continues against “some of the accused.”⁶⁴

August 13, 2002: The Eighth Investigative Magistrate’s Court in Criminal Matters issues a final decision closing the investigative phase and ordering the case file to be sent to the Criminal Court to continue the oral and adversarial proceedings for the crimes of deprivation of liberty, abuse, and torture.⁶⁵ The crime of murder is excluded.⁶⁶

August 23, 2002: Mrs. Ibsen Castro appeals the final investigation order.⁶⁷

September 26, 2003: Mr. Mario Resine Ordoñez and Mr. Tito Ibsen Castro present a petition on behalf of Mr. Ibsen Peña and Mr. Ibsen Cárdenas to the Inter-American Commission on Human Rights.⁶⁸

June 7, 2004: The Examining Magistrate’s Court for the City of Warnes issues a final order to prosecute the accused “for the crimes of deprivation of liberty, abuse and torture, criminal association, criminal organization, and murder, as well as concealment and crime of concealment amounting to complicity.”⁶⁹

September 23 and 29, 2004: Three of the accused request that the Ninth Criminal Court of Santa Cruz dismiss the criminal action due to delays in the proceedings.⁷⁰

January 13, 2005: Two more of the accused request that the Fifth Executing Judge of First Instance in Criminal Matters of Santa Cruz

62. *Id.*

63. *Id.* ¶ 142.

64. *Id.*

65. *Id.* ¶ 143.

66. *Id.*

67. *Id.*

68. *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Admissibility Report, Report No. 46/05, Inter-Am. Comm’n H.R., Case 12.529, ¶ 1 (Oct. 12, 2005).

69. *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Merits, Reparations, and Costs, ¶ 144.

70. *Id.* ¶ 145.

(“the Fifth Criminal Judge of First Instance”) dismiss the criminal action due to delays in the proceedings.⁷¹

January 19, 2005: The Fifth Criminal Judge of First Instance dismisses the criminal action as time-barred and closes the proceedings in favor of the accused.⁷² The dismissal is based on delays “attributed to government authorities and the civilian party and not to the accused.”⁷³

January 25, 2005: Mrs. Rebeca Ibsen Castro appeals the dismissal.⁷⁴

April 18, 2005: The First Civil Chamber of the Superior Court of Justice of Santa Cruz overturns the order to dismiss and orders the prosecution of the case.⁷⁵

2003-2007: During the period from 2003 to 2007, Mrs. Ibsen Castro and Mr. Ibsen Castro request the exhumation of Mr. Ibsen Cárdenas’ remains at least five times.⁷⁶

March 21, 2007: The remains of Mr. Ibsen Cárdenas are allegedly exhumed as part of the criminal proceedings.⁷⁷

March 23, 2007: A “preliminary report” to the Prosecutor by an expert witness indicates that none of the skeletal remains match the characteristics of Mr. Ibsen Cárdenas.⁷⁸ According to the report, Mr. Ibsen Cárdenas’ remains have been interred at the General Cemetery of La Paz, “after having been previously exhum[ed] from a grave in the same cemetery.”⁷⁹

May 10, 2007: The “Final Reports” issued by the expert witnesses confirm that the biological profile of the remains exhumed on March 21, 2007 are not consistent with the information corresponding to Mr. Ibsen Cárdenas before his death.⁸⁰

71. *Id.*

72. *Id.* ¶ 146.

73. *Id.*

74. *Id.*

75. *Id.* ¶ 147.

76. *Id.* ¶ 89.

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* ¶ 90.

February 20, 2008: The remains of Mr. Ibsen Cárdenas are exhumed, along with other bodies, from ASOFAMD's mausoleum.⁸¹ A "preliminary report" on the DNA profile of the remains of one of the bodies exhumed establishes that there was a 99.7% probability the body was Mr. Ibsen Cárdenas.⁸²

July 28, 2008: The District Prosecutor of La Paz receives a "Forensic Anthropology Final Report" on the February 20 exhumations from the expert witnesses.⁸³

October 31, 2008: The Commission adopts its Report on the Merits No. 93/08 and makes certain recommendations to the State.⁸⁴

November 11, 2008: The remains of Mr. Ibsen Cárdenas are delivered to his family.⁸⁵ The Forensic Research Institute of the Office of Attorney General issues a Death Certificate indicating Mr. Ibsen Cárdenas died on June 22, 1972 in La Paz from a traumatic brain injury and multiple other traumas.⁸⁶

December 6, 2008: The Seventh First Instance Court in Civil and Commercial Matters delivers a first instance judgment that declares the statute of limitations barred penal action "for the crimes of abuse and torture, criminal association, criminal organization, [and] murder and concealment," of which some of the accused had been convicted in connection with the illegal deprivation of liberty of Mr. Ibsen Peña.⁸⁷

December 10, 2008: The State acknowledges international responsibility.⁸⁸

May 12, 2009: The Commission submits the case to the Court after the State failed to adopt its recommendations.⁸⁹

81. *Id.* ¶ 91.

82. *Id.*

83. *Id.*

84. *Id.* ¶ 1. The Report on the Merits has not been published.

85. *Id.* ¶ 91.

86. *Id.*

87. *Id.* ¶ 148.

88. *Id.* ¶ 30.

89. *Id.* ¶ 1.

September 28, 2009: The Superior District Court of Santa Cruz upholds, in part, the first instance judgment.⁹⁰ The court ratifies the sentences of all of the accused except for that of Mr. Juan Antonio Elio Rivero, who receives a lighter sentence.⁹¹

June 2, 2010: The Second Criminal Chamber of the Supreme Court of Justice issues a judgment that annuls the statute of limitation previously imposed.⁹²

August 16, 2010: The Second Criminal Chamber of the Supreme Court of Justice issues a judgment convicting two of the accused of the crime of enforced disappearance.⁹³ The judgment convicts another accused for complicity in the crime of enforced disappearance, and absolves another person accused of committing crimes against Mr. Ibsen Peña.⁹⁴

B. Other Relevant Facts

During Hugo Banzer's regime, political prisoners detained at secret concentration camps and illegal detention centers were subjected to interrogation, torture, and forced disappearance.⁹⁵ A human rights report from ASOFAMD recounted types of torture experienced by the detainees, which included beatings, rape, simulated execution by firing squad, hanging by the feet, threats to arrest family members, and electric prods.⁹⁶ The precise number of people who fell victim to the regime is unknown, but in 1979 ASOFAMD estimated that eighty-nine people had been murdered and disappeared, and that many of those deaths were not subsequently investigated.⁹⁷

The Achocalla Detention Center was one of the centers used for torture and prisoner executions. The most atrocious crimes, torture, and abuse were carried out in May, June, and July 1972, coinciding with the detention and death of Mr. Ibsen Cárdenas.⁹⁸

90. *Id.* ¶ 149.

91. *Id.*

92. *Id.* ¶ 150.

93. *Id.*

94. *Id.*

95. Ibsen Cárdenas and Ibsen Peña v. Bolivia, Petition No. 786/03, Inter-Am. Comm'n H.R., ¶ 65 (Sept. 26, 2003).

96. *Id.* ¶ 66.

97. *Id.* ¶¶ 68-69.

98. *Id.* ¶ 76.

The El Pari Detention Center, located in the center of Santa Cruz, was used to house prisoners of some importance.⁹⁹ Prisoners in the El Pari Detention Center also suffered torture and murder by security forces.¹⁰⁰

In 1983, the National Commission for the Investigation of Citizens Forcibly Disappeared announced that it had established the illegal burial of fourteen persons considered forcibly disappeared during Hugo Banzer Suárez's administration.¹⁰¹ The National Commission asserted that the illegal burials were carried out under instruction from the Ministry of the Interior.¹⁰²

II. PROCEDURAL HISTORY

A. *Before the Commission*

September 26, 2003: Mr. Mario Resine Ordoñez and Mr. Tito Ibsen Castro present a petition on behalf of Mr. Ibsen Peña and Mr. Ibsen Cárdenas to the Inter-American Commission on Human Rights.¹⁰³

October 12, 2005: The Commission adopts Report on Admissibility No. 46/05, declaring the petition admissible.¹⁰⁴

The State claims the petition is inadmissible due to the failure of the representatives to exhaust domestic remedies and to the lateness of the petition.¹⁰⁵ The State objects to some of the facts alleged by the representatives regarding the remains of Mr. Ibsen Cárdenas and their location.¹⁰⁶ The State also protests the admissibility of the petition in light of the measures it is taking to discover information concerning the remains of victims of forced disappearance.¹⁰⁷

The Commission concludes that an exception to the exhaustion of domestic remedies requirement exists pursuant to Article 46(2) of the American Convention because more than thirty years have passed since the disappearances of Mr. Ibsen Peña and Mr. Ibsen Cárdenas without

99. *Id.* ¶ 83.

100. *Id.*

101. *Id.* ¶ 152.

102. *Id.*

103. *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Admissibility Report, Report No. 46/05, Inter-Am. Comm'n H.R., Case 12.529, ¶ 1 (Oct. 12, 2005).

104. *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 217, ¶ 1 (Sept. 1, 2010).

105. *Ibsen Cárdenas and Ibsen Peña v. Bolivia*, Admissibility Report, Report No. 46/05, Inter-Am. Comm'n H.R., Case No. 12.529 ¶ 4 (Oct. 12, 2005).

106. *Id.*

107. *Id.* ¶¶ 32-33.

seeing a conclusion to criminal legal proceedings.¹⁰⁸ Given the facts of the case and the efforts of the representatives to seek relief domestically, the Commission considers the petition presented within a reasonable time.¹⁰⁹ The Commission determines that the petition is admissible.¹¹⁰

October 31, 2008: The Commission adopts its Report on the Merits No. 93/08 making certain recommendations to the State.¹¹¹ The Commission grants two extensions of time to the State.¹¹² In spite of the extensions, the Commission finds that the State failed to make significant progress in complying with some of its recommendations.¹¹³

December 10, 2008: The State acknowledges international responsibility.¹¹⁴ The Commission recommends that:

The State make reparations to Mr. Ibsen Peña and Mr. Ibsen Cárdenas' next of kin.¹¹⁵ The reparations recommended are to investigate and publish the facts that can be reliably established; to prosecute and punish the responsible actors; to remove from security divisions those who are known to have committed, ordered, or tolerated the abuses; and to make restitution for the pecuniary and non-pecuniary harms endured.¹¹⁶ Measures of cessation should also be taken.¹¹⁷ The State should investigate the forced disappearance of Mr. Ibsen Peña and Mr. Ibsen Cárdenas and prosecute and punish the responsible actors as well as any abettors.¹¹⁸

The State should investigate and punish those who were responsible for obstructing justice and allowing impunity in this case.¹¹⁹ The remains of Mr. Ibsen Peña should be exhaustively searched for and delivered to his family.¹²⁰ The State should provide additional measures of satisfaction to the family in the form of publicity of the results of the

108. *Id.* ¶¶ 39-40.

109. *Id.* ¶ 44.

110. *Id.* ¶ 48.

111. Ibsen Cárdenas and Ibsen Peña v. Bolivia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 217, ¶ 1 (Sept. 1, 2010). The Commission's Report on the Merits has not been published.

112. *Id.*

113. *Id.*

114. *Id.* ¶ 30.

115. Ibsen Cárdenas and Ibsen Peña v. Bolivia, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.529, ¶ 314 (May 12, 2009).

116. *Id.*

117. *Id.* ¶ 320.

118. *Id.* ¶ 325.

119. *Id.*

120. *Id.* ¶ 326.

State's investigation and punishment proceedings, publication of the Court's judgment in a national newspaper, and establishment of a project dedicated to preserving the memories of Mr. Ibsen Peña and Mr. Ibsen Cárdenas.¹²¹

Also, the Commission observes that the State is obligated to implement necessary legal, administrative, and other measures to prevent the recurrence of similar human rights violations and impunity.¹²² It requests the Court to order rehabilitation measures, such as psychological rehabilitation, for Mr. Ibsen Peña and Mr. Ibsen Cárdenas' next of kin.¹²³ Finally, it defers to the Court to determine the appropriate amount of pecuniary and non-pecuniary damages,¹²⁴ and requests the Court to require the State to pay the cost and expenses incurred by the representatives and next of kin of Mr. Ibsen Peña and Mr. Ibsen Cárdenas.¹²⁵

B. Before the Court

May 12, 2009: The Commission submits the case to the Court after the State failed to adopt its recommendations.¹²⁶

1. Violations Alleged by Commission¹²⁷

To the detriment of Mr. Ibsen Peña and Mr. Ibsen Cárdenas:

Article 3 (Right to Juridical Personality)

Article 4 (Right to Life)

Article 5 (Right to Humane Treatment)

Article 7 (Right to Personal Liberty)

Article 8 (Right to a Fair Trial)

Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.¹²⁸

121. *Id.* ¶ 332.

122. *Id.* ¶ 333.

123. *Id.* ¶ 334.

124. *Id.* ¶¶ 336-42.

125. *Id.* ¶¶ 345-46.

126. *Ibsen Cárdenas and Ibsen Peña v. Bolivia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 217, ¶ 1 (Sept. 1, 2010).*

127. *Id.* ¶ 3.

128. *Id.*

Article 1 (Obligation to Adopt Measures)
 Article 3 (Obligation to Adopt Legislative Measures)
 Article 4 (Jurisdiction over Forced Disappearances)
 Article 11 (Right to Officially Recognized Detention Location and to Be Promptly Brought Before Competent Judicial Authority) of the Inter-American Convention on Forced Disappearance of Persons.¹²⁹

To the detriment of Mrs. Martha Castro Mendoza, Mrs. Rebeca Ibsen Castro, Mr. Tito Ibsen Castro, and Ms. Raquel Ibsen Castro:

Article 5 (Right to Humane Treatment)
 Article 8 (Right to a Fair Trial)
 Article 25 (Right to Judicial Protection)

all in relation to:

Article 1(1) (Obligation to Respect Rights) of the American Convention.¹³⁰

2. Violations Alleged by Representatives of the Victims¹³¹

Same violations alleged by the Commission, plus:

Article 24 (Right to Equal Protection) of the American Convention.¹³²

Since the State acknowledged international responsibility, it did not submit any preliminary objections to the admissibility of the petition or to the jurisdiction of the Court.¹³³

April 8, 2010: In response to a court order directing the State to “adopt measures of rehabilitation for the family of the victim,”¹³⁴ The Ministry of Health and Sports signs an “Inter-Institutional Agreement” with the Petroleum Company Health Fund to provide medical health services and “medicines and inputs” to the Ibsen family, and to provide the appropriate mechanisms to allow the beneficiaries to access medical treatment and care.¹³⁵

129. *Id.*

130. *Id.*

131. Mr. Mario Ressini Ordoñez, Mr. Daniel Enríquez Tordoya, and Mr. Tito Ibsen Castro served as representatives of the Ibsen family.

132. *Ibsen Cárdenas and Ibsen Peña v. Bolivia, Merits, Reparations, and Costs*, ¶ 4.

133. *See Id.* ¶ 5.

134. *Id.* ¶ 250.

135. *Id.* ¶ 252. The agreement was titled “Inter-Institutional Agreement for the Provision of Medical Services to the Members of the Ibsen Cárdenas Family.”

April 13, 2010: The Court holds a public hearing in Lima, Peru.¹³⁶ At the hearing, Bolivia's Vice Minister of Justice and Fundamental Rights makes a public apology.¹³⁷

May 18, 2010: The State issues a "commemorative postal stamp" of Mr. Ibsen Cárdenas and Mr. Ibsen Peña.¹³⁸

May 21, 2010: A public act of reparation is held to officially name the "Ibsen Family" roundabout.¹³⁹

May 24, 2010: Pursuant to an order of The President of the Inter-American Court of Human Rights, the Commission, the representatives of the alleged victims, and the State present their final written arguments.¹⁴⁰ The representatives and the State submit documentary evidence.¹⁴¹ The State also submits documents that had been requested by the Tribunal, including information on judicial recusals.¹⁴²

August 23, 2010: The Court requests information from the Commission and the representatives concerning a decision issued on August 16, 2010 by the Second Criminal Chamber of the Supreme Court.¹⁴³ The Court also requests that the State and the representatives submit a copy of the commemorative postal stamp.¹⁴⁴

August 26, 2010: The State submits a report on the progress made in fulfilling the State's commitment to establish compliance with the obligation to "recover the historical memory" of Mr. Ibsen Peña and Mr. Ibsen Cárdenas.¹⁴⁵ The State also submits information on the August 16, 2010 Second Criminal Chamber of the Supreme Court decision and a copy of the commemorative stamp.¹⁴⁶ The representatives submit the information requested by the Court, but not a

136. *Id.* ¶ 8.

137. *Id.* ¶ 247.

138. *Id.*

139. *Id.*

140. *Id.* ¶¶ 6, 10.

141. *Id.* ¶ 10.

142. *Id.*

143. *Id.* ¶ 16.

144. *Id.*

145. *Id.* ¶ 17.

146. *Id.*

copy of the stamp.¹⁴⁷ The Commission does not submit the information requested about the August 16, 2010 decision and misses the Court-mandated deadline.¹⁴⁸

III. MERITS

A. *Composition of the Court*

Diego García-Sayán, President
Leonardo Franco, Vice-President
Manuel E. Ventura Robles, Judge
Margarette May Macaulay, Judge
Rhadys Abreu Blondet, Judge
Alberto Pérez Pérez, Judge
Eduardo Vio Grossi, Judge

Pablo Saavedra Alessandri, Secretary
Emilia Segares Rodríguez, Deputy Secretary

B. *Decision on Merits*

September 1, 2010: The Court issues its judgment on Merits, Reparations, and Costs.¹⁴⁹

The Court found unanimously that Bolivia had violated:

Article 7(1) (Right to Personal Liberty and Security), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention and Articles 1(a) (Prohibition of Practicing, Tolerating or Permitting Forced Disappearances) and 11 (Right to Officially Recognized Detention Location and to Be Promptly Brought Before Competent Judicial Authority) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Ibsen Peña and Mr. Ibsen Cárdenas,¹⁵⁰ because:

147. *Id.*

148. *Id.*

149. Ibsen Cárdenas and Ibsen Peña v. Bolivia, Merits, Reparations, and Costs.

150. *Id.* ¶ 119.

*The Court found the State violated the right to personal liberty, to the detriment of Mr. Ibsen Peña, due to his arrest and subsequent forced disappearance.*¹⁵¹

*The Court found the State violated the right to personal liberty, to the detriment of Mr. Ibsen Cárdenas, due to his detention and subsequent forced disappearance.*¹⁵²

Articles 5(1) (Right to Physical, Mental, and Moral Integrity) and 5(2) (Prohibition of Torture, and Cruel, Inhumane or Degrading Treatment), in Relation to Article 1(1) (Obligation to Respect Rights) of the Convention and Articles 1(a) (Prohibition of Practicing, Tolerating or Permitting Forced Disappearances) and 11 (Right to Officially Recognized Detention Location and to Be Promptly Brought Before Competent Judicial Authority) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Ibsen Peña, Mr. Ibsen Cárdenas, Mrs. Martha Castro Mendoza, Mrs. Rebeca Ibsen Castro, Mr. Tito Ibsen Castro, and Ms. Raquel Ibsen Castro,¹⁵³ because:

*The State violated the right to humane treatment, to the detriment of Mrs. Martha Castro Mendoza, Mrs. Rebeca Ibsen Castro, Mr. Tito Ibsen Castro, and Ms. Raquel Ibsen Castro, due to the suffering caused by not knowing what became of Mr. Ibsen Peña and Mr. Ibsen Cárdenas.*¹⁵⁴

*The State violated the right to humane treatment, and the right to physical, mental, and moral integrity to the detriment of Mr. Ibsen Peña, due to his arrest and subsequent forced disappearance.*¹⁵⁵

*The State also violated the right to humane treatment and the right to physical, mental, and moral integrity to the detriment of Mr. Ibsen Cárdenas, due to his detention and subsequent forced disappearance.*¹⁵⁶

Article 3 (Right to Juridical Personality), in relation to Article 1(1) (Obligation to Respect Rights) of the Convention and Articles 1(a) (Obligation to Adopt Measures) and 11 (Right to Officially Recognized

151. *Id.*

152. *Id.* ¶ 103.

153. *Id.* ¶¶ 131-33.

154. *Id.*

155. *Id.* ¶ 119.

156. *Id.* ¶ 103.

Detention Location and to Be Promptly Brought Before Competent Judicial Authority) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Ibsen Peña and Mr. Ibsen Cárdenas,¹⁵⁷ because:

*The State violated the right to juridical personality of Mr. Ibsen Peña due to his rights having not been protected while deprived of liberty in the custody of the State.*¹⁵⁸

*The State also violated the right to juridical personality of Mr. Ibsen Cárdenas due to having been placed in a position of legal uncertainty that precluded the possibility of being entitled to and exercising his rights.*¹⁵⁹

Article 4(1) (Prohibition of Arbitrary Deprivation of Life), in Relation to Article 1(1) (Obligation to Respect Rights) of the Convention and Articles 1(a) (Prohibition of Practicing, Tolerating or Permitting Forced Disappearances) and 11 (Right to Officially Recognized Detention Location and to Be Promptly Brought Before Competent Judicial Authority) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mr. Ibsen Peña and Mr. Ibsen Cárdenas,¹⁶⁰ because:

*The State violated the right to life, to the detriment of Mr. Ibsen Peña, due to his arrest and subsequent forced disappearance.*¹⁶¹

*The State violated the right to life, to the detriment of Mr. Ibsen Cárdenas, due to his detention and subsequent forced disappearance.*¹⁶²

Article 8(1) (Right to a Hearing Within Reasonable Time by a Competent and Independent Tribunal), in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention and Article 1(b) (Duty to Punish Forced Disappearances) of the Inter-American Convention on Forced Disappearance of Persons to the detriment of Mrs. Martha

157. *Id.* ¶¶ 116-120.

158. *Id.*

159. *Id.* ¶¶ 102, 118.

160. *Id.* ¶ 119.

161. *Id.*

162. *Id.* ¶ 103.

Castro Mendoza, Mrs. Rebeca Ibsen Castro, Mr. Tito Ibsen Castro, and Ms. Raquel Ibsen Castro,¹⁶³ because:

*The State did not conduct a serious investigation into the facts surrounding the arrests and enforced disappearances of Mr. Ibsen Peña and Mr. Ibsen Cárdenas.*¹⁶⁴

*The search for Mr. Ibsen Peña was not conducted immediately and it was discontinued prematurely.*¹⁶⁵

*The State did not properly investigate what happened to Mr. Ibsen Cárdenas based on the analysis of his remains.*¹⁶⁶

*The State unduly placed the evidentiary burden on Mrs. Rebeca Ibsen Castro.*¹⁶⁷

*The “constant presentation of abstentions,”¹⁶⁸ tendered by approximately 111 different judges during the nine-year domestic criminal proceedings,¹⁶⁹ affected the seriousness and efficient processing of the case at the domestic level.*¹⁷⁰

Article 25(1) (Right of Recourse Before a Competent Court), in relation to Articles 1(1) (Obligation to Respect Rights) and 2 (Obligation to Give Domestic Legal Effect to Rights) of the Convention and Article 1(b) (Prohibition of Practicing, Tolerating or Permitting Forced Disappearances) of the Inter-American Convention on Forced Disappearance of Persons, to the detriment of Mrs. Martha Castro Mendoza, Mrs. Rebeca Ibsen Castro, Mr. Tito Ibsen Castro, and Ms. Raquel Ibsen Castro,¹⁷¹ because:

*The domestic criminal proceedings failed to guarantee access to justice because the investigation and punishment of the responsible parties was not conducted in a reasonable time.*¹⁷²

163. *Id.* ¶ 174.

164. *Id.*

165. *Id.* ¶ 220.

166. *Id.* ¶ 225.

167. *Id.* ¶ 174.

168. *Id.* ¶ 190.

169. *Id.* ¶ 180.

170. *Id.* ¶¶ 190-91.

171. *Id.* ¶ 226.

172. *Id.*

*The domestic criminal proceedings failed to guarantee an investigation of the locations of Mr. Ibsen Peña and Mr. Ibsen Cárdenas.*¹⁷³

*The domestic criminal proceedings failed to guarantee the reparation of the consequences stemming from the crimes committed against Mr. Ibsen Peña and Mr. Ibsen Cárdenas.*¹⁷⁴

The Court did not rule on:

Article 24 (Right to Equal Protection) of the American Convention, because:

*The Court found the representatives' allegation that they had not received any support or advisory assistance from the Bolivian Ombudsman was too general and lacked the foundation to allow the Court to rule on the issue.*¹⁷⁵

Article 4 (Jurisdiction over Forced Disappearances) of the Convention on Forced Disappearance, because:

*Since the Commission did not present arguments or refer to any argument regarding the State's non-compliance with Article 4 (Jurisdiction over Forced Disappearances), the Court did not rule on the obligation.*¹⁷⁶

C. Dissenting and Concurring Opinions

[None]

IV. REPARATIONS

The Court ruled unanimously that Bolivia had the following obligations:

173. *Id.*

174. *Id.*

175. *Id.* ¶¶ 227-30.

176. *Id.* ¶ 195.

A. Specific Performance (Measures of Satisfaction and Non-Repetition Guarantee)

1. Determination of the Whereabouts of José Luis Ibsen Peña

The State must conduct a reliable search for Mr. Ibsen Peña, “in which it displays its best efforts to clarify his whereabouts as soon as possible.”¹⁷⁷ If the search by the State establishes that Mr. Ibsen Peña has passed away, his remains must be delivered to his family as soon as possible and without cost to the family.¹⁷⁸ The State must also pay the costs of Mr. Ibsen Peña’s funeral.¹⁷⁹

2. Publication of the Pertinent Parts of the Court’s Judgment and Public Dissemination

The State must publish, once, specific paragraphs from the decision of the Court in the Official Gazette.¹⁸⁰

The State must publish the official summary of the judgment in another newspaper with “widespread national circulation” within six months from the notification of the judgment.¹⁸¹

The State must publish the entire judgment in “an appropriate official web site,” for one year within two months from the notification of the judgment.¹⁸²

3. Commemorate Mr. Ibsen Cárdenas and Mr. Ibsen Peña

The State must reach an agreement with the Ibsen family to name a public place after them within one year from the notification of the judgment.¹⁸³ The State must display a commemorative plaque relating the judgment and the facts and circumstances of the case.¹⁸⁴

177. *Id.* ¶ 242.

178. *Id.*

179. *Id.*

180. *Id.* ¶ 244.

181. *Id.*

182. *Id.*

183. *Id.* ¶ 249.

184. *Id.*

4. Rehabilitation Measures

The State must correct errors contained in the Inter-Institutional Agreement,¹⁸⁵ which entitled the Ibsen family to medical care services, “to avoid problems in its execution that might represent an unnecessary burden for the beneficiaries.”¹⁸⁶ The Inter-Institutional Agreement may not limit or modify the measures ordered in the judgment, nor may it impose a disproportionate burden on the beneficiaries.¹⁸⁷

The State is obligated to comply with the rehabilitation measures as they were ordered by the Court, regardless of the Inter-Institutional Agreement.¹⁸⁸

5. Training for Justice Administrators and Education on Human Rights

Notwithstanding the human rights training programs for public officials already in place in Bolivia, the State must implement a training program, within a reasonable time, on the investigation and prosecution of acts constituting enforced disappearance of persons.¹⁸⁹ The training program must target agents of the Public Prosecutor’s office and judges of the Bolivian judiciary,¹⁹⁰ and it must integrate techniques for evaluating the phenomenon of enforced disappearance.¹⁹¹ Authorities responsible for investigating these kinds of cases in particular must be “trained in the use of circumstantial evidence, indicia and presumptions, the assessment of the systematic patterns that can give rise to the facts investigated and the discovery of the whereabouts of those who have suffered enforced disappearance.”¹⁹²

B. Compensation

The Court awarded the following amounts:

185. The Inter-Institutional Agreement arranged for the provision of medical health services to the Ibsen family. The Inter-Institutional Agreement was signed by the Ministry of Health and Sports and the Petroleum Company Health Fund.

186. Ibsen Cárdenas and Ibsen Peña v. Bolivia, Merits, Reparations, and Costs ¶ 254.

187. *Id.*

188. *Id.*

189. *Id.* ¶ 258.

190. *Id.*

191. *Id.*

192. *Id.*

1. Pecuniary Damages

The State must make a compensatory payment of \$130,000 for the sum that Mr. Ibsen Cárdenas would have earned during his professional life, which should be distributed equally among Mr. Ibsen Cárdenas' rightful claimants.¹⁹³

The State must make a compensatory payment of \$75,000 for the sum that Mr. Ibsen Peña would have earned during the remainder of his professional life, which should be distributed equally among Mr. Ibsen Peña's rightful claimants.¹⁹⁴

The State must make a compensatory payment of \$5,000 for the expenses incurred by the Ibsen family in searching for Mr. Ibsen Cárdenas and Mr. Ibsen Peña.¹⁹⁵ The payment should be divided evenly between Rebeca, Tito, and Raquel Ibsen Castro.¹⁹⁶

2. Non-Pecuniary Damages

The Court found that compensation to the Ibsen family was appropriate in light of their suffering due to the enforced disappearance of two family members, the time that had elapsed since the disappearances, the denial of justice, the change in living conditions, and other non-pecuniary damages.¹⁹⁷

The State must pay \$80,000 each to Mr. Ibsen Cárdenas and Mr. Ibsen Peña as compensation for non-pecuniary damages.¹⁹⁸

The State must pay \$50,000 to Martha Castro Mendoza.¹⁹⁹

The State must pay \$40,000 each to Rebeca, Tito, and Raquel Ibsen Castro.²⁰⁰

3. Costs and Expenses

The State must pay \$15,000 to Mrs. Rebeca Ibsen Castro for the costs and expenses incurred during the domestic criminal proceedings.²⁰¹

193. *Id.* ¶¶ 263, 267.

194. *Id.* ¶ 271.

195. *Id.* ¶ 276.

196. *Id.*

197. *Id.* ¶ 283.

198. *Id.*

199. *Id.*

200. *Id.* The Court did not factor the alleged threats made to the Ibsen family into its calculation of non-pecuniary damages.

201. *Id.* ¶ 291.

The State must also pay \$10,000 to Mr. Tito Ibsen Castro, which should be distributed among those who represented the Ibsen family in the manner Mr. Ibsen Castro considers proportional to the assistance they provided.²⁰²

4. Total Compensation (including Costs and Expenses ordered):

\$565,000

C. Deadlines

The State must pay the compensation for pecuniary and non-pecuniary damages and costs and expenses within one year from notification of the judgment.²⁰³

V. INTERPRETATION AND REVISION OF JUDGMENT

[None]

VI. COMPLIANCE AND FOLLOW-UP

November 12, 2010: The State published portions from the judgment of the Court in the Official Gazette of the Plurinational State of Bolivia.²⁰⁴

March 2, 2011: The Plurinational Legislative Assembly sanctioned Law No. 091, which authorized the Ministry of Economy and Public Finance to cover the cost of health services for the beneficiaries identified in the Court's judgment.²⁰⁵

August 2, 2011: The Ministry of Justice and the Municipal Government of the city of La Paz named an avenue after Mr. Ibsen Peña and Mr. Ibsen Cárdenas as a tribute to their memories.²⁰⁶ Mr. Tito Ibsen Castro commented that the tribute would also serve as a reminder of the

202. *Id.*

203. *Id.* ¶¶ 291, 292.

204. *Caso Ibsen Cárdenas E Ibsen Peña, Publica las Partes Pertinentes de la Sentencia Que Fueran Ordenadas como una Medida Reparatoria*, GACETA OFICIAL DEL ESTADO PLURINACIONAL DE BOLIVIA [Official Gazette of the Plurinational State of Bolivia], Edición: 132ESP (2010).

205. *Law No. 91*, GACETA OFICIAL DEL ESTADO PLURINACIONAL DE BOLIVIA [Official Gazette of the Plurinational State of Bolivia] (Mar. 2, 2011).

206. *Nombran Avenida Luis Ibsen Peña y Rainer Ibsen Cárdenas, Desaparecidos de la Dictadura* [Street Named After Luis Ibsen Peña y Rainer Ibsen Cárdenas, who Disappeared Under the Dictatorship], FMBOLIVIA (Aug. 2, 2011), <http://www.fmbolivia.com.bo/noticia59524-nombran-avenida-luis-ibsen-pena-y-rainer-ibsen-cardenas-desaparecidos-de-la-dictadura.html>.

struggle that his sister and mother faced trying to exact justice for the deaths of their father and husband, and brother and stepson.²⁰⁷

May 14, 2013: The Court declares that the State has fully complied with some of its obligations, and must continue to take measures to fulfill its remaining obligations.²⁰⁸

The State had fully complied with its obligations to publish the Court's judgment, designate a public place in honor of the victims, and to pay pecuniary and non-pecuniary compensation, as well as costs and expenses.²⁰⁹ The Court will continue to monitor the State's progress in complying with its remaining obligations.²¹⁰

VII. LIST OF DOCUMENTS

A. *Inter-American Court*

1. Preliminary Objections

[None]

2. Decisions on Merits, Reparations and Costs

[Ibsen Cárdenas and Ibsen Peña v. Bolivia, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. \(ser. C\) No. 217 \(Sept. 1, 2010\).](#)

3. Provisional Measures

[None]

4. Compliance Monitoring

[Ibsen Cárdenas and Ibsen Peña v. Bolivia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. \(May 14, 2013\).](#)

207. *Id.*

208. *See* Ibsen Cárdenas and Ibsen Peña v. Bolivia, Monitoring Compliance with Judgment, Order of the Court, Inter-Am. Ct. H.R. "Decides That" (May 14, 2013).

209. *Id.* "Decides That" ¶¶ 1(a)-(c).

210. *See id.* "Decides That" ¶¶ 2(a)-(e).

5. Review and Interpretation of Judgment

[None]

B. Inter-American Commission

1. Petition to the Commission

Ibsen Cárdenas and Ibsen Peña v. Bolivia, Petition No. 786/03, Inter-Am. Comm'n H.R. (Sept. 26, 2003).

2. Report on Admissibility

[Ibsen Cárdenas and Ibsen Peña v. Bolivia, Admissibility Report, Report No. 46/05, Inter-Am. Comm'n H.R., Case No. 12.529 \(Oct. 12, 2005\).](#)

3. Provisional Measures

[None]

4. Report on Merits

Ibsen Cárdenas and Ibsen Peña v. Bolivia, Report on the Merits, Report No. 93/08, Inter-Am. Comm'n H.R., Case No. 12.529 (Oct. 31, 2008).

5. Application to the Court

Ibsen Cárdenas and Ibsen Peña v. Bolivia, Petition to the Court, Inter-Am. Comm'n H.R., Case No. 12.529 (May 12, 2009).

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